



HM Government

Provisional UK Common Framework on Plant Varieties and Seeds

Provisional Framework Outline Agreement and Concordat

February 2022

CP 591



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Provisional Framework Outline Agreement and Concordat

Presented to Parliament
by the Secretary of State for Environment, Food and Rural Affairs
by Command of Her Majesty

February 2022



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ISBN 978-1-5286-3054-2

E02698080 02/22

Printed on paper containing 75% recycled fibre content minimum

Printed in the UK by HH Associates Ltd on behalf of the Controller of Her Majesty's Stationery Office

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Plant Varieties and Seeds Provisional Common Framework Outline Agreement

Part 1: Context

1. Introduction and Policy Area

- 1.1. This Framework Outline Agreement (“The Common Framework”) is an agreement between Defra (Department for Food & Rural Affairs), DAERA (Department of Agriculture, Environment and Rural Affairs), Scottish Government (SG) and Welsh Government (WG) (‘ will hereafter be referred to as the Parties)’
- 1.2. The Framework sets out arrangements for co-operation between the Parties in the policy area of plant varieties and seeds (PVS). The policy area of PVS covers intellectual property rights of plant breeders, plant variety registration, setting standards for marketing and certification of seed and other plant propagating material and ensuring that these standards are upheld.

2. Scope

How the European Union (EU) Framework Operated

- 2.1 Plant Variety Rights: Plant Variety Rights were regulated by Regulation EC 2100/94 on Community plant variety rights and other directly applicable implementing regulations made under this Regulation. The Community Plant Varieties Office (CPVO) implemented and applied the plant varieties rights system across the EU. Though originally retained EU law, this regulation has now been revoked (see Domestic Law).
- 2.2 Marketing Seed and other Plant Propagating Material¹: Under the EU PVS regime there were 11 directives prescribing marketing standards and requirements for seed and other plant propagating material. These requirements were transposed into domestic law during the UK’s EU membership. Before they could be marketed, plant varieties first had to be listed on the EU Common Catalogue. This took place once plant varieties had undergone technical examination in a Member State and met the criteria for distinctness, uniformity, stability (“DUS”) and for agricultural crops, value for cultivation and use (VCU).
- 2.3 The EU law on variety registration and marketing of plant propagating material will continue to apply to Northern Ireland.

Domestic Law

- 2.4 Plant Breeder’s Rights (PBR): Plant variety rights (known as plant breeders’ rights (PBR) in the UK) are administered on a UK wide basis under the Plant Varieties Act 1997 and associated regulations. Plant variety rights are a form of intellectual property that allow the holder of the protected variety to control the use of seed or other plant propagating material and collect royalties. All species of plant may be subject to an

¹ Which includes plants for planting, where regulated

application for PBR. The availability of PBR is considered essential for the economic success of plant breeding. (See Annex 1 – Legislation, Part A).

- 2.5 A UK Controller is appointed jointly by Ministers (section 2 of the Plant Varieties Act 1997) and is responsible for the operation of the Plant Variety Rights Office (PVRO) in administering plant breeders' rights.
- 2.6 Marketing Seed and other Plant Propagating Material: Marketing legislation assures the quality of seed and other plant propagating material on the market. It applies mainly to food crops, through officially controlled certification, but also provides quality assurance for ornamental, amenity and forestry plants (forest reproductive material, "FRM"). Material of all prescribed crops must comply with the legislation, but the level of regulation required varies with the type of crop.
- 2.7 The Plant Varieties and Seeds Act 1964 provides Ministers in UK Government, Scottish Government and Welsh Government with regulation making powers to regulate seed and other plant propagating material. That Act extends to Northern Ireland (limited to seeds by an Order in Council of 1973); DAERA also has regulation making powers under the Seeds Act (Northern Ireland) 1965. (See Annex 1 – Legislation, Part B).
- 2.8 Variety Registration: For the main food and feed crops, a plant variety must first be officially registered. Before a proposed variety is added to a Variety List, all species must pass the DUS test common to Variety Registration and PBR. Agricultural species prescribed in the legislation must also pass performance testing (VCU tests).
- 2.9 Prior to the UK's departure from the EU, the UK operated a national list of plant varieties. Following the UK's departure from the EU and the application of the Northern Ireland Protocol (NIP), in order for a variety to be marketed it must be added to the GB Variety List and certified where appropriate before it can be legally marketed in GB; and it must be on the NI Variety List or EU Common Catalogue before it can be legally marketed in Northern Ireland. Varieties on the NI Variety List can also be marketed in GB, once certified where appropriate. For fruit propagating material, the variety must be officially registered, have PBR or be commonly known before September 2012.
- 2.10 Variety registration legislation in GB requires Defra, Scottish Government and Welsh Government to act jointly when making a listing decision. Northern Ireland maintains its own variety registration legislation. For fruit registration, each Party provides for such in their legislation (see Annex 1 – Legislation, Part C).
- 2.11 Seed and plant propagating material – certification: Certification of seed and other plant propagating material takes place to assure identity and quality through crop inspection, seed testing and labelling. The process is carried out by a mixture of officials and licensed individuals and businesses.
- 2.12 Certification legislation is made separately for England, Wales, Scotland and Northern Ireland for agricultural and vegetable seed, fruit plant and propagating material and seed potatoes. GB-wide and NI legislation exists in three crop sectors: ornamentals, vegetable plants and forest reproductive material (see Annex 1 – Legislation, Part D).

UKG, SG, WG and NIE Competence

- 2.13 Legislative competence in respect of marketing of seed and other plant propagating material and plant breeders' rights is devolved.
- 2.14 This framework is an agreement between Defra, Scottish Government, Welsh Government and DAERA. The Parties will work together with their delivery bodies to provide UK-wide protection for plant breeders' rights, set standards for marketing and certification of seed and other plant propagating material, and ensure these standards are upheld.
- 2.15 The relevant public sector delivery bodies are the Animal and Plant Health Agency (APHA, an Agency of Defra), SASA ((a division of Agriculture and Rural Economy Directorate, within the Scottish Government), the Agri-Food and Biosciences Institute (AFBI, Northern Ireland) and the Forestry Commission. Several non-government organisations carry out significant delivery work for performance testing of new varieties, and in England and Wales, for certification and testing of agricultural seed.

Interdependencies

- 2.16 The outcomes of the intergovernmental relations review are in the process of being implemented. Once confirmation has been provided from each government, the outcomes of the review and appropriate intergovernmental structures will be reflected in this Common Framework.
- 2.17 This Common Framework operates in conjunction with the Memorandum of Understanding for the Cross-Border provision of Forestry Functions and Research Delivery and is without prejudice to the development of the Plant Health Common Framework.
- 2.18 There are some linkages with the Plant Health Common Framework in respect of shared functions (market access) and working groups on plant material where there are both plant health and PVS regulatory requirements (i.e., Forest Reproductive Material, seed potatoes and fruit material). PVS representation will be provided at the working group for market access, which plant health policy colleagues lead on. The working groups on seed potatoes and fruit material are sub-committees of the NLSC (National Lists and Seeds Committee). Parties will continue to explore linking up more closely with plant health colleagues in these sub-committees. In practice, there are occasions when the delivery bodies of the parties combine enforcement activities of plant health and PVS regulatory requirements which leads to the cross-over in governance.

International Relations

- 2.19 The Common Frameworks Principles agreed at JMC (EN) state that frameworks will be established where necessary to ensure the UK can negotiate, enter into and implement new trade agreements and international treaties, and ensure compliance with international obligations. These principles were established in the context of an ambition for close working between the Parties on reserved matters that significantly impact devolved responsibilities in Common Frameworks.

- 2.20 Common Frameworks will allow the Parties, in a timely manner, to ascertain the impact of international trade on managing UK policy divergence. All parties to the framework will consider any impact in a way that meets the requirements of the JMC (EN) principles. Common Frameworks will afford an opportunity to consider any implications stemming from international trade which have a direct bearing on the operation of a Common Framework. The scope of this consideration will not extend beyond Common Frameworks.
- 2.21 International policy formulation will be developed in line with the current Devolution MoU and its accompanying International Relations Concordat. International obligations will be implemented in line with these agreements. In this respect, the Parties will automatically use any updated IR Concordat, and the wider outcomes of the Joint IGR Review, as the basis for such international considerations.
- 2.22 The policy area covered by this Common Framework intersects with the EU-UK Trade and Cooperation Agreement and therefore topics relevant to the framework may be considered from time to time by relevant TCA Specialised Committees or the Partnership Council. Where a UK-EU meeting agenda includes an item concerning implementation in an area of devolved competence, UK Government should facilitate the attendance of the Scottish Government, Welsh Government and Northern Ireland Executive of a similar level to that of the UK Government representatives with final discretion as to the UK delegation a matter for the UK co-chair. UK Government should engage the Scottish Government, Welsh Government and Northern Ireland Executive as fully as possible in preparation for these meetings regardless of attendance, and on all relevant implementation matters.

International Obligations

- 2.23 The Parties will work together to engage with international organisations, co-ordinating a common position to represent an agreed UK view in international fora.
- 2.24 Decisions made under this Common Framework will ensure that the UK can continue to fulfil its international obligations, as outlined below. Further detail for the process of representing the UK in international fora is described in the Protocol for International Representation and Coordination (to follow).
- 2.25 The UK is a signatory to the International Convention for the Protection of New Varieties of Plants and maintains its legislation on PBR in compliance with that Convention. The UK is represented at the International Union for the Protection of New Varieties of Plants (UPOV) council, legal, administrative and technical meetings. As a signatory to the Convention, the UK shares the UPOV mission to “provide and promote an effective system of plant variety protection, with the aim of encouraging the development of new varieties of plants, for the benefit of society”.
- 2.26 The UK is a member of the Organisation for Economic Co-operation and Development (OECD) schemes for both the Varietal Certification or the Control of Seed Moving in International Trade and for the Certification of Forest Reproductive Material. The OECD Seed Schemes promote the use of certified agriculture seed that is of consistently high quality. Seeds are produced – and officially controlled – according to

a set of harmonised procedures. As a member, the UK is obliged to strictly observe the OECD Basic Principles, Method of Operation, and Rules and Regulations of the Schemes, designate a National Designated Authority for the UK and to maintain a List of Varieties. Defra is the National Designated Authority for the UK.

2.27 The UK is a member of the International Seed Testing Association (ISTA), an organisation that develops and publishes standard procedures in the field of seed testing. Representatives from SASA and NIAB (an independent plant science organisation working under a contract with Defra) attend ISTA meetings on behalf of the UK. SASA and NIAB have ISTA accredited laboratories, AFBI has an ISTA member laboratory.

2.28 The United Nations Economic Commission for Europe (UNECE) convenes a Working Party on agricultural quality standards which is applied to trade in seed potatoes. A seed potato specialist from SASA, represents the UK at these meetings.

2.29 Where possible, the UK will attend the European Seed Certification Agencies Association (ESCAA), whose objectives are “to allow the contact between European seed certification agencies, to exchange experiences of national seed certification systems and to harmonise the implementation of EU legislation”. This forum does not have any decision-making powers, but provides the UK with an opportunity to exchange scientific/technical information on seed certification with other European countries.

2.30 The European VCU Platform brings together the official variety testing offices in charge of testing for Value Cultivation and Use (VCU). Representatives with technical knowledge and expertise attend these meetings, which provide an opportunity to exchange information on variety testing.

The Protocol on Ireland/ Northern Ireland

2.31 The Agreement on the Withdrawal of the United Kingdom from the EU sets out the current arrangements where, although remaining within the UK’s custom territory, Northern Ireland will remain aligned with the EU. Paragraph 42 of Annex 2 of the Northern Ireland Protocol is relevant to this framework.

2.32 This Framework reflects the specific circumstances in NI that arise as a result of the Protocol and remains UK wide in its scope. As such decision making and information sharing will always respect the competence of all Parties to the Framework and in particular the provisions in Article 18 of the Protocol on democratic consent in Northern Ireland.

2.33 Where one or more of UK Government, the Scottish Government or the Welsh Governments propose to change rules in a way that has policy or regulatory implications for the rest of the UK, or where rules in Northern Ireland change in alignment with the EU, the Framework is intended to provide governance structures and consensus-based processes for considering and managing the impact of these changes.

2.34 As rules evolve to meet the emerging regulatory needs of the UK, Scottish and Welsh Governments, this Framework will ensure the full participation of Northern Ireland in discussions such that the views of the relevant Northern Ireland Executive Minister(s) are taken into account in reaching any policy or regulatory decisions by the UK, Scottish or Welsh Governments.

2.35 Where rules in Northern Ireland change in alignment with the EU, the Framework will form the basis of a mechanism to ensure consideration by the four governments of any changes, and will enable them to determine any impacts and subsequent actions arising from these changes.

2.36 Where issues or concerns raised by the relevant Northern Ireland Executive Minister(s) in respect of GB-only proposals have not been satisfactorily addressed, they will have the right to trigger a review of the issue as set out in the dispute resolution process at section 13 of this document.

3. Definitions

3.1 Definitions for the key terms in this policy area are as follows.

Abbreviations:

AFBI: Agri-Food Biosciences Institute

APHA: Animal and Plant Health Agency (An Agency of Defra)

British Islands: The United Kingdom of Great Britain and Northern Ireland, the Bailiwick of Guernsey, the Bailiwick of Jersey and the Isle of Man

DAERA: Department for Agriculture, Environment and Rural Affairs

Defra: Department for Environment, Food and Rural Affairs

DIT: Department for International Trade

DUS: Distinct, Uniform and Stable

ESCAA: European Seed Certification Agencies Association

FRM: Forest Reproductive Material

IDSG: Inter-Departmental Statisticians Group

ISTA: International Seed Testing Association

JMC(EN): Joint Ministerial Committee (EU Negotiations)

National Authorities: The Secretary of State for Environment, Food and Rural Affairs, the Welsh Ministers, the Scottish Ministers and the Department for Agriculture, Environment and Rural Affairs

NLSC: National Lists and Seeds Committee

OECD: Organisation for Economic Co-operation and Development

PBR: Plant Breeders' Rights

PDG: Procedures Development Groups

PVRO: Plant Variety Rights Office

PVS: Plant Varieties and Seeds

PVSC: Plant Varieties and Seeds Committee

SCOS: Seed Certification and Official Supervision Committee

STSC: Seed Testing and Sampling Committee

UNECE: United Nations Economic Commission for Europe

UPOV: International Union for the Protection of New Varieties of Plants

VCU: Value for Cultivation and Use

Part 2: Proposed breakdown of policy area and framework

4. Summary of proposed approach

Non-legislative agreement

4.1. This Common Framework constitutes a non-legislative agreement between the Parties. The following outlines how the Parties will work together and co-operate:

- 4.1.1. Parties will work collaboratively and in partnership, agreeing to adhere to the Joint Ministerial Committee (European Negotiations) (JMC(EN)) principles for Common Frameworks.
- 4.1.2. Respect will be paid to the devolution settlements and the democratic accountability of the devolved governments, including the provisions of the Belfast Agreement including the North/South dimension in Strand 2 of that Agreement. Current devolution arrangements will be preserved and enhanced.
- 4.1.3. The Common Framework will enable the administration, management, control and enforcement of plant varieties, seeds and other plant propagating material requirements using co-ordinated procedures based on a common set of rules across the UK, acknowledging the opportunity for policy divergence whilst ensuring the functioning of the UK Internal Market, in line with JMC(EN) principles.

- 4.1.4. The Parties will share information and scientific research in a spirit of openness and transparency and to facilitate effective operation of the Common Framework; information sharing protocols may also be established.
- 4.1.5. The Common Framework should serve to facilitate the administration of:
 - 4.1.5.1. plant breeders' rights for the UK as a whole;
 - 4.1.5.2. marketing of seed and other plant propagating material within each part of the UK. This will occur through co-operation and collaboration, including in areas where divergence exists or may take place in the future.
- 4.1.6. The Common Framework should serve to enable the furtherance of trade for all parts of the UK, including where divergence has resulted in a difference in trade priorities.
- 4.1.7. The dispute resolution process should be utilised only when genuine agreement cannot be reached and divergence would impact negatively on the ability to meet the JMC(EN) principles. In those areas where a common approach is not needed in order to meet the JMC(EN) principles an agreement to diverge would be considered an acceptable resolution.
- 4.1.8. All Parties agree to respect the dispute resolution process in the case of disputes arising and give due consideration to the findings of independent advice from legal counsel or other independent sources.

5. Detailed overview of proposed framework: legislation (primary or secondary)

- 5.1. This Common Framework is underpinned by primary and secondary legislation (see Annex 1) in the PVS field which has been maintained and made operable since the UK's departure from the EU. For plant breeders' rights and variety registration, this legislation provides a UK and GB/NI basis respectively.

6. Detailed overview of proposed framework: non-legislative arrangements

The Parties have agreed that this Common Framework is a political commitment that is not intended to be legally binding or enforceable, and is necessary to maintain common rules for plant varieties, seeds and other plant propagating material across the UK and manage divergence where agreed by the PVSC (Plant Varieties and Seeds Committee).

- 6.1. In the spirit of the Common Framework, the Parties may not implement a divergent measure without seeking the agreement of the other Parties.
- 6.2. The policy objectives of the Parties are:
 - 6.2.1. A single UK regime governing the administration of plant breeders' rights (by the PVRO).
 - 6.2.2. A functioning internal UK market for the marketing of seed and other plant propagating material including a joint GB/NI approach on variety registration.

- 6.2.3. Timely implementation of changes agreed by the Parties on plant varieties and seeds.
- 6.2.4. The adoption of measures in a manner that is consistent with the UK's international obligations, in particular under the UPOV Convention.
- 6.2.5. To establish common policy objectives and positions for engagement in international organisations, in line with international obligations.
- 6.2.6. To engage with the Crown Dependencies, as appropriate, on issues of marketing of seed and other plant propagating material to maintain common rules across the British Islands.

7. Detailed overview of areas where no further action is thought to be needed

- 7.1. Fees and Charges – the Parties will continue to establish their own fees and charges for certification services delivered. For fees and charges on variety registration and PBR, APHA will continue to administer these services on a UK basis (including for NI in terms of varieties being registered on the NI variety list) in line with UK Government's guidelines on full cost recovery.

Part 3: Proposed operational elements of the framework

8. Decision making

Key decisions that will be made through this framework

- 8.1. The key decisions that may be taken by the Parties to this framework are:
 - 8.1.1. Policy decisions concerned with legislative amendments, temporary marketing derogations and equivalence recognition requests;
 - 8.1.2. International representation;
 - 8.1.3. Resolution of disputes;
 - 8.1.4. Referring disputes to the overarching dispute avoidance and resolution mechanism with the appropriate intergovernmental structures if not resolved at portfolio level first;
 - 8.1.5. Reviewing and amending the framework; and
 - 8.1.6. Procurement of services for PBR and variety registration.

Decision-making fora

- 8.2. The key fora for facilitating framework discussions and decision-making are the PVSC and the NLSC, which are attended by representatives of each Party.

Governance

- 8.3. The relationship between the PVSC, NLSC, FRM (ad hoc) Working Group, the technical working groups and the cross-cutting working group (shared with Plant Health Governance) is shown in the PVS Governance Chart, Annex 2.
- 8.4. The NLSC manages variety registration for GB and NI, including listing decisions, and advises on technical aspects of variety registration referred to by the PVSC. The NLSC has responsibility for a number of technical sub-groups to support its delivery – see the PVS Governance Chart in Annex 2 – Governance:
- 8.4.1. VCU Technical Experts Group
 - 8.4.2. VCU Procedures Development Group
 - 8.4.3. DUS Test Centres
 - 8.4.4. seed certification and official supervision committee
 - 8.4.5. seed testing and sampling committee
 - 8.4.6. seed potatoes ad hoc working group
 - 8.4.7. fruit propagating material ad hoc working group
 - 8.4.8. inter-departmental statisticians group
- 8.5. The PVSC and the NLSC are responsible for handling and considering representations received in respect to variety registration.
- 8.6. For failed representations to the PVSC, any affected person has the right to appeal the decision to the Plant Varieties and Seeds Tribunal (“PVST”). The PVST is a statutory appeal tribunal which operates independently of the Parties. When an appeal is received, the Parties will cooperate in responding to the appeal.
- 8.7. The PVRO administers UK PBR. It comprises the UK Controller, UK Deputy Controller and members of the APHA team responsible for the administration and delivery of UK Plant Breeders’ Rights. The NLSC advises the PVRO and makes recommendations to it. The UK Controller is responsible for decision-making required for the granting of UK PBR.
- 8.8. The FRM (ad hoc) Working Group oversees the activity required to achieve successful delivery of FRM functions by the Forestry Commission. This group will report annually to the PVSC on its delivery of FRM functions in time to feed into the annual joint PVSC/NLSC meeting that takes place in autumn.
- 8.9. Market Access Working Group - The PVSC will work together with the UK NPPO (National Plant Protection Organisation) on issues of market access, through ad-hoc membership of the Market Access Working Group (a governance forum of the UK Common Framework on Plant Health). A UK PVS policy representative(s) will provide

advice on marketing of seed and other plant propagating material, and rights protection issues associated with market access.

8.10. In addition to the shared governance bodies and linkages with the UK Common Framework on Plant Health, Parties to both Common Frameworks commit to maximise collaboration and share information on proposals/issues that potentially impact/affect both policy areas. All Parties will ensure good working practice whereby colleagues with responsibility for PVS or/and plant health are informed of such proposals/issues at the earliest opportunity.

Principles for decision-making

8.11. The Parties commit to maintaining minimum standards for seeds marketing as set out in legislation providing reassurance for our trading partners, whilst allowing freedom for Parties to flex above these minimum standards in line with the JMC (EN) framework principles. The PVSC commits to a common approach in considering changes to these minimum standards, as set out in the “Protocol– Proposals for Legislation” (to follow),

8.12. In exceptional circumstances, Defra, SG, and WG members of the PVSC may grant a temporary derogation to market seed below minimum standards, as set out in the “Protocol - Derogations for temporary marketing of seed of a lower germination standard” (to follow).

8.13. Defra, SG and WG members of the PVSC will follow the decision-making guidelines set out in “Protocol - Applicant Country Equivalence Recognition Request” (to follow) when a country outside the British Islands makes an application for its plant material to be recognised as equivalent to plant material produced under the Parties’ legislation and practises. The principle for decision making is that the Parties are in agreement, whether this is, for example, a change to a quality standard for marketing across the UK or for divergence. This is without prejudice to any existing divergence and application of the NIP.

8.14. Where a Party wishes to pursue a divergent policy or measure, the PVSC should consider any evidence regarding the impact of the divergence, including any impact on the functioning of the UK internal market, international trade and international obligations. If one Party considers that a new policy or measure will have an unacceptable impact on any of these areas, and the matter cannot be resolved by the PVSC it may trigger the dispute resolution mechanism (see Dispute Resolution).

8.15. The most likely sources of legislative change or proposals for change are: international organisations, stakeholders, the NLSC and its supporting groups, and the EU. Parties will monitor changes in EU legislation and present them for discussion by the PVSC and assessment of impact. Changes may initially be through a temporary experiment.

Disputes

8.16. The Parties to this Common Framework have agreed that if there is a dispute on a decision, every effort will be made to resolve this dispute at the lowest possible level -

namely through the NLSC and/or the PVSC. If a dispute cannot be resolved, Parties will follow the dispute resolution process outlined in section 13 of this document.

8.17. Any disputes between Parties will be recorded by the PVSC secretariat, as this may help to inform the Review and Amendment process for this document when it is next conducted.

9. Roles and responsibilities of each Party to the Common Framework

Parties

9.1. The Parties to this Common Framework are responsible for confidentiality, to ensure that information that they each may provide is subject to appropriate safeguards and that the confidentiality and sensitivity of such information is respected. Therefore, without prejudice to the legal requirements relating to data protection and freedom of information, unpublished information will not be disclosed to third parties without written permission of the relevant Party that provided the information.

9.2. All Parties are also committed to avoid conflicts of interest during decision-making, in line with the “Ways of Working” section of this Common Framework.

9.3. The Parties to this Common Framework are also responsible for:

9.3.1. Setting the policy and decision-making process for variety registration, which is administered by APHA;

9.3.2. Facilitating the appointment of the UK Controller and the UK Deputy Controller through their respective Ministers;

9.3.3. Meeting international obligations, and coordination, attendance and representation of the UK in international fora;

9.3.4. Providing the appropriate personnel for the PVSC and NLSC, and for the sub-groups of these committees as outlined in Annex 2;

9.3.5. Implementation of legislation;

9.3.6. Adhering to the “Provision of Information and Collaboration” principles outlined in the “Ways of Working” section of this Common Framework;

9.3.7. Cooperation on engagement with stakeholders so that a unified message will be delivered across Parties;

9.3.8. Sharing information and scientific research in a spirit of openness and transparency and to facilitate the effective operation of the Framework; information sharing protocols may be established, and;

9.3.9. Maintenance of knowledge required to make policy decisions on a UK basis; specifically, to maintain capacity and expertise to ensure the functioning of the PVRO, complete representation at Committees for joint decision-making, and for effective administration and provision of services.

Defra

9.4. Defra is responsible for strategic oversight, policy development and legislation in England. It is also responsible for providing UK representation at international fora. Defra provides the Secretariat for the PVSC. Certification activities of seed and other plant propagating material, licensing of businesses and individuals, and enforcement in England is undertaken by APHA. Testing of agricultural seed is undertaken by the Official Seed Testing Station at NIAB.

Welsh Government

9.5. The Welsh Government is responsible for strategic oversight, policy development and legislation in Wales. The Welsh Government uses the delivery services of APHA for certification activities of seed and other plant propagating material, licensing of businesses and individuals, and enforcement. Testing of agricultural seed is undertaken by the Official Seed Testing Station at NIAB.

DAERA

9.6. DAERA is responsible for strategic oversight, policy development and legislation in Northern Ireland. DAERA is responsible for certification and marketing of seed and plant propagating material (including forest reproductive material) in Northern Ireland. As the certifying authority for Northern Ireland, DAERA is responsible for the administration, enforcement and inspection of certification schemes for seed and plant propagating material. Testing of agricultural seed is undertaken by the Official Seed Testing Station at the Agri-Food and Biosciences Institute (AFBI). DAERA is also responsible for the licensing of seed samplers and crop inspectors in Northern Ireland.

Scottish Government

9.7. The Scottish Government is responsible for strategic oversight, policy development and legislation in Scotland. Certification work in Scotland is undertaken by SASA, a division of the Agriculture and Rural Economy Directorate, within the Scottish Government, who divide the work up into three areas.

9.8. Seed Potato Certification is carried out by SASA officials who provide for the administration and inspections as well as a range of scientific activities in support of seed potato classification.

9.9. Seed Certification for cereals and non-cereal seed species is a mixture of official and licensed activities undertaken by SASA, SG Agricultural staff and licensed individuals from the seed industry. The licensing, training, examination, official supervision and enforcement work is the responsibility of SASA and Agricultural staff.

9.10. Seed testing is undertaken at its Official Seed Testing Station, for cereals and non-cereal seed species. The licensing, training, examination, official supervision and enforcement work is the responsibility of the OSTs Chief Officer, SASA and Agricultural staff.

- 9.11. Soft fruit certification is carried out by the Horticultural Marketing Unit (HMU) in SASA. HMU also oversees the controls for both ornamental and vegetable plant material.
- 9.12. SASA is also responsible for delivery of plant health activities in Scotland and combines the management of the regulatory requirements for plant health and PVS where this is appropriate.

Ways of Working

- 9.13. This section of the Common Framework describes the working arrangements to maximise co-operation and collaboration, thereby ensuring value for money by making the most effective use of resources, specifically:
- 9.13.1. Provision of Information – Parties will endeavour to provide each other with full, open and timely access to information which the others may need in order to effectively discharge their responsibilities. They will keep each other informed of contact with third countries on relevant trade related matters and have coordinated liaison on press and publicity matters. They will keep each other informed on matters of mutual interest, including opportunities for collaboration and sharing of resources (for example in research projects and developments) and on contact with stakeholders and external communications.
- 9.13.2. Collaboration – Parties will work together to develop policy on matters of mutual interest and shall endeavour to reach agreement, working together to resolve disagreements. The Parties will contribute to UK policy positions for international meetings, including timely reporting of outcomes, and liaising on proposals emanating from them.

10. Roles and responsibilities of existing or new bodies

APHA (An Agency of Defra)

- 10.1. APHA is responsible for the management of certification activities, licensing of businesses and individuals, and enforcement in England and Wales. Most of the technical work in assuring seed company activities is done by NIAB under a contract with APHA. NIAB is responsible for seed testing at the Official Seed Testing Station and the oversight of licensed testing stations.
- 10.2. APHA coordinates the delivery of variety registration and PBR. It receives and manages applications, coordinates testing, and provides the secretariat for the NLSC. It manages the Seed Potato Classification Scheme (SPCS) and the Fruit Propagating Certification Scheme (FPCS) in England and Wales.
- 10.3. APHA is also responsible for delivery of plant health activities in England and Wales, on behalf of the Secretary of State and Welsh Ministers, and combines the management of the regulatory requirements for plant health and PVS where this is appropriate.

AFBI

10.4. AFBI is responsible for the testing of agricultural seed at its Official Seed Testing Station on behalf of DAERA.

10.5. AFBI is also responsible for delivery of plant health activities in Northern Ireland and combines the management of the regulatory requirements for plant health and PVS where this is appropriate.

Forestry Commission

10.6. The Forestry Commission delivers the FRM functions, as well as plant health functions, on behalf of Great Britain, as detailed in Schedule 3 of the Memorandum of Understanding for the Cross-Border provision of Forestry Functions and Research Delivery.

10.7. The Forestry Commission is responsible for coordination and attendance of the FRM (ad hoc) Working Group. This group will provide a report of relevant issues to the PVSC on an annual basis, ahead of the joint PVSC/NLSC annual meeting in the autumn, including proposals for changes to marketing regulations, and coordination with DAERA on Northern Ireland forestry issues.

10.8. The Forestry Commission also has responsibility for arranging for delegates to attend meetings of the OECD Forest Seed and Plant Scheme Technical Working Group, normally in April and October each year.

Crown Dependencies

9.9 The PVSC will engage with the Crown Dependencies, as necessary, on areas of mutual interest.

11. Monitoring

11.1. The PVSC has overall responsibility for monitoring of the Common Framework. This will be reviewed at the annual meeting between the NLSC and the PVSC.

11.2. The purpose of monitoring is to assess:

11.2.1. intergovernmental cooperation and collaboration as a result of the Framework;

11.2.2. whether Parties are implementing and complying with the Framework;

11.2.3. whether divergence has taken place in contravention of the common framework principles; and

11.2.4. whether any divergence that has taken place has had an inadvertent impact on the policy area covered by the framework.

11.3. The outcome of this monitoring will be used to inform joint decision-making going forward and the next review and amendment process. If there is an unresolved disagreement, the dispute avoidance and resolution mechanism should be used.

11.4. The PVSC will define its responsibility in terms of monitoring at a future meeting and describe the arrangements needed.

12. Review and Amendment

Process

12.1. The Review and Amendment Mechanism (RAM) will ensure the Common Framework can adapt to changing policy and governance environments in the future.

12.2. There are two types of review which are outlined below. The process for agreeing amendments should be identical regardless of the type of review.

12.3. The RAM relies on consensus at each stage of the process from the Ministers responsible for the policy areas covered by the Common Framework.

12.4. Third parties can be consulted by any Party to the Common Framework to provide advice at any stage in the process. These include other government departments or bodies as well as external stakeholders such as NGOs and interest groups.

12.5. At the outset of the review stage, Parties to the Common Framework will agree timelines for the process, including the possible amendment stage.

12.6. If agreement is not reached in either the review or amendment stage, Parties to the Common Framework can raise a dispute through the Common Framework's dispute avoidance and resolution mechanism.

Review Stage

12.7. The Common Framework will be reviewed by the PVSC, after the first six months or in light of the outcomes of the Inter-Governmental Relations Review, whichever comes first.

12.8. Following the first review a periodic review of the Common Framework will be carried out by the PVSC every 3 years.

12.8.1. The period of 3 years starts from the conclusion of a periodic review and any amendment stages that follow.

12.8.2. During the periodic review, the PVSC will discuss whether the governance and operational aspects of the Common Framework are working effectively.

12.9. An exceptional review of the Common Framework is triggered by a 'significant issue'. Any Parties to the Common Framework can request an exceptional review by notifying the PVSC. The PVSC will decide whether an exceptional review is needed.

12.9.1. A significant issue must be time sensitive and fundamentally impact the operation and/or the scope of the Common Framework.

12.9.2. The exceptional review may include a review of governance structures if all Parties agree it is required. Otherwise, these issues are handled in the periodic review.

12.9.3. The same significant issue cannot be discussed within six months of the closing of that issue.

12.10. The amendment stage can only be triggered through unanimous ministerial agreement. If Parties agree that no amendment is required, the relevant time period begins again for both review types (for example, it will be three years until the next periodic review and at least six months until the same significant issue can trigger an exceptional review.)

Amendment Stage

12.11. Following agreement that the Parties wish to enter the amendment stage, the Parties will enter into discussion around the exact nature of the amendment. This will be led by the PVSC.

12.12. If an amendment is deemed necessary during either type of review, the existing Common Framework will remain in place until a final amendment has been agreed by the PVSC.

12.13. All amendments to the Common Framework must be agreed by all Parties, via the PVSC within agreed timescales, and a new non-legislative agreement signed by all Parties.

12.14. If the PVSC cannot agree whether or how a Common Framework should be amended this may become a dispute and as such could be raised through the framework's dispute avoidance and resolution mechanism.

13. Dispute Resolution

Process

13.1. A disagreement between Parties to this Common Framework becomes a 'dispute' when it enters the formal dispute avoidance and resolution process set out in the appropriate intergovernmental structures, currently under review as referred to in paragraph 2.16.

13.2. The goal of this dispute avoidance and resolution mechanism is therefore to avoid escalation to the formal dispute avoidance and resolution process that is set out in the appropriate intergovernmental structures.

13.3. This mechanism will be utilised only when genuine agreement cannot be reached and divergence would impact negatively on the ability to meet the Common Frameworks' principles. In those areas where a common approach is not needed in

order to meet these principles an agreement to diverge could be considered an acceptable resolution.

13.4. In the event of a dispute, the intention is to resolve issues at the earliest opportunity at official level.

13.4.1. The starting point is discussion through the NLSC, on technical issues and the PVSC on policy issues.

13.4.2. If the NLSC cannot resolve a dispute it can be escalated to the PVSC for consideration.

13.4.3. If the PVSC cannot resolve the dispute, then senior officials will be nominated to contribute to the dispute resolution.

13.4.4. Where disputes are of a technical nature, the senior officials group nominated by the PVSC may refer the dispute back to the NLSC or appropriate subgroup in order to gather more scientific evidence to help resolve the dispute.

13.4.5. If necessary, if a dispute cannot be resolved, it can then be escalated to the Senior Officials Programme Board.

13.4.6. If this fails, it would then be escalated to ministerial level at the Inter-Ministerial Group for Environment, Food and Rural Affairs (IMG (EFRA)) via the Senior Officials Programme Board.

13.4.7. The last step in the dispute resolution would be with appropriate intergovernmental structures at the highest level.

Timescales for escalation of disputes

13.5. When a dispute is raised at official level, consideration will be given to the urgency of the dispute (i.e. how quickly a decision is required) by the PVSC who will develop and agree an assessment. This assessment will guide timescales for escalation of the dispute within the governance structure, with decisions requiring a more immediate resolution being escalated more quickly.

Evidence gathering

13.6. At each stage further evidence may be requested from the preceding forum before the dispute is discussed.

Part 4: Practical next steps and related issues

14. Next Steps

Stakeholder Engagement

14.1. An infographic for stakeholders has been finalised which describes the Common Framework. This will be updated when we consult further after publication of the Common Framework.

14.2. Stakeholders were invited to comment or feedback on a summary of the Common Framework in a previous informal consultation that was put to key industry representatives to engage with them on its development, though minimum feedback was received.

Linkages with the Plant Health Framework

14.3. Work has been undertaken to ensure a good relationship between the PVS and Plant Health Common Frameworks.

14.3.1. Interaction between the two Common Frameworks will be through the following groups: Market Access working group, FRM (ad hoc) Working Group, Seed Potatoes Ad-Hoc Working Group and Fruit Propagating Material Ad Hoc Working Group.

14.3.2. The Parties to the PVS Common Framework are represented on the Market Access Working Group by a Defra policy team member.

14.3.3. Linkages will continue to be explored with the plant health Common Framework for the Seed Potatoes Ad-Hoc Working Group and the Fruit Propagating Material Ad-Hoc Working Group.

14.3.4. The FRM (ad hoc) Working Group is led by the Forestry Commission, which has links with the PH Framework on tree health matters and will provide reports to the annual PVSC and NLSC joint meeting.

Protocols and Terms of Reference

14.4. The PVSC has developed proposed protocols that provide detail on the processes the Parties will follow in four discrete areas: equivalence recognition requests from other countries; international representation and coordination; proposing legislation; and derogations for temporary marketing of seed of a lower germination standard.

14.5. The protocols will be included within the draft concordat.

14.6. There is an ongoing review of the existing Terms of Reference (ToR) for the PVSC and NLSC.

Annex A - Joint Ministerial Committee (EU Negotiations) Communiqué, October 2017

Common Frameworks: Definition and Principles

Definition

As the UK leaves the European Union, the Government of the United Kingdom and the devolved administrations agree to work together to establish common approaches in some areas that are currently governed by EU law, but that are otherwise within areas of competence of the devolved administrations or legislatures. A framework will set out a common UK, or GB, approach and how it will be operated and governed. This may consist of common goals, minimum or maximum standards, harmonisation, limits on action, or mutual recognition, depending on the policy area and the objectives being pursued. Frameworks may be implemented by legislation, by executive action, by memorandums of understanding, or by other means depending on the context in which the framework is intended to operate.

Context

The following principles apply to common frameworks in areas where EU law currently intersects with devolved competence. There will also be close working between the UK Government and the devolved administrations on reserved and excepted matters that impact significantly on devolved responsibilities.

Discussions will be either multilateral or bilateral between the UK Government and the devolved administrations. It will be the aim of all participants to agree where there is a need for common frameworks and the content of them.

The outcomes from these discussions on common frameworks will be without prejudice to the UK's negotiations and future relationship with the EU.

Principles

1. Common frameworks will be established where they are necessary in order to:
 - enable the functioning of the UK internal market, while acknowledging policy divergence;
 - ensure compliance with international obligations;
 - ensure the UK can negotiate, enter into and implement new trade agreements and international treaties;
 - enable the management of common resources;
 - administer and provide access to justice in cases with a cross-border element; and
 - safeguard the security of the UK.
2. Frameworks will respect the devolution settlements and the democratic accountability of the devolved legislatures, and will therefore:
 - be based on established conventions and practices, including that the competence of the devolved institutions will not normally be adjusted without their consent;

- maintain, as a minimum, equivalent flexibility for tailoring policies to the specific needs of each territory as is afforded by current EU rules; and
- lead to a significant increase in decision-making powers for the devolved administrations.

3. Frameworks will ensure recognition of the economic and social linkages between Northern Ireland and Ireland and that Northern Ireland will be the only part of the UK that shares a land frontier with the EU. They will also adhere to the Belfast Agreement.

Annex 1 – Legislation²

Part A – Plant Breeders’ Rights

- The Plant Breeders’ Rights Regulations 1978 (S.I. 1978/294) (regulation 18 (and regulation 3 as it applies to regulation 18) as saved by SI 1998/1027)
- The Plant Varieties Act 1997 (1997 c. 66)
- The Plant Breeders’ Rights (Information Notices) Regulations 1998 (S.I. 1998/1024)
- The Plant Breeders’ Rights (Farm Saved Seed) (Specification of Species and Groups) Order 1998 (S.I. 1998/1025)
- The Plant Breeders’ Rights (Farm Saved Seed) (Specified Information) Regulations 1998 (S.I. 1998/1026).
- The Plant Breeders’ Rights Regulations 1998 (S.I. 1998/1027)
- The Patents and Plant Variety Rights (Compulsory Licensing) Regulations 2002 (S.I. 2002/247)
- The Plant Breeders’ Rights (Naming and Fees) Regulations 2006 (S.I. 2006/648)
- The Plant Breeders’ Rights (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/204)³

Part B – Marketing Seed and other Plant Propagating Material Primary Legislation and powers

- The Plant Varieties and Seeds Act 1964 (1964 c. 14)
- The Seeds Act (Northern Ireland) 1965 (1965 c. 22 (N.I))
- The Plant Varieties and Seeds (Northern Ireland) Order 1973 (S.I. 1973/609)
- The Aquatic Animal Health and Alien Species in Aquaculture, Animals, and Marketing of Seed, Plant and Propagating Material (Legislative Functions and Miscellaneous Provisions) (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1463)

Part C – Variety Registration

- The Seeds (National Lists of Varieties) Regulations 2001 (S.I. 2001/3510)
- The Seeds (Variety Lists) Regulations (Northern Ireland) 2020 (S.R. (NI) 2020 No. 302)
- Relevant parts of the Fruit Plant and Propagating Material Marketing Regulations (see Part D)

Part D – Certification and Marketing of Seed and Material

- The Vegetable Seed Regulations 1993 (S.I.1993/2008)
- The Oil and Fibre Plant Seed (Scotland) Regulations 2004 (S.S.I.2004/317)
- The Cereal Seed (Scotland) Regulations 2005 (S.S.I.2005/328)
- The Fodder Plant Seed (Scotland) Regulations 2005 (S.S.I.2005/329)
- The Beet Seeds (Scotland) No 2 Regulations 2010 (S.S.I.2010/148)
- The Seed Marketing Regulations 2011 (S.I. 2011/463)
- The Seed Marketing (Wales) Regulations 2012 (S.I. 2012/245 (W. 39))
- The Seed Marketing Regulations (Northern Ireland) 2016 (S.R. (NI) 2016 No 244)
- The Seed (Licensing and Enforcement etc.) (Scotland) Regulations 2016 (S.S.I.2016/68)

² To note that legislation.gov.uk has not made all of the amendment changes from EU Exit

³ S.I. 2019/204 as amended by S.I. 2019/1220 and 2020/769.

Plant Varieties and Seeds Provisional Common Framework

- The Marketing of Fruit Plant and Propagating Material (England) Regulations 2017 (S.I.2017/595)
- The Marketing of Fruit Plant and Propagating Material (Wales) Regulations 2017 (S.I. 2017/691 (W. 163))
- The Marketing of Fruit Plant and Propagating Material (Scotland) Regulations 2017 (S.S.I.2017/177)
- The Marketing of Fruit Plant and Propagating Material Regulations (Northern Ireland) 2017 (S.R. (NI) 2017 No 119)

- The Seed Potatoes (Scotland) Regulations 2015 (S.S.I 2015/395)
- The Seed Potatoes (England) Regulations 2015 (S.I.2015/1953)
- The Seed Potatoes (Wales) Regulations 2016 (S.I 2016/106 (W. 52))
- The Seed Potatoes Regulations (Northern Ireland) 2016 (S.R. (NI) 2016 No 190)

- The Marketing of Ornamental Plant Propagating Material Regulations (Northern Ireland) 1999 (S.R (NI) 1999 No 502)
- The Marketing of Ornamental Plant Propagating Material Regulations 1999 (S.I.1999/1801)

- The Marketing of Vegetable Plant Material Regulations (Northern Ireland) 1995 (S.R. (NI) 1995 No 415)
- The Marketing of Vegetable Plant Material Regulations 1995 (S.I.1995/2652)
- Forest Reproductive Material Regulations (Northern Ireland) 2002 (S.R.(NI) 2002 No 404)
- The Forest Reproductive Material (Great Britain) Regulations 2002 (S.I.2002/3026)

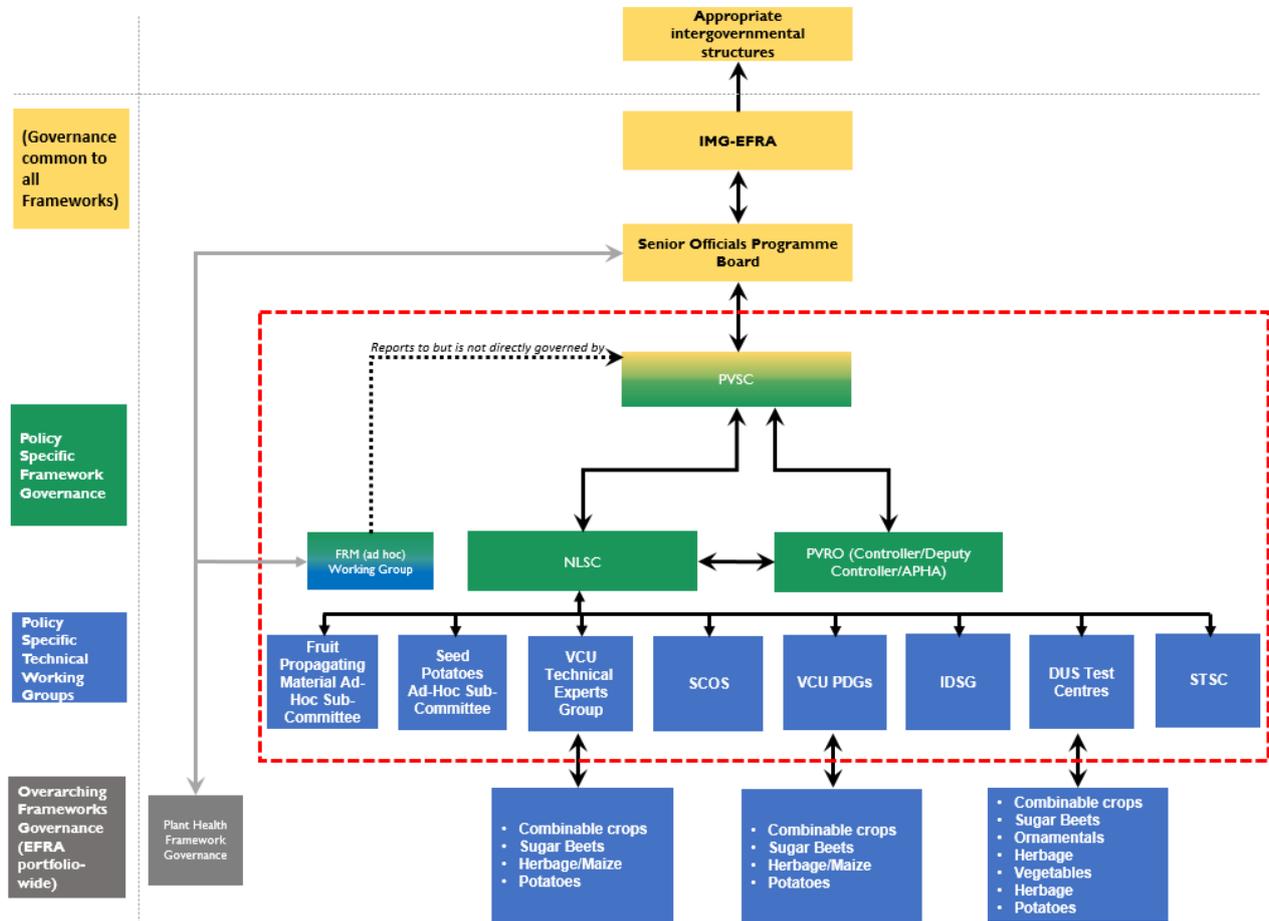
Directly applicable EU law retained in domestic legislation:

- Commission Decision 80/512/EEC authorising Denmark, Germany, Luxembourg, Netherlands, and the UK not to apply the conditions laid down in Council Directive 66/401/EEC on the marketing of fodder plant seed, as regards the weight of the sample for determination of seed of *Cuscuta*.
- Council Decision 2003/17 on equivalence of field inspections carried out in third countries on seed-producing crops and on the equivalence of seed produced in third countries.
- Council Decision 2005/834/EC on the equivalence of checks on practices for the maintenance of varieties carried out in certain third countries and amending Decision 2003/17/EC.
- Commission Regulation (EC) 217/2006 laying down rules for the application of Council Directives 66/401/EEC, 66/402/EEC, 2002/54/EC, 2002/55/EC and 2002/57/EC as regards the authorisation of Member States to permit temporarily the marketing of seed not satisfying the requirements in respect of the minimum germination.
- Commission Implementing Decision 2014/150 on the organisation of a temporary experiment providing for certain derogations for the marketing of populations of the plant species wheat, barley, oats and maize pursuant to Council Directive 66/402/EEC.
- Commission Implementing Decision (EU) 2017/547 on the organisation of a temporary experiment under Council Directive 2002/56/EC as regards seed potato tubers derived from true potato seed.
- Commission Implementing Decision (EU) 2020/1106 on the organisation of a temporary experiment under Council Directives 66/401/EEC, 66/402/EEC, 2002/54/EC and

2002/57/EC as regards the official checking rate for field inspection under official supervision for basic seed, bred seed of generations prior to basic seed and certified seed.

Annex 2 – Governance

PVS Governance Chart - structure and linkages



This diagram shows how the NLSC, including all its subgroups, reports into the PVSC and how the NLSC and PVSC interacts with the PVRO. It also shows how the FRM (ad hoc) Working Group reports to the PVSC. The PVSC escalates any issues or disputes to the Senior Officials Programme Board which in turn reports into IMG EFRA which feeds into appropriate intergovernmental structures.

If you need an accessible version of the flowchart above, please contact Defra’s Plant Varieties and Seeds Team: defra-plant-varieties-and-seeds@defra.gov.uk

Concordat on Plant Varieties and Seeds

Introduction

1. This concordat between the Department for Environment, Food and Rural Affairs (Defra), the Department of Agriculture, Environment and Rural Affairs (DAERA), the Scottish Government and the Welsh Government ('the Parties'), concerns the UK Common Framework on Plant Varieties and Seeds ('the Framework'). The Framework sets out arrangements and principles that will guide joint working; provides a dispute avoidance and resolution mechanism; provides a review and amendment mechanism; and facilitates fulfilment of the Common Framework principles agreed at the Joint Ministerial Committee (EU Negotiations) (JMC(EN)) on 16 October 2017⁴ that apply to this policy area.
2. The policy area of Plant Varieties and Seeds is devolved. The Common Framework seeks to facilitate a common UK position where necessary to fulfil the Common Framework principles. Plant breeders' rights (PBR) are administered on a UK wide basis under the Plant Varieties Act 1997 and associated regulations. Variety registration is administered on a GB and NI basis; while certification of seed and other plant propagating material is to be administered by each party. The aim of the Framework is to avoid divergence insofar as is possible where it may lead to negative consequences for any of the Parties.
3. This concordat is a political commitment and is not intended to be legally binding or enforceable. It is in accordance with the overarching Memorandum of Understanding on Devolution⁵ which is currently under review as part of the intergovernmental relations review.

Scope

4. This concordat covers provision for UK protection for PBR, plant variety registration, setting standards for marketing and certification of seed and other propagating material, and ensuring these standards are upheld. The Parties will work together to engage with international organisations, co-ordinating a common position to represent an agreed UK view in international affairs.
5. Four protocols sit within the scope of the concordat and contribute to the aims of the Framework: protocol for proposing legislation, protocol for derogations for marketing

4

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/652285/JOINT_Ministerial_Committee_communique.pdf

5

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/316157/MOU_between_the_UK_and_the_Devolved_Administrations.pdf

seed of a lower germination standard, protocol for international co-ordination and representation and the protocol for applicant country equivalence recognition requests. These protocols can be found in Annex 1 (to follow).

6. Each Party will continue to establish its own fees and charges for certification services. For fees and charges on variety registration and PBR, the Animal and Plant Health Agency (APHA) will continue to administer these services (and associated fees and charges) on a UK basis, including for DAERA in terms of the registration of varieties on the Northern Ireland Variety List in line with UK Government's guidelines of full cost recovery.

Principles for working together

7. The Framework enables the administration, management, control and enforcement of PBR, plant variety registration and the marketing and certification of seed and other plant propagating material by maintaining co-ordinated procedures based on a common set of rules across the UK where appropriate. The Framework acknowledges the scope for policy divergence whilst enabling the functioning of the UK Internal Market, in line with JMC(EN) principles.
8. The Framework should serve to facilitate the administration of PBR for the UK as a whole. It should also serve to facilitate the administration of the marketing of seed and propagating material within each part of the UK. This will occur through co-operation and collaboration, including in areas where divergence has and may take place in the future.
9. Respect will be paid to the devolution settlements of the Northern Ireland Executive, Scottish Government and Welsh Government and to the democratic accountability of the Devolved Governments, including the provisions of the Belfast Agreement, with the inclusion of the North/South dimension highlighted in Strand 2 of that Agreement.
10. The Agreement on the Withdrawal of the United Kingdom from the EU sets out the current arrangements where, although remaining within the UK's custom territory, Northern Ireland will remain aligned with the EU. Paragraph 42 of Annex 2 of the Northern Ireland Protocol is relevant to this concordat.
11. This concordat reflects the specific circumstances in NI that arise as a result of the Protocol and remains UK wide in its scope. As such decision making and information sharing will always respect the competence of all Parties to the Framework and in particular the provisions in Article 18 of the Protocol on democratic consent in Northern Ireland.
12. Where one or more of UK Government, the Scottish Government or the Welsh Governments propose to change rules in a way that has policy or regulatory implications for the rest of the UK, or where rules in Northern Ireland change in alignment with the EU, the Framework is intended to provide governance structures and consensus-based processes for considering and managing the impact of these changes.

13. As rules evolve to meet the emerging regulatory needs of the UK, Scottish and Welsh Governments, this concordat will ensure the full participation of Northern Ireland in discussions such that the views of the relevant Northern Ireland Executive Minister(s) are taken into account in reaching any policy or regulatory decisions by the UK, Scottish or Welsh Governments.
14. Where rules in Northern Ireland change in alignment with the EU, the Framework will form the basis of a mechanism to ensure consideration by the four governments of any changes, and will enable them to determine any impacts and subsequent actions arising from these changes.
15. Where issues or concerns raised by the relevant Northern Ireland Executive Minister(s) in respect of GB-only proposals have not been satisfactorily addressed, they will have the right to trigger a review of the issue as set out in the dispute resolution process in paragraphs 25 to 40 of this document.
16. The Parties will share information and scientific research in a spirit of openness and transparency and in a timely manner and to facilitate effective operation of the framework; information sharing protocols may be established if the Parties agree this is necessary.
17. The Parties will engage, as appropriate, with the Crown Dependencies on issues of marketing of seed and other plant propagating material to maintain common rules across the British Islands. This will involve ensuring the Crown Dependencies are made aware of any relevant legislative changes in the UK following their discussion at Plant Varieties and Seeds Committee (PVSC).
18. The Parties shall inform each other at the earliest opportunity of any new policy proposals, and before they are made public, to allow full consideration and a common approach to be reached wherever appropriate. Each Party will also appraise the others of the ongoing development of such proposals. Where this will not be possible, each Party will inform the others as soon as possible.
19. The Framework should serve to enable the furtherance of trade for all parts of the UK, including where divergence has resulted in a difference in trade priorities.
20. The Plant Variety Rights Office (PVRO) administers UK PBR. It comprises the UK Controller, UK Deputy Controller and the APHA team responsible for the administration and delivery of UK PBR. The National Lists and Seeds Committee (NLSC) advises the PVRO and makes recommendations to them. The Controller, supported by the PVRO, is responsible for the decision making required for the granting of UK PBR.
21. The key fora for facilitating framework discussions and decision-making are the NLSC and the PVSC, which are attended by representatives of each Party.
22. The NLSC has broad responsibility for the technical remit for variety registration and marketing of seed and other plant propagating material across the UK. It is attended by official representatives of each of the Parties: AFBI for DAERA, APHA for Defra,

Scottish Government and Welsh Government. The NLSC meets a minimum of four times a year and currently meets at least once a month.

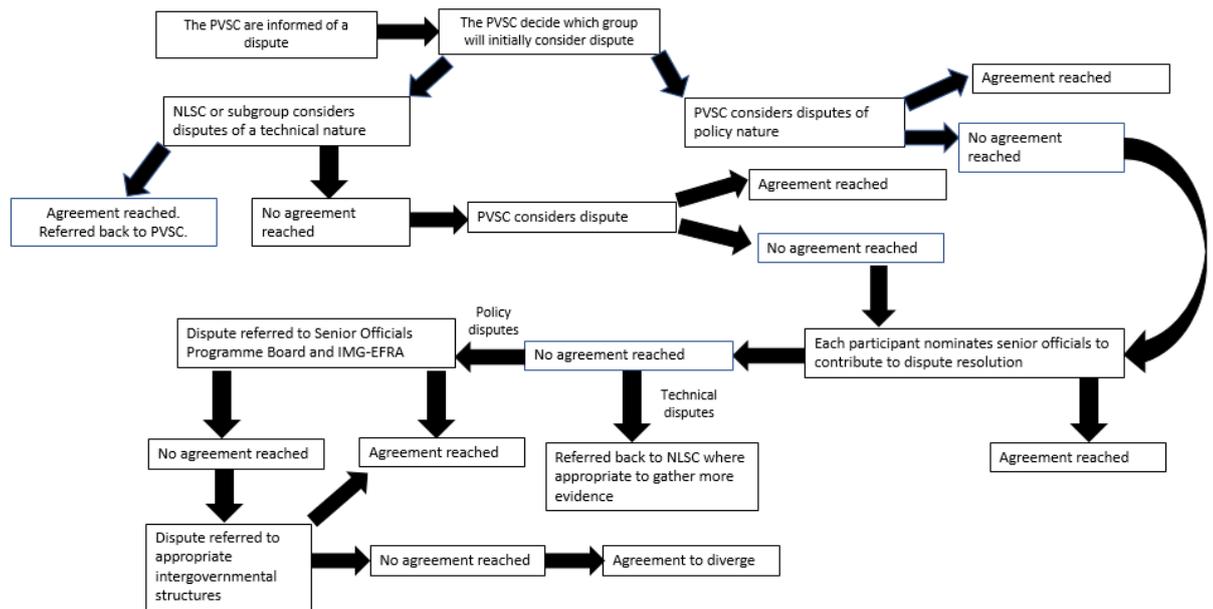
23. A number of technical working-groups feed into the NLSC structure and specific technical matters may be referred to these working groups by the NLSC.
24. The PVSC has broad responsibility for the policy remit for variety registration and marketing of seed and other plant propagating material across the UK. It is attended by representatives from each Party and is held a minimum of four times a year and currently meets every four weeks.
25. The dispute resolution process should be utilised only when genuine agreement cannot be reached and divergence would impact negatively on the ability to meet the JMC(EN) principles. The Parties to this concordat commit to resolving any issues at the earliest opportunity and at the most appropriate level. In those areas where a common approach is not needed in order to meet the JMC(EN) principles an agreement to diverge would be considered an acceptable resolution.
26. Parties agree to respect the dispute resolution process in the case of disputes arising and give due consideration to the findings of independent advice from legal counsel or other independent sources.
27. The Parties are committed to avoid conflicts of interest during decision-making.
28. Parties will apply the following working arrangements to maximise co-operation and collaboration, thereby ensuring value for money, by making the most effective use of resources:
 - Provision of Information – Parties will endeavour to provide each other with full, open and timely access to information which the others may need in order to effectively discharge their responsibilities. They will keep each other informed of contact with third countries on relevant trade related matters, and have coordinated liaison on press and publicity matters. They will keep each other informed on matters of mutual interest, including opportunities for collaboration and sharing of resources (for example in research projects and developments) and on contact with stakeholders and external communications.
 - Collaboration – Parties will work together to develop policy on matters of mutual interest, and shall endeavour to reach agreement, working together to resolve disagreements. The Parties will contribute to UK policy positions for international meetings, including timely reporting of outcomes, and liaising on proposals emanating from them.

Dispute avoidance and resolution mechanism

Process

29. A disagreement between Parties of this concordat becomes a 'dispute' when it enters the formal dispute avoidance and resolution process set out in appropriate intergovernmental structures.

30. The goal of the dispute avoidance and resolution mechanism in this concordat is therefore to avoid escalation to the process set out in the overarching MoU on Devolution, by resolving any disagreements at the earliest opportunity and the most appropriate level.
31. The mechanism in this concordat will be utilised only when genuine agreement cannot be reached and divergence would impact negatively on the Parties' ability to meet the Common Framework principles. In those areas where a common approach is not needed in order to meet these principles an agreement to diverge could be considered an acceptable resolution.
32. The intention is to resolve issues at the earliest opportunity at official level via the NLSC and/or PVSC. In the event that an agreement cannot be reached by NLSC or PVSC, then an ad hoc group of senior officials will be nominated, if not already done so, to contribute to the dispute avoidance and resolution.
33. The flowchart at paragraph 41 shows the dispute resolution process and is described in paragraphs 34 to 40.
34. Disputes of a policy nature would initially be considered by PVSC.
35. Disputes of a technical nature would be considered by NLSC or a relevant subgroup, who would then provide a recommendation to the PVSC on the matter. PVSC then considers these proposals and makes a decision on them.
36. The PVSC will consider which Committee or Committee subgroups should initially look at a dispute when it assesses the urgency of any proposal as per paragraph 31.
37. Where NLSC or PVSC are unable to resolve a dispute, then senior officials will be nominated by each Party to this framework to contribute to the dispute resolution process.
38. Senior officials nominated by the Parties may, in the case of technical disputes, refer the matter back to the NLSC or an appropriate subgroup to gather more scientific evidence if an agreement is not reached, before the dispute reaches the appropriate intergovernmental structures at the highest level of the dispute resolution mechanism.
39. If the dispute cannot be resolved at this level, the matter will be referred to the Senior Officials Programme Board and IMG-EFRA
40. The final step for unresolved disputes would be with appropriate intergovernmental structures at the highest level.
41. Flowchart of dispute resolution process



This diagram shows a flowchart of the dispute resolution process as described in paragraphs 34 to 40.

Timescales for escalation

42. When a proposal is raised at official level, consideration will be given to the urgency of the proposal (i.e. how quickly a decision is required) by the PVSC, who will develop and agree an assessment. This assessment will guide timescales for escalation of disagreement within the governance structure, with decisions requiring a more immediate resolution being escalated more quickly.

43. As groups within the official dispute resolution structure meet on differing timetables, where PVSC determines that an agreement requires rapid resolution by a particular group, a special meeting may be convened if it is judged unlikely that the group may resolve any issue via correspondence.

Evidence gathering

44. At each stage further evidence may be requested from officials at the preceding level before the disagreement is discussed.

Review and amendment mechanism

Process

45. The Review and Amendment Mechanism (RAM) ensures the concordat can adapt to changing policy and governance environments in the future.

46. There are two types of review which are outlined below. The process for agreeing amendments should be identical regardless of the type of review.

47. The RAM relies on consensus at each stage of the process from the Ministers responsible for the policy areas covered by the framework.
48. Third parties can be used by any Party to the concordat to provide advice at any stage in the process. These include other government departments or bodies as well as external stakeholders such as NGOs and interest groups.
49. At the outset of the review stage, Parties to the concordat must agree timelines for the process, including the possible amendment stage.
50. If agreement is not reached in either the review or amendment stage, Parties to the concordat can raise it as a dispute through the concordat's dispute avoidance and resolution mechanism.

Review Stage

Routine

51. This concordat will be reviewed by the PVSC, after the first six months or in light of the outcomes of the Inter-Governmental Relations Review, whichever comes first.
52. Following the first review a periodic review of the concordat will be carried out by the PVSC every six years, in line with official or ministerial level meetings.
 - The period of three years starts from the conclusion of a periodic review and any amendment stages that follow.
 - During the periodic review, the PVSC will discuss whether the governance and operational aspects of the framework are working effectively.

Exceptional

53. An exceptional review of the concordat is triggered by a 'significant issue'. Any Party to the concordat can request an exceptional review by notifying the PVSC. The PVSC will decide whether an exceptional review is needed.
 - A significant issue must be time sensitive and fundamentally impact the operation and/or the scope of the framework.
 - The exceptional review may include a review of governance structures if all Parties agree it is required. Otherwise, these issues are handled in the periodic review.
 - The same significant issue cannot be discussed within six months of the closing of that issue.

Amendment Stage

54. The amendment stage can only be triggered through unanimous ministerial agreement. If Parties agree that no amendment is required, the relevant time period begins again for both review types (for example, it will be three years until the next

periodic review and at least six months until the same significant issue can trigger an exceptional review.)

55. Following agreement that the Parties wish to enter the amendment stage, the Parties will enter into discussion around the exact nature of the amendment. This will be led on by the PVSC.

56. If an amendment is deemed necessary during either type of review, the existing concordat will remain in place until a final amendment has been agreed by the PVSC.

57. All amendments to the concordat must be agreed by all Parties, via the PVSC, and a new concordat signed by all Parties.

58. If the PVSC cannot agree whether or how the concordat should be amended this may become a disagreement and as such could be raised through this concordat's dispute avoidance and resolution mechanism.

International Relations

59. The Common Frameworks Principles agreed at JMC (EN) state that frameworks will be established where necessary to ensure the UK can negotiate, enter into and implement new trade agreements and international treaties, and ensure compliance with international obligations. These principles were established in the context of an ambition for close working between the Parties on reserved matters that significantly impact devolved responsibilities in Common Frameworks.

60. Common Frameworks will allow the Parties, in a timely manner, to ascertain the impact of international trade on managing UK policy divergence. All parties to the framework will consider any impact in a way that meets the requirements of the JMC (EN) principles. Common Frameworks will afford an opportunity to consider any implications stemming from international trade which have a direct bearing on the operation of a Common Framework. The scope of this consideration will not extend beyond Common Frameworks.

61. International policy formulation will be developed in line with the current Devolution MoU and its accompanying International Relations Concordat. International obligations will be implemented in line with these agreements. In this respect, the Parties will automatically use any updated IR Concordat, and the wider outcomes of the Joint IGR Review, as the basis for such international considerations.

62. The policy area covered by this Common Framework intersects with the EU-UK Trade and Cooperation Agreement and therefore topics relevant to the framework may be considered from time to time by relevant TCA Specialised Committees or the Partnership Council. Where a UK-EU meeting agenda includes an item concerning implementation in an area of devolved competence, UK Government should facilitate the attendance of the Scottish Government, Welsh Government and Northern Ireland Executive of a similar level to that of the UK Government representatives with final discretion as to the UK delegation a matter for the UK co-chair. UK Government should engage the Scottish Government, Welsh Government

and Northern Ireland Executive as fully as possible in preparation for these meetings regardless of attendance, and on all relevant implementation matters.

International obligations and relations

63. Decisions made under this concordat will be in line with the UK's international obligations, as described in points 57 to 63 as well as in line with the agreed International Coordination Representation Protocol.
64. The UK is a signatory to the International Convention for the Protection of New Varieties of Plants and maintains its legislation on PBR in compliance with that Convention. The UK is represented at the International Union for the Protection of New Varieties of Plants (UPOV) council, legal, administrative and technical meetings. As a signatory to the Convention, the UK shares the UPOV mission to "provide and promote an effective system of plant variety protection, with the aim of encouraging the development of new varieties of plants, for the benefit of society".
65. The UK is a member of the Organisation for Economic Co-operation and Development (OECD) schemes for both the Varietal Certification of Seed and for the Certification of Forest Reproductive Material. The OECD Seed Schemes promote the use of certified agriculture seed that is of consistently high quality. Seeds are produced – and officially controlled – according to a set of harmonised procedures. As a member, the UK is obliged to strictly observe the OECD Basic Principles, Method of Operation, and Rules and Regulations of the schemes, as well as a requirement for a National Designated Authority for the UK and to maintain a List of Varieties. Defra is the National Designated Authority for the UK.
66. The UK is a member of the International Seed Testing Association (ISTA) an organisation that develops and publishes standard procedures in the field of seed testing. Representatives from SASA (a division of the Agriculture and Rural Economy Directorate, within the Scottish Government) and NIAB (an independent plant science organisation working under a contract with Defra) attend ISTA meetings on behalf of the UK.
67. The United Nations Economic Commission for Europe (UNECE) convenes a Working Party on agricultural quality standards which is applied to trade in seed potatoes. A seed potato specialist from SASA represents the UK at these meetings.
68. Where possible, the UK will attend the European Seed Certification Agencies Association (ESCAA), whose objectives are "to allow the contact between European seed certification agencies, to exchange experiences of national seed certification systems and to harmonise the implementation of EU legislation". This forum does not have any decision-making powers but provides the UK with an opportunity to exchange scientific / technical information on seed certification with other European countries.
69. The European VCU Platform brings together the official variety testing offices in charge of testing for Value, Cultivation and Use (VCU). Representatives with technical knowledge / expertise attends these meetings, which provide an opportunity to exchange information on variety testing.

Confidentiality and information sharing

70. The Parties to this Common Framework are responsible for confidentiality, to ensure that information that they each may provide is subject to appropriate safeguards and that the confidentiality and sensitivity of such information is respected. Therefore, without prejudice to the requirements of data protection and freedom of information, unpublished information will not be disclosed to third parties without written permission of the relevant Party that provided the information.

E02698080

ISBN 978-1-5286-3054-2