



**SPICe Briefing**

**Pàipear-ullachaidh SPICe**

# Plant Varieties and Seeds Common Framework

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This briefing discusses the Plant Varieties and Seeds Common Framework. It sets out how the UK Government and devolved governments propose to work together in policy areas covering plant varieties and seeds. This area 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. It also provides background information on the common frameworks programme.

**Common  
Framework**

# Contents

<b>Summary</b>	<b>4</b>
<b>What are common frameworks?</b>	<b>5</b>
<b>Why are common frameworks needed?</b>	<b>7</b>
<b>What is the process for developing frameworks ?</b>	<b>9</b>
<b>How will the Scottish Parliament consider frameworks?</b>	<b>10</b>
The Scrutiny Challenge	10
<b>Scrutiny at other legislatures</b>	<b>12</b>
House of Lords Common Frameworks Scrutiny Committee	12
Northern Ireland Assembly Committee for Agriculture, Environment, and Rural Affairs	12
House of Commons Environment, Food, and Rural Affairs Committee	13
<b>The UK Internal Market Act 2020</b>	<b>14</b>
Process for considering UK Internal Market Act exclusions in common framework areas	15
<b>Plant Varieties and Seeds</b>	<b>17</b>
Policy Area	17
Scope	17
Northern Ireland Protocol	19
EU-UK Trade and Cooperation Agreement	21
International Obligations	21
Definitions	22
Summary of proposed approach	23
Stakeholder engagement	24
Northern Ireland Assembly Committee for Agriculture, Environment and Rural Affairs	24
Detailed overview of proposed framework: legislation	25
Detailed overview of proposed framework: non-legislative arrangements	26
<b>Plant Varieties and Seeds in practice</b>	<b>27</b>
Roles and Responsibilities: parties to the framework	27
Responsibilities and Ways of Working	27
Principles of Working Together	28
UK Government	28
Animal Plant Health Agency	29
Forestry Commission	29
Scottish Government	29

Science and Advice for Scottish Agriculture _____	29
Welsh Government _____	30
Northern Ireland Executive _____	30
Agri-Food and Biosciences Institute _____	30
Roles and responsibilities: existing or new bodies _____	30
Framework Governance Structure _____	31
National Lists and Seeds Committee _____	31
Plant Variety Rights Office _____	32
Plant Varieties and Seeds Committee _____	32
Senior Official Programme Board _____	32
Decision-making _____	33
Decision Making Principles _____	34
Monitoring and enforcement _____	35
Review and amendment _____	35
Dispute resolution official level _____	37
Dispute resolution Ministerial level _____	37
Implementation _____	40
<b>Annex 1: Legislation _____</b>	<b>41</b>
Plant Breeders' Rights _____	41
Marketing Seed and other Plant Propagating Material Primary Legislation and powers _____	41
Variety Registration _____	41
Certification and Marketing of Seed and Material _____	42
Directly applicable EU law retained in domestic legislation _____	43
<b>Bibliography _____</b>	<b>44</b>

# Summary

This briefing provides detailed information on the Plant Varieties and Seeds Common Framework. The Rural Affairs, Islands and Natural Environment (RAINE) Committee will lead on scrutiny of this framework.<sup>1</sup>

The Plant Varieties and Seeds framework is a non-legislative agreement formalising ways of working between the four governments on plant varieties and seeds policy. The framework sets out the scope of the policy area, the roles and responsibilities of parties to the framework, as well as the mechanisms for monitoring, review, amendment, and dispute resolution.

Background information on, for example, what common frameworks are and how they have been developed is also provided in this paper.

The [SPICe common frameworks hub](#) collates all publicly available information on frameworks considered by committees of the Scottish Parliament.

In session five, the Finance and Constitution Committee [reported](#) on common frameworks and recommended that frameworks should include the following:

- their scope and the reasons for the framework approach (legislative or non-legislative<sup>i</sup>) and the extent of policy divergence provided for;
- decision making processes and the potential use of third parties;
- mechanisms for monitoring, reviewing and amending frameworks including an opportunity for Parliamentary scrutiny and agreement;
- the roles and responsibilities of each administration; and
- the detail of future governance structures, including arrangements for resolving disputes and information sharing

The [Scottish Government's response](#) highlighted that there may be a "range of forms" which frameworks could take.

More detail on the background to frameworks is available in a [SPICe briefing](#) and also in a [series of blogs](#) available on SPICe spotlight.

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<sup>i</sup> This categorisation was dropped in the [2021 Frameworks analysis](#), which reported that all frameworks will now be non-statutory intergovernmental agreements, and that the previously-used categories of "legislative" and "non-legislative" frameworks have been renamed as "frameworks with associated primary legislation" and "frameworks with no associated primary legislation" respectively.

# What are common frameworks?

A common framework is an agreed approach to a particular policy, including the implementation and governance of it. The aim of common frameworks is to manage divergence in order to achieve some degree of consistency in policy and practice across UK nations in areas formerly governed by EU law.

In its [October 2017 communique on common frameworks](#), the Joint Ministerial Committee (EU Negotiations) (JMC (EN)) stated that:

“ 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.”

[Joint Ministerial Council \(EU Negotiations\), 16 October 2017](#), Common Frameworks: Definition and Principles

The [Scottish Government indicated in 2019](#) that common frameworks would set out:

- the area of EU law under consideration, the current arrangements and any elements from the policy that will not be considered. It will also record any relevant legal or technical definitions.
- a breakdown of the policy area into its component parts, explain where the common rules will and will not be required, and the rationale for that approach. It will also set out any areas of disagreement.
- how the framework will operate in practice: how decisions will be made; the planned roles and responsibilities for each administration, or third party; how implementation will be monitored, and if appropriate enforced; arrangements for reviewing and amending the framework; and dispute resolution arrangements.

However, the Food and Feed Safety and Hygiene Law framework outline considered by the session five Health and Sport Committee noted that:

“ the framework itself is high level and commits all signatories to early, robust engagement on policy changes within scope.”

[Framework Outline Agreement and Concordat](#), 30 November 2020

The framework outline went on to note that the framework:

“ is intended to facilitate multilateral policy development and set out proposed high level commitments for the four UK Administrations. It should be viewed as a tool that helps policy development, rather than a rigid template to be followed.”

As such, it is likely that there will be significant variation between frameworks in terms of whether they set policy or set out how decisions on policy within the scope of the framework will be taken.

There are, however, similarities between frameworks in terms of their overall structure, with the agreements setting out the roles and responsibilities for parties to the framework,

how the framework can be reviewed and amended, and how disputes are to be resolved.

# Why are common frameworks needed?

During its membership of the European Union, the UK was required to comply with EU law. This means that, in many policy areas, a consistent approach was often adopted across all four nations of the UK, even where those policy areas were devolved.

On 31 December 2020, the transition period ended, and the United Kingdom left the EU single market and customs union. At this point, the requirement to comply with EU law also came to an end. As a result, the UK and devolved governments agreed that common frameworks would be needed to avoid significant policy divergence between the nations of the UK, where that would be undesirable.

The Protocol on Ireland/Northern Ireland was signed as part of the UK-EU Withdrawal Agreement and ratified in UK law by the EU Withdrawal (Agreement) Act (2020). The Protocol requires that Northern Ireland aligns with a limited set of EU laws relating to the Single Market for goods and the Customs Union. The [Northern Ireland Protocol Bill](#) was introduced to the UK Parliament on 13 June 2022. If passed, the Bill may affect the requirement for Northern Ireland to align with EU regulations of goods. In addition, policy positions (or framework governance arrangements) set out in this Common Framework briefing may also be affected.

The Joint Ministerial Committee (JMC) was a set of committees that comprised ministers from the UK and devolved governments. The JMC (EU Negotiations) sub-committee was created specifically as a forum to involve the devolved administrations in discussion about the UK's approach to EU Exit. Ministers responsible for Brexit preparations in the UK and devolved governments attended these meetings.

In October 2017, the JMC (EN) [agreed an underlying set of principles to guide work in creating common frameworks](#). These principles are set out below.

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.

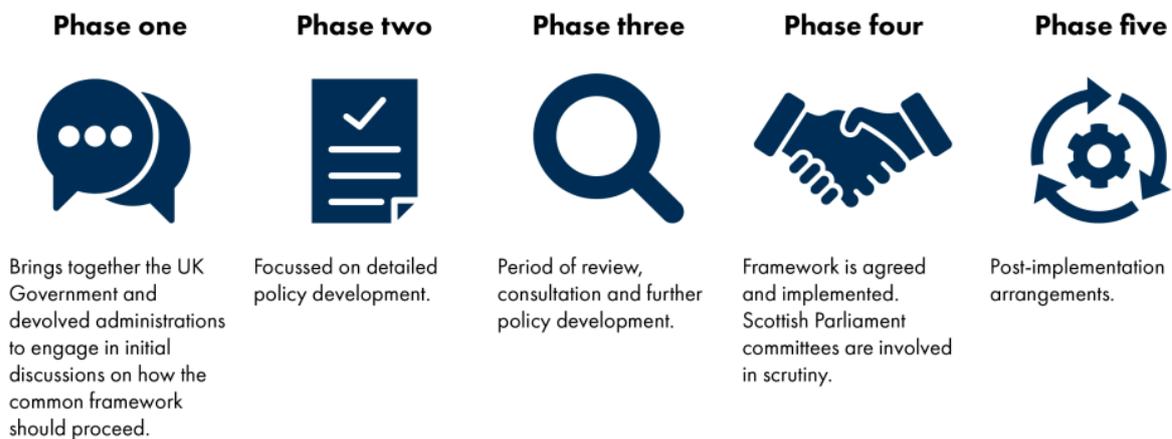
# What is the process for developing frameworks ?

Frameworks are inter-governmental agreements between the UK Government and the devolved administrations.

They are approved by Ministers on behalf of each government prior to being sent to all UK legislatures for scrutiny. [The UK Government Cabinet Office](#) is coordinating the work on developing common frameworks.

Common frameworks go through four phases of development before implementation at phase five. The stages are set out below. The parliament receives frameworks for scrutiny at phase four.

## Common framework development



Scottish Parliament Information Centre

# How will the Scottish Parliament consider frameworks?

Frameworks which have reached phase four are available to be considered by the Scottish Parliament. Subject committees can consider frameworks which sit within their policy areas.

Each legislature in the UK can consider common frameworks. Issues raised by legislatures during this scrutiny are fed back to their respective government. Governments then consider any changes which should be made to frameworks in light of scrutiny by legislatures before implementing the framework. Changes in light of scrutiny are not, however, a requirement.

The Constitution, Europe, External Affairs and Culture Committee has an oversight role in relation to frameworks and will lead on cross-cutting issues around transparency, governance and ongoing scrutiny.

The Scottish Government has previously acknowledged the ongoing role of the Scottish Parliament in relation to frameworks:

“ Consideration will also need to be given to what role the Parliament might have in the ongoing monitoring and scrutiny of frameworks post-implementation.”

[Scottish Government response](#) to the session five Finance and Constitution Committee report on common frameworks, June 2019

## The Scrutiny Challenge

The way in which common frameworks have been developed and will operate raises some significant scrutiny challenges for the Scottish Parliament.

- Common frameworks are intergovernmental agreements and the scope for parliamentary influence in their development is significantly limited with scrutiny taking place at phase four.
- The ongoing operation of frameworks will take place at an official level between government departments. It is therefore unclear how much information the Parliament may be able to access to scrutinise the effect of frameworks on policy-making.
- The Scottish Government and the UK Government have differing objectives in relation to frameworks. The UK Government is seeking “high levels of regulatory coherence”.<sup>2</sup> The Scottish Government believes that they are about “allowing legitimate policy choices”.<sup>2</sup>
- The interconnected nature of common frameworks and the UK Internal Market Act 2020 (see section on the [UK Internal Market Act](#)).
- The impact of common frameworks on the Scottish Government’s stated policy position of keeping pace with EU law.
- The fact that most frameworks have been operating on an interim basis since 1

January 2021 in spite of being unavailable for scrutiny by legislatures<sup>3</sup>.

The [legacy expert panel report](#) to the session five Finance and Constitution Committee noted these scrutiny challenges. The Committee had previously recommended that the Scottish Government should have to report on the operation of each common framework, noting interactions with cross-cutting issues such as keeping pace with EU law, on an annual basis.

## Scrutiny at other legislatures

This section provides information on scrutiny of the framework at other legislatures.

The framework is currently being considered by the [Senedd Economy, Trade and Rural Affairs Committee](#).

### House of Lords Common Frameworks Scrutiny Committee

The House of Lords Common Frameworks Scrutiny Committee considered a [pre-publication summary of the framework on 29 June 2021](#). The Committee noted that the summary was "*a detailed and helpful document which will help our Committee prepare for scrutiny of the provisional framework.*" It is unclear whether the committee will conduct further scrutiny of the framework

### Northern Ireland Assembly Committee for Agriculture, Environment, and Rural Affairs

The Northern Ireland Committee for Agriculture, Environment and Rural Affairs [published its position paper at the end of the 2017-22 mandate](#). The Committee noted several concerns on the framework relating to the [role of bodies within the framework governance structure](#), [stakeholder and parliamentary engagement](#), the [decision making process](#), [monitoring of the framework](#), and [dispute resolution](#) (see the respective sections of the briefing paper for further discussion of scrutiny in these areas).

Several of the concerns from the [Northern Ireland Committee for Agriculture, Environment and Rural Affairs](#) relate to the framework's relations with the [Protocol on Ireland/Northern Ireland](#) and the [UK Internal Market Act 2020](#). For example, the Committee observed the following in its position paper:

*“ One of the stated policy objectives of the Parties to the Framework is to deliver: “A functioning internal UK market for the marketing of seed and other plant propagating material including a joint GB/NI approach on variety registration.” It is difficult to foresee how this can be realistically achieved given that NI will be legally required to follow a different registration scheme to the rest of the UK.”*

The position paper also noted that the Northern Ireland Assembly Committee wrote to the House of Lords Common Frameworks Scrutiny Committee in December 2021 (this correspondence is not published). The position paper indicates the Northern Ireland Assembly Committee and House of Lords Common Frameworks Scrutiny Committee share concerns across frameworks in the following areas:

- a lack of apparent engagement with the Irish government in respect of Common Frameworks and implications for North-South policy interaction;
- a lack of engagement with community and voluntary stakeholders in NI to seek their views on common frameworks;

- how the [Subsidy Control Act 2022](#) will overlap with and impact on common frameworks which deal with subsidies

## House of Commons Environment, Food, and Rural Affairs Committee

At the time of writing, [the framework is being considered by the House of Commons' Environment, Food, and Rural Affairs Committee](#) alongside other frameworks within the remit of the UK Government Department of Environment, Food and Rural Affairs. [In a letter to George Eustice MP](#), Secretary of State for Environment, Food and Rural Affairs, dated 8 June 2022, the Committee asked for clarification on the UK Government's views on policy divergence and expressed concern about provisions for stakeholder engagement.

# The UK Internal Market Act 2020

The [UK Internal Market Act 2020](#) was introduced in the UK Parliament by the UK Government in preparation for the UK's exit from the EU. The Act establishes [two market access principles](#) to protect the flow of goods and services in the UK's internal market.

1. The principle of mutual recognition, which means that goods and services which can be sold lawfully in one nation of the UK can be sold in any other nation of the UK.
2. The principle of non-discrimination, which means authorities across the UK cannot discriminate against goods and service providers from another part of the UK.

The Act means that the market access principles apply even where divergence may have been agreed in a framework.

The introduction of the UK Internal Market Act had a significant impact on the common frameworks programme because of the tension between the market access principles contained in the Act and the political agreement reached that "common frameworks would be developed in respect of a range of factors, including "ensuring the functioning of the UK internal market, *while acknowledging policy divergence*".<sup>iii</sup>

UK Government Ministers have the power to disapply the market access principles set out in the Act where the UK Government has agreed with one or more of the devolved governments that divergence is acceptable through the common frameworks process.

Although UK Ministers can disapply the market access principles in such circumstances, they are not legally obliged to do so.

On 2 December 2021, [Angus Robertson MSP, Cabinet Secretary for Constitution, External Affairs and Culture](#) wrote to the [Convener of the Constitution, Europe, External Affairs and Culture Committee](#) to give an update on the common frameworks programme.

The letter indicated that at a recent Ministerial quadrilateral, agreement had been reached between the UK Government and the Scottish Government and other devolved administrations<sup>iii</sup> on an approach to "securing exemptions to the Act for policy divergence agreed through common frameworks".

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ii [After Brexit: The UK Internal Market Act and Devolution](#), Scottish Government, 8 March 2021. Note that footnote 27 in this document provides an incorrect reference. The correct reference is [JMC \(EN\) Communiqué, 16 October 2019](#).

iii See [letter from the Counsel General and Minister for the Constitution to the Senedd's Legislation, Justice and Constitution Committee dated 25 November 2021](#).

“ The meeting agreed an approach to securing exemptions to the Act for policy divergence agreed through common frameworks, and endorsed the text of a statement that UK Ministers will shortly make to the House of Commons. This will give effect to firm commitments made to the UK Parliament during the passage of the Bill that “...divergence may occur where there is agreement under a common framework, and that such divergence could be excluded from the market access principles. Regulations to give effect to such an agreement can be made under Clauses 10 and 17. In those cases, the Secretary of State would be able to bring to the House a statutory instrument to exclude from the market access principles a specific agreed area of divergence. This would follow consensus being reached between the UK Government and all the relevant parties that this is appropriate in respect of any specific defined topic within a common framework.”

[Letter from the Cabinet Secretary for Constitution, External Affairs and Culture](#), 2 December 2021

## **Process for considering UK Internal Market Act exclusions in common framework areas**

The UK Government and devolved administrations have agreed a process for considering exclusions to the market access principles of the UK Internal Market Act 2020. The [process](#) was published on 10 December 2021.

The process requires that if a [party to the framework](#) wishes to seek an exclusion to the market access principles, it must set out the scope and rationale for this. The proposed exclusion is then considered by the appropriate framework forum, taking into account evidence including about the likely direct and indirect economic impact of the proposed exemption. If the exemption is agreed, it is for UK Ministers to introduce a draft instrument to the UK Parliament to give effect to the exclusion. The UK Parliament will then consider the draft instrument.

The process is set out in full below. <sup>4</sup>

## **Proposal and consideration of exclusions**

1. Sections 10 and 18 and Schedules 1 and 2 of the UK Internal Market Act contain provisions excluding the application of the United Kingdom market access principles in certain cases.
2. Whenever any party is proposing an amendment to those Schedules in areas covered by a Common Framework:
  - a. the exclusion seeking party should set out the scope and rationale for the proposed exclusion; and
  - b. consideration of the proposal, associated evidence and potential impact should be taken forward consistent with the established processes as set out in the relevant Common Framework, including an assessment of direct and indirect economic impacts.
3. It is recognised that all parties will have their own processes for considering policy proposals. Administrations should consult and seek agreement internally on their position before seeking to formally agree the position within the relevant Common Frameworks forum.

## **Agreement of an exclusion request**

4. Where policy divergence has been agreed through a Common Framework this should be confirmed in the relevant Common Framework forum. This includes any agreement to create or amend an exclusion to the UKIM Act 2020's market access principles.
5. Evidence of the final position of each party regarding any exclusion and whether an agreement has been reached should be recorded in all cases. This could take the form of an exchange of letters between appropriate UK Government and Devolved Administration ministers and include confirmation of the mandated consent period for Devolved Administration ministers regarding changes to exclusions within the Act.
6. Parties remain able to engage the dispute resolution mechanism within the appropriate Common Framework if desired.

## **Finalising an exclusion**

7. Under section 10 or section 18 of the UK Internal Market Act 2020 amendments to the schedules containing exclusions from the application of the market access principles require the approval of both Houses of the UK Parliament through the affirmative resolution procedure. Where agreement to such an exclusion is reached within a Common Framework, the Secretary of State for the UK Government department named in the Framework is responsible for ensuring that a draft statutory instrument is put before the UK Parliament.

# Plant Varieties and Seeds

The Plant Varieties and Seeds provisional Common Framework ("the framework") has reached phase four and has, as such, been received by the Scottish Parliament for scrutiny. Scrutiny will be undertaken by the Rural Affairs, Islands and Natural Environment (RAINE).

The framework has also been received by other UK legislatures. This briefing is intended to facilitate scrutiny of the framework by the Scottish Parliament.

## Policy Area

Plant varieties and seeds (PVS) policy includes:

- intellectual property rights of plant breeders;
- plant variety registration, and
- setting standards for marketing and certification of seed and other plant propagating material, and ensuring that these standards are upheld.

## Scope

PVS is a devolved matter. The framework applies to retained EU law in the PVS area. The PVS policy area is also within the scope of the Protocol on Ireland and Northern Ireland. This means that Northern Ireland must continue to align with EU law in these areas.

The elements of EU law that intersected with devolved competence in this policy area include:

- **Plant Variety Rights:** [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, the framework notes this regulation has now been revoked.
- **Marketing Seed and other Plant Propagating Material:** Marketing standards and requirements for seed and plant propagating material were governed by [11 EU Directives](#). Under the EU PVS regime, plant varieties first had to be listed on the EU Common Catalogue before they could be marketed. 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).

The framework sets out the domestic law relating to the policy area in four broad sections (the full list of legislation noted in the framework is shown in [Annex 1](#)):

### 1. Plant Breeder's Rights (PBR)

- a. Plant variety rights (also known as plant breeders' rights; PBR) are administered

on a UK wide basis under the [Plant Varieties Act 1997](#) and associated regulations.

- b. 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 application for PBR.
- c. A UK Controller is appointed 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. Marketing Seed and other Plant Propagating Material

- a. 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 (or forest reproductive material; FRM).
- b. Material of all prescribed crops must comply with the legislation, but the level of regulation required varies with the type of crop.
- c. 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. These powers were extended to Northern Ireland, but limited to seeds, by [The Plant Varieties and Seeds \(Northern Ireland\) Order 1973](#). The Northern Ireland Department of Agriculture, Environment and Rural Affairs also has regulation making powers under the [Seeds Act \(Northern Ireland\) 1965](#).

## 3. Variety Registration

- a. 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).
- b. 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 Protocol on Ireland/Northern Ireland, 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.
- c. 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. Each government provides for fruit registration in their own legislation.

## 4. Seed and plant propagating material – certification

- a. 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.
- b. 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.

The framework notes that it is without prejudice to the [Plant Health Common Framework](#) and the [Memorandum of Understanding for the Cross-Border provision of Forestry Functions including Research Delivery and Plant Health \(forestry\)](#).<sup>iv</sup> The [covering material for the framework sent to the RAINE Committee on 7 February 2022](#) states:

“ The Framework has some connections 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).”

The framework documents provide further detail on where the links between frameworks are expected to occur:

“ 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.”

The framework also notes that "no further action is thought to be needed" for accommodating fees and charges within the scope of the framework. As such, the Parties to the framework will be able to continue to establish their own fees and charges for certification and variety registration services. The framework notes that the Animal and Plant Health Agency (APHA; an agency of Defra) will continue to administer fees and charges for variety registration and PBR (Plant Breeders Rights) on a UK basis.<sup>v</sup>

## Northern Ireland Protocol

[Paragraph 42 of Annex 2 of the Protocol on Ireland/Northern Ireland](#) sets out the EU law that applies to Northern Ireland in the PVS policy area.<sup>vi</sup>

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iv The Memorandum of Understanding for the Cross-Border provision of Forestry Functions including Research Delivery and Plant Health (forestry) sets out the details of the governance, commissioning and funding arrangements agreed between the Scottish, Welsh and UK Governments and the Forestry Commission. It is GB-wide.

v This includes Northern Ireland for varieties being registered on the NI variety list.

vi The Northern Ireland Protocol Bill was introduced to the UK Parliament on 13 June 2022. If passed, the Bill may affect the current requirement for regulatory alignment between Northern Ireland and the EU.

Paragraph 42 of Annex 2 lists the following EU Directives relating to the PVS policy area:

- Council Directive 66/402/EEC of 14 June 1966 on the marketing of cereal seed
- Council Directive 68/193/EEC of 9 April 1968 on the marketing of material for the vegetative propagation of the vine
- Council Directive 1999/105/EC of 22 December 1999 on the marketing of forest reproductive material
- Council Directive 2002/53/EC of 13 June 2002 on the common catalogue of varieties of agricultural plant species
- Council Directive 2002/54/EC of 13 June 2002 on the marketing of beet seed
- Council Directive 2002/55/EC of 13 June 2002 on the marketing of vegetable seed
- Council Directive 2002/56/EC of 13 June 2002 on the marketing of seed potatoes
- Council Directive 2002/57/EC of 13 June 2002 on the marketing of seed of oil and fibre plants
- Council Directive 2008/90/EC of 29 September 2008 on the marketing of fruit plant propagating material and fruit plants intended for fruit production

The framework is UK-wide and notes that it is intended to accommodate the specific circumstances in Northern Ireland that arise as a result of the Protocol. The governance structures and decision making processes outlined in the framework are, the framework states, intended to allow for the full participation of Northern Ireland in the event policy changes are proposed. The framework indicates that this may be when the UK or devolved governments propose policy changes that have "*regulatory implications for the rest of the UK*" or when the rules in Northern Ireland change with EU alignment.

It is not clear from the framework documents what policy changes would have regulatory implications for the other Parties to the framework. The Northern Ireland Executive Ministers will be able to trigger a review of an issue as part of the [framework dispute resolution process](#) in the event that they have concerns over GB-wide proposals which they feel have not been satisfactorily addressed.

The [position paper on the framework from the Northern Ireland Committee for Agriculture, Environment and Rural Affairs](#) made several observations relating to the operation of the framework and the Protocol on Ireland/Northern Ireland (see [Stakeholder engagement](#) for further discussion):

“

- There is the potential for significant future divergences in policy between NI and GB given NI’s requirement to adhere to Protocol regulations.”
- The document states that the Framework will provide a mechanism to discuss and manage proposed policy changes “*Where one or more of UK Government, the Scottish Government or the Welsh Government proposes 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*” – this suggests that NI may be prohibited from proposing policy changes under the auspices of the Framework which are unconnected to its obligations under retained EU law.”
- It is unclear to which forum issues should be highlighted in the event that NI is precluded from aligning with policy changes made in GB as a result of compliance with Protocol-related EU legislation, and whom would represent NI’s interests at such a forum.”

## EU-UK Trade and Cooperation Agreement

The policy area covered by the framework intersects with the [EU-UK Trade and Cooperation Agreement \(TCA\)](#) and therefore topics relevant to the framework may be considered from time to time by relevant TCA Specialised Committees or the Partnership Council.<sup>vii</sup> The framework states:

“ 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

The framework notes that decisions made under the framework will ensure the UK continues to fulfil its international obligations. It also notes that a Protocol for International Representation and Coordination is forthcoming. This Protocol is expected to provide further detail on the process of Parties representing the UK in international fora.

The framework documents outline the following international obligations within the the policy area:

- **International Convention for the Protection of New Varieties of Plants:** the UK is a signatory and is expected to maintain its legislation on Plant Breeder’s Rights in compliance with that Convention.

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vii The Partnership Council is the EU-UK body which oversees the TCA Agreement. Beneath the Partnership Council, a number of Specialised Committees and working groups have been established to oversee particular elements of the Agreement.

- **Organisation for Economic Co-operation and Development (OECD) seed schemes:** the UK is a member of the OECD schemes for the **Varietal Certification or the Control of Seed Moving in International Trade** and the **Certification of Forest Reproductive Material**.
  - The OECD Seed Schemes ensure a set of harmonised procedures for the use and control of certified agriculture seed. The UK is obliged to strictly observe the OECD Basic Principles, Method of Operation, and Rules and Regulations of the Schemes. The UK must also designate a National Designated Authority for the UK and maintain a List of Varieties. Defra is the National Designated Authority for the UK.
- **International Seed Testing Association (ISTA):** the UK is a member of this organisation which develops and publishes standard procedures in the field of seed testing.
- **United Nations Economic Commission for Europe (UNECE):** the UNECE convenes a Working Party (with UK representation from Science and Advice for Scottish Agriculture; SASA) on agricultural quality standards which is applied to trade in seed potatoes.
- **European Seed Certification Agencies Association (ESCAA):** the UK is able to attend meetings associated with this body to exchange scientific and technical information on seed certification with other European seed certification agencies.
- **European VCU Platform:** this platform brings together the official variety testing offices in charge of testing for Value Cultivation and Use (VCU) to exchange information on variety testing.

## Definitions

The framework lists the following abbreviations and definitions:

- 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: Northern Ireland Department for Agriculture, Environment and Rural Affairs
- Defra: UK Government Department for Environment, Food and Rural Affairs
- DIT: UK Government 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

## Summary of proposed approach

The framework comprises of non-legislative mechanisms that set out arrangements for joint working to maintain common rules for plant varieties, seeds and other plant propagating material across the UK, and manage divergence where agreed.

The framework documents note the approach is supported by the following policy objectives:

- A single UK regime governing the administration of plant breeders' rights (by the Plant Variety Rights Office).
- A functioning UK internal market for the marketing of seed and other plant propagating material including a joint GB/NI approach on variety registration.
- Timely implementation of changes agreed by the Parties on plant varieties and seeds.
- The adoption of measures in a manner that is consistent with the UK's international obligations.
- To establish common policy objectives and positions for engagement in international

organisations, in line with international obligations.

- To engage with the Crown Dependencies<sup>viii</sup>, as appropriate, on issues of marketing of seed and other plant propagating material to maintain common rules across the British Islands.

## Stakeholder engagement

The [covering material for the framework sent to the RAINE Committee on 4 February 2022](#), set out the stakeholder engagement that has taken place in the development of the framework. The covering material states:

“ In December 2020, Scottish Government placed the ‘Stakeholder and Explainer Documents’ for the Framework on the SASA website, sending a link to industry and individuals who certified seeds or plant propagating material in Scotland, applied for UK plant breeders’ rights, or GB variety listing. We also met in person with the National Farmers Union, Scotland; AIC Scotland (agricultural industries confederation); the Scottish Seed Trade Association (SSTA); and British Society of Plant Breeders’ (BSPB). There were no concerns provided at the meeting and no comments received in response to the documents on the website.”

“ Defra, DAERA and Welsh Government also carried out their own individual consultations. Only one minor comment regarding a horticultural scheme was received by Defra.”

“ Updated copied of the ‘Stakeholder and Explainer Documents’ have been provided as requested. These will be sent out to our Stakeholders after publication of the Framework. Changes to these documents reflect those provided by way of the Light Touch review.”

The framework documents also note:

“ 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.”

The [Implementation](#) section of the framework documents also make reference to stakeholder consultation activities that may take place.

## Northern Ireland Assembly Committee for Agriculture, Environment and Rural Affairs

Through its engagement with stakeholders the Northern Ireland Assembly Committee for Agriculture, Environment, and Rural Affairs identified a number of issues relating to the functioning of the framework and the particular situation of Northern Ireland. The [Committee's position paper](#) reports the following statements:

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<sup>viii</sup> The Crown Dependencies are three island territories in the British Islands that are self-governing possessions of the British Crown: the Bailiwick of Guernsey, the Bailiwick of Jersey, and the Isle of Man.

“

- The Common Framework aspires to deliver two laudable, but fundamentally conflicting ideals, in terms of facilitating commonality of approach across jurisdictions but also enabling independent policy action.”
- It is acknowledged that a uniform policy approach across domains will support greater profitability in the sector.”
- There is significant concern about the lack of engagement with stakeholders and industry and hitherto there has been virtually no consultation with local representatives and DAERA about the functioning of the Common Framework.”
- There is the potential for significant future divergences in policy between NI and GB given NI’s requirement to adhere to Protocol regulations.”
- There is a concern that NI growers may not be able to access new plant varieties and seeds in the future which may be developed in GB through techniques such as gene editing as it will have to maintain parity with EU regulations.”
- There has been a significant impact on the plant/tree supply sector following introduction of the Protocol which has resulted in prohibitions on the transit of certain plant and tree species e.g., oak, beech and birch from NI to GB.”
- Additionally, as a result of the introduction of additional paperwork on the transit of seeds, soft fruit and plants from GB into NI many suppliers in GB and/or haulage firms have stopped offering a transit service and therefore if NI growers and companies want to access these products, they have to travel to GB independently to collect them.”
- NI consumers are being affected negatively both in terms of choice, as there are fewer varieties of plants/seeds available locally than before introduction of the Protocol, and in terms of price as those suppliers which are continuing to transport goods into NI are passing on the additional costs of paperwork to customers.”
- Acquiring seeds and plant materials from GB for use in NI has become “*very challenging, very difficult and very bureaucratic*”, ”
- The Common Framework as drafted will not offer any practicable solutions to businesses, traders and growers to overcome the barriers which have been introduced into the supply chain.”

## Detailed overview of proposed framework: legislation

This section provides information on the legislation associated with the framework.

The [covering material of the framework documents sent to the RAINE Committee on 4 February 2022](#) set out the key legislation associated with the policy area:

“ 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.”

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“ Secondary legislation for the certification of seeds and plant propagating material 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.”

A full list of legislation mentioned in the framework documents can also be found in [Annex 1](#).

## **Detailed overview of proposed framework: non-legislative arrangements**

The non-legislative governance of the framework is supported by a Concordat and processes for [decision making](#), [dispute resolution](#), [monitoring the framework](#), and a [review and amendment mechanism](#).

# Plant Varieties and Seeds in practice

## Roles and Responsibilities: parties to the framework

This section sets out the roles and responsibilities of each party to the framework.

The Parties to the framework include:

- UK Government Department of Environment, Food and Rural Affairs (Defra)
- Scottish Government
- Welsh Government
- Northern Ireland Department for Agriculture, Environment and Rural Affairs (DAERA)

The framework also lists the following public sector delivery bodies:

- Animal and Plant Health Agency (APHA, an agency of Defra).
- Science and Advice for Scottish Agriculture (SASA, a division of the Agriculture and Rural Economy Directorate within the Scottish Government)
- Agri-Food and Biosciences Institute (AFBI, Northern Ireland)
- Forestry Commission.

The framework notes that:

“ 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.”

## Responsibilities and Ways of Working

The framework sets out the following responsibilities common to all Parties to the framework:

- Setting the policy and decision-making process for variety registration;
- Facilitating the appointment of the UK Controller and the UK Deputy Controller through their respective Ministers;<sup>ix</sup>
- Meeting international obligations, and coordination, attendance and representation of the UK in international fora;
- Providing the appropriate personnel for the [Plant Varieties and Seeds Committee](#) and [National Lists and Seeds Committee](#), and for the sub-groups of these committees

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<sup>ix</sup> It is not clear what UK Controller is being referred to in this instance. However, the Scope section of the framework only refers to the UK Controller appointed by Ministers by virtue of [section 2 of the Plant Varieties Act 1997](#). This UK Controller is responsible for the operation of the Plant Variety Rights Office (see [Scope](#)).

(see [Roles and Responsibilities: existing or new bodies](#));

- Implementation of legislation;
- Adhering to the “Ways of Working” principles;
- Cooperation on stakeholder engagement to deliver a unified position across Parties;
- Sharing information and scientific research to facilitate the effective operation of the Framework;<sup>x</sup>
- Maintenance of knowledge required to make policy decisions on a UK basis, ensure the functioning of the [Plant Variety Rights Office](#), ensure complete representation at framework committees for joint decision-making, and for effective administration and provision of services.

The framework also sets out Ways of Working principles:

- **Provision of Information**
  - Parties are expected to provide each other with full, open and timely access to information, keep each other informed of contact with third countries on relevant trade related matters, and have coordinated liaison on press and publicity matters.
  - Parties are expected to keep each other informed on matters of mutual interest, including opportunities for collaboration and sharing of resources and on contact with stakeholders.
- **Collaboration**
  - Parties are expected to work together to develop policy on matters of mutual interest, and endeavour to reach agreement and resolve disagreements. The Parties are expected to contribute to UK policy positions for international meetings, reporting outcomes from international meetings, and liaise on proposals resulting from international obligations.

## Principles of Working Together

The Concordat also sets out Principles of Working Together ([pp. 33-35 of the framework documents](#)). These principles reiterate most of the substantive content of the framework agreement relating to the [Scope](#), [Framework Governance Structure](#), [Decision-making](#), and [Dispute Resolution](#).

## UK Government

The UK Government Department for Environment, Food and Rural Affairs (Defra) is responsible for strategic oversight, policy development and legislation in England. It is also responsible for providing UK representation at international fora.

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<sup>x</sup> The framework notes information sharing protocols may be established.

## Animal Plant Health Agency

Certification activities of seed and other plant propagating material, licensing of businesses and individuals, and enforcement in England is undertaken by the Animal Plant Health Agency (APHA; an agency of Defra). Testing of agricultural seed is undertaken by the Official Seed Testing Station at NIAB.<sup>xi</sup>

APHA coordinates the delivery of variety registration and PBR. It manages the Seed Potato Classification Scheme (SPCS) and the Fruit Propagating Certification Scheme (FPCS) in England and Wales. APHA is also responsible for delivery of plant health activities in England and Wales, on behalf of the Secretary of State and Welsh Ministers. The framework notes APHA combines the management of the regulatory requirements for plant health and PVS where this is appropriate.

## Forestry Commission

The Forestry Commission delivers the Forest Reproductive Material (FRM) functions, as well as plant health functions, on behalf of Great Britain, as detailed in the [Memorandum of Understanding for the Cross-Border provision of Forestry Functions and Research Delivery](#).

The Forestry Commission is responsible for the coordination and attendance of the FRM (ad hoc) Working Group (see [Framework Governance Structure](#)).

The Forestry Commission also has responsibility for arranging for delegates to attend meetings of the OECD Forest Seed and Plant Scheme Technical Working Group.

## Scottish Government

The Scottish Government is responsible for strategic oversight, policy development and legislation in Scotland.

### Science and Advice for Scottish Agriculture

Certification work in Scotland is undertaken by SASA, a division of the Agriculture and Rural Economy Directorate, within the Scottish Government. Specifically, SASA Officials carry out administration and inspections as well as a range of scientific activities in support of seed potato classification. SASA officials, Scottish Government Agricultural officials, and licensed individuals from the seed industry also carry out a mixture of official and licensed activities relating to seed certification for cereals and non-cereal seed species. The licensing, training, examination, official supervision and enforcement work is also the responsibility of SASA and Scottish Government Agricultural officials.

Seed testing is undertaken at the SASA Official Seed Testing Station (OSTS), 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 Scottish Government Agricultural officials. Soft fruit certification is carried out by the Horticultural Marketing Unit (HMU) in SASA. HMU also oversees the controls for both ornamental and

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<sup>xi</sup> The framework notes NIAB is an independent plant science organisation working under a contract with Defra.

vegetable plant material.

SASA is also responsible for delivery of plant health activities in Scotland. The framework notes SASA combines the management of the regulatory requirements for plant health and PVS when appropriate.

## **Welsh Government**

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.

## **Northern Ireland Executive**

The Northern Ireland Department for Agriculture, Environment, and Rural Affairs (DAERA) is responsible for strategic oversight, policy development and legislation in Northern Ireland.

According to the framework documents, DAERA is responsible for:

- certification and marketing of seed and plant propagating material (including forest reproductive material) in Northern Ireland.
- the administration, enforcement and inspection of certification schemes for seed and plant propagating material.
- the licensing of seed samplers and crop inspectors in Northern Ireland.

The framework notes testing of agricultural seed is undertaken by the Official Seed Testing Station at the Agri-Food and Biosciences Institute (AFBI).

## **Agri-Food and Biosciences Institute**

The Agri-Food and Biosciences Institute (AFBI) is responsible for the testing of agricultural seed at its Official Seed Testing Station on behalf of DAERA. AFBI is also responsible for delivery of plant health activities in Northern Ireland. The framework notes that AFBI combines the management of the regulatory requirements for plant health and PVS where this is appropriate.

## **Roles and responsibilities: existing or new bodies**

This section sets out the roles and responsibilities of any bodies associated with the framework which already exist, or which are to be created.

The framework notes the main decision-making groups in the framework are:

- National Lists and Seeds Committee (NLSC)
- Plant Variety Rights Office (PVRO)
- Plant Varieties and Seeds Committee (PVSC)

The Governance section of the framework documents (pp. 15-17) and associated framework governance structure (p. 31) provide most of the information on the composition and role of the above decision-making bodies. The Northern Ireland Assembly for Environment, Agriculture and Rural Affairs Committee's position paper on the framework noted:

- “
- The Terms of Reference of the main decision-making groups included in the Framework such as the PVSC, NLSC and PRVO are not included in the document.”
  - There is very little detail regarding the composition and role of the various technical sub-groups which will feed into, and advise, the PVSC which limits the ability to scrutinise effectively how these fora will function.”

## Framework Governance Structure

The following sections collate and set out the available information on the framework governance structure. The framework governance consists of a [three-level structure](#) consisting of official level technical working groups, official level decision-making bodies, and overarching governance by the [Senior Official Programme Board \(SOPB\)](#) and the [Inter-ministerial Group for Environment, Food and Rural Affairs \(IMG-EFRA\)](#). The governance structure also indicates where the framework interacts with the Plant Health Common Framework and the shared governance bodies of the SOPB and IMG-EFRA.

### National Lists and Seeds Committee

The National Lists and Seeds Committee (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 PVSC and the NLSC are responsible for handling and considering representations received in respect to variety registration.

APHA coordinates the delivery of variety registration and PBR. It receives and manages applications, coordinates testing, and provides the secretariat for the NLSC.

### *Related and Technical Working Groups*

The framework indicates that the NLSC has responsibility for the following technical sub-groups:

- VCU Technical Experts Group
- VCU Procedures Development Group
- DUS Test Centres
- seed certification and official supervision committee

- seed testing and sampling committee
- seed potatoes ad hoc working group
- fruit propagating material ad hoc working group
- inter-departmental statisticians group

## **Plant Variety Rights Office**

The Plant Variety Rights Office (PVRO) administers UK Plant Breeder's Rights. 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 Plant Breeder's Rights.

## **Plant Varieties and Seeds Committee**

The Plant Varieties and Seeds Committee (PVSC) is a key decision-making body within the framework. Defra provides the Secretariat for the PVSC.

The PVSC, along with the NLSC, is also responsible for handling and considering representations received in respect to variety registration. 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 are expected to cooperate in responding to the appeal.

The framework documents also note that the PVSC will work with the UK National Plant Protection Organisation (NPPO; [governance structure of the Plant Health framework](#)) on issues of market access, through ad-hoc membership of the Market Access Working Group (a forum of the Plant Health Common Framework). The framework notes that a UK PVS policy representative will provide advice on marketing of seed and other plant propagating material, and rights protection issues associated with market access. This relationship between frameworks is not indicated on the framework governance structure. However, the framework does indicate that further work is being undertaken to ensure relationships with the Plant Health Common Framework (see [Implementation](#)).

### *Forest Reproductive Material (ad hoc) Working Group*

The Forest Reproductive Material (FRM) (ad hoc) Working Group is expected to report relevant issues to the PVSC on an annual basis, including proposals for changes to marketing regulations, and coordination with DAERA on Northern Ireland forestry issues. The FRM (ad hoc) Working Group also oversees the activity of FRM functions by the Forestry Commission.

## **Senior Official Programme Board**

The Senior Official Programme Board (SOPB) is made up of senior officials from each

government and appears to be a feature of framework governance structures for most Environment, Food and Rural affairs (EFRA-related) common frameworks. The SOPB and IMG-EFRA<sup>xii</sup> sit above framework-specific governance structures for the following frameworks:

- Agricultural support
- Animal health and welfare
- Air Quality
- Plant varieties and seeds
- Integrated pollution prevention and control: developing and setting of Best Available Techniques (BAT)
- Fertilisers
- Plant health
- Organics
- Chemicals and pesticides
- Fisheries management and support
- Ozone Depleting Substances (ODS) and Fluorinated Greenhouse Gases (F-gases)

Some framework documents contain [virtually no information about the SOPB and its membership](#) whereas others [contain full terms of reference](#). Legislatures have asked questions about how the membership of the SOPB [differs from other framework forums](#), [its role in dispute resolution](#), and [its additional tasks](#).

The primary role of the SOPB appears to be to sift disputes before they are escalated for Ministerial attention. In response to a letter by the House of Lords Common Framework Scrutiny Committee, George Eustice, MP Secretary of State for Environment, Food and Rural Affairs, [further stated](#) that:

“ [the SOPB] can also play a role in helping to avoid the need for a dispute to be referred to ministers, for example if a resolution and consensus can be achieved at the SOPB.”

## Decision-making

The framework indicates the key groups for facilitating framework discussions and decision-making are the PVSC and the NLSC, which are attended by representatives of each party to the framework. The framework indicates the decisions that may be taken through the framework include:

- policy decisions concerned with legislative amendments, temporary marketing derogations and equivalence recognition requests;

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<sup>xii</sup> Inter-ministerial Group for Environment, Food and Rural Affairs

- international representation;
- resolution of disputes;
- referring disputes to the overarching dispute avoidance and resolution mechanism with the appropriate intergovernmental structures if not resolved at portfolio level first;
- reviewing and amending the framework;
- procurement of services for PBR and variety registration.

The framework also states:

“ In the spirit of the Common Framework, the Parties may not implement a divergent measure without seeking the agreement of the other Parties.”

## Decision Making Principles

The framework also sets out five principles for decision-making. The first three principles state:

“ 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.”

The first three principles indicate that protocols to aid decision making within the framework are in operation but the protocols have not been published with the Concordat. There is also no indication as to when these protocols will be published (see [Implementation](#)). On the second principle, it is unclear why Northern Ireland is not included in the collective authority for granting temporary derogations for market seeds. This was noted by the Northern Ireland Assembly Committee for Agriculture, Environment and Rural Affairs in its position paper which states:

“ Products derived from these seeds may ultimately end up in the NI market and so it would be reasonable to consider the views of the NI administration in terms of decision-making.”

The remaining two principles relate to proposals for divergent policy and legislative change. While the framework indicates a common approach is preferred and divergent policy will not be implemented without agreement from the parties, there is a lack of clarity over what divergence is considered unacceptable. The principles state:

“ 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.”

“ 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.”

## Monitoring and enforcement

The framework indicates the PVSC has responsibility for monitoring the framework at the annual meeting between the NLSC and the PVSC. The framework also notes:

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

The purpose of monitoring is stated 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 [common framework principles](#); and
- whether any divergence that has taken place has had an inadvertent impact on the policy area covered by the framework.

The outcome of this monitoring will be used to inform joint decision-making processes and the next review and amendment process. If there is an unresolved disagreement, the [dispute avoidance and resolution mechanism](#) outlined in the framework should be used.

The framework documents do not make reference to parliamentary engagement for the review and monitoring of the operation of the framework.

## Review and amendment

The review and amendment mechanism (RAM) is intended to ensure the framework is able to adapt to changing policy and governance environments. The framework indicates that the PVSC will review the framework and that the RAM is intended to rely on

consensus from the relevant Ministers at each stage of the process.

At the outset of the review stage, the parties must agree timelines for the process, including the possible amendment stage. The framework allows for third parties to be involved in an advisory capacity at the invitation of any party to the framework. These include other government departments or bodies as well as external stakeholders. If a decision is not reached in either the review or amendment stage, parties to the framework can raise it through the framework dispute avoidance and resolution process.

The framework notes that the first review will take place after the first six months or after the first Inter-governmental Relations Review. The Inter-governmental Relations review was published on 13 January 2022 (before the framework's publication on 3 February 2022). It should also be noted that the [European Union \(Withdrawal\) Act and Common Frameworks Quarterly Update \(26 December 2020 to 25 March 2021\)](#) indicates that the framework has been operating on a provisional basis since January 2021. Therefore, it is not clear whether the first review has taken place or when it could be reasonably expected to occur.

There are two types of review that can take place within the framework - periodic and exceptional. The process for agreeing amendments should be identical regardless of the type of review and is set out in the framework as follows.

### **Review stage**

- Periodic review: the operation of the framework should be reviewed every three years. The period of three years starts from the conclusion of a periodic review and any amendment stages that follow.
- Exceptional review: an exceptional review of the framework is triggered by a 'significant issue'. Any Party can request an exceptional review by notifying the PVSC who are then expected to determine whether an exceptional review is required.
  - A significant issue must be time sensitive and fundamentally impact the operation or the scope of the framework.
  - This kind of 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.
  - The substantial amendment stage can only be triggered through unanimous agreement by Ministers.

### **Amendment stage**

Following the parties jointly deciding to enter the amendment stage, parties will enter into discussion around the exact nature of the amendment. This will be led by the PVSC.

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 by the PVSC.

All amendments to the framework must be agreed by all parties via the PVSC and a new non-legislative agreement signed by all parties. If the PVSC cannot reach agreement on

whether or how a framework should be amended, this may become a disagreement and, as such, could be raised through the framework [dispute resolution mechanism](#).

## Dispute resolution official level

This section considers the dispute resolution process set out within the framework.

The framework notes that the goal of its dispute avoidance and resolution mechanism is to avoid escalation and resolve disagreements at the earliest opportunity via the NLSC, PVSC, or both.

The PVSC appear to have a role in both coordinating and considering disputes. The dispute resolution mechanism sets out that PVSC will be informed of a dispute and consider the urgency of the dispute as well as which Committee(s) or subgroup(s) will assess a disagreement.

It expected that disagreements relating to a technical matter will be discussed by the NLSC (or a relevant subgroup) who would then provide an agreed recommendation to PVSC. The framework indicates PVSC would then make a decision on the recommendation. For disagreements relating to a policy matter, PVSC will discuss the dispute in the first instance.

If there is no resolution at official level (i.e. NLSC or PVSC), the disagreement will be discussed at an ad hoc group of senior officials. The framework indicates senior officials attending the ad hoc dispute resolution group will be nominated by the Parties to the framework. There is no further information included in the framework documents on the composition that the ad hoc senior official group may take.

The framework notes that the ad hoc senior official group may, in the case of technical disputes, refer the matter back to the NLSC (or an appropriate subgroup) to gather more scientific evidence. In the event of no agreement at the ad hoc senior official group, the dispute is to be escalated to the [SOPB and IMG-EFRA](#). The final step for unresolved disputes would be with intergovernmental structures. The Northern Ireland Assembly Committee for Agriculture, Environment, and Rural Affairs position paper on the framework indicated:

“ It is unclear in what circumstances a dispute will be escalated from EFRA IMG-level to Intergovernmental Structures and whether this will require consensus by all Ministers, or can be triggered by a Minister acting independently”

## Dispute resolution Ministerial level

It is anticipated that recourse to resolution at Ministerial level will be as a last resort and only sought where [dispute resolution at official level](#) has failed. Disputes which reach Ministerial level will be resolved through intergovernmental dispute resolution mechanisms. Relevant intergovernmental disputes may concern the ["interpretation of, or actions taken in relation to, matters governed by \[...\] common framework agreements"](#).

Intergovernmental dispute resolution mechanisms were considered as part of the [joint](#)

[review on intergovernmental relations](#). The [conclusions of the joint review](#) were published on 13 January 2022 and set out a new approach to intergovernmental relations, which the UK Government and devolved governments have agreed to work to. The joint review created a new three-tiered system for intergovernmental discussions, doing away with the old Joint Ministerial Committee structure.

## Dispute resolution Ministerial level

# What will intergovernmental relations look like?

Proposed outline of new intergovernmental relations structure

### Top tier:

The Council

This is made up of the Prime Minister and heads of devolved governments.

### Middle tier:

#### Standing committees

The Interministerial Standing Committee (IMSC)

Ministers responsible for IGR consider issues that cut across different policy areas, and facilitate collaborative working between groups in the lowest tier.

The Finance Interministerial Standing Committee (F:ISC)

Will comprise Finance Ministers and consider finance and funding matters.

Additional interministerial committees

These committees might be formed temporarily to consider issues that would otherwise be in the remit of IMSC, but which require special consideration.

### Lowest tier:

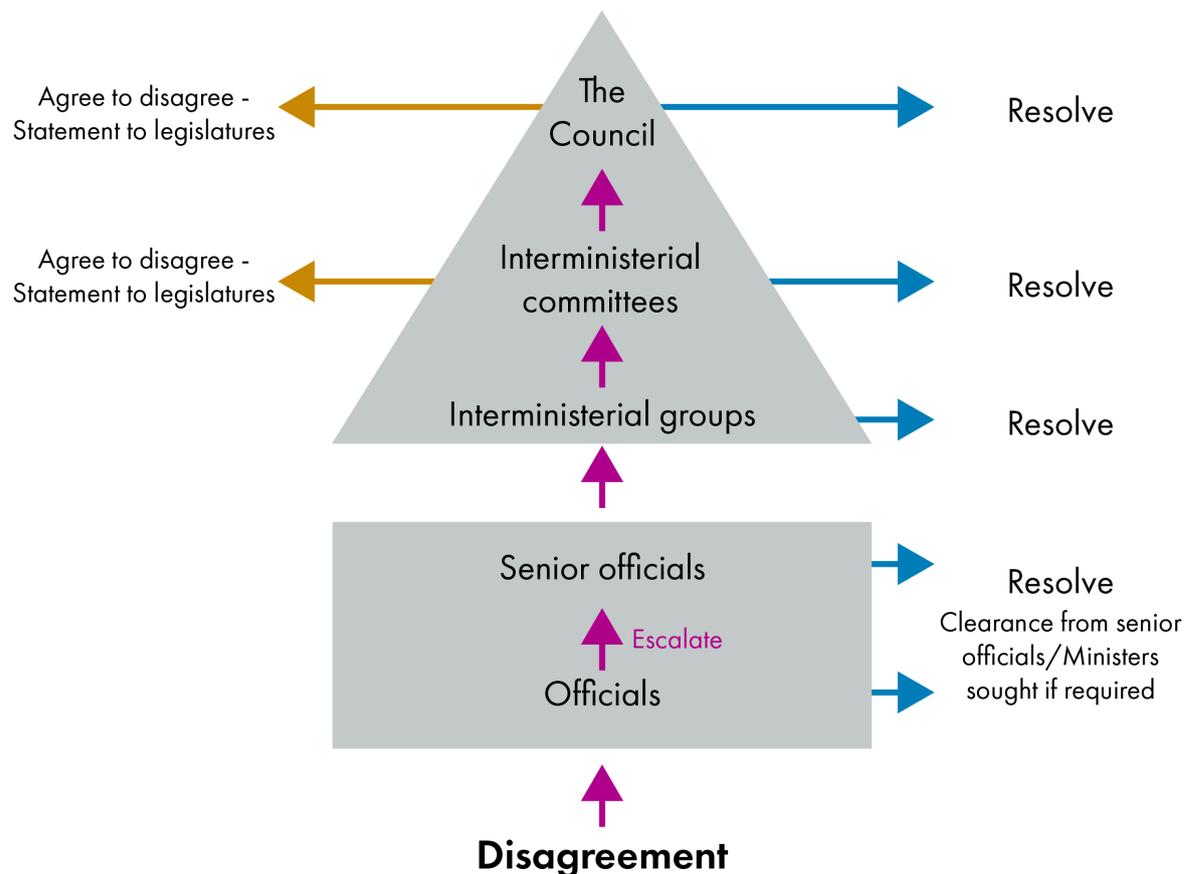
A number of interministerial groups (IMG) will be formed to discuss specific policy areas, such as on transport, Net Zero, and the Trade and Cooperation Agreement with the EU.

The lowest and middle tiers have [specific responsibilities for common frameworks](#). At the lowest tier, interministerial groups (IMGs) are responsible for particular policy areas, including common frameworks falling within them. At the middle-tier, the Interministerial Standing Committee (IMSC) is intended to provide oversight of the common frameworks programme.

The new IGR dispute resolution process follows on from the process at the official level. If a dispute cannot be resolved at the official level as set out in individual frameworks, it is escalated to the Ministerial level. The diagram below illustrates the general dispute resolution process for frameworks, including discussions between officials (square) and Ministers (triangle).<sup>xiii</sup>

<sup>xiii</sup> A slightly different dispute resolution process applies for disputes of a financial nature, which involve the Finance Interministerial Standing Committee.

## Dispute Resolution at official and Ministerial levels



At the lowest level, interministerial groups comprising portfolio Ministers attempt to resolve the disagreement. If their attempts are unsuccessful, the issue can be escalated to an interministerial committee. If the interministerial committee is unsuccessful in resolving the issue, it can either agree to disagree, in which case each government makes a statement to their legislature to or escalate the dispute further. If a dispute is escalated to the highest level, third-party advice or mediation should normally be sought and made available to the Council. If the Council fails to find agreement, it is again required to make a statement to their legislatures.

The new process includes more extensive reporting requirements about disputes. The IGR secretariat is required to report on the outcome of disputes at the final escalation stage, including on any third-party advice received. Each government is also required to lay this report before its legislature.

The Office for the Internal Market (OIM) can provide expert, independent advice to the UK Government and devolved governments. Its advice and reports may, however, be used by governments as evidence during a dispute on a common framework.

Rachel Merelie of the OIM explained the position whilst giving evidence to the [House of Lords Common Frameworks Scrutiny Committee in November 2021](#):

“ The OIM is not involved in dispute resolution. We are here to provide advice to government, using our economic and technical expertise...It is of course possible...that our reports are considered in some shape or form as evidence in support of that process, and we remain open to being used in that way.”

# Implementation

The covering material associated with the framework documents notes that the published version of the framework was agreed by Ministers in January 2022. The framework was provisionally confirmed and published on 3 February 2022. UK legislatures now have the opportunity to scrutinise the framework and raise any concerns with their respective government. If scrutiny and any subsequent reappraisal of the framework leads to significant changes, the provisional framework may need to undergo further collective agreement before final confirmation and implementation. However, frameworks have also [been operating on a provisional basis since January 2021](#).

The framework also notes several next steps and implementation-related issues:

- **Stakeholder Engagement**

- The framework notes that it intends to consult stakeholders following publication and that an "*infographic*" to support stakeholder engagement has been finalised. There was no further information on the nature of this post-publication stakeholder engagement given in the framework documents.

- **Linkages with the Plant Health Framework**

- The framework notes that work is being undertaken to ensure there is a positive relationship between the PVS and Plant Health frameworks. The framework notes that these two frameworks will primarily interact via the following groups:
  - Market Access Working Group.
  - Forest Reproductive Material ad hoc Working Group
  - Seed Potatoes ad hoc Working Group
  - Fruit Propagating Material ad hoc Working Group

- **Protocols and Terms of Reference**

- The framework notes that the Plant Varieties and Seeds Committee (PVSC) has proposed protocols for the parties to 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.
- The framework notes that these protocols will be included within the draft concordat. However, there is no inclusion of them in the current publication of the framework and Concordat.
- The framework also notes there is an ongoing review of the existing Terms of Reference (ToR) for the PVSC and National Lists and Seeds Committee (NLSC).

# Annex 1: Legislation

## 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)

## 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)

## 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 [Certification and Marketing of Seed and Material](#))

## 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)
- 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 Plant Varieties and Seeds Provisional Common Framework 30 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.

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- 1 SPICe has worked collaboratively with colleagues at Senedd Research on the scrutiny of common frameworks. This includes sharing material drafted by Senedd Research which informed this briefing and which forms part of its text. (2022). Plant health; Plant varieties and seeds. Retrieved from <https://research.senedd.wales/media/agnbwiwh/22-56-provisional-common-framework-plant-health.pdf>
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