



Northern Ireland
Assembly

Committee for Agriculture, Environment and
Rural Affairs

OFFICIAL REPORT (Hansard)

Common Framework for Chemicals and
Pesticides: DAERA Briefing

3 December 2020

NORTHERN IRELAND ASSEMBLY

Committee for Agriculture, Environment and Rural Affairs

Common Framework for Chemicals and Pesticides: DAERA Briefing

3 December 2020

Members present for all or part of the proceedings:

Mr Declan McAleer (Chairperson)
Mr Philip McGuigan (Deputy Chairperson)
Ms Clare Bailey
Mrs Rosemary Barton
Mr Maurice Bradley
Mr Harry Harvey
Mr William Irwin

Witnesses:

Ms Caroline Barry	Department of Agriculture, Environment and Rural Affairs
Ms Helen Lewis	Department of Agriculture, Environment and Rural Affairs
Mr Tommy McNamara	Department of Agriculture, Environment and Rural Affairs

The Chairperson (Mr McAleer): I welcome the witnesses from the Department of Agriculture, Environment and Rural Affairs on StarLeaf: Caroline Barry, acting head of chemical and industrial pollution policy; Tommy McNamara, staff officer in environmental farming branch; and Helen Lewis, principal scientific officer, heads of chemical regulations. I invite the officials to begin their presentation. That will be followed by questions from members. Do you want to kick off? You are very welcome to start now.

Ms Caroline Barry (Department of Agriculture, Environment and Rural Affairs): Good morning, Mr Chairman and members of the Committee. It is Caroline Barry here. I will just kick off by giving you an overview of the common framework for chemicals and pesticides. The Committee will be aware that DAERA officials have been working with their counterparts in DEFRA and other devolved Administrations, Departments and relevant agencies over the course of the past two years to develop a range of new common policy frameworks, which, once agreed, will come into operation at the end of the transition period.

The chemicals and pesticides common framework, given the scope and impact of the legislation that it covers, is deemed to be one of the priority frameworks. It is also cross-cutting, with both DAERA and the Department for the Economy having an interest. The legislation and international obligations in the framework for which DAERA has responsibility include the registration, evaluation, authorisation and restriction of chemicals (REACH), plant protection products, persistent organic pollutants (POPs), detergents, mercury and the transboundary movements of hazardous waste under the Basel convention.

The framework covers other chemical regimes for which the Department for the Economy has policy responsibility, such as the Biocidal Products Regulation, prior informed consent, and the Classification, Labelling and Packaging Regulation. The Department for the Economy also has a joint regulatory role with DAERA under REACH.

In recent weeks, the Committee has been briefed on a number of related UK-wide UK-exit statutory instruments (SIs) and Northern Ireland statutory rules (SRs) relating to REACH, POPs, detergents, mercury and the transboundary movements of hazardous waste. Those are vital to ensuring that Northern Ireland has a functioning rule book after the end of the transition period and it is in accordance with the Northern Ireland protocol. The main purpose for the UK common framework is to develop UK-wide arrangements for those powers that fall within the devolved competence that has been repatriated from the EU. UK common frameworks should be established to ensure consistency and coordination and to determine how divergence can best be addressed. This particular framework has been designed to support the effective regulation and administration of chemicals and pesticides across the UK, to enable the functioning of the UK internal market and to ensure that regulatory burdens are kept to a minimum.

The framework development process to date has involved detailed discussions between officials in the devolved Administrations, relevant agencies and the UK Government. They propose governance structures and decision-making processes, which will be required for effective joint working within the UK after the EU exit. The arrangements that are put in place will respect devolution settlements and established constitutional conventions and practices while recognising that it is the role of Ministers, ultimately, to make policy decisions. It also takes account of the Northern Ireland protocol, which sets out the arrangements between the UK and the EU in relation to those areas, where, although remaining within the UK's custom territory, Northern Ireland remains aligned with the EU.

The current provisional framework consists of a framework outline agreement, concordat and new governance structures through which issues that relate to chemicals regulations and management can be resolved. The framework outline agreement is a high-level document that sets out proposed policy approaches and operational governance arrangements for future working. A concordat between DEFRA, the Health and Safety Executive (HSE), the English Environment Agency (EA), DAERA, the Department for the Economy, and the Scottish and Welsh Governments is proposed to underpin the framework. It will provide the basis for managing and maintaining commonality in approach, minimum standards, and the sharing of information and governance arrangements. It also provides the finer detail on how governance structures will operate, programmes of work developed, resource allocation, dispute resolution mechanisms and framework review.

With regard to governance, over the past two years, various working groups have been set up, such as the chemicals, pesticides and biocides delivery boards and enforcement liaison group, which are supported by a number of expert groups and thematic subgroups. Overall governance is managed by the UK chemicals governance group. The group's role is to develop a UK view on the prioritisation of the UK chemicals work programme and provide a strategic steer on the deployment of available resources. Membership is comprised of senior officials from DEFRA, HSE, EA and the various devolved Administrations.

A summary paper on the provisional common framework for chemicals and pesticides has already been shared with the Committee for information prior to the meeting. It sets out more detailed background information on the development of the framework to date, the legislative regimes that will be covered, the main proposals for joint working, and how the process will be taken forward between now and the end of the implementation period.

During phase 3 of the framework development process, a copy of the summary document was shared with a wide range of stakeholders from across the UK. That included non-governmental organisations (NGOs), trade associations and Northern Ireland-specific stakeholders, such as Business in the Community, the Ulster Farmers' Union, Northern Ireland Environment Link, etc. They were contacted and asked, by correspondence via email, for feedback on the scope of the framework and given the opportunity to raise any concerns. By the end of the two-week consultation, on 26 November, responses were received from 12 stakeholders, including the UK Chemical Industries Association, the Food and Drink Federation, the Pesticide Action Network, the UK Royal Society of Biology (RSB), the CHEM Trust and the Ulster University. Feedback on the rationale and scope of the framework was largely positive, with industry and NGOs welcoming collaborative working across the four Administrations and maintaining a common approach for UK and retained EU legislation. Some concerns, particularly around pesticides after the implementation period, and feedback from

stakeholders will be considered and incorporated into the provisional framework as appropriate before it is finalised.

During phase 3, an in-depth review and assessment gateway process led by the joint UK Government and devolved Administrations framework project board took place. This concentrated on the cross-cutting and constitutional implications of the draft framework, rather than the technical policy elements. During this time, officials from DAERA, the Department for the Economy, DEFRA and the other devolved Administrations participated in an in-person panel review on 28 October. At the end of this process, the project board made some minor recommendations, but overall, it was satisfied that the framework had been developed to an appropriate standard. It is in line with the principles agreed by the joint ministerial councils in 2017, and the approach used is consistent with that taken in other frameworks under development.

At the beginning of December, the DEFRA Secretary of State will write to the devolved Administrations *[Inaudible]* and seek agreement to the provisional frameworks *[Inaudible]*.

The Chairperson (Mr McAleer): You are just cutting out there, a wee bit, Caroline.

Ms Barry: I am sorry for that. Is it OK for me to continue?

The Chairperson (Mr McAleer): Yes. We can hear you now.

Ms Barry: I am almost finished, you will be glad to know.

At the beginning of December, the EFRA Secretary of State will write to the devolved Administrations' Secretaries and Ministers, seeking agreement to the provisional frameworks. Subsequently, at the EFRA inter-ministerial group meeting on 8 December, Ministers will be asked to confirm their agreements.

In the last few weeks, both the AERA and the Economy Ministers, as signatories to the framework, have given approval for it to move to the next phase of its development. However, as it is a cross-cutting framework, Executive endorsement is needed before that can happen. It is being considered at today's Executive meeting, and if approval is given, the AERA Minister will write to the DEFRA Secretary of State to confirm that, prior to next Monday's meeting. This will allow the joint ministerial council for EU negotiations to be asked for provisional agreement before the end of the year, that is, the end of the transition period.

As the lead Northern Ireland Department in the development of this framework, the AERA Minister will seek Executive approval for the final agreed framework early in 2021. This Committee will be offered further briefing on completion of phase 4, prior to final agreement.

I hope that that gives you some insight into the what the chemicals and pesticides common framework is about, and the progress made to date. As you mentioned, along with me today are Tommy McNamara, who leads on the plant protection products policy for the Department — he has been involved in the process from the start — and Helen Lewis, who is head of the new Northern Ireland Environment Agency (NIEA) chemicals policy team, and she will have a key role in the operational outworkings of the framework. If you have questions, my colleagues and I will be happy to respond.

The Chairperson (Mr McAleer): Thank you very much, Caroline, for that comprehensive briefing. I will move to members' questions.

Mr Irwin: Thank you for your presentation. You said that, in the consultation, the stakeholders' responses were broadly in favour. Were issues raised about any of the chemicals that were on the list? Were there any particular issues raised by a number of stakeholders?

Ms Barry: Generally, the comments were positive. Consultees welcomed the cooperation between the devolved Administrations and the relevant agencies. There was some note made in relation to pesticides. Tommy McNamara might be best placed to discuss that.

Mr Tommy McNamara (Department of Agriculture, Environment and Rural Affairs): Yes, concerns were raised about the availability of products and maintaining common standards across the UK. However, those were not in relation to the framework itself. I think that it was the Pesticide Action

Network raising concerns to ensure that sustainability in the use of pesticides would be maintained on a UK-wide basis. It will because it is not in the Northern Ireland protocol.

Concerns were also raised about the availability of pesticides coming from GB to Northern Ireland and vice versa, and that will also remain unaffected. We had interaction with stakeholders in general, and those concerns were addressed. The industry seemed quite content with the Department's explanation as to how trade will continue.

Mr Irwin: That is good. I was hearing, on the ground, about issues with some products. Could the outcome of the negotiations change any of that?

Mr McNamara: No, not pesticides in particular. It will be slightly different for chemicals. I know that it is difficult to be over all these areas at the one time, but pesticides, in general, will remain unaffected in the short term by Brexit. From day 1, in relation to availability of products, everything will continue as normal, so a negotiated outcome probably will not make any major difference in the short term.

Mr Irwin: That is good. Thank you.

Mr McGuigan: Thanks, Caroline, for the presentation. Following on from William's point, Tommy, you said that pesticides were going to be unaffected by Brexit, and presumably, by the protocol. What part of the framework, if any, will be affected by the protocol? If the North is, perhaps, having to stay within EU regulations for chemicals, will England, Wales and Scotland diverge from that?

Mr McNamara: In relation to pesticides, there is a possibility for divergence as we move forward because there will be separate regulatory regimes. For example, the main ingredient of a pesticide is called an active substance, and those are approved at EU level for countries that are subject to EU law, whereas GB will be able to have its own active substances. There is a possibility for divergence within that.

There is also a possibility for divergence in the setting of maximum residue levels in food and feed, because GB will set its own levels, which could be affected by trade agreements. If a trade agreement were agreed with the United States, and the United States insisted on higher maximum residue levels of pesticides in food, that food may well be tradable or allowed into GB, but it would not be allowed to be marketed in Northern Ireland. That is just an example and do not take anything from it.

Mr McGuigan: So, there are, potentially, snags down the line.

Mr McNamara: Potentially, some.

Mr McGuigan: OK. Thank you.

Mrs Barton: Thank you for your presentation. As you can imagine, as I come from County Fermanagh, I am interested in cross-border cooperation. What you have talked about seems to have been mostly east to west or west to east. What do you think the problems will be in relation to North/South cooperation on pesticides and chemicals, because very often farmers buy either side of the border?

Mr McNamara: The position, at the minute, is that all pesticide products must be authorised for use in Northern Ireland, and that will not change. However, because we are in the protocol, we will still be able to operate what is called parallel trade imports. I am aware of one product — funny enough, we had a query about it this week — that is available in the South under a different name but has been granted a parallel trade import in the UK that allows it to be marketed here. That will continue, but it will only continue for Northern Ireland. It will not continue for GB. The parallel trade imports that it has will cease. They are allowed for a number of years, and they will be allowed to see out the length of that authorisation, but, after that, GB will not do any parallel trade imports, whereas we will. That will allow trade from South to North and North to South to continue as it is at present.

Mrs Barton: I have one further question. What has been the extent of the involvement of DAERA in the development of the common framework overall?

Ms Barry: The Department has been involved in the development of the framework from the very beginning, in January 2018. We have been involved in the development of all of the various paperwork

and the governance structures, and we were also involved in the various groups that make up those governance structures. So, we have had input into the paperwork, with our colleagues in the Department for the Economy, whom we have worked jointly with. We have also sought input from the Executive Office to ensure that the constitutional elements included in the paperwork are addressed and are correct. Also, the paperwork and the framework itself have been developed in line with the Joint Ministerial Council's principles, which take account of the Good Friday Agreement and, obviously, the devolved competencies and responsibilities.

The Chairperson (Mr McAleer): We will bring in Maurice. Can you hear us, Maurice? Maurice, you are on mute. You have to press a button. We will move on to Clare and come back to Maurice.

Clare Bailey, can you hear me? We cannot hear you.

Ms Bailey: Can you hear me now?

The Chairperson (Mr McAleer): Yes.

Ms Bailey: I was chatting away to myself. That was great craic. *[Laughter.]* Thanks for the presentation. Obviously, all of these scenarios are dependent on a deal. Are we expecting any additional legislation? You mentioned, Caroline, that additional legislation would be needed. I do not know whether you said that it would be needed post-deal or post-negotiations or post-transition period. Can you let us know what additional legislation we are talking about?

Ms Barry: It depends on whether there is a deal or not. The current legislation initially was created to deal with no-deal exit plans, and that has, obviously, been updated to deal with the Northern Ireland protocol. Additional legislation really will depend on what comes out of the current negotiations, if a settlement is agreed. We foresee that, if there is a deal, there may be some additional legislation in and around mutual recognition. Under the legislation that is currently going through the system, we will have two separate schemes. In Northern Ireland, we will be aligned with the EU, for example in REACH, whereas, in GB, there will be a GB REACH scheme, essentially. Chemicals and *[Inaudible]* trade in Northern Ireland and the rest of the EU would have to adhere to the EU's system. That is where there may be some additional legislation, but, at this stage, we just do not know.

Ms Bailey: The dispute resolution mechanisms are going to be looked at as well. Have you any sense about whether the proposed office of environmental protection would have any role to play in the concordat?

Ms Barry: The concordat and the framework outline agreement are not set up for dispute resolution at the moment. It is done through the governance structures that have been set up whereby, primarily, decisions and disputes would be resolved at official level in the various working groups. If they cannot be resolved there, they are escalated through the *[Inaudible]* group, on which senior officials from the devolved Administrations sit. If an issue still cannot be resolved, it goes to the senior officials programme board. If it still cannot be resolved, say, for DAERA environmental disputes, it would go to the Ministers and the Joint Ministerial Committee. The mechanisms are already there, so I do not foresee that provisions other than that would take effect. It has been well-thought through as to how we would manage disputes at this stage.

Ms Bailey: Did I pick up in the briefing that, in the dispute resolution process, there is a proposal for an "agree to disagree" solution? What would that look like? If there are all those layers of checks and balances and escalations, how would an "agree to disagree" solution work?

Ms Barry: I should say that the dispute resolution mechanism takes account of the Northern Ireland protocol. Ultimately, Northern Ireland is aligned with that and that will take precedence. On the issue of an "agree to disagree" solution, I will give REACH as an example, whereby the EU — or, rather, GB — is looking at a new authorisation where there is regulatory divergence. Obviously, Northern Ireland and the rest of the devolved Administrations are keen not to have divergence, but, if there is, we would have to adhere to what the new UK system and the GB devolved Administrations decide for a GB-resolved solution.

Ms Bailey: Does the final power lie with the Secretary of State?

Ms Barry: Yes.

The Chairperson (Mr McAleer): Can you hear us now, Maurice? We are having trouble with your microphone; we cannot get you. I will go to Harry. If we cannot resolve the sound issue, perhaps you should message us, Maurice, if you wish to ask a question.

Mr Harvey: Thank you, Caroline. How will the framework be implemented and enforced? Is there provision to review or change the framework?

Ms Barry: I hope that my colleagues are content for me to answer this one. The framework will be implemented through the various governance structures and with close cooperation between the devolved Administrations and the signatories to the framework.

I am sorry; what was the second part of your question?

Mr Harvey: Is there provision to review or change the framework if that were necessary?

Ms Barry: Yes. There is provision in the current concordat to conduct a review of the framework after six months and, thereafter, every three years. A proper review and assessment mechanism has been built into that. There are also additional opportunities, if there were new legislation or specific issues of concern, to instigate a review of the framework and, if necessary, make any amendments to the relevant documents.

Mr Harvey: Good answers. Thank you very much.

The Chairperson (Mr McAleer): I will ask some questions that Maurice Bradley has sent in. After Brexit, what weight will be given to devolved matters regarding chemicals and pesticides? Current restrictions on the use of chemicals and pesticides need to be improved. Can we legislate for reductions in chemical use?

Will there be an opportunity to enhance the monitoring of chemicals and fertilisers to ensure a reduction in pollutants entering our waterways, which have an impact on wildlife and habitats? In that regard, what scope does Northern Ireland have to introduce further regulations to monitor and reduce chemical impacts on the countryside and on waterways, or will we be bound by either UK or EU regulations?

Mr McNamara: Caroline, if you want, I will kick off, although I think that there were about 10 questions in one there [*Laughter.*] Get them all in in one go. Why not?

The Chairperson (Mr McAleer): If it would be any help, I could write them down again [*Laughter.*]

Mr McNamara: I could not write fast enough [*Laughter.*] I will go through what I can remember. If I miss anything, feel free to come back to me.

EU law on chemicals and pesticides applies here, and we are bound by it for the authorisation and use of, for example, pesticide products. However, the sustainable use of pesticides, which is also governed by EU law, is not in the Northern Ireland protocol, so it will continue to operate on a UK-wide basis. That will give Northern Ireland the scope to look at a reduction in pesticide usage, how best to do that, what the alternative methods are and how to integrate pest management. To that effect, the Committee will be aware that the consultation on a UK-wide national programme for the reduction of pesticide usage has been launched. Although Northern Ireland is not bound on a UK-wide basis because it is a devolved matter, we will seek to influence the use of pesticides and adopt a consolidated approach across the UK. One of the objectives of the framework as a whole is to maintain commonality as best we can.

There is much ongoing work on the monitoring of pesticides in our waterways, and policies have been put in place that have not been replicated in, for example, England. Those include weed wiper trials that aim to reduce the amount of MCPA in the water in Northern Ireland. We will be able to continue with those policies. The UK Government may seek to influence those policies by saying that they are a good idea or something along those lines, but they cannot stop us from doing that, and I do not think that they would want to. We still have that freedom in policies that we can adopt to meet the aspirations of the legislation.

The Chairperson (Mr McAleer): I will pick up on Maurice's question. For clarification, is it right that there will be scope for the North to introduce further regulations to monitor and reduce chemical impacts on the countryside and the waterways?

Mr McNamara: There is always scope. First, we would want to examine what we would be carrying out and then decide on the best way forward, because there is quite a lot of monitoring. There will be scope to introduce legislation, but whether that transpires is, of course, a different question.

The Chairperson (Mr McAleer): Tommy, thank you for that response, and thank you, Maurice, for the question.

OK, folks. No other members want to ask a question. I thank Tommy, Helen and Caroline for joining us, for their presentation and for taking all those questions. Thank you very much. No doubt, we will speak to you again.

Ms Barry: Thank you.