

# Provisional common frameworks: Plant health; Plant varieties and seeds

August 2022



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# **Provisional common frameworks:** Plant health; Plant varieties and seeds

August 2022

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The UK and devolved governments published the provisional common frameworks on **plant health** and **plant varieties and seeds** in February 2022.

Common frameworks are agreements between the UK and devolved governments on how to work together and manage divergence in areas previously governed or coordinated at EU level.

The governments are publishing common frameworks in provisional form for scrutiny. The Senedd's Economy, Trade and Rural Affairs Committee is carrying out scrutiny of the provisional common frameworks on **plant health** and **plant varieties and seeds**.

Once all parliaments have completed scrutiny, the governments intend to respond to recommendations and agree a final version of both common frameworks.

This briefing provides an overview of both provisional common frameworks.

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## Summary

The provisional common frameworks on plant health and plant varieties and seeds set out how the UK and devolved governments will work together and make decisions in these policy areas outside the EU.

The frameworks both set out detailed structures for the governments to work together. The House of Lords Common Frameworks Scrutiny Committee has raised concerns about the complexity of the governance of the plant health framework. The plant varieties and seeds framework refers to four protocols for making decisions in specific areas. These are in development and have not been published.

The governments agree to maintain common rules on plant health across the UK, maintain minimum standards for seed marketing, and maintain a functioning UK internal market for seeds and plant propagating material.

The governments will seek to agree whether to take the same approach to law and policy or to diverge. If the governments do not agree on whether to take the same approach or to diverge, they will seek to resolve the disagreement at the lowest possible level. They may then escalate the disagreement to senior officials and ultimately to Ministers.

Part of the purpose of both common frameworks is ensuring the functioning of the UK internal market. The market access principles in the *UK Internal Market Act 2020* aim to ensure that (in general) goods and services that can be sold or authorised in one part of the UK can be sold or authorised in any other part. This could limit the effect of changes to Welsh law in these policy areas. However, the frameworks do not refer to the Act or the process for agreeing exclusions from the Act.

The frameworks provide for the governments to work together on relevant international obligations and to consider any implications stemming from international trade which have a direct bearing on their operation.

The frameworks do not require the governments to update parliaments and stakeholders on how they are working, or to involve parliaments and stakeholders in review and amendment. The governments have agreed in principle to report regularly to parliaments on common frameworks. The Welsh Government has also agreed unilaterally to report to the Senedd on common frameworks and to consult the Senedd and stakeholders during review and amendment.

## 1. Background

The EU sets rules on plant health and plant varieties and seeds. Now that the Brexit transition period has ended, the UK and devolved governments no longer have to follow EU law and can also diverge from retained EU law, with the exception of Northern Ireland.

- **Plant health policy** includes requirements for the import, export and movement of plants and plant products, surveillance and risk assessment of plant pests and outbreak management, and the protection of plant biosecurity.
- **Plant varieties and seeds policy** includes the property rights of plant breeders, plant variety registration, and standards for the marketing and certification of seed and other plant propagating material.

Plant health and plant varieties and seeds are in scope of the Northern Ireland Protocol. This means that Northern Ireland must continue to align with EU law in these areas.

## Legislation

### Plant health

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The main EU legislation on plant health is the **Plant Health Regulation (Regulation (EU) 2016/2031)**. This sets out rules on protective measures against plant pests, including:

- requiring the European Commission to establish a list of pests not to be introduced into or held within the EU and surveillance of pests;
- setting out how outbreaks of pests should be managed; and
- restricting and setting requirements for movement of certain plants and plant products into or within the EU.

In addition, the **Official Controls Regulation (Regulation (EU) 2017/625)** sets out rules on official controls to ensure application of rules on food safety, plant health and plant varieties and seeds.

These regulations have been retained in domestic law in Great Britain (GB) and amended.

The retained EU law (as amended) now provides for domestic authorities to carry out checks on plant imports to and exports from GB. Checks on plant imports from

and exports to the EU and Northern Ireland are being phased in.

The **UK, Scottish and Welsh governments consulted** jointly on a plant biosecurity strategy for GB in late 2021.

## **Plant varieties and seeds**

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EU law on plant varieties and seeds includes **Regulation EC 2100/94 on Community Plant Variety Rights**, establishing an EU-wide system for plant variety rights (i.e. intellectual property rights for plant varieties). This was revoked in GB following the end of the transition period.

EU Directives also set marketing standards and requirements for seed and other plant propagating material.

The UK, Scottish and Welsh governments maintain a domestic plant varieties register for GB, agreeing listings jointly. In Northern Ireland, plant varieties must be registered on the Northern Ireland Variety List or the EU Common Catalogue.

The EU has granted the UK (i.e. GB) **equivalence for agricultural seed** (excluding production of vegetable seed), fruit and vegetable propagating material, and forest reproductive material (FRM) (excluding tested material) until the end of 2024.

The **EU has not granted** the UK equivalence for seed potatoes on the basis that the UK is not dynamically **aligned with relevant EU law**, so exports of seed potatoes to the EU are now prohibited. The matter was discussed in September 2021 at a **UK-EU meeting**. The UK presented a paper on the issue with a view to seeking an agreement with the EU and requested it share its risk assessments with the UK. The EU offered to provide a technical briefing to explain the rationale for the ban. In April 2022, the **European Commission reiterated** its position.

## **UK Government's review of retained EU law**

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The **UK Government has set out plans** to introduce a Retained EU Law Bill to make it easier to change or repeal retained EU law (REUL) and to remove the special status it has in UK law. This could lead to existing standards being removed or changed in domestic law.

The **UK Government has said** that it “will not seek to make changes to retained EU law within Common Frameworks without following the ministerially-agreed processes in each framework”.

The Counsel General and Minister for the Constitution, **Mick Antoniw, has stated** that there should be “no derogation from the standards that we actually hold to” and that the Welsh Government wants to improve on standards in Wales in devolved areas of responsibility.

## **International obligations**

There is a range of international obligations and bodies involved in plant health and plant varieties and seeds policy.

The UK has taken on new international obligations following the end of the transition period. It is now responsible for negotiating international obligations in areas previously done by the EU on its behalf. The **devolved governments are responsible for observing and implementing them** within their competence.

## **Plant health**

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**The World Trade Organisation (WTO) SPS Agreement** encourages states to establish sanitary and phytosanitary (plant health) measures consistent with international standards.

WTO Members discuss the implementation of the SPS Agreement at the **WTO SPS Committee**. Following the end of the transition period, the UK Government has taken on responsibility for representing the UK at the WTO SPS Committee.

The **International Plant Protection Convention (IPPC)** is an international treaty that aims to protect plant resources from pests and promote safe trade. It is recognised by the WTO SPS Agreement. The IPPC’s Commission on Phytosanitary Measures adopts international standards. The IPPC website lists staff at the UK Government’s Department for Environment Food and Rural Affairs (Defra) as the **UK’s IPPC official contact points**.

## **Plant varieties and seeds**

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There is a range of different international bodies and standards on plant varieties and seeds. They are described on pages 10-11 of the framework.

## UK-EU obligations

### Withdrawal Agreement: Northern Ireland Protocol

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The main forum for discussing implementation of the Protocol is the **Withdrawal Agreement Joint Committee** and its Specialised Committee on the Protocol. Since its entry into force, the Protocol has been the subject of **multiple UK-EU disputes**.

New duties placed on Welsh Ministers by the **UK Internal Market Act 2020** relating to the Protocol can be disapplied to deal with threats to biosecurity between NI and GB.

### Trade and Cooperation Agreement

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The **UK-EU Trade and Cooperation Agreement** (TCA) covers areas relating to the frameworks, including SPS provisions..

The TCA establishes an **institutional framework** for the UK and EU to discuss its implementation, including a Partnership Council and trade specialised committees (TSCs).

Relevant issues will be discussed at:

- the TSCs on SPS measures; and
- the organic products working group, established under the TSC on technical barriers to trade.

The Welsh Government has **attended TCA committee meetings** as an observer.

## International trade

International trade agreements may also set out measures on SPS checks for plants and plant products.

For example, the **UK-Australia free trade agreement** provides for “recognition of the principle of equivalence of SPS measures where they achieve the other country’s appropriate level of protection”.

The **UK Government must report** on whether certain trade agreements are consistent with statutory protections on plant life and health, informed by the **Trade and Agriculture Commission**.

## 2. The common frameworks

The provisional common frameworks set out how the governments will work together to make decisions about plant health and plant varieties and seeds in this new context. Each framework is underpinned by a concordat agreed between Ministers.

Both frameworks affirm the **principles for setting up common frameworks agreed by the Joint Ministerial Committee (European Negotiations)** in 2017. They also set out aims and objectives for themselves.

### Plant health

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The plant health framework says that its purpose is to maintain common rules on plant health across the UK to facilitate internal UK and international trade. It also says it aims to maintain a single GB import regime for regulated plant material.

The framework says that governments will be able to diverge where “technically justified”, in line with EU law as it applies in Northern Ireland and in line with international obligations.

### Plant varieties and seeds

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The plant varieties and seeds framework sets out that it aims to maintain minimum standards for seed marketing, while allowing the governments to “flex above” those standards in line with the JMC principles. It states that there should be a functioning UK internal market for seeds and plant propagating material.

It also states that it aims to maintain the existing single UK regime for administration of plant breeders’ rights.

### Scope

Both frameworks offer guidance about when decisions will be within their scope:

- the **plant health** framework states that it applies to retained EU law on plant health; while
- the **plant varieties and seeds** framework notes that the main retained EU law has now been revoked, and lists relevant domestic law and retained EU Commission decisions as being in scope (Annex 1).

### 3. Roles and responsibilities

Both frameworks set out tiers of governance through which the four governments and other relevant organisations can work together. In both cases, senior oversight from all four governments is provided by the Senior Officials' Programme Board and the Interministerial Group on Environment, Food and Rural Affairs.

#### Plant health

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A range of different bodies are involved in developing and delivering plant health policy across the UK. Responsibilities for Wales are described on page 11 of the framework.

The framework sets out tiers of governance for these bodies to work together.

- The **UK National Plant Protection Organisation (NPPO) Group** is made up of the chief plant officers for each government and the Forestry Commission. This group provides a strategic overview of plant health.
- The **UK Plant Health Risk Group** is made up of officials in the four governments and representatives of the Forestry Commission and Animal and Plant Health Agency. This is described as the main decision-making body for the framework, responsible for assessing plant health threats and proposals for changes to law and policy.
- The **UK Plant Health Policy Group** (also referred to as the Defra-DA Policy Working Group) is made up of officials from the four governments and the Forestry Commission. It provides policy support to the Risk Group and aims to maintain common approaches across the UK.
- **Technical groups** provide draft policy proposals for consideration at the Plant Health Risk Group.

A network of other **related groups** are shown in the diagram of the framework's governance in Annex 1 to the Concordat. There is limited information about most of these groups in the text of the framework. The **House of Lords Common Frameworks Scrutiny Committee has raised concerns** that the arrangements are "unclear, complex and overly bureaucratic".

Defra provides the secretariat for the UK NPPO Group, the UK Plant Health Policy Group and the UK Plant Health Risk Group. No information is provided about the chairing of the meetings of the groups.

**Natural Resources Wales** carries out some plant health functions in Wales (such as terrestrial disease control and surveillance), but is not listed as a member of the UK NPPO Group, the UK Plant Health Policy Group or the UK Plant Health Risk Group.

## **Plant varieties and seeds**

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In Wales, the Welsh Government is responsible for plant varieties and seeds policy. The **Animal and Plant Health Agency (APHA)** carries out certification of seed and other plant propagating material, licensing and enforcement on behalf of the Welsh Government. The **Forestry Commission** is responsible for functions relating to forest reproductive material.

The framework sets up tiers of governance for the governments to work together:

- The **Plant Varieties and Seeds Committee** is the highest-level group, reporting to the Senior Officials Programme Board.
- The **National Lists and Seeds Committee** sits under the Plant Varieties and Seeds Committee. It is responsible for managing variety registration and advises the Plant Variety Rights Office.
- The **Plant Variety Rights Office** grants and administers plant variety rights. This office is run by a UK Controller, appointed jointly by Ministers from the four governments, and administered by APHA.
- **Technical sub-groups** provide advice on specific areas of plant variety and seeds policy.

The framework does not provide any terms of reference or information about membership for the Plant Variety Rights Office or National Lists and Seeds Committee, saying that they are under review. It says both groups meet at least four times a year, and currently every four weeks.

The framework also provides for other groups to link into the governance of the framework (such as the UK Plant Health market access working group), but does not describe how this will work.

## **Connections between the frameworks**

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The plant varieties and seeds framework states that there will be interaction between the two frameworks at the market access working group and for certain kinds of seeds and plant propagating material. It says that parties to both frameworks will collaborate and share information, including notifying each other of policy proposals at the earliest opportunity.

The frameworks do not consider how they might interact with other common frameworks in related areas, such as **food and feed safety and hygiene** or **public health protection and health security**.

## Working together

Both frameworks provide for the parties to work together and develop collaborative approaches to law and policy within their scope.

### Plant health

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The parties to the framework agree to work together in a range of ways, including to:

- adopt common rules on the movement of regulated plant material;
- consider proposals for changes to and divergence in law and policy;
- develop a joint approach to plant health threats, including collaborating on risk analysis, decisions on updating lists of pests and high-risk plants, contingency planning and outbreak response; and
- coordinate external communications.

### Plant varieties and seeds

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The parties to the framework agree to work together in a range of ways, including to:

- share information and work together to develop policy;
- facilitate the joint appointment of the UK Controller;
- make decisions on changes to law and policy, temporary derogations from marketing standards, and requests for equivalence decisions;
- decide common policy objectives and positions for international organisations; and
- coordinate external communications.

## 4. Managing divergence

### Making decisions

The frameworks set out processes for the governments to discuss and agree proposals for common and divergent approaches to law and policy.

If one government wishes to diverge

- on **plant health**, the UK Plant Health Risk Group will assess the impact of divergence on plant health protection, consumers, UK trade, and international obligations;
- on **plant varieties and seeds**, the Plant Varieties and Seeds Committee will consider the impact of divergence, including on the internal market, international trade and international obligations.

If the governments cannot agree whether to take the same approach or to diverge, the dispute resolution process can be engaged.

The **plant varieties and seeds** framework also refers to, but does not include, four protocols for making decisions in specific areas, on:

- proposals for legislation;
- granting derogations to allow temporary marketing of seed of a lower germination standard;
- handling applications from other countries for their plant material to be recognised as equivalent to UK plant material; and
- international representation and coordination.

The framework says these protocols will “follow”. In the absence of these protocols, it is not possible to provide a full assessment of the framework’s decision-making processes.

### Impact on decision-making

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In both cases, the governments agree not to take forward divergent changes to law and policy without taking them through the framework processes.

The **plant varieties and seeds** framework also provides that the governments must inform each other at the earliest opportunity of proposals for changes to law and policy, before any public consultation. It states that the parties may not implement

a divergent measure without seeking the agreement of the other parties.

This could have an impact on the role of the Senedd and Welsh stakeholders in influencing the development of law and policy on plant health and plant varieties and seeds.

## **Managing the impact of the UK Internal Market Act 2020**

Part of the purpose of both frameworks is ensuring the functioning of the UK internal market.

The **UK Internal Market Act 2020** sets out in law market access principles for goods, services and professional qualifications. These principles aim to ensure that (in general) goods and services that can be sold or authorised in one part of the UK can be sold or authorised in any other part.

The market access principles in the Act could limit the practical effect of Welsh law on plant health or plant varieties and seeds.

The Act sets out limited exclusions from the market access principles for threats to human, animal or plant health.

The UK Government has powers to create new exclusions from the market access principles or vary the list of legitimate aims by regulations. The governments have agreed a **process for considering and agreeing exclusions to the Act in common framework areas**. The frameworks make no reference to this process.

## **Managing divergence from Northern Ireland and the EU**

Under the Northern Ireland Protocol, EU law continues to apply in Northern Ireland on plant health and plant varieties and seeds. Both frameworks set out that:

- as the UK, Scottish and Welsh governments make decisions on plant health and plant varieties and seeds policy and regulation, the Northern Ireland Executive will participate in discussions and their views will be taken into account; and
- where rules in Northern Ireland change in alignment with the EU, the four governments will consider the changes and determine “any impacts or subsequent actions”.

If Northern Ireland Ministers believe that concerns have not been adequately addressed, they will be able to engage the framework’s dispute resolution process.

In early 2022, the Northern Ireland Assembly's Committee for Agriculture, Environment and Rural Affairs raised concerns about the impact on Northern Ireland of divergence between GB and NI on **plant health** and **plant varieties and seeds** policy.

## 5. Resolving disputes

Both frameworks set out dispute resolution processes for the governments to follow if they cannot agree. They both state that the dispute resolution process should only be used “when genuine agreement cannot be reached, such as where divergence would impact negatively on the ability to meet the JMC (EN) principles.”

The dispute resolution processes provide for disputes to be escalated from working level to senior officials and then to Ministers.

Finally, the dispute may be escalated to “appropriate intergovernmental processes”. In January 2022, the **governments agreed** a new interministerial dispute resolution process as part of the Intergovernmental Relations Review. The **Counsel General said** this was a “groundbreaking step”.

### **Plant health**

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The governments agree that the dispute resolution process can be triggered if a proposed change to policy “is perceived to have a negative impact”. This could be for compliance with international obligations, or the functioning of the UK internal market, or if the proposal conflicts with the policy of another party to the framework.

The UK NPPO Group will consider disputes in the first instance. Disputes can then be escalated to the Senior Officials Programme Board and to Ministers.

### **Plant varieties and seeds**

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The Plant Varieties and Seeds Committee will decide which group should initially consider a dispute.

Technical disputes will be discussed at the National Lists and Seeds Committee and may be escalated to the Plant Varieties and Seeds Committee.

Policy disagreements will be discussed at the Plant Varieties and Seeds Committee.

The framework provides that any party will be able to seek legal advice as part of the dispute resolution process.

If there is no agreement at official level, the parties nominate senior officials to consider the dispute further. Disputes can then be escalated to the Senior Officials Programme Board and ultimately to Ministers.

## Impact on decision-making

The frameworks do not provide any timelines for dispute resolution. This might result in delays to decisions.

Apart from the **plant varieties and seeds** framework providing for legal advice to be sought, the frameworks do not provide for any external input into the dispute resolution process.

The **Welsh Government has agreed** to notify the Senedd of disputes raised through common frameworks.

## 6. Managing international obligations

The purpose of both frameworks is partly to ensure that the UK can negotiate and implement international obligations.

The governments agree that international policy formulation will be based on “the current Devolution Memorandum of Understanding and its accompanying International Relations Concordat” and that they “will automatically use any updated International Relations Concordat, and the wider outcomes of the Joint Inter Governmental Relations Review”.

The **International Relations Concordat** was last updated in 2013; it was not revised as part of **the Intergovernmental Relations Review**. The Concordat does not explicitly reflect the UK Government’s increased role in agreeing post-Brexit international obligations in areas previously within EU competence, such as trade.

## International obligations

### Plant health

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The plant health framework provides that the parties will work together to contribute to UK policy positions for international meetings and international

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standards.

The framework says that the Plant Health Policy Working Group will coordinate notifications to the WTO.

It also refers to a “separate operating model” setting out how the UK and devolved governments will work together on the WTO SPS Agreement and Department for International Trade guidance on how the devolved governments can engage with WTO committees. These documents do not appear to be in the public domain.

The framework also confirms that decisions on plant health must be in line with the International Plant Protection Convention (IPPC). It states that Defra is responsible for representing “the agreed UK view” at international bodies (including the governing bodies of the IPPC), but does not set out how the governments will work together to reach a view.

## **Plant varieties and seeds**

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The framework says that the parties will work together to engage with international organisations, co-ordinating a common position to represent an agreed UK view.

It says there is more detail in a protocol on coordination with international organisations. This has not yet been published.

## **UK-EU obligations**

The TCA establishes an **institutional framework** for the UK and EU to discuss its implementation, including a Partnership Council, Trade Specialised Committees and Specialised committees (including on goods, SPS measures, and level playing field provisions). The **Welsh Government attends** the meetings as an observer.

Both frameworks recognise that the TCA Specialised Committees and Partnership Council may discuss plant health and plant varieties and seeds. However, such matters fall within the Trade Specialised Committees of the TCA, which have different roles and more limited powers to its Specialised Committees.

The frameworks confirm that, where a UK-EU meeting agenda includes an item concerning implementation in an area of devolved competence, the UK Government agrees to facilitate the attendance of the devolved governments of a similar level to that of the UK Government representatives. The UK co-chair will have final discretion. The UK Government should also engage the devolved governments in preparation for meetings.

## International trade agreements

Both frameworks state that they will afford an opportunity to consider any implications stemming from international trade that have a direct bearing on their operation.

The **plant health** framework states that the market access working group will coordinate trade promotion and cooperation. This reports to the UK NPPO Group, Terms of reference for the market access working group are not provided. The framework notes that there is “regular engagement” on trade negotiations between the UK and devolved governments through a Defra Trade Engagement Group.

The **Welsh Government has said** that the frameworks allow it to influence the UK Government’s position on plant health and plant varieties and seeds issues in trade negotiations, and to escalate discussions to inter-ministerial level.

## 7. Monitoring, review and amendment

Both frameworks set out arrangements for monitoring.

- The UK NPPO Group will meet on a quarterly basis and monitor the **plant health** framework. They will assess intergovernmental cooperation and whether any “harmful divergence” has occurred.
- The National Lists and Seeds Committee and the Plant Varieties and Seeds Committee will monitor the **plant varieties and seeds** framework at an annual meeting.

Both also set out processes for review and amendment.

- The parties to the **plant health** framework will review the framework every two years after the framework is signed.
- The **plant varieties and seeds framework** will be reviewed “after the first six months or in light of the outcomes of the Inter-Governmental Relations Review, whichever comes first.” The Intergovernmental Relations Review was finalised in January 2022. The framework will be reviewed every three years after that. Paragraph 52 of the Concordat refers to six-yearly reviews. This appears to be a mistake.

There will also be a review if a ‘significant issue’ arises that has a ‘fundamental impact’ on the framework’s operation. The same significant issue cannot be discussed within six months of the conclusion of the discussion.

Following a review, the governments may agree to open a discussion of amendments by unanimous agreement. Amendments to the frameworks must be agreed unanimously. If there is no agreement, the dispute resolution process may be used.

## 8. Transparency and accountability

Both frameworks provide limited information on how stakeholders were consulted in their development. The **plant varieties and seeds** framework states that stakeholders were invited to comment on a summary document, but “minimum [*sic*] feedback” was received. The **Welsh Government has said** that stakeholders were consulted during the drafting process and following publication.

The Senedd’s Economy, Trade and Rural Affairs Committee is **considering both frameworks**. The **Committee consulted** on common frameworks within its remit in early 2022.

Committees in parliaments across the UK have also been scrutinising the two frameworks. The **House of Lords Common Frameworks Scrutiny Committee** reported on the plant health common framework in April 2022. The **Northern Ireland Assembly’s Committee for Agriculture, Environment and Rural Affairs** published position papers on both frameworks shortly before the end of the 2017-22 Assembly mandate. The **House of Commons Environment, Food and Rural Affairs Committee** and the Scottish Parliament’s **Rural Affairs, Islands and Natural Environment Committee** are also expected to consider the frameworks.

There is no commitment for reports on the operation of the frameworks to be produced or published. The **Welsh Government has committed** unilaterally to reporting annually on frameworks. In November, the **Counsel General said** that the governments had all agreed to future reporting to parliaments on common frameworks.

There are no commitments to give parliaments a role in monitoring the operation of the framework or scrutinising amendments. The framework says that the governments may use third parties to advise on review and amendment to the framework. This could include government bodies or external stakeholders. In March, **the Counsel General agreed** to notify the Senedd and stakeholders when a common framework is reviewed, and consider their recommendations before the review process concludes.