



HM Government

# **Fertilisers common framework**

## **Provisional framework outline agreement and concordat**

February 2022

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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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# Fertiliser framework outline agreement

## Introduction

Framework has been agreed by the Department for Environment, Food and Rural Affairs (Defra) (United Kingdom), the Department of Agriculture, Environment and Rural Affairs (DAERA) (Northern Ireland), the Scottish Government and the Welsh Government (hereafter known as the “Parties”).

This Framework has been collaboratively drafted by the Parties.

This Framework should not be interpreted as legally binding. It does not create legal obligations between the parties.

This Framework will uphold the fundamental principles set out by the Joint Ministerial Committee (JMC(EN)) in October 2017 within fertiliser policy (see Annex 3).

This Framework has been drafted to support the effective regulation of fertilisers across the UK, now that the Transition Period has ended. Notably it supports the functioning of EU legislation as applicable in Northern Ireland under the Northern Ireland Protocol, retained EU legislation, domestic legislation, as well as communication and decision-making processes between the Parties in relation to fertilisers. It is entered into with a spirit of cooperation and mutual respect.

## Part 1: Context

### 1. Policy area

#### **Fertiliser Regulation**

- 1.1. Fertiliser policy and legislation covers the rules surrounding the placing on the market, the import, export, sale or use of fertilisers. Primary legislation, domestic regulations, retained EU law and, in Northern Ireland, EU law set out definitions, compositional limits, labelling requirements, sampling and analysis procedures and the processes for compliance and enforcement relating to fertilisers under multiple regulatory regimes.
- 1.2. Fertilisers are a devolved matter in Scotland and Wales and a transferred matter in Northern Ireland. Decisions regarding ammonium nitrate fertilisers of high nitrogen content (which can be adapted for use as an improvised explosive and are potentially fatal if mishandled in manufacture, transport or storage) in so far as they relate to health and safety fall outside devolved competence. This Framework will respect both devolved and reserved competences.
- 1.3. Rules and requirements around the manufacturing and marketing of fertilisers in the UK were partially harmonised with EU regulations, which meant that in the UK there were both EU and domestic legislative regimes that operated in

parallel (this is still the case in Northern Ireland as a result of the Protocol on Ireland/Northern Ireland).

- 1.4. New powers included in the Agriculture Act 2020 will enable a new regulatory regime based on conformity assessment to be put in place across the UK and for a broader range of fertilisers to be regulated. This will enable each party to implement new domestic regulations in line with modern developments in the fertiliser sector.
- 1.5. This Framework has been developed and endorsed by Ministers It is also being developed as a direct result of a extensive discussions with the Parties and will be seeking a harmonised approach where appropriate while respecting the devolved competence of the four governments.

## **2. Definitions**

- 2.1. All technical definitions used in this agreement will reflect those set out in the legislation listed in the Senior Officials Programme Board (SOPB) attached annexes
- 2.2. The UK Fertiliser Regulatory Committee (UKFRC) ('the Committee') has been set up to consider issues around the designation, definition and composition of fertilisers, the setting of standards for the marketing of fertilisers and ensuring these standards are upheld. In doing so it engages with international organisations, works to coordinate a common position across the UK and represents the agreed UK view at international fora. The Committee comprises officials from Defra, the Scottish Government, Welsh Government, and DAERA. Terms of reference can be seen in Annex B.
- 2.3. The Joint Ministerial Committee (JMC) was a set of committees that comprised of ministers from the UK and devolved governments, that provided central coordination of the overall relationship between the UK and the devolved governments. 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
- 2.4. SOPB, is made up of senior officials from each party and supports the functioning of the Inter-Ministerial Group for Environment Food and Rural Affairs.
- 2.5. The Inter-Ministerial Group for the Environment, Food, and Rural Affairs (IMG-EFRA) is made up of Ministers from each party for the purpose of discussing issues relevant to the EFRA policy areas.

### 3. Scope

#### **Fertiliser Regulation - intersect with devolved competence and existing arrangements**

This Framework covers the various regulatory regimes relating to fertilisers alongside the gathering of technical and scientific evidence around fertilisers, stakeholder engagement, policy making processes and design, as well as enforcement and market surveillance coordination. Fertiliser regulation is a devolved policy area. This is set out as follows in the devolution settlements for each nation:

- 3.1. Schedule 5 of the Scotland Act 1998 sets out those matters which are reserved to the UK Parliament. Any area not listed in Schedule 5 is devolved to the Scottish Parliament. Fertilisers are not listed in Schedule 5
- 3.2. Schedule 7A to the Government of Wales Act 2006 sets out those matters which are reserved to the UK Parliament. Any area not listed in Schedule 7A is devolved to the Welsh Parliament. Fertilisers are not listed in Schedule 7A.
- 3.3. Schedule 2 of the Northern Ireland Act 1998 sets out ‘excepted matters’ (matters of national importance on which the NI Assembly does not have competence to legislate), and Schedule 3 of the Northern Ireland Act sets out which matters fall into the ‘reserved’ category. Anything that is not explicitly reserved or excepted in Schedules 2 or 3 is deemed to be devolved and the NI Assembly has full legislative competence. Fertilisers are not listed in Schedules 2 and 3. decisions relating to Ammonium Nitrate are a reserved matter in GB insofar as they relate to health and safety and in NI insofar as they relate to explosives.
- 3.4. While fertiliser policy areas are devolved matters, international trade, alongside health and safety regulation and some areas of security and counter terrorism is reserved, creating an area of overlapping interests where UK trade negotiations and implementation may intersect with aspects of devolved policy areas, such as fertiliser regulation. Though fertiliser regulation is devolved, it remains the responsibility of the UK Government to ensure the UK complies with its international trading obligations. For example, the World Trade Organisation Sanitary and Phytosanitary Agreement (WTO SPS Agreement, see Annex 3 for ‘Definitions’) Article 13 permits Members to devolve the implementation of SPS to non-central government bodies, but explicitly states “Members are fully responsible under this Agreement for the observance of all obligations set forth herein”. Thus, the UK Government will be held to account on behalf of all devolved nations for this specific function.

#### **How the European Union Framework operated**

- 3.5. The EU regime sets out the requirements for fertilisers marketed as ‘EC fertilisers’, whereas the domestic regime, the domestic regime provided for in the Fertiliser Regulations 1991 and the Fertiliser Regulations (Northern Ireland) 1992. The retained version of Regulation (EC) 2003/2003 as amended by The Fertilisers and Ammonium Nitrate Material (Amendment) (EU Exit) Regulations 2019 provides for a “UK fertiliser” regime. These set out

the requirements for “fertilisers” as defined in the Agriculture Act 1970. The regimes contain provisions about the composition, labelling, and marketing of fertilisers, with the aim of regulating their content, efficacy and safety.

- 3.6. New EU Regulation 2019/1009 on the making available on the market of EU fertilising products (the FPR), which has a staggered application in GB, will replace Regulation (EC) No 2003/2003 in the EU once it fully applies in July 2022. This will introduce a new conformity assessment regulatory regime for EU fertilising products, which will regulate a broader range of materials than are currently regulated as EC fertilisers also bringing contaminant limits on particular fertilisers into scope within the EU. Some articles of the FPR applied before the end of the Transition Period and action was taken to implement those articles in GB where required by way of the Fertilising Products Regulations 2020 Under the terms of the Protocol on Ireland/Northern Ireland, the FPR will fully apply in Northern Ireland from July 2022, alongside domestic fertiliser legislation. This major shift in fertiliser regulations will result in significant change to UK wide policy work over the coming years.

### **Retained European Union rules and what they achieve**

- 3.7. From the end of the Transition Period, Regulation (EC) No 2003/2003 has become retained EU law. The Fertilisers and Ammonium Nitrate Material (Amendment) (EU Exit) Regulations 2019/601 amended retained Regulation (EC) No 2003/2003 to ensure that it operates effectively, providing for a new domestic “UK fertiliser” regime to replace the “EC fertiliser” regime.
- 3.8. Therefore, this Framework must take account of the fact that EU law will continue to apply in Northern Ireland alongside domestic rules. The retained version of EU Regulation 2003/2003 will also be applied to Northern Ireland, subject to modifications, to ensure commonality and that UK labelled fertilisers can be marketed across the whole of the UK.

### **4. Interdependencies/other linked Frameworks policy areas**

- 4.1 There are several other policy areas which overlap with fertilisers, for example air quality, water quality, climate policy, manufactured goods policy. This Framework will respect and interconnect with other relevant Common Frameworks, legislation and international agreements in any areas that have meaningful relation to the operation of fertiliser policy.

#### **TCA (Trade Cooperation Agreement) Text:**

- 4.2 The policy area covered by this Framework intersects with the EU-UK Trade and Cooperation Agreement (TCA), regarding environmental protection and rules of origin for example, 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, the UK Government should facilitate Parties attendance 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. The 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.

## **5. Geographical scope**

5.1 It is the intention that the Framework should apply in England, Wales, Northern Ireland and Scotland. Officials in all four nations have been closely involved throughout the development of the Framework proposals.

5.2 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 UK Government and the Devolved Administrations on reserved matters that significantly impact devolved responsibilities in common frameworks.

5.3 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.

5.4 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.

## **6. Northern Ireland considerations**

6.1 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. The following paragraphs of Annex 2 of the Northern Ireland Protocol are relevant to this framework.

6.2 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.

6.3 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.

- 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.

- 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.

6.4 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 15 of this document

## Part 2: Proposed breakdown of policy area and framework

### 7. Summary of proposed approach

7.1 At a meeting in February 2020, the parties discussed the development of a common approach for fertiliser policy. All the UK Parties attended, as did Cabinet Office and Defra's central devolution team. There was a shared view that a common approach to regulating fertilisers that may be produced/sold in the UK and to technical standards in general, not least to simplify the requirements upon importers and exporters, was desirable.

7.2 Commonality is desirable to:

- minimise barriers to future trade agreements where free access to the (whole) UK market is a condition of trade;
- provide clarity to consumers (farmers), particularly in relation to labelling; and
- minimise burdens on manufacturers, in relation to labelling and testing.

- 7.3 It is considered that a non-legislative Framework is appropriate in this policy area and that it will be supported by a Concordat setting out the principles of engagement between the Parties (see section 6).

### **JMC(EN) Frameworks Principles**

- 7.4 All Parties agree that the approach summarised above is necessary according to section 1 of the JMC(EN) Frameworks Principles (see Annex A for the full list of principles). The Framework is necessary in relation to every principle identified by the JMC (EN) committee.

## **8. Detailed overview of proposed Framework: legislation (primary or secondary)**

- 8.1 This Framework will be non-legislative. It will set out the overarching principles of how all Parties will work together across the variety of tasks relating to fertiliser policy (both legislative and non-legislative).
- 8.2 It is however worth noting that there are some legislative requirements on how Parties should make decisions and this will impact on how the Framework is employed, for example under retained Regulation (EC) No 2003/2003. In respect of retained Regulation (EC) No 2003/2003, this will ensure a consistent approach to fertiliser labelled 'UK Fertiliser' across the UK, without the need for a different set of rules for each Party. The Secretary of State may make regulations under the retained Regulation for the whole of the United Kingdom with the consent of, or having regard to a request to make regulations made by the Parties.

### **Future Secondary and Primary Legislation**

- 8.3 It is generally accepted, both in the UK and at EU level, that the current regulatory regimes are in need of modernisation. In March 2016 the European Commission presented its proposals for replacing the EC Fertilisers Regulation (2003/2003) and on 25 June 2019 the FPR, was published. It entered into force on 15 July 2019 and will fully apply from 16 July 2022, three years after its entry into force, meaning that the majority of the Regulation has not become retained EU law.
- 8.4 The concept behind the new Regulation is to move away from an exhaustive list-based approach where to gain access to the market products have to comply with a list of approved product types and composition requirements to a new European Conformity (CE) marking Framework approving any product to be manufactured and sold as long as it complied with a set of rules. This new, more flexible, regime is based on the functions that a fertilizer claims to have and the materials that the fertilizer is made from, and designs the requirements that a fertilising product must meet around these two main

concepts. This modular conformity assessment system allows the level of testing and checking to be relevant to the risks that each product presents. This is seen by many stakeholders as a significant step forward.

8.5 Domestically, new powers have been included in the Agriculture Act 2020 to enable each Party to regulate the modern fertiliser sector more appropriately using a similar conformity assessment regime to that provided for in the FPR. The use of these powers should be based on the principles set out in this Framework and accompanying Concordat

## **9. Detailed overview of proposed Framework: non-legislative requirements**

9.1 The Parties have created a Concordat to formalise working arrangements in a non-legislative agreement and set out the principles for how the Parties will work together and co-operate.

9.2 The Concordat supports the effective regulation of fertilisers across the UK. Notably it supports the functioning of retained EU legislation, EU legislation where applicable, domestic legislation, as well as communication and decision-making processes between the four Parties. It will be entered into with a spirit of cooperation and mutual respect.

9.3 Fertiliser policy and legislation covers the rules surrounding the import, export, sale or use of fertilisers. Primary legislation and regulations set out definitions, compositional limits, labelling requirements, sampling and analysis procedures and the processes for compliance and enforcement relating to fertilisers. A Framework is necessary to draw together the administration of these multiple fertiliser legislative regimes.

9.4 This work will mainly be via the creation of the UK Fertilisers Regulatory Committee. The draft Terms of Reference are in Annex B.

9.5 The Concordat also sets out some joint overarching policy objectives (set out below), the roles and responsibilities of each party, the ways of working, decision making processes, procedures around divergence and review periods.

9.6 Overarching policy objectives:

- i. Ensure farmers have access to effective and safe fertilisers
- ii. Ensure protection and enhancement of the natural environment
- iii. Improve productivity and support innovation
- iv. Create and maintain a suitable regulatory environment for fertilisers
- v. Develop strong and fruitful stakeholder relationships

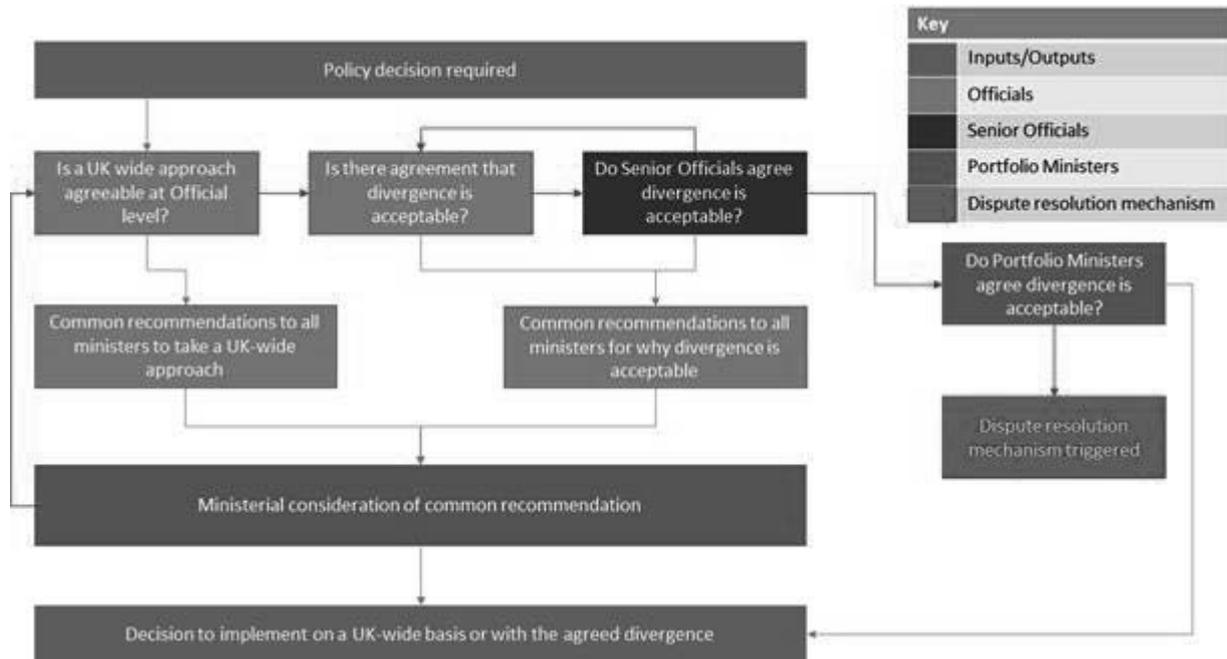
- vi. Protect public health and safety

## Part 3: Proposed operational elements of framework

### 10. Decision making

- 10.1 The UKFRC will be the main forum for official level discussion and decision making subject to Ministerial steers.
- 10.2 For matters that require a collective decision - for example, decisions to legislate, agreement on an approach, jointly drafted documents, the issue to be raised should be sent to all members of the Committee as early as possible with a reasonable timeline for review or response.
- 10.3 If discussion is necessary, then the issue should be brought up at either the quarterly meeting of the Committee, or at one of the joint teleconferences or ad hoc meeting if the issue is urgent or an emergency. Following discussion, and unless further discussion is necessary, a decision should be taken by all relevant parties. Decisions should always be confirmed in writing, whether by the agreed minutes of the meeting, or by written agreement after the meeting. In the case of a disagreement, see dispute resolution in Subsection 13.
- 10.4 In situations where policy related to fertilisers, but that is out of control of the UK Fertilisers Regulatory Committee, impacts upon fertiliser policy, the UK Fertilisers Regulatory Committee should discuss the issues and take a view on those impacts to inform other policy areas under the committees purview.
- 10.5 When considering a proposal or recommendation for divergence in one or more nations, as an additional element to its opinion, the Committee should consider the impact divergence would have on public health and environmental protection in the UK, consumer interests, the functioning of the internal market and international trade obligations or other aspects in relation to the JMC (EN) principles in Annex A. If one Party considers that a new policy or measure will negatively impact on the UK, they must raise this through the Ways of Working set out in the Concordat and if necessary, through the dispute resolution process (section 13).
- 10.6 There is no specific senior official group that exists for fertilisers with regard to decision making. Policy officials also consider that there is no need for a specific senior official group only for fertiliser related decisions. Therefore, the decision making process follows a linear path in each Party as is standard working practice for that Party currently.

## Decision making Flow Diagram



### Diagram showing the dispute resolution process

- An administration states that it wants to introduce a change or policy. This will be discussed by the Fertiliser Liaison Group to assess if it causes divergence.
- If there is agreement that any resulting divergence is acceptable, then this is referred to Senior Officials for their agreement.
- This will lead to common recommendations being made to portfolio ministers explaining why any divergence is acceptable.
- Ministers will consider the recommendations at the Inter-ministerial Group (Efra). If ministers agree that the divergence is acceptable, the policy will be implemented.
- The dispute resolution mechanism will be triggered if agreement cannot be reached at the Fertiliser Liaison Group. In the first instance, the issue will be referred to the Senior Officials Programme Board (SOPB) to try to reach agreement.
- If an agreement cannot be reached by SOPB, the issue will be referred to the IMG (Efra) for decision. If the issue remains unresolved, it will be referred to the appropriate intergovernmental structures to consider.
- Agreement will lead to the policy or change being implemented.

## 11.Roles and responsibilities of each party to the Framework

The roles and responsibilities of each party to the Framework are outlined below.

## **All Parties**

11.1 All Parties to this 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 that Party which provided the information, subject to the requirements of the law. All parties are also committed to avoidance of conflicts of interest during decision making, in line with the Ways of Working Arrangements.

## **The UKFRC Committee**

11.2 The Committee is responsible for:

- i. Setting the policy and decision-making process for fertilisers.
- ii. Making decisions on UK fertiliser policy.
- iii. Meeting international obligations, and coordination, attendance and representation of the UK in international fora, as required.
- iv. Adhering to the provision of information and collaboration principles outlined in Ways of Working.
- v. Cooperation on engagement with stakeholders so that a unified message will be delivered across Parties.
- vi. Sharing information and scientific research in a spirit of openness and transparency and to facilitate effective operation of the Agreement; information sharing protocols may be established.
- vii. Maintenance of knowledge required to make policy decisions on a UK basis; to maintain capacity and expertise; to ensure effective representation at meetings for joint decision-making, and for effective administration and provision of services.

## **Information sharing**

11.3 As per the current MoU on Devolution, each Party will aim to provide each other Party with as full and open as possible access to scientific, technical and policy information including statistics and research and, where appropriate, representations from third parties.

## **12. Roles and responsibilities of existing or new bodies**

12.1 A review of fertilizer regulation is planned with the following issues to be considered:

- The implementation EU Regulation 2019/1009 with regard to Northern

Ireland, whether a new body would be necessary for operating and enforcing this system. Defra will be designated as the Notifying Authority on behalf of NI for the purposes of the FPR as it will apply under the Protocol on Ireland/Northern Ireland, and in GB in respect of those articles of the FPR which will be retained EU law. The process by which Defra will exercise its responsibilities as NA in conjunction with the Scottish Government, Welsh Government and the Northern Ireland Executive is yet to be finalised by the Parties and will need to be considered as the Framework is developed.

- Review of current domestic Framework may require further system change and therefore a review of responsibilities on existing bodies, such as local authorities or arms-length bodies.
- Access to independent expert advice on scientific and technical evidence may also require further processes and use of existing or creation of new bodies.

### **13. Monitoring and enforcement**

13.1 The UKFRC will meet regularly to monitor the Framework, and monitoring will also take place in the course of routine business. The purpose of monitoring is to assess:

- intergovernmental cooperation and collaboration as a result of the Framework;
- whether parties are implementing and complying with the Framework
- whether divergence has taken place in contravention of the Framework principles and
- whether harmful divergence has taken place that impacts on the policy area covered by the Framework

13.2 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.

### **14. Review and amendment**

#### **Periodic Review**

14.1 Initially the Framework will be reviewed 12 months post-commencement, after which a regular review will take place every 3 years as is standard across other Framework areas. This 12 month review is necessary for the fertiliser Framework due to the expected incoming changes and policy work necessary in 2021/2022.

## Exceptional Review

- 14.2 The Framework can be reviewed at any time on the request of any one of the parties to the Framework as a result of a significant issue.
- 14.3 A significant issue must be time sensitive and fundamentally impact the operation and/or the scope of the Framework.
- 14.4 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.
- 14.5 The same significant issue cannot be discussed within six months of the closing of that issue.
- 14.6 The review should be conducted by all parties to the Framework and allow input from third parties. All parties should also set out a timeline for the review to take place and any substantial amendments that need making.
- 14.7 The substantial amendment stage can only be triggered through unanimous agreement by ministers. If parties agree that no amendment is required, the relevant time period begins again for both review types (for example, it will be 3 years until the next periodic review and at least 6 months until the same significant issue can trigger an exceptional review.)

## Amendment Stage

- 14.8 Following agreement that all parties wish to enter the amendment stage, parties will enter into discussion around the exact nature of the amendment. This can either be led by one party to the Framework or all.
- 14.9 If an amendment is deemed necessary during either type of review, the existing Framework will remain in place until a final amendment has been agreed
- 14.10 All amendments to the Framework must be agreed by all parties and a new non-legislative agreement signed by all parties.
- 14.11 If Parties cannot agree whether or how a Framework should be amended this may become a disagreement and as such could be raised through the Framework's dispute avoidance and resolution mechanism.

## 15. Dispute resolution

- 15.1 The intention under this Framework is that the UK Fertiliser Regulatory Committee will meet regularly to discuss and work through any issues at the earliest possible stage. This approach to dispute resolution largely reflects the current decision-making approach mentioned in section 8, i.e. matters proceed via policy leads, with senior managers and Ministers within each Party brought in to agree a course of action when appropriate.
- 15.2 The dispute resolution process may be triggered when a disagreement cannot be resolved by further dialogue between members of the UKFRC, or members of the Committee agree that a common opinion cannot be found and/or that this negatively impacts the ability to meet JMC (EN) principles (Annex A).

### Policy leads

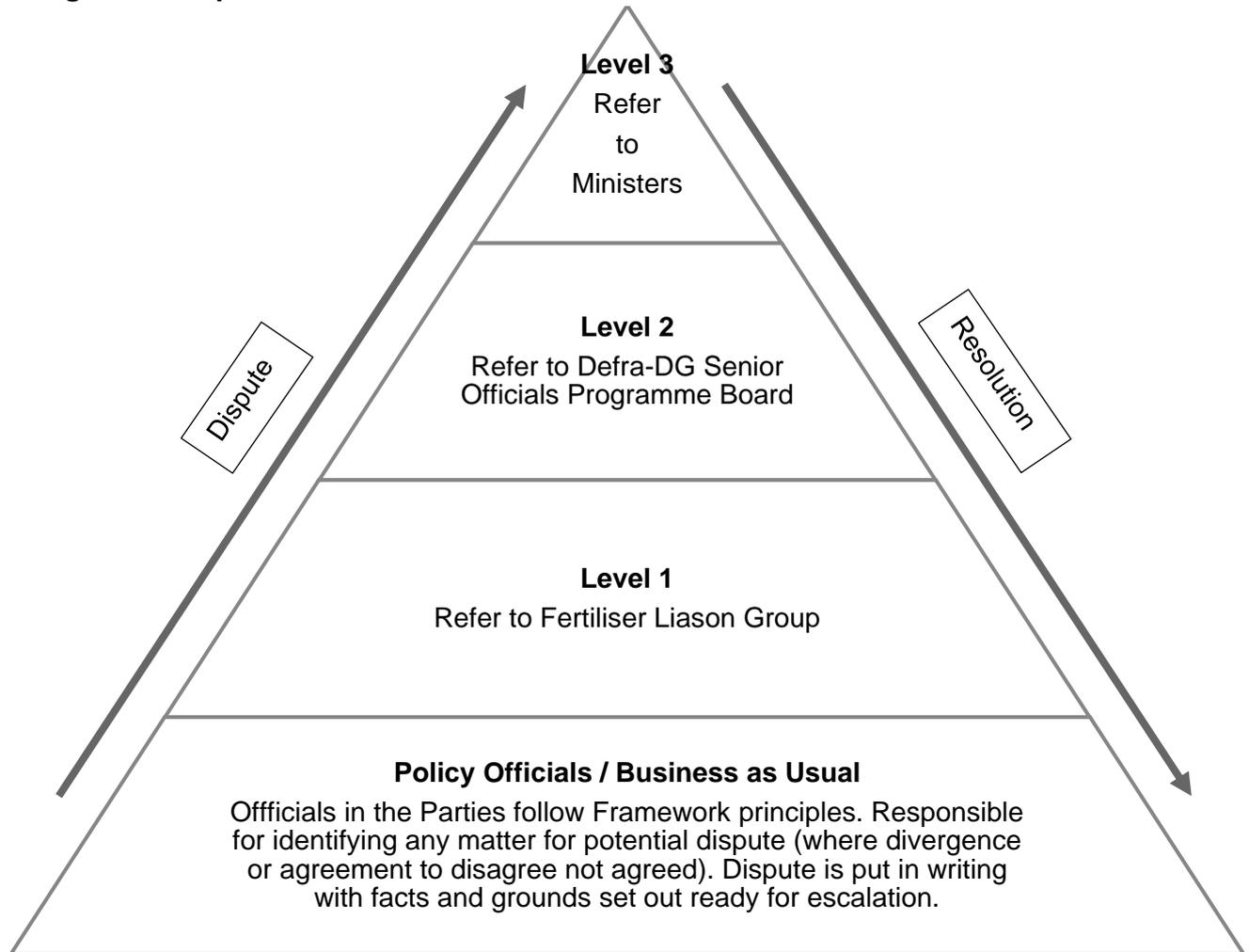
- 15.3 Where officials become aware of potential issues or areas of disagreement via any means the first step will be to seek to resolve this amongst policy leads without escalation. This will usually be resolved via discussion with equivalents in other Parties to determine the source of the disagreement, to establish whether it is a material concern and to work through possible solutions to the satisfaction of all parties. It is expected that most disagreements would be resolved at this point.

### Senior officials

- 15.4 Where disagreements cannot be resolved amongst policy leads the next stage will usually be to escalate the issue to senior official level within each Party. At this stage senior officials can decide whether it would be appropriate to arrange a meeting with counterparts across Parties. Alternatively, or after such a meeting, senior officials may determine that the issue cannot be resolved at this stage and needs further escalation.

### Senior Officials Programme Board (SOPB)

- 15.5 If senior officials responsible for fertiliser policy cannot resolve the dispute, then the next step would be to take the issue to SOPB which supports the IMG EFRA. SOPB could then take a view as to whether this dispute would need to be escalated onwards to an IMG EFRA meeting or recommendation for another form of Ministerial meeting to resolve it.

**Diagram 2: Dispute resolution levels****Levels explained:**

- a. **Level 1:** at level 1 there are two different groups where disputes may be discussed depending on the type of dispute (either a dispute on a policy issue; or a dispute relating to the functioning of the Framework). If the dispute is around the policy recommendation, then the dispute is referred to a four governments Directors group. This group is an ad-hoc group called together only when disputes need to be resolved.
- b. If the dispute is around the functioning of the Framework itself, then the dispute is referred to the fertiliser Frameworks Management Group. This group should consist of senior officials in all parts of the UK and should have responsibility for overseeing the functioning of the Framework (for example, the annual review of the Framework) as well as seeking to resolve disputes that arise around the functioning of the Framework.

- c. **Level 2:** at level 2, disputes should be handled through the same mechanism regardless of the type of dispute. When a dispute is escalated to level two, the bilateral meeting is used as the forum for discussing the dispute.

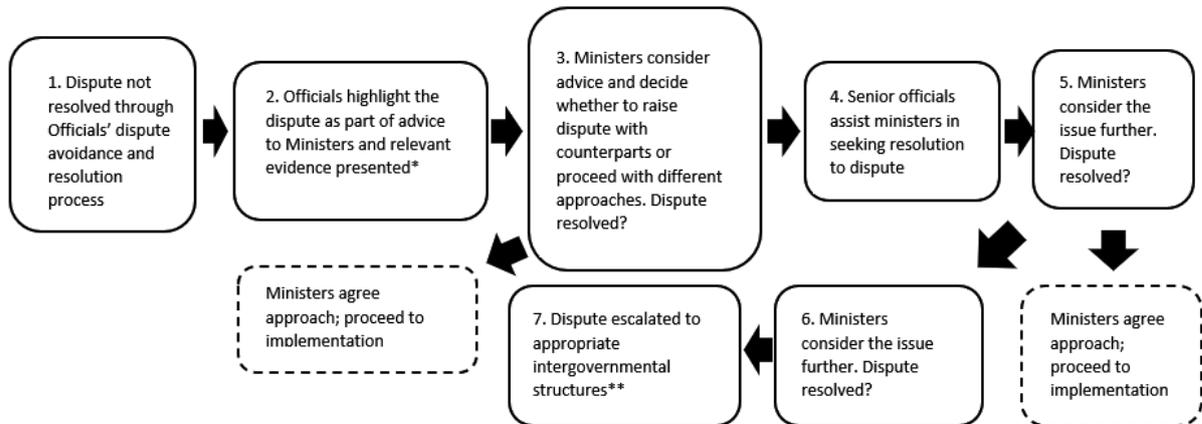
## Ministers

- 15.6 This is expected to be a last resort for only the most serious issues and where all alternatives have been exhausted. Approaches should first look to resolve any issue at the junior Ministerial level, either with advice or input from senior Ministers as required.
- 15.7 Terminology distinguishing ministerial hierarchy is not universal across Parties. Where there is a distinction, it is likely that advice presented to a minister who is not a senior minister, will be copied to a senior minister who may provide an additional steer if needed. In some circumstances the senior minister will also be the most appropriate minister to make a decision and therefore, the distinction between senior minister and Minister will not be relevant. In the case of the United Kingdom Government (UKG) a senior minister would be a Secretary of State (SofS).
- 15.8 Where ministers are considering issues as part of the Framework's dispute avoidance and resolution mechanism this could be via several media, including inter-ministerial meetings (IMG-EFRA) or by correspondence.
- 15.9 It does not always follow that where disagreements emerge these will need to be escalated or a 'solution' need to be established. This Framework will not prejudice the right of Parties to 'agree to disagree' in certain circumstances.

## Ministers' dispute resolution

- 15.10 In rare instances where Ministers do not reach unanimous agreement on a joint recommendation from food safety bodies, and in instances where officials cannot agree an approach (having attempted to reach agreement through the officials' dispute avoidance and resolution process), then the Ministers' dispute avoidance and resolution mechanism will be used to resolve the dispute and reach agreement on appropriate approaches.
- 15.11 In either of these situations, disputes should be handled with adherence to the same principles as the officials' dispute avoidance and resolution process. Diagrams 3 and 4 set out the two different ways disputes could be escalated to Ministerial level.

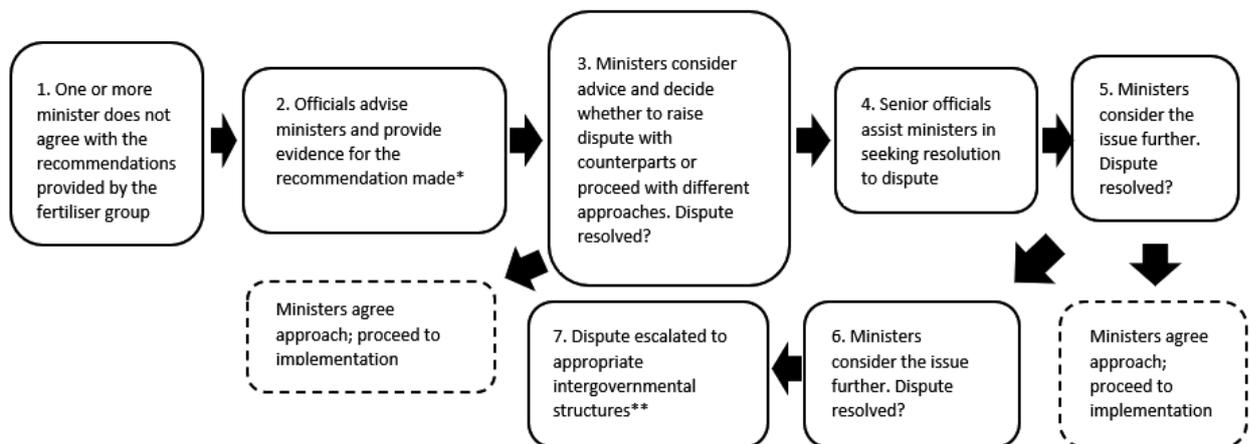
**Diagram 3: Ministerial Dispute Avoidance and Resolution Process – Dispute arising at Official Level**



\*This evidence will include any required to be considered following development of guidance in cross cutting areas

\*\* It is highly unlikely that disputes would reach this stage. escalation to this stage should only be considered in exceptional circumstances where agreement by other means has not been possible

**Diagram 4: Ministerial Dispute Avoidance and Resolution Process – Dispute arising at Ministerial level**



\*This evidence will include any required to be considered following development of guidance in cross cutting areas

\*\* It is highly unlikely that disputes would reach this stage. escalation to this stage should only be considered in exceptional circumstances where agreement by other means has not been possible.

### **Diagrams 3 and 4 show the dispute resolution process**

- An administration states that it wants to introduce a change or policy. This will be discussed by the Fertiliser Liaison Group to assess if it causes divergence.
- If there is agreement that any resulting divergence is acceptable, then this is referred to Senior Officials for their agreement.
- This will lead to common recommendations being made to portfolio ministers explaining why any divergence is acceptable.
- Ministers will consider the recommendations at the Inter-ministerial Group (Efra). If ministers agree that the divergence is acceptable, the policy will be implemented.
- The dispute resolution mechanism will be triggered if agreement cannot be reached at the Fertiliser Liaison Group. In the first instance, the issue will be referred to the Senior Officials Programme Board (SOPB) to try to reach agreement.
- If an agreement cannot be reached by SOPB, the issue will be referred to the IMG (Efra) for decision. If the issue remains unresolved, it will be referred to the appropriate intergovernmental structures to consider.
- Agreement will lead to the policy or change being implemented.

15.12 Disputes could arise at official level if officials cannot agree either to recommending a common approach, or to recommending that divergence is appropriate. Initially, the issue should pass through the officials' dispute avoidance and resolution processes. If it is not possible to resolve the issue through official level processes, the issue would be raised to Ministerial level for a decision on how to proceed.

15.13 In this situation, officials would highlight the disagreement at official level alongside respective food safety bodies' advice to Ministers including any relevant evidence (including any required to be considered following development of guidance in cross cutting areas, such as an assessment of the impact of divergence). It would be for Ministers to review the impacts of the proposed approaches before taking a decision on whether to proceed, or to raise a dispute at Ministerial level.

15.14 If Ministers could not agree to proceed with the recommended approaches having reviewed the evidence, the issue would continue through the stages of the dispute process: officials would provide assistance to Ministers in seeking resolution as requested, and further consideration of the

issue would be given by Ministers.

- 15.15 If the dispute could not be resolved during these stages, portfolio Ministers would meet in person to discuss the issue. If resolution could still not be reached, the issue would be escalated to appropriate governmental structures.
- 15.16 Disputes could also arise at Ministerial level in cases where one or more Minister were not content to proceed with the recommendation from food safety bodies. In these cases, the issue would come back to officials in all four governments to carry out a review of the evidence (including the impacts of decision(s) taken) and provide further advice to Ministers. If the divergence was not considered to be acceptable, a dispute could be raised, following the same stages of escalation.
- 15.17 It will be necessary to continue to discuss the interdependencies of the Fertiliser Framework dispute avoidance and resolution processes with cross-cutting areas such as internal market considerations and international trade implications to ensure the dispute avoidance and resolution processes of the 'vertical' policy Framework joins up appropriately with any 'horizontal' cross-cutting Frameworks as these are developed.
- 15.18 These cases, the issue would come back to officials in all four nations to carry out a review of the evidence (including the impacts of decision(s) taken) and provide further advice to Ministers. If the divergence was not considered to be acceptable, a dispute could be raised, following the same stages of escalation.
- 15.19 It will be necessary to continue to discuss the interdependencies of the Fertiliser Framework dispute avoidance and resolution processes with cross-cutting areas such as internal market considerations and international trade implications to ensure the dispute avoidance and resolution processes of the 'vertical' policy Framework joins up appropriately with any 'horizontal' cross-cutting Frameworks as these are developed.

## Part 4: Practical next steps and related issues

### 16. Next Steps

- 16.1 Once Ministers' provisional agreement is given of the Fertiliser Frameworks, preparation to implement the Framework will begin.

16.2 The non-legislative agreement that will implement the Fertiliser Framework will then be signed. This is the Concordat between the four Governments (signed by EFRA-IMG Ministers).

16.3 Work will also be needed to:

16.3.1 ensure that the proposals set out in the Framework are flexible enough to align with the outcomes of FR negotiations;

16.3.2 understand how the governance of the Framework might interact with any potential commitments made to the European Union to demonstrate UK wide compliance with FR commitments.

## **17. Resource requirements**

17.1 There will be resource requirements to develop and implement the Framework and then ongoing resource requirements to support the effective functioning of the Framework. Once implemented, the Framework will require continued resourcing from all four nations in the policy groups and supporting Ministerial decision-making.

17.2 A significant proportion of this resource would be required anyway to support delivery of Fertilisers due to the European Union Exit and taking a four nations approach under the Framework will ensure that expertise is shared and resource requirements are actually lower overall than if the four nations were taking this work forward individually. However, it is likely that ongoing resource and funding requirements will be needed to enable effective functioning of the Framework.

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

## Frameworks: Definition and Principles

### Definition

As the UK leaves the European Union, the Government of the United Kingdom, Scottish Government, Welsh Government and Northern Ireland Executive 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 Parties 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 Frameworks in areas where EU law currently intersects with devolved competence. There will also be close working between the UK Government and the Parties on reserved and excepted matters that impact significantly on devolved responsibilities.

Discussions will be either multilateral or bilateral between the UK Government and the Parties. It will be the aim of all parties to agree where there is a need for Frameworks and the content of them.

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

### Principles

1. 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 nation as is afforded by current EU rules; and
- lead to a significant increase in decision-making powers for the Parties.

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 B – Terms of Reference for the UK Fertilisers Regulatory Committee (UKFRC)

### **Purpose:**

The purpose of the Committee is to develop UK fertiliser policy: to consider issues surrounding the designation, definition, composition and use of fertilisers, the setting of standards for the marketing of fertilisers and ensuring these standards are upheld.

The Committee is responsible for:

- i. Setting the policy and decision-making process for fertilisers
- ii. Making decisions in accordance with the regulatory Framework
- iii. Meeting international obligations, and coordination, attendance and representation of the UK in international fora, as required
- iv. Adhering to the provision of information and collaboration principles outlined in the Concordat
- v. Cooperation on engagement with stakeholders so that a unified message will be delivered across Parties where appropriate
- vi. Sharing information (such as draft policies, impact assessments etc.) and scientific research in a spirit of openness and transparency, and to facilitate effective operation of the Concordat. Information sharing protocols may be established
- vii. Maintenance of knowledge required to make policy decisions on a UK basis; to maintain capacity and expertise; and for effective administration and provision of services

### **Attendance:**

Policy official/s responsible for fertiliser policy in each of the Parties are required (in person or via teleconference) at each meeting.

### **Roles:**

Each policy official representing a government should be mindful of the need to represent both their own position and the wider UK position with regards to matters arising.

All Parties to this Arrangement are responsible for upholding 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 administration which provided the information, subject to the requirements of the law.

All parties are also committed to the avoidance of conflicts of interest during decision making, in line with the Ways of Working set out within this Arrangement.

**Secretariat:**

Defra policy officials will take on the responsibility for organising the agenda, chairing the meeting, taking and sharing minutes from the meeting, and coordinating decisions from meetings.

## Annex C – List of relevant primary and secondary legislation

- Part IV of the Agriculture Act 1970
- The Fertilisers Regulations 1991 (GB)
- The Fertilisers Regulations (Northern Ireland) 1992
- The Sampling and Analysis of Fertilisers Regulations 1996.
- The Fertilisers (Sampling & Analysis) Regulations (Northern Ireland) 1996
- The Ammonium Nitrate Materials (High Nitrogen Content) Safety Regulations 2003
- EU Regulation EC 2003/2003, including the retained version in UK law, as well as the domestic implementing regulations:
  - The EC Fertilisers (England and Wales) Regulations 2006
  - The EC Fertilisers (Scotland) Regulations 2006
  - The EC Fertilisers Regulations (Northern Ireland) 2006
- The Fertilisers and Ammonium Nitrate Material (Amendment) (EU Exit) Regulations 2019 (No. 601) <sup>1</sup>
- The Pesticides and Fertilisers (Miscellaneous Amendments) (EU Exit) Regulations 2019 No. 306 (UK wide)
- The Fertilisers and Pesticides (EU Exit) (Scotland) (Miscellaneous Amendments etc.) Regulations 2019 No. 25
- The Pesticides, Genetically Modified Organisms and Fertilisers (Miscellaneous Amendments) Regulations (Northern Ireland) 2018 No. 188
- The Fertilisers (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 (No. 100)
- EU Regulation 2019/1009 entered into force on 15 July 2019, however will not apply fully until 16 July 2022.
- The Fertilising Products Regulations (FPR) 2020
- The Fertilising Products Regulations (Northern Ireland) 2020.
- The Agriculture Act 2020

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<sup>1</sup> as amended by the Fertilisers and Ammonium Nitrate Material (Amendment) (EU Exit) Regulations 2020/998 and the Fertilisers and Ammonium Nitrate Material (Amendment) (EU Exit) Regulations 2021/207

# Fertiliser Policy Concordat

Between the Department for Environment, Food and Rural Affairs (Defra) (United Kingdom), the Department of Agriculture, Environment and Rural Affairs (DAERA) (Northern Ireland), the Scottish Government and the Welsh Government.

## Introduction

1. This Concordat ('the Concordat') has been agreed by the Department for Environment, Food and Rural Affairs (Defra) (United Kingdom), the Department of Agriculture, Environment and Rural Affairs (DAERA) (Northern Ireland), the Scottish Government and the Welsh Government (hereafter known as the "Parties").
2. This Concordat has been drafted collaboratively by the Parties. The signatories to the Concordat will be senior officials on behalf of the Parties.
3. This Concordat should not be interpreted as legally binding. It does not create legal obligations between the Four Parties.
4. This Concordat will uphold the fundamental principles set out by the Joint Ministerial Committee (JMC(EN)) in October 2017 (see Annex 3).
5. This Concordat has been drafted to support the effective regulation of fertilisers across the UK, following the end of the Transition Period. Notably it supports the functioning of EU legislation as applicable in Northern Ireland under the Northern Ireland Protocol, retained EU legislation, domestic legislation, as well as communication and decision-making processes between the Parties in relation to fertilisers. It is entered into with a spirit of cooperation and mutual respect.

## Fertiliser Policy

6. Fertiliser policy and legislation covers the rules surrounding the placing on the market, the import, export, sale or use of fertilisers. Primary legislation, domestic regulations, retained EU law and, in Northern Ireland, EU law set out definitions, compositional limits, labelling requirements, sampling and analysis procedures and the processes for compliance and enforcement relating to fertilisers under multiple regulatory regimes.
7. Fertilisers are a devolved matter in Scotland and Wales and a transferred matter in Northern Ireland. Decisions regarding ammonium nitrate fertilisers of high nitrogen content in so far as they relate to health and safety fall outside devolved competence.
8. In the EU, fertilisers legislation is partially harmonised in that it is permissible for Member States to have domestic regimes in addition to the EU rules. This means

that in the UK there were both EU and domestic regimes for the regulation of fertilisers operating side by side, with common UK-wide rules applying in respect of “EC fertilisers” alongside domestic rules for fertilisers not designated as EC fertilisers. The EU Exit statutory instruments dealing with deficiencies in retained EU law relating to fertilisers, as well as out of date references in domestic law, and the relevant domestic and EU legislation are listed in Annex 1.

9. ‘legislation’ in this Concordat refers to domestic legislation relating to fertilisers in one or more of the Four Parties, not only UK wide legislation.
10. Previously, no such concordats for fertiliser policy have existed in the UK, therefore this Concordat has formalised a new UK committee and ways of working for the effective regulation of fertilisers moving forwards.

## Overarching Objectives

- i. Ensure farmers have access to effective and safe fertilisers
- ii. Ensure protection and enhancement of the natural environment
- iii. Improve productivity and support innovation
- iv. Create and maintain a suitable regulatory environment for fertilisers
- v. Develop strong and fruitful stakeholder relationships
- vi. Protect public health and safety

### **The Committee**

11. The UK Fertiliser Regulatory Committee (‘the Committee’) has been set up to consider issues surrounding the designation, definition and composition of fertilisers, the setting of standards for the marketing of fertilisers and, ensuring these standards are upheld and enforced (see Annex 2 – Terms of Reference).
12. It will work to co-ordinate an agreed position across the UK and represent the agreed UK view in international fora. The Committee comprises officials from Defra, the Scottish Government, Welsh Government, and DAERA.
13. Responsibility for reviewing and updating this Concordat lies with the Committee.

## Ways of Working

14. The work of the Committee will focus on building consensus-based decision-making, effective collaboration, and dispute prevention/dispute resolution processes where agreement cannot be reached, or where one administration is considered not to be adhering to the Concordat.

15. To ensure that the Parties are committed to the principle of good communication and to enable all aspects of this Concordat to be put in place, there will be quarterly meetings of the Committee, as well as supplementary meetings as necessary, or on a frequency which is agreed by all Parties. This meeting will be rotated between each Party who will be responsible for hosting and organising the venue.
16. Provision of information and collaboration should be proactive wherever possible, so as to implement a 'no surprises' policy. Early sharing of information and issues enables more effective collective decisions to be made within agreed timescales.
17. Members of the Committee will consult each other if a change to the Concordat is proposed. Any changes must be made with the written agreement of all parties.

## Decision Making

18. For matters that require a collective decision, for example decisions to legislate, agreement on an approach, or jointly drafted documents, the issue should be sent to all members of the Committee (Annex 2) as early as possible with a reasonable timeline for review or response.
19. If discussion is necessary then the issue should be brought up at either the quarterly meeting of the Committee, or at one of the supplementary meetings. Following discussion, and unless further discussion is necessary, a decision should be taken by all relevant parties. Decisions should always be confirmed in writing, whether by the agreed minutes of the meeting, or by written agreement after the meeting.
20. In situations where decisions are made or proposed outside of fertiliser policy, but that impacts upon fertiliser policy, the Committee should discuss the issues and take a view on those impacts, informing other policy areas of the Committee's view.

## Dispute Resolution

21. The Committee commits themselves, wherever possible, to conduct business through standard communication channels as set out in the Ways of Working section in this Concordat.
22. The dispute resolution process may be triggered when a disagreement cannot be resolved by further dialogue between members of the Committee, or members of the Committee agree that a common opinion cannot be found and/or that this negatively impacts the ability to meet JMC (EN) principles on Common Frameworks (Annex 3).
23. Where officials become aware of potential issues or areas of disagreement, the first step will be to seek to resolve this amongst policy leads without escalation. This will usually be resolved via discussion with equivalents in other Parties to determine the source of the disagreement, to establish the nature of the concern and to work

through possible solutions to the satisfaction of all parties. It is expected that most disagreements would be resolved at this point.

- 24. Where disagreements cannot be resolved amongst policy leads the next stage will usually be to escalate the issue to senior officials and departmental leads for intergovernmental relations. At this stage, senior officials can decide whether it would be appropriate to arrange a meeting with counterparts across Parties. Alternatively, or after such a meeting, senior officials may determine that the issue cannot be resolved at this stage at which point the involvement of the Senior Officials Programme Board and Ministers will be required.

## Commencement, Review and Termination

- 25. The Concordat has been in effect since the end of the Transition Period. The Concordat can be reviewed at any time but must be reviewed 12 months post-commencement, after which a regular review period should be agreed. Proposed changes to the Concordat following any review must be made with the written agreement of the Parties.

## Signatories

.....

[Name, position]:

Date:

.....

[Name, position]:

Date:

.....

[Name, position]:

Date:

.....

[Name, position]:

Date:

## Annex 1 – Relevant Legislation

The following EU Exit statutory instruments deal with correcting deficiencies in retained EU law relating to fertilisers arising due to EU Exit, as well as amending relevant domestic legislation where out of date references exist.

- The Fertilisers and Ammonium Nitrate Material (Amendment) (EU Exit) Regulations 2020 No. 998 (UK wide)
- The Fertilisers and Ammonium Nitrate Material (Amendment) (EU Exit) Regulations 2019 No.601 (UK wide)
- The Pesticides and Fertilisers (Miscellaneous Amendments) (EU Exit) Regulations 2019 No. 306 (UK wide)
- The Fertilisers (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 No. 100
- The Fertilisers and Pesticides (EU Exit) (Scotland) (Miscellaneous Amendments etc.) Regulations 2019 No. 25
- The Pesticides, Genetically Modified Organisms and Fertilisers (Miscellaneous Amendments) Regulations (Northern Ireland) 2018 No. 188

List of relevant fertiliser legislation:

- Part IV of the Agriculture Act 1970
- The Fertilisers Regulations 1991/2197 (GB) (England, Scotland and Wales)
- The Fertilisers (Sampling and Analysis) Regulations 1996/1342 (GB)
- The Fertilisers Regulations (Northern Ireland) 1992/187 (NI)
- The Fertilisers (Sampling and Analysis) Regulations (Northern Ireland) 1996/513 (NI)
- The Ammonium Nitrate Material (High Nitrogen Content) Safety Regulations 2003/1082 (GB)
- The EC Fertilisers Regulations (Northern Ireland) 2006/503 (NI)
- The EC Fertilisers Regulations (Scotland) 2006/543 (S)
- The EC Fertilisers Regulations (England and Wales) 2006/2486 (England+Wales)
- The Fertilising Products Regulations 2020/887 (GB)
- The Fertilisers (Sampling and Analysis) Regulations (Northern Ireland) 1996/513 (NI) The Fertilisers and Ammonium Nitrate Material (Amendment) (EU Exit) Regulations 2020 No. 998 (UK wide)
- The Fertilising Products Regulations (Northern Ireland) 2020
- The Agriculture Act 2020

List of relevant EU legislation applicable in Northern Ireland

- EU Regulation (EC) No. 2003/2003
- EU Regulation (EU) No. 2019/1009

## Annex 2 – Terms of Reference for the UK Fertilisers Regulatory Committee (UKFRC)

### **Purpose:**

The purpose of the Committee is to develop UK fertiliser policy: to consider issues surrounding the designation, definition, composition and use of fertilisers, the setting of standards for the marketing of fertilisers and, ensuring these standards are upheld and enforced.

The Committee is responsible for:

- i. Setting the policy and decision-making process for fertilisers
- ii. Making decisions in accordance with the regulatory framework
- iii. Meeting international obligations, and coordination, attendance and representation of the UK in international fora, as required
- iv. Adhering to the provision of information and collaboration principles outlined in the Ways of Working
- v. Cooperation on engagement with stakeholders so that a unified message will be delivered across Parties where appropriate
- vi. Sharing information (such as draft policies, impact assessments etc.) and scientific research in a spirit of openness and transparency, and to facilitate effective operation of the Concordat. Information sharing protocols may be established
- vii. Maintenance of knowledge required to make policy decisions on a UK basis; to maintain capacity and expertise; and for effective administration and provision of services

### **Attendance:**

Policy official/s responsible for fertiliser policy in each Party are required (in person or virtually) at each meeting.

### **Roles:**

Each policy official representing a Party should be mindful of the need to represent both their own Party and the wider UK position with regards to matters arising.

All parties to this Concordat are responsible for upholding 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 Party which provided the information, subject to the requirements of the law.

All Parties are also committed to the avoidance of conflicts of interest during decision making, in line with the Ways of Working set out within this Concordat.

**Secretariat:**

Defra policy officials will take on the responsibility for organising the agenda, chairing the meeting, taking and sharing minutes from the meeting, and coordinating decisions from meetings.

## Annex 3 - Joint Ministerial Committee (EU Negotiations) Communiqué - October 2017

### **Joint Ministerial Committee (EU Negotiations) Communiqué October 2017**

The fifth Joint Ministerial Committee (EU Negotiations) met today in 70 Whitehall. The meeting was chaired by the Rt Hon Damian Green MP, First Secretary of State and Minister for the Cabinet Office.

The attending Ministers were:

From the UK Government: the First Secretary of State and Minister for the Cabinet Office, Rt Hon Damian Green MP; the Secretary of State for Exiting the EU, Rt Hon David Davis MP; the Secretary of State for Wales, Rt Hon Alun Cairns MP; the Secretary of State for Scotland, Rt Hon David Mundell MP; and, Parliamentary Under Secretary of State for Northern Ireland, Lord Bourne of Aberystwyth.

From the Welsh Government: Cabinet Secretary for Finance and Local Government, Mark Drakeford AM.

From the Scottish Government: the Minister for UK Negotiations on Scotland's Place in Europe, Michael Russell MSP.

In the absence of Ministers from the Northern Ireland Executive, a senior civil servant from the Northern Ireland Civil Service was in attendance.

The Chair opened the meeting by summarising the bilateral engagement and political developments that had taken place since JMC(EN) last met. The Secretary of State for Exiting the EU provided an update on the previous rounds of negotiations with the EU and the Committee discussed forthcoming priorities and the future relationship with the EU. The Committee discussed the establishment of frameworks.

Ministers noted the positive progress being made on consideration of frameworks and agreed the principles that will underpin that work (below).

## Frameworks: Definition and Principles

### **Definition**

As the UK has now left the European Union, the Government of the United Kingdom and the Parties have agreed 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 Parties or legislatures. The 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 frameworks in areas where retained EU law currently intersects with devolved competence. There will also be close working between the UK Government and the Parties on reserved and excepted matters that impact significantly on devolved responsibilities.

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

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

## **Principles**

1. 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 nation as is afforded by current EU rules; and
  - lead to a significant increase in decision-making powers for the Parties.
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.

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