

# Common Frameworks

December 2022



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# Common Frameworks

December 2022



# About the Committee

The Committee was established on 23 June 2021. Its remit can be found at:  
[www.senedd.wales/SeneddEconomy](http://www.senedd.wales/SeneddEconomy)

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Paul Davies MS**  
Welsh Conservatives



**Hefin David MS**  
Welsh Labour



**Luke Fletcher MS**  
Plaid Cymru



**Samuel Kurtz MS**  
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## Foreword

The four governments of the UK agreed to work together to develop common frameworks in 2017. Common frameworks are agreements between the UK and devolved governments on how to manage divergence in certain policy areas formerly governed or coordinated at an EU level.

Most common frameworks came into effect on a provisional basis at the end of the Brexit transition process on 31 December 2020 but have yet to be finalised. The legislatures of the UK have been tasked with scrutinising these provisional frameworks and making recommendations on their content to their respective governments prior to final versions being agreed.

In the Senedd, scrutiny has been carried out by the relevant subject committees with the Legislation, Justice and Constitution Committee keeping an overview of the programme as a whole.

The Economy, Trade and Rural Affairs Committee was tasked with scrutinising seven frameworks within its remit. This included the Fisheries Management and Support Framework, which was considered alongside scrutiny of the **Draft Joint Fisheries Statement**. Due to the close links between the areas covered by the remaining six frameworks, the Committee opted to consider these frameworks together. This report identifies common themes and recommendations that the Committee identified across the six frameworks, in addition to specific issues that relate to the individual frameworks.

The report makes 46 recommendations in total. Some call on the Welsh Government to take specific actions in the delivery of the framework programme in Wales. Others call for changes to the content of the frameworks themselves.

In making recommendations, the Committee has considered carefully the work of its counterpart committees across the UK and has found many areas of common concern and interest.

The frameworks form an important part of the constitutional governance of the UK post-Brexit and it is vital that we get them right.



**Paul Davies MS,**  
Chair

## Recommendations

**Recommendation 1.** The Welsh Government should ensure that the views of Welsh stakeholders are sought on the provisional common frameworks and taken into account before they are finalised. ....Page 13

**Recommendation 2.** The Welsh Government should keep the Committee updated on progress towards finalising the provisional common frameworks. ....Page 13

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**Recommendation 4.** We agree with the House of Lords Common Frameworks Scrutiny Committee that, while a standardised approach may not always be possible, where frameworks have diverged from the standard model, the reasons for this should be clearly explained. ....Page 15

**Recommendation 5.** We agree with the House of Lords Common Frameworks Scrutiny Committee that the common frameworks should **include** clear terms of reference for all working groups and diagrams clearly showing the relationships between them. ....Page 15

**Recommendation 6.** The Welsh Government should commit that the frameworks will lead to no dilution of public consultation or of parliamentary scrutiny in policymaking or the legislative process. ....Page 16

**Recommendation 7.** The Welsh Government should set out how it will identify, manage and mitigate any risk that the frameworks might limit the role of the Welsh Government, the Senedd or stakeholders in making law and policy for Wales. ....Page 17

**Recommendation 8.** The Welsh Government should make it clear to the Senedd and stakeholders wherever proposed legislation or policy is being taken through any of these common frameworks. ....Page 17

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- Recommendation 10.** The Welsh Government should seek intergovernmental agreement to amend these common frameworks to clarify that changes to law and policy in areas where the Welsh Government had regulatory flexibility while the UK was an EU Member State should not be bound by requirements for joint decision-making or bound by dispute resolution processes. ....Page 18
- Recommendation 11.** The Welsh Government should clearly set out the reasons for making the animal health and welfare framework broad in scope, and should confirm that it has at least the same flexibility to develop policy and legislation as it did before leaving the EU.....Page 18
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- Recommendation 16.** The Welsh Government should seek intergovernmental agreement to update the frameworks to reference the agreed new interministerial dispute resolution process, following the implementation of the Intergovernmental Relations Review. ....Page 19
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- Recommendation 18.** The Welsh Government should seek intergovernmental agreement that each of these common frameworks should provide for the governments to seek independent advice during the dispute resolution process. ....Page 20
- Recommendation 19.** The Welsh Government should seek intergovernmental agreement that each framework should provide for disputes escalated to Ministerial level to be notified to parliaments. ....Page 20
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**Recommendation 20.** To support transparency, the Welsh Government should seek intergovernmental agreement to include reference in these common frameworks to the UK Internal Market Act 2020 and the exclusions process as relevant. ....Page 21

**Recommendation 21.** The Welsh Government should confirm that any proposed changes to retained EU law in scope of these common frameworks will be taken through relevant framework processes. ....Page 22

**Recommendation 22.** The Welsh Government should explain how it will ensure decisions on aligning with or diverging from retained EU law are clear to the Senedd in scrutiny of legislation in these common framework areas. ....Page 22

**Recommendation 23.** The Welsh Government should keep the Senedd updated on any measures agreed on lessening the detrimental impacts of divergence between Great Britain and Northern Ireland as a result of the Protocol in these common framework areas. ....Page 22

**Recommendation 24.** The Welsh Government should seek intergovernmental agreement to include the text above as part of the standard wording on the Protocol in these common frameworks. ....Page 23

**Recommendation 25.** We agree with the House of Lords Common Frameworks Scrutiny Committee that all common frameworks that intersect with the Protocol should be updated to ensure frequent information sharing between parties to the framework on forthcoming EU legislation. ....Page 23

**Recommendation 26.** The Welsh Government should confirm its understanding of why the frameworks take different approaches towards their role in the development of international policy. ....Page 24

**Recommendation 27.** The Welsh Government should explain arrangements for ensuring effective representation for Wales in the development of UK international policy in these common framework areas. ....Page 24

**Recommendation 28.** The Welsh Government should seek intergovernmental agreement that each common framework should include a standardised section on the UK-EU Trade and Cooperation Agreement, setting out relevant provisions, their accompanying TCA committee, and how the governments will work together on implementation. ....Page 24

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- Recommendation 29.** The Welsh Government should explain how discussions between the governments through the common frameworks will feed into the work of the Interministerial Group on UK-EU Relations..... Page 24
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- Recommendation 42.** The Welsh Government should seek intergovernmental agreement to amend the framework to make clear that reviews will move to a three-yearly basis only after consultation with stakeholders. ....Page 32
- Recommendation 43.** The Welsh Government should seek intergovernmental agreement to amend the framework to set out governance structures clearly, and in particular the role, membership and functions of the Fertilisers Liaison Group. ....Page 33
- Recommendation 44.** The Welsh Government should clearly set out the reasons for making the fertilisers framework broad in scope, and should confirm that it has at least the same flexibility to develop policy and legislation as it did before leaving the EU. ....Page 34
- Recommendation 45.** The Welsh Government should clearly set out the reasons for making the organic production framework broad in scope, and should confirm that it has at least the same flexibility to develop policy and legislation as it did before leaving the EU. ....Page 35
- Recommendation 46.** The Welsh Government should keep the Committee updated on the establishment of the UK Expert Group on Organic Production. ....Page 35

# 1. Introduction

Common frameworks are agreements between government on how to manage divergence in certain areas that were previously governed or coordinated at EU level.

**1.** Common frameworks have been in operation on a provisional basis since the end of the Brexit transition period on 31 December 2020. In February 2022, the **UK Government published** provisional common frameworks on:

- animal health and welfare,
- plant health,
- plant varieties and seeds,
- organics,
- fertilisers,
- agricultural support.

**2.** The Committee considered the provisional common frameworks in spring 2022, hearing from Welsh Government officials in private in a **technical briefing session** and **corresponding with the Welsh Government**. The **Committee also held a consultation** to gather views from stakeholders.

**3.** This report first considers cross-cutting issues across all these common frameworks, before turning to consider each framework in turn.

## 2. Cross-cutting issues

### The aims of the common frameworks programme

4. The **Joint Ministerial Committee (European Negotiations) agreed** principles for common frameworks in October 2017 and criteria for where they should be established.
5. In evidence to the Committee, stakeholders welcomed the ambition to strengthen intergovernmental cooperation and collaboration.
6. **NFU Cymru said** that there should be the “closest possible levels of cooperation” between the UK and devolved governments on agriculture, environment and food, arguing that common frameworks were particularly important for minimising barriers to trade within the UK and ensuring that the UK upholds international obligations. **RSPCA Cymru** and the **Farmers’ Union Wales** also highlighted the benefits of close intergovernmental working.
7. Potential risks of the common framework approach were also highlighted. **RSPCA Cymru** argued that the framework should not unduly inhibit a government that wished to raise standards in a policy area such as animal welfare. It also raised concerns that it was unclear if common frameworks could risk restricting the power of legislatures, for example if backbench parliamentarians tabled proposals for legislation that had not been subject to the common framework process.
8. In considering these common frameworks, the Committee has sought to understand how their benefits can be fully realised and risks recognised and mitigated.

### The development of the common frameworks

9. The provisional common frameworks considered by the Committee came into effect from the end of the transition period in December 2020. They were published for scrutiny in February 2022.
10. There was therefore a period of more than a year in which the provisional common frameworks were in operation on a provisional basis, but not available to the Senedd or the public.
11. Following the elections to the Northern Ireland Assembly in May 2022, it is not clear when the provisional common frameworks will be finalised, or what progress has been made towards this.

**12.** The governments have agreed in principle to report on common frameworks on a regular basis. However, it is not clear when the frameworks will be finalised and reporting will begin. This means it is unclear how parliaments and stakeholders will be kept informed of how common frameworks are working in the meantime.

### **Stakeholder input during development**

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**13.** In response to correspondence from the Committee, the Welsh Government provided some information about stakeholder engagement in the development of the common frameworks.

**14.** For example, the **Welsh Government provided the Committee** with an indicative list of Welsh stakeholders consulted on the provisional common framework on animal health and welfare.

**15.** The Welsh Government noted that stakeholder feedback on the animal health and welfare common framework and on “a number of other frameworks” had been limited.

**16.** However, some concerns were raised with the Committee about the level of stakeholder engagement. The **Farmers’ Union Wales** told the Committee that to its knowledge the Welsh Government had not sought the views of key Welsh stakeholders before the agricultural support framework was drafted and agreed.

**Recommendation 1.** The Welsh Government should ensure that the views of Welsh stakeholders are sought on the provisional common frameworks and taken into account before they are finalised.

**Recommendation 2.** The Welsh Government should keep the Committee updated on progress towards finalising the provisional common frameworks.

### **The quality, clarity and consistency of common framework documents**

**17.** Common frameworks set new processes that will shape how the Welsh Government can make decisions. This means that it is important for the Senedd and stakeholders to understand how they will work in practice.

**18.** However, the Committee has found understanding these common framework documents challenging, in keeping with the **House of Lords Common Frameworks Scrutiny Committee** and the **Northern Ireland Assembly Agriculture, Environment and Rural Affairs Committee** (2017-2022 mandate).

**19.** The common frameworks did not generally appear to have been drafted with external audiences in mind. Complex governance structures are described with minimal explanation, and governance groups referenced without terms of reference. For example, committees across the UK have highlighted issues with the complexity of the governance structures in the plant health frameworks.

**20.** Several of the common frameworks have significant errors, such as describing governance structures inconsistently, using black-and-white for colour-coded diagrams, repeating sections of text, or featuring inaccurate cross-references.

**21.** There are also inconsistencies between the approaches in different frameworks. Although standard text is generally used for sections used across different common frameworks there is frequently deviation from this standard text without obvious reason.

**22.** For example the [House of Lords Common Frameworks Scrutiny Committee](#) and the [Northern Ireland Assembly Agriculture, Environment and Rural Affairs Committee](#) (2017-22 mandate) have set out detailed concerns about the quality and clarity of the animal health and welfare common framework document

**23.** In response to the Committee's concerns about errors and inconsistencies in the animal health and welfare framework, the organics framework, the agricultural support framework and the fertilisers framework, the [Welsh Government said](#) that time constraints may have been a factor. Given common frameworks have been in development since 2017, this is surprising.

**24.** These problems with quality, clarity and consistency raise questions about:

- the processes by which common frameworks were developed and signed off by junior officials, senior officials and Ministers in all four governments;
- the seriousness with which the four governments regard common frameworks;
- the extent to which common frameworks are in fact used to shape decision-making; and
- how the Senedd and stakeholders will be able to understand how common frameworks are working in practice.

**Recommendation 3.** The Welsh Government should explain how it will ensure that a full quality assurance and proofing exercise is carried out on these provisional common frameworks before final versions are published.



**Recommendation 4.** We agree with the [House of Lords Common Frameworks Scrutiny Committee](#) that, while a standardised approach may not always be possible, where frameworks have diverged from the standard model, the reasons for this should be clearly explained.

**Recommendation 5.** We agree with the [House of Lords Common Frameworks Scrutiny Committee](#) that the common frameworks should **include** clear terms of reference for all working groups and diagrams clearly showing the relationships between them.

## Implications for making law and policy for Wales

### Welsh Government and Senedd decision-making

**25.** These common frameworks generally set processes for the governments to work together and decide when to follow the same rules and when to diverge. If the governments do not agree what approach to take, disputes can be raised.

Example: animal health and welfare

This framework provides that:

- the governments will notify each other of potential policy changes early on, and in time to have joint discussions about their implications;
- before one government diverges, the governments must see if they can agree a common approach that minimises divergence while still accommodating that party's wishes;
- if a government still wants to diverge, they should set out why this is still the most suitable course of action. There should be an assessment of the implications for the UK internal market, the negotiation and implementation of international agreements, and biosecurity. Policy officials and Chief Veterinary Officers will consider the impact of the changes; and
- if the governments cannot agree whether to take the same approach or diverge, the dispute resolution process can be used.

**26.** In evidence to the Committee, some stakeholders raised concerns about the impact of the common frameworks on how the Senedd and Welsh Government can exercise their competence.

**27.** [RSPCA Cymru](#) highlighted the potential impact of intergovernmental joint decision-making on the role of non-government Members of the Senedd. It called for a commitment

that frameworks should not preclude or diminish proposals on changing standards and the law from being approved in the four legislatures if they are not proposed by the governments.

**28.** The Committee asked the Welsh Government about the impact of the processes for making joint decisions in the animal health and welfare framework on the competence of the Senedd and Welsh Government.

**29.** The **Welsh Government said** that the animal health and welfare framework did not prevent or inhibit the Welsh Ministers' executive competence to implement new policies or the Senedd's competence to pass legislation.

**30.** However, it is not clear how the common frameworks can set processes for the governments to make decisions jointly about how to use their powers, while simultaneously having no impact on how the Senedd and Welsh Government exercise those powers.

### **The role of stakeholders in making decisions**

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**31.** These common frameworks do not generally set out defined routes for stakeholders to provide input into intergovernmental decision-making.

**32.** In its submission to the Committee, **NFU Cymru** said that it understood that it would be open to stakeholders to make representations to the Market Monitoring Group in the agricultural support common framework.

**33.** However, it said it was regrettable that no formal route was set out for stakeholders to provide input into the Market Monitoring Group or the Policy Collaboration Group.

**34.** In some instances, these common frameworks also appear to limit the scope for governments to engage with stakeholders on proposed policy changes.

**35.** **RSPCA Cymru** noted in its submission to the Committee that it was unclear if and when proposals would have to proceed through common frameworks before beginning the legislative process.

**36.** It called for there to be a clear process to understand what proposals would be subject to common framework processes, and an explanation across civic society of how this process will work.

**Recommendation 6.** The Welsh Government should commit that the frameworks will lead to no dilution of public consultation or of parliamentary scrutiny in policymaking or the legislative process.

**Recommendation 7.** The Welsh Government should set out how it will identify, manage and mitigate any risk that the frameworks might limit the role of the Welsh Government, the Senedd or stakeholders in making law and policy for Wales.

### **Practical impact**

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**37.** There remains uncertainty about how the governments use the common frameworks to make decisions jointly, both now and in future.

**38.** In correspondence with the Committee, the Welsh Government provided some examples of constructive joint working through common frameworks, such as creating a cross-government programme board to address changes to the **EU Animal Health Regulations** (AHR) in domestic law.

**39.** However, the Welsh Government has in some instances raised concerns that the governments have not in fact used common frameworks to work together on planned changes to law and policy within their scope.

**40.** The **Counsel General raised** concerns that provisions of the UK Genetic Technologies (Precision Breeding) Bill have not been taken through relevant common frameworks.

**41.** This suggests that it may prove difficult for the Senedd and stakeholders to understand when the governments are working together on changes to law and policy through the common frameworks and where they are not. This risks undermining transparency and confidence in the policymaking and legislative process.

**Recommendation 8.** The Welsh Government should make it clear to the Senedd and stakeholders wherever proposed legislation or policy is being taken through any of these common frameworks.

**Recommendation 9.** The Welsh Government should inform the Senedd if proposals for legislation or policy changes result from decision-making processes in any of these common frameworks.

### **Scope**

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**42.** As part of the principles for common frameworks, the governments agreed that they should maintain, as a minimum, equivalent flexibility for tailoring policies to the specific needs of each territory as was afforded by EU rules when the UK was member.

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**43.** These common frameworks take varying approaches to their scope. For example, the animal health and welfare framework states that all retained EU and domestic law in the policy area is in scope, unless the governments agree otherwise.

**44.** The **Welsh Government told the committee** that this is because the majority of animal health and welfare legislation is retained EU law, and so it would “not make practical sense to have separate structures under the Framework for discussions and decision-making on both retained EU law and non-retained AH&W law”.

**45.** However, it appears that this approach means that the governments will make joint decisions on all animal health and welfare policy and legislation through the common framework, even where they would previously have had autonomy to regulate differently when the UK was in the EU.

**46.** It is not clear why this is considered consistent with the principle that frameworks should maintain equivalent flexibility to EU rules when the UK was an EU Member State.

**Recommendation 10.** The Welsh Government should seek intergovernmental agreement to amend these common frameworks to clarify that changes to law and policy in areas where the Welsh Government had regulatory flexibility while the UK was an EU Member State should not be bound by requirements for joint decision-making or bound by dispute resolution processes.

**Recommendation 11.** The Welsh Government should clearly set out the reasons for making the animal health and welfare framework broad in scope, and should confirm that it has at least the same flexibility to develop policy and legislation as it did before leaving the EU.

**Recommendation 12.** The Welsh Government should seek intergovernmental agreement to amend common frameworks to ensure that they set out clearly when decisions will be in scope and the reasons for this.

**Recommendation 13.** The Welsh Government should engage with stakeholders to ensure that the scope of common frameworks is widely understood.

### **Determining when divergence is acceptable**

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**47.** The common frameworks set varying parameters for the governments to take into account when deciding when divergence is acceptable.

**48.** Divergence is described in different ways in different frameworks, and sometimes in different ways within a framework.

**49.** For example, the agricultural support framework refers to divergence in different ways in different sections, such as ‘problematic’ divergence, ‘unwanted’ divergence, ‘negative impact’ or divergence, and reference to demonstrating why ‘divergent policy is necessary’.

**50.** This may make it difficult for the Senedd and stakeholders to know whether divergence is likely to be deemed acceptable or not.

**Recommendation 14.** The Welsh Government should seek intergovernmental agreement that each framework should set out where divergence is acceptable in a clear, consistent and accessible way.

**Recommendation 15.** The Welsh Government should explain how it will ensure that processes for determining whether divergence is acceptable are open and accessible to the Senedd and stakeholders.

### **Resolving disputes**

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**51.** The common frameworks set out processes by which disputes between the governments can be escalated from official to ministerial level.

**52.** If a dispute cannot be resolved, the frameworks provide that it can be escalated to the interministerial dispute resolution process set out in the Memorandum of Understanding on Devolution.

**53.** In January 2022, the **governments agreed** to make changes to the interministerial dispute resolution process as part of the Intergovernmental Relations Review.

**54.** Although stakeholders welcomed the dispute resolution processes in the frameworks, **RSPCA Cymru** and **NFU Cymru** noted uncertainty about how they would work in practice. The revised intergovernmental dispute resolution process remains untested.

**Recommendation 16.** The Welsh Government should seek intergovernmental agreement to update the frameworks to reference the agreed new interministerial dispute resolution process, following the implementation of the Intergovernmental Relations Review.

**55.** Time limits for dispute resolution are not set. The animal health and welfare common framework explicitly provides that actions under dispute should be paused pending resolution.

**56.** The Committee asked the Welsh Government about the impact of this on the development of law and policy for Wales in scrutiny of the animal health and welfare common framework. The **Welsh Government said**:

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*"The initial pausing of any actions under dispute is an agreed part of the dispute resolution mechanism in frameworks, but it would depend on the case as the nature of diseases might mean pausing action pending a dispute could leave risks unmitigated."*

**57.** This suggests that the pausing of actions under dispute could lead to delays to decisions critical to human, animal or plant health.

**58.** It is not clear how the governments will balance the need to seek to make decisions collaboratively and resolve disputes through the agreed process with the need to make time-critical decisions quickly.

**Recommendation 17.** The Welsh Government should explain how it will ensure that the pausing of actions under dispute does not lead to undue delays to decisions.

**59.** These common frameworks do not generally provide for external input into the dispute resolution process to be sought as standards. The agricultural support framework sets out that third party advice may be sought during dispute resolution.

**60.** In evidence to the Committee, **RSPCA Cymru** said that it understood that initial plans for common frameworks had envisaged the establishment of an independent board of experts to consider disputes.

**61.** The common frameworks do not provide for disputes to be notified to the Senedd or stakeholders. However, the **Welsh Government has committed** to notify the Senedd of disputes escalated through common frameworks to Ministers. This is welcome.

**Recommendation 18.** The Welsh Government should seek intergovernmental agreement that each of these common frameworks should provide for the governments to seek independent advice during the dispute resolution process.

**Recommendation 19.** The Welsh Government should seek intergovernmental agreement that each framework should provide for disputes escalated to Ministerial level to be notified to parliaments.

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

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**62.** In 2017, the **Joint Ministerial Committee (European Negotiations) agreed that common frameworks** should be established where needed to ensure the functioning of the UK internal market.

- 63.** The **UK Internal Market Act** sets market access principles in law. These principles are intended to ensure that, in general, goods and services sold, and professional qualifications recognised, in one part of the UK can be sold or recognised in another part. The Fifth Senedd voted not to grant consent to the UK Internal Market Bill.
- 64.** There are some exclusions from the market access principles, for example for threats to human, animal or plant health. Sections 10 and 18 of the Act allow the UK Government to make regulations to create new exclusions from the market access principles.
- 65.** The market access principles are likely to have a significant impact on the development of law and policy in most policy areas covered by these frameworks.
- 66.** In December 2021, the governments agreed a process for **considering and agreeing exclusions from the UK Internal Market Act in common framework areas**.
- 67.** In submissions to the Committee, **stakeholders raised concerns** about the impact of the Act on the development of Welsh law and policy.
- 68.** However, **Dr Mary Dobbs, Dr Viviane Gravey and Dr Ludivine Petetin argued** that common frameworks were now “a potential instrument to protect devolution”, in that they could provide a route for the Welsh Government to secure exclusions from the market access principles and informally to influence law and policy elsewhere in the UK.
- 69.** The common frameworks do not make any reference to the exclusions process. The **House of Lords Common Frameworks Scrutiny Committee has recommended** that common frameworks should be updated to reference the agreed exclusions process.
- 70.** In March 2022, the **Welsh Government told the Committee** that it did not consider it appropriate to include reference to the exclusions process in view of its legal challenge to the Act.

**Recommendation 20.** To support transparency, the Welsh Government should seek intergovernmental agreement to include reference in these common frameworks to the UK Internal Market Act 2020 and the exclusions process as relevant.

## **Managing the impact of the Retained EU Law Bill**

- 71.** The previous **UK Government set out plans** to introduce a Retained EU Law Bill (or “Brexit Freedoms Bill”) to make it easier to change or repeal retained EU law (REUL) and to remove the special status it has in UK law.

**72.** 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.”

**Recommendation 21.** The Welsh Government should confirm that any proposed changes to retained EU law in scope of these common frameworks will be taken through relevant framework processes.

**Recommendation 22.** The Welsh Government should explain how it will ensure decisions on aligning with or diverging from retained EU law are clear to the Senedd in scrutiny of legislation in these common framework areas.

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

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**73.** Under the Northern Ireland Protocol, EU law applies to and in Northern Ireland in policy areas covered by these common frameworks.

**74.** Divergence between legislation in Great Britain and Northern Ireland and the EU has increased since the end of the transition period. The **Northern Ireland Assembly Agriculture, Environment and Rural Affairs Committee** (2017-2022 mandate) raised concerns during its scrutiny of these common frameworks about the impact of divergence on businesses in Northern Ireland.

**75.** In scrutiny of the organic production common framework, the **Welsh Government told the Committee** that the governments were working together through the framework to develop law and policy for Great Britain in such a way as to lessen the detrimental impact of divergence on Northern Ireland.

**Recommendation 23.** The Welsh Government should keep the Senedd updated on any measures agreed on lessening the detrimental impacts of divergence between Great Britain and Northern Ireland as a result of the Protocol in these common framework areas.

**76.** The common frameworks generally include standardised wording on how the governments will address divergence arising from NI remaining aligned to changes in the EU, as agreed in the Protocol.

**77.** The **Northern Ireland Assembly’s Agriculture, Environment and Rural Affairs Committee (2017-2022 mandate)** noted during its scrutiny that the animal health and welfare common framework offers clearer guidance on how divergence as a result of the Protocol will be managed than other frameworks, stating that:



*"If Northern Ireland has to diverge in order to maintain parity with the EU the same review process will be followed and the same assessments are made as whether it would be in the best interests of GB to follow suit or to allow divergence."*

**78.** The Committee recommended that this wording should be adopted across the common frameworks.

**Recommendation 24.** The Welsh Government should seek intergovernmental agreement to include the text above as part of the standard wording on the Protocol in these common frameworks.

**Recommendation 25.** We agree with the House of Lords Common Frameworks Scrutiny Committee that all common frameworks that intersect with the Protocol should be updated to ensure frequent information sharing between parties to the framework on forthcoming EU legislation.

## Managing international obligations

**79.** In 2017, the Joint Ministerial Committee (European Negotiations) agreed that common frameworks should be established where needed to ensure compliance with international obligations.

**80.** These common frameworks set out commitments for the UK and devolved governments to work together on the negotiation and implementation of international obligations.

**81.** Standard text in each of the frameworks provides that international policy formulation will be based on "the current Devolution MoU and its accompanying International Relations Concordat" and that they "will automatically use any updated IR Concordat, and the wider outcomes of the Joint IGR Review".

**82.** The International Relations Concordat was last updated in 2013; it was not revised in 2022 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.

**83.** The Committee asked the Welsh Government about how the frameworks would affect the scope for devolved engagement in the formulation of international policy. Responses varied.

**Recommendation 26.** The Welsh Government should confirm its understanding of why the frameworks take different approaches towards their role in the development of international policy.

**Recommendation 27.** The Welsh Government should explain arrangements for ensuring effective representation for Wales in the development of UK international policy in these common framework areas.

### **Managing engagement with the UK-EU institutional framework**

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**84.** Most of these common frameworks include standard text confirming the **UK Government's commitments to the devolved governments** on devolved engagement in the UK-EU institutional framework. The Welsh Government has expressed dissatisfaction with these arrangements.

**85.** The agricultural support common framework does not specifically mention the UK-EU Trade and Cooperation Agreement (TCA). Agricultural support is exempt from the state aid provisions in the TCA, but this framework will interact with a number of other frameworks that make explicit references to the TCA. The Concordat to this framework also appears not to have been updated to reflect the agreement and ratification of the TCA.

**86.** The UK and devolved governments held the inaugural meeting of the **UK-EU Relations Interministerial Group** in February 2022. It is not clear how discussions between the governments through these common frameworks will feed into the work of the interministerial group.

**Recommendation 28.** The Welsh Government should seek intergovernmental agreement that each common framework should include a standardised section on the UK-EU Trade and Cooperation Agreement, setting out relevant provisions, their accompanying TCA committee, and how the governments will work together on implementation.

**Recommendation 29.** The Welsh Government should explain how discussions between the governments through the common frameworks will feed into the work of the Interministerial Group on UK-EU Relations.

### **Managing engagement in international trade negotiations**

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**87.** These common frameworks set out how the governments will work together on the negotiation and implementation of international trade agreements. Standard text in each of the frameworks (except for agricultural support) states that they will enable the governments to "ascertain the impact of international trade on managing policy divergence".

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**88.** In evidence to the Committee on the animal health and welfare framework, the **Welsh Government said** that the framework allows the Welsh Government to influence the UK Government's position on animal health and welfare policy issues in trade negotiations, and to escalate discussions to interministerial level.

**89.** However, the Welsh Government has previously raised concerns about engagement with the UK Government on trade negotiations in these common framework areas.

**90.** In December 2021, the **Minister for Economy said** that he was "disappointed" that Welsh Government representations about the impact of the UK-Australia free trade agreement for animal welfare standards "appear to have not been taken on board".

**91.** In its submission to the Committee, **RSPCA Cymru raised concerns** that it appeared that there had not been reference to the common frameworks principles in consideration of the impact of beef and lamb tariffs in the New Zealand and Australia free trade agreements.

**92.** The UK Government published terms of reference for the **Interministerial Group on Trade** in August 2022. It is not clear how discussions between the governments through these common frameworks will feed into the work of the interministerial group.

**Recommendation 30.** The Welsh Government should explain how it will seek to ensure that disagreements on international trade negotiations in these common framework areas can be addressed through the common frameworks, and disputes escalated and resolved effectively.

**Recommendation 31.** The Welsh Government should explain how discussions on international trade through these common frameworks will feed into the work of the Interministerial Forum on Trade.

## Future reporting

**93.** During the Fifth Senedd, the **Welsh Government committed** unilaterally to report annually on the common frameworks programme as a whole.

**94.** The **Counsel General confirmed in November 2021** that the governments had all agreed in principle to future reporting on common frameworks. He said that Welsh Government officials were preparing a paper for all four governments to agree an approach to this.

**95.** In March 2022, the **Counsel General said** that the "exact format of the annual reporting mechanism is currently being worked through at an official level".

**Recommendation 32.** The Welsh Government should pursue intergovernmental agreement on reporting regularly on common frameworks and update the Senedd on progress.

### Review and amendment

**96.** These common frameworks set out processes by which they may be reviewed and amended periodically. Most of the frameworks (except for animal health and welfare) provide that third party advice may be sought during the review and amendment.

**97.** The Welsh Government has committed to notifying the Senedd and stakeholders when a common framework is reviewed, and to consider their recommendations before the review process is concluded. This is welcome.

**98.** The House of Lords Common Frameworks Scrutiny Committee has recommended that there should be an open and well-publicised stakeholder consultation process during future reviews of common frameworks, and that parliaments should be updated following the conclusion of each review.

**Recommendation 33.** The Welsh Government should seek intergovernmental agreement that each framework should be updated to provide for parliamentary and stakeholder engagement during the review and amendment process and for parliaments to be updated following the conclusion of a review.

## 3. Plant health

**99.** The plant health common framework covers 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.

### Key issues

#### Natural Resources Wales

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**100.** Natural Resources Wales (NRW) is responsible for delivering the Welsh Ministers' plant health (forestry) functions. The framework does not provide for NRW to be represented in its governance structures.

**101.** The Welsh Government told the Committee that NRW attended delivery-level meetings as appropriate.

**Recommendation 34.** The Welsh Government should seek intergovernmental agreement to amend the framework to reflect the role of NRW in delivering plant health functions in Wales.

## 4. Plant varieties and seeds

**102.** The plant varieties and seeds common framework covers the property rights of plant breeders, plant variety registration, and standards for the marketing and certification of seed and other plant propagating material.

### Key issues

#### Quality and clarity

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**103.** The Northern Ireland Assembly Agriculture, Environment and Rural Affairs Committee has raised concerns about the quality of the framework document, including significant duplication.

**104.** On page 38 of the framework, there is reference to review of the concordat every six years. This appears to be an error.

**Recommendation 35.** The Welsh Government should ensure that any errors in this common framework are corrected before it is finalised.

#### Terms of reference for governance groups

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**105.** The framework sets out tiers of governance for making decisions and resolving disputes.

**106.** The framework does not provide terms of reference or information about membership for the Plant Varieties and Seeds Committee or National Lists and Seeds Committee, saying that they are under review.

**107.** The Welsh Government told the Committee that there was no intention to provide terms of reference for governance groups, but that they could be provided on request.

**Recommendation 36.** The Welsh Government should seek intergovernmental agreement to amend the frameworks to include terms of reference for these groups.

#### Protocols for decision-making

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**108.** The framework 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.

**109.** The framework says these protocols will “follow”. In the absence of these protocols, it is not possible to assess the framework’s decision-making processes fully.

**110.** The **Welsh Government told the Committee** that the intention was that the protocols would be issued for technical stakeholder engagement later in 2022 and made available in due course.

**Recommendation 37.** The Welsh Government should keep the Committee updated on progress towards developing and publishing the protocols.

## 5. Agricultural support

**111.** The agricultural support common framework covers direct support to farmers and market intervention support, crisis management mechanisms, cross-border farms and data collection.

**112.** The four governments of the UK are in the process of developing new agricultural support schemes as a replacement for the Common Agricultural Policy. The framework will therefore play a key role in managing divergence in this new context.

**113.** In its submission to the Committee, the **Farmers' Union of Wales noted** that the framework sets out ways of working, but highlighted the absence of more defined frameworks for agricultural support across the UK. It raised concerns that this could lead to perverse outcomes and increase the likelihood of disputes.

### Key issues

#### Quality and clarity

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**114.** The Welsh Government also provided the Committee with further information about the governance of the framework and committed to tell the Senedd when crisis management groups were set up. This is welcome.

**Recommendation 38.** The Welsh Government should ensure clear information on governance arrangements is set out before it is finalised.

#### Scope

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**115.** The agricultural support framework states that not all agricultural spending will be notified to the Agriculture Policy Collaboration Group (PCG), only spending relating to market price support, payments based on outputs or production and export support (page 28).

**116.** In correspondence with the Committee, the Welsh Government confirmed that sustainable land management schemes were also in scope of the framework. This is surprising given that such spending is not listed as notifiable to the PCG.

**Recommendation 39.** The Welsh Government should seek intergovernmental agreement to clarify whether sustainable farming schemes are (a) within scope of the framework and (b) included in the agricultural support payments of which the Policy Collaboration Group will be regularly notified.



## Subsidy Control Act 2022

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**117.** The Subsidy Control Act 2022 sets out a new regulatory regime for subsidy control to replace the EU state aid regime, granting powers to UK Ministers to manage this regime.

**118.** Concern about the interaction between the Act and the framework has been raised by the House of Lords Common Frameworks Scrutiny Committee, the Senedd's Legislation, Justice and Constitution Committee and the Farmers' Union of Wales.

**Recommendation 40.** We agree with the House of Lords Common Frameworks Scrutiny Committee that reviews of this framework should include analysis of how it is interacting with the Subsidy Control Act.

## Concordat on WTO Agreement on Agriculture

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**119.** The Agriculture Act 2020 gave powers to the UK Secretary of State to make regulations to set ceilings on some types of government support to ensure the UK meets its obligations under the World Trade Organisation (WTO) Agreement on Agriculture.

**120.** The UK Government agreed to develop a Concordat with the devolved governments setting out how it would use these regulation-making powers. The framework says it is in draft form, but once agreed will operate alongside this framework.

**121.** The Welsh Government told the Committee that this Concordat was being considered by Ministers in all four governments and that a timetable for publication would be agreed following approval.

**Recommendation 41.** The Welsh Government should keep the Senedd updated on progress towards publishing the final Concordat on the WTO Agreement on Agriculture.

## Review and amendment

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**122.** The timescales for review of the framework are unclear. It says the Concordat will be reviewed one year after the agreement. Further reviews will continue annually; and it can then be reviewed every three years.

**123.** The Welsh Government confirmed in correspondence with the Committee that the framework would be amended to clarify that reviews will take place annually until the reviewers agree that a three-year review period is satisfactory. This commitment is welcome.

**124.** In evidence to the Committee, **NFU Cymru argued** that it might be appropriate for reviews to take place on an annual basis for some time, and in any event until the framework is bedded in.

**Recommendation 42.** The Welsh Government should seek intergovernmental agreement to amend the framework to make clear that reviews will move to a three-yearly basis only after consultation with stakeholders.

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## 6. Fertilisers

**125.** The fertilisers framework covers not only processes for managing regulation in areas previously governed by EU law, but the governments' approach to fertilisers policy as a whole.

**126.** The framework recognises that a "major shift" in fertilisers regulation to modernise the system for governance "will result in significant change to UK wide policy work over the coming years". This means that the framework will face an early test.

### Key issues

#### Quality and clarity

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**127.** The framework states that the main structure for making decisions on fertiliser policy will be a new UK Fertilisers Regulatory Committee (UKFRC).

**128.** The diagrams and detailed descriptions of the decision-making process also mention a Fertilisers Liaison Group but do not explain what this Group is or how it relates to the UKFRC.

**129.** The Welsh Government provided the Committee with further information to clarify the roles of the UKFRC and the Fertilisers Liaison Group.

**Recommendation 43.** The Welsh Government should seek intergovernmental agreement to amend the framework to set out governance structures clearly, and in particular the role, membership and functions of the Fertilisers Liaison Group.

#### Scope

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**130.** The framework documents imply that the framework is broad in scope and will cover not only processes for managing regulation in areas previously governed by the EU, but fertilisers policy as a whole.

**131.** The Committee asked the Welsh Government if it had the same flexibility in developing legislation and policy under the framework as it did during EU membership.

**132.** The Welsh Government said that:

*"The Welsh Government's ability to legislate and develop policy in respect of fertilisers has not diminished following the end of the transition period."*

**133.** This response does not directly address the question of whether there is equivalent flexibility.

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**Recommendation 44.** The Welsh Government should clearly set out the reasons for making the fertilisers framework broad in scope, and should confirm that it has at least the same flexibility to develop policy and legislation as it did before leaving the EU.

## 7. Organic production

**134.** This framework covers organic production standards and certification, labelling and trade of organic produce, organic aquaculture and official controls.

**135.** There is now divergence between Great Britain and Northern Ireland/the EU on organics regulation due to the implementation of the new EU Regulation 848/2018.

### Key issues

#### Scope

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**136.** The organic production framework is broad in scope and will cover processes for managing regulation in areas previously governed by the EU, but also organics law and policy as a whole

**137.** This broad scope may mean that the Welsh Government and the Senedd may have less regulatory flexibility under the framework than they would have had when in the EU.

**Recommendation 45.** The Welsh Government should clearly set out the reasons for making the organic production framework broad in scope, and should confirm that it has at least the same flexibility to develop policy and legislation as it did before leaving the EU.

#### UK Expert Group on Organic Production

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**138.** The framework states that a UK Expert Group on Organic Production (UK EGOP) will be established, saying that developing an appropriate evidence base will be essential for the operation of the framework. The UK EGOP is yet to be established. It is therefore unclear what evidence is currently being used to make decisions.

**139.** The Welsh Government told the Committee that the establishment of the EGOP had progressed more slowly than expected, and that it was now expected that recruitment would begin in the next few months.

**Recommendation 46.** The Welsh Government should keep the Committee updated on the establishment of the UK Expert Group on Organic Production.