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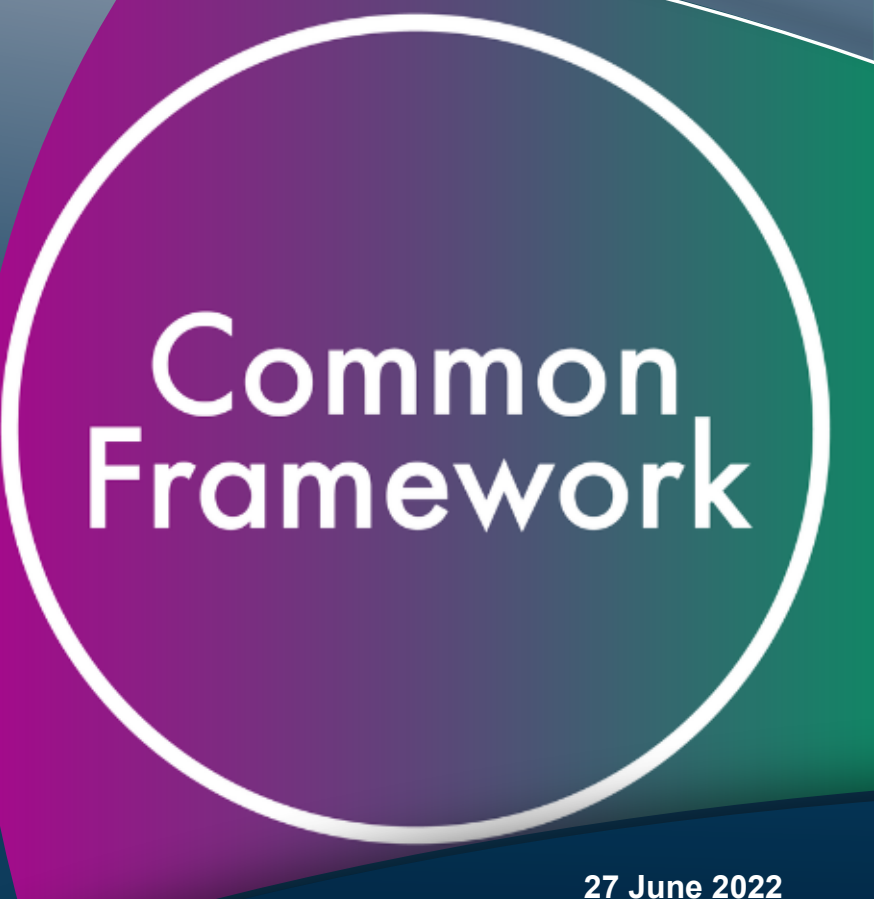
SPICe Briefing

Pàipear-ullachaidh SPICe

Fertilisers Common Framework

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This briefing discusses the Fertilisers Common Framework. It sets out how the UK Government and devolved governments propose to work together in policy areas affecting fertilisers. It also provides background information on the common frameworks programme.



**Common
Framework**

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Summary

This briefing provides detailed information on the Fertilisers Common Framework. The Rural Affairs, Islands, and Natural Environment (RAINE) Committee will lead on scrutiny of this framework.

The Fertilisers Common Framework covers policy governed by retained EU law and other domestic arrangements. The framework is a non-legislative agreement formalising ways of working between the four governments on fertilisers policy. The framework sets out the scope of the policy area, the roles and responsibilities of parties to the framework, as well as the mechanisms for monitoring, review, amendment, and dispute resolution.

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

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

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

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

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

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

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

What are common frameworks?

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

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

“ A framework will set out a common UK, or GB, approach and how it will be operated and governed. This may consist of common goals, minimum or maximum standards, harmonisation, limits on action, or mutual recognition, depending on the policy area and the objectives being pursued. Frameworks may be implemented by legislation, by executive action, by memorandums of understanding, or by other means depending on the context in which the framework is intended to operate.”

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

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

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

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

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

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

The framework outline went on to note that the framework:

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

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

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

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

Why are common frameworks needed?

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

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

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

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

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

1. Common frameworks will be established where they are necessary in order to:
 - enable the functioning of the UK internal market, while acknowledging policy divergence;
 - ensure compliance with international obligations;
 - ensure the UK can negotiate, enter into and implement new trade agreements and international treaties;
 - enable the management of common resources;
 - administer and provide access to justice in cases with a cross-border element; and
 - safeguard the security of the UK.
2. Frameworks will respect the devolution settlements and the democratic accountability of the devolved legislatures, and will therefore:
 - be based on established conventions and practices, including that the competence of the devolved institutions will not normally be adjusted without their consent;
 - maintain, as a minimum, equivalent flexibility for tailoring policies to the specific needs of each territory, as is afforded by current EU rules; and
 - lead to a significant increase in decision-making powers for the devolved administrations.

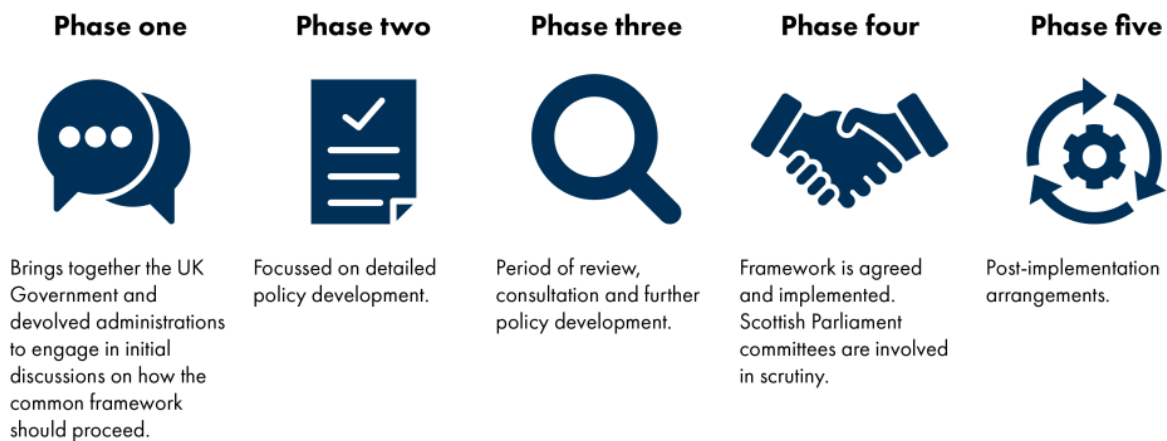
What is the process for developing frameworks ?

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

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

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

Common framework development



Scottish Parliament Information Centre

How will the Scottish Parliament consider frameworks?

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

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

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

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

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

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

The Scrutiny Challenge

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

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

January 2021 in spite of being unavailable for scrutiny by legislatures².

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

Scrutiny at other legislatures

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

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

House of Lords Common Frameworks Scrutiny Committee

The [House of Lords Common Frameworks Scrutiny Committee](#) considered a summary of the framework during June 2021. This scrutiny raised some issues regarding the framework's operational processes set and new bodies that were due to be created to support the operation of the framework. The Committee also raised concerns about the extent to which Northern Ireland stakeholders were consulted (see [Stakeholder engagement](#)).

The committee then further considered the framework on 15 March 2022. Following [an exchange of letters with George Eustice MP](#), Secretary of State for Environment, Food and Rural Affairs from the House of Lords Common Frameworks Scrutiny Committee the Committee made a number of recommendations. These include:

- improvements to editing processes;
- increased cross-border communication and cooperation with the Irish Government given that "the island of Ireland is considered a single epidemiological unit on matters concerning animal health, and therefore fertilisers";
- text setting out the UK Internal Market Act exclusions process; and
- the inclusion of a commitment to update the House of Lords, House of Commons and the three devolved legislatures on the ongoing functioning of the framework after the conclusion of the scheduled reviews.

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

The Northern Ireland Assembly's Committee for Agriculture, Environment and Rural Affairs published its [position paper at the end of the 2017-22 mandate](#). The Committee agreed with many of the concerns voiced by committees at other legislatures, but also noted several issues specific to Northern Ireland. These include the effects of current and anticipated future levels of divergence as well as a lack of regulatory oversight. For instance, the Committee stated:

“

- There is pre-existing divergence between jurisdictions in respect of Fertilisers policy, for example NI has been unable to import substances with ammonium nitrate over a certain level”
- The extent of engagement between professionals/industry and DAERA [Northern Ireland Department of Agriculture, Environment and Rural Affairs] in respect of policy matters is ad hoc and it is imperative that there are effective communication channels to ensure that the needs, interests and views of professionals are transmitted to DAERA through to the Framework groups, and vice versa”
- The introduction of the new FRP [EU Fertilising Products Regulation] in NI in July 2022 will present significant challenges for producers, marketers and users of fertilisers as NI will effectively be subject to two separate regulatory regimes, which, if enforced strictly would necessitate the generation of a unique label for fertilisers used locally”
- Industry representatives are hopeful that the structures proposed under the Framework may provide the opportunity to identify a flexible and workable solution to the anticipated difficulties for NI stakeholders in terms of labelling and use of Fertilisers”

The Committee also drew attention to the role a paragraph in the framework documents about mechanisms that will be used to discuss and manage proposed policy changes.

“ Where one or more of UK Government, the Scottish Government or the Welsh Government proposes to change rules in a way that has policy or regulatory implications for the rest of the UK, or where rules in Northern Ireland change in alignment with the EU”

The Committee expressed concerns that this paragraph "suggests that NI may be prohibited from proposing policy changes under the auspices of the Framework which are unconnected to its obligations under retained EU law".

The Committee made a number of recommendations to address their concerns. These include the request that "DAERA [Northern Ireland Executive's Department of Agriculture, Environment and Rural Affairs] should clarify if the Secretary of State will assume responsibility for representing NI's interests in the functioning of the Common Framework, should the local Executive collapse."

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

- A lack of apparent engagement with the Irish government in respect of common frameworks and implications for North-South policy interaction;
- A lack of engagement with community and voluntary stakeholders in Northern Ireland to seek their views on common frameworks;
- How the [Subsidy Control Act 2022](#) will overlap with and impact on common

frameworks which deal with subsidies.

House of Commons Environment, Food, and Rural Affairs Committee

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

The UK Internal Market Act 2020

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The process is set out in full below. ³

Proposal and consideration of exclusions

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

Agreement of an exclusion request

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

Finalising an exclusion

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

Fertilisers

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

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

Policy Area

The policy area under consideration is fertilisers regulation. This policy area covers policies and regulations relating to:

- the placing on the market, the import, export, sale and use of fertilisers;
- definitions, compositional limits, labelling requirements, sampling and analysis procedures; and
- processes for compliance and enforcement relating to fertilisers under multiple regulatory regimes.

Scope

Fertilisers policy is a devolved matter. Rules and requirements around the manufacturing and marketing of fertilisers in the UK were partially harmonised with EU regulations, which meant that in the UK there were both EU and domestic legislative regimes that operated in parallel.

This framework covers the various regulatory regimes (including [retained EU law](#) that intersects with devolved competence) relating to fertiliser policy.^{iv} The framework also relates to domestic and international legislation concerning the gathering of technical and scientific evidence around fertilisers, stakeholder engagement, policy making processes and design, as well as enforcement and market surveillance coordination. Relevant EU law continues to apply in Northern Ireland in respect of the Protocol on Ireland/Northern Ireland.^v Decisions regarding ammonium nitrate fertilisers of high nitrogen content and those relating to health and safety fall outside devolved competence.

The framework notes that policy area covered by it also intersects with the [EU-UK Trade and Cooperation Agreement](#) (TCA) and therefore topics relevant to the framework may be considered from time to time by relevant TCA Specialised Committees or the Partnership Council.^{vi}

iv Decisions regarding ammonium nitrate fertilisers of high nitrogen content (which can be adapted for use as an improvised explosive and are potentially fatal if mishandled in manufacture, transport or storage) in so far as they relate to health and safety fall outside devolved competence.

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

The framework also states that it is likely to interact with other policy areas which overlap or have relevance to fertiliser policy (e.g. air quality, water quality, climate policy, manufactured goods policy).

“ This Framework will respect and interconnect with other relevant Common Frameworks, legislation and international agreements in any areas that have meaningful relation to the operation of fertiliser policy.”

Definitions

- **UK Fertiliser Regulatory Committee (UKFRC)** is a committee comprising of officials from the UK Government Department for Environment, Food and Rural Affairs, the Scottish Government, Welsh Government, and Northern Ireland Department for Agriculture, Environment and Rural Affairs (DAERA) that has been set up to consider issues around the designation, definition and composition of fertilisers, the setting of standards for the marketing of fertilisers and ensuring these standards are upheld. UKFRC will:
 - engage with international organisations;
 - work to coordinate a common position across the UK; and
 - represent the agreed UK view at an international level.
- **Senior Official Programme Board (SOPB)** is made up of senior officials from each government and supports the functioning of the Inter-Ministerial Group for Environment Food and Rural Affairs.
- **Inter-Ministerial Group for the Environment, Food, and Rural Affairs (IMG-EFRA)** is made up of Ministers from each government for the purpose of discussing issues relevant to the EFRA policy areas.

Summary of proposed approach

The framework is non-legislative and is implemented by a concordat. The framework notes that a "harmonised approach" to fertilisers policy is desirable but that the governance structures and processes set out in the framework seek to allow governments to manage divergence on a consensual basis. The framework does not provide a clear description of what kind of divergence in fertiliser policy would be considered acceptable or harmful.

The framework notes that the governance structures will also allow the parties to the framework (i.e. the four governments of the UK) to determine the impact of international trade and Northern Ireland's alignment with EU policy on managing UK policy divergence in the fertiliser policy area.^{vii}

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

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

Stakeholder engagement

The [covering material supplied to the RAINE Committee by Minister for Green Skills, Circular Economy and Biodiversity Lorna Slater MSP on 7 February 2022](#) provides some detail on the stakeholder engagement that took place during the development of the framework. The covering material states:

“ Stakeholder engagement took place in January 2021, with information and 3 consultation questions on the rationale, scope and asking for additional comments. This was sent to our main stakeholders – National Farmers Union for Scotland (NFUS) and the Agricultural Industries Confederation (AIC), Convention of Scottish Local Authorities (COSLA) and the Scottish Council for Voluntary Organisations (SCVO).”

It is not clear whether the other governments that are party to the framework also undertook stakeholder engagement. The limited detail on stakeholder engagement was raised by the House of Lords Common Frameworks Scrutiny Committee when it reviewed a pre-publication summary of the framework in June 2021. [Secretary of State for Environment, Food and Rural Affairs, George Eustice MP, responded to the Committee's concerns on 2 November 2021:](#)

“ In relation to your question about the brevity of the list of stakeholders engaged, this was due to the first round of stakeholder engagement being a high-level initial scoping of stakeholders' views with the intention to do a second round of consultation as the Framework develops. The list of stakeholders was made by each nation deciding who needed to be consulted initially and use of a jointly agreed consultation document ensured consistency. The second round of consultation is currently being planned with the Welsh, Scottish and Northern Irish administrations in advance of the conclusion of the framework in autumn 2021.”

Detailed overview of proposed framework: legislation

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

Regimes and regulations within scope

The domestic fertilisers regime was provided for in the Fertiliser Regulations 1991 and the Fertiliser Regulations (Northern Ireland) 1992. The EU Fertilisers Regime was governed by [Regulation \(EC\) 2003/2003](#).

Regulation (EC) No 2003/2003 has become domestic law as retained EU law. The Fertilisers and Ammonium Nitrate Material (Amendment) (EU Exit) Regulations 2019/601 amended retained Regulation (EC) No 2003/2003 to ensure that it operates effectively, providing for a new domestic “UK fertiliser” regime. These regulations set out the requirements for “fertilisers” as defined in the [Agriculture Act 1970](#) and contain provisions about the composition, labelling, and marketing of fertilisers, with the aim of regulating their content, efficacy and safety.

New [EU Regulation 2019/1009](#) on the making available on the market of EU fertilising

products (the Fertilising Products Regulation, FPR), which has a staggered application in Great Britain, will replace Regulation (EC) No 2003/2003 in the EU once it fully applies in July 2022. This will introduce a new conformity assessment regulatory regime for EU fertilising products, which will regulate a broader range of materials than are currently regulated as EC fertilisers also bringing contaminant limits on particular fertilisers into scope within the EU.

Some articles of the FPR applied before the end of the transition period ([the transition period ended on 31 December 2020](#)) and action was taken to implement those articles in Great Britain where required by way of the Fertilising Products Regulations 2020. Under the terms of the Protocol on Ireland/Northern Ireland, this will fully apply in Northern Ireland from July 2022, alongside domestic fertiliser legislation.^{viii}

New powers have also been included in the [Agriculture Act 2020](#) to enable each government to regulate the modern fertiliser sector more appropriately using a similar conformity assessment regime to that provided for in the FPR. The use of these powers should be based on the principles set out in the framework documents and Concordat.

International Obligations

While fertiliser policy areas are devolved matters, international trade, health and safety, and some areas of security and counter terrorism^{ix} is reserved. This creates an area of overlapping interests where UK trade negotiations and implementation may intersect with devolved matters. It is the responsibility of the UK Government to ensure that the UK complies with its international trading obligations.

The UK is an independent World Trade Organisation (WTO) member. Cross-departmental processes have been developed by Defra to ensure that all nations of the UK fulfil the UK's WTO obligations, including consulting stakeholders on Sanitary and Phytosanitary (SPS)^x and Technical Barriers to Trade (TBT) measures.

Review of Fertiliser Regulations

The framework notes that a review of fertiliser regulation is planned with the following issues to be considered:

- The implementation of EU Regulation 2019/1009 with regard to Northern Ireland and whether a new body is necessary for operating and enforcing this system.
 - The Fertilising Products Regulation (FPR) will apply to Northern Ireland, in respect of the Protocol on Ireland/Northern Ireland. Defra is to be designated as the UK-wide Notifying Authority for the purposes of this regulation.

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

ix Decisions regarding ammonium nitrate fertilisers of high nitrogen content (which can be adapted for use as an improvised explosive and are potentially fatal if mishandled in manufacture, transport or storage) in so far as they relate to health and safety fall outside devolved competence.

x Sanitary (human and animal health) and phytosanitary (plant health) governance refers to measures intended to ensure food is safe for consumers and prevent the spread of pests or diseases among animals and plants.

- Articles of the FPR which comprise retained EU law will apply to Great Britain, in respect of the Northern Ireland Protocol. Defra is to be designated as the UK-wide Notifying Authority for the purposes of this regulation.
- The process by which Defra will exercise its responsibilities as Notifying Authority in conjunction with the Scottish Government, Welsh Government and the Northern Ireland Executive is expected to be considered within the planned review.
- Whether the framework may require further system change and a review of responsibilities on existing bodies, such as local authorities or arms-length bodies.
- Whether access to independent expert advice on scientific and technical evidence may require additional processes and the use of existing, or creation of new bodies.

Detailed overview of proposed framework: non-legislative arrangements

Non-legislative arrangements consist of a Concordat between the parties (i.e. the four governments of the UK). The Concordat sets out the framework's joint decision making and dispute resolution processes.

The Concordat also sets out the following joint policy objectives:

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

Fertilisers in practice

Roles and Responsibilities: parties to the framework

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

The parties to the framework are the UK Government Department for Environment, Food and Rural Affairs (Defra), the Northern Ireland Department of Agriculture, Environment and Rural Affairs (DAERA), the Scottish Government and the Welsh Government. Officials, senior officials and Ministers from each government will be involved in the framework.

The framework notes that information sharing between parties to the framework is expected. Specifically, it is expected that each government will aim to provide each other with full and open access to scientific, technical and policy information (including statistics and research), and where appropriate, representations from third parties. Parties are also expected to ensure that information provided is subject to appropriate safeguards and that the confidentiality and sensitivity of such information is respected.

Roles and responsibilities: existing or new bodies

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

UK Fertilisers Regulatory Committee

The UK Fertiliser Regulatory Committee (UKFRC) has been established to consider issues around the designation, definition and composition of fertilisers, the setting of standards for the marketing of fertilisers and ensuring these standards are upheld. It is expected to engage with international organisations, work to coordinate a common position across the UK and represent the agreed UK view at international fora. The Committee comprises officials from Defra, the Scottish Government, Welsh Government, and DAERA.

The UKFRC consists of policy officials and is responsible for:

- setting the policy and decision-making process for fertilisers;
- making decisions in accordance with the framework;
- meeting international obligations, and coordination, attendance and representation of the UK in international groups, as required;
- adhering to the provision of information and collaboration principles outlined in the Concordat;
- cooperation on stakeholder engagement;
- sharing information and scientific research;

- maintenance of knowledge and expertise;
- ensuring effective representation at meetings for joint decision-making, and for effective administration and provision of services.

Defra policy officials are responsible for organising the UKFRC agenda, chairing the meeting, taking and sharing minutes from the meeting, and coordinating decisions from meetings. The UKFRC is expected to meet quarterly and on an ad hoc basis when necessary.

Senior Official Programme Board

The Senior Official Programme Board (SOPB) is made up of senior officials from each government and appears to be a feature of framework governance structures for most Environment, Food and Rural affairs (EFRA-related) common frameworks. The SOPB and IMG-EFRA^{xi} sit above framework-specific governance structures for the following frameworks:

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

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

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

xi Inter-ministerial Group for Environment, Food and Rural Affairs

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

Decision-making

The UK Fertiliser Regulatory Committee (UKFRC) is also the main forum for official level discussion and decision making subject to Ministerial guidance.

The framework highlights the following areas that may require collaborative working or joint decision making:

- decisions to legislate;
- agreement on an approach; and
- jointly drafted documents.

It is expected that in areas of joint decision making, the issue should be sent to all members of the UKFRC as early as possible with a reasonable timeline for review or response. If discussion is necessary, then the issue should be considered at the quarterly UKFRC meetings, or at an ad hoc meeting if the issue is urgent.

The framework notes that the impact of changes on aspects on fertiliser policy **outwith the scope** of the framework should also be considered at UKFRC meetings to inform aspects of the policy area under consideration by UKFRC. In addition, when considering proposals for policy divergence in one or more nations, the UKFRC should consider the following:

- public health and environmental protection in the UK;
- consumer interests;
- the functioning of the internal market;
- international trade obligations; and
- other aspects related to the JMC (EN) principles.

Following discussion, and unless further discussion is necessary, a decision should be taken by all relevant parties. The framework says that decisions should be confirmed in writing (e.g. by meeting minutes or written agreement). In the case of disagreement at the UKFRC, the [dispute resolution mechanism](#) should be considered.

There are no specific senior official groups listed in framework decision making process. There are, however, senior official level groups associated with the dispute resolution process. The framework notes that policy officials consider such a senior official level group for fertiliser decisions as unnecessary. Thus, parties to the framework are expected to follow standard working practices within their respective organisations to communicate decisions made at the UKFRC.

The role of senior officials in the decision-making process was queried [in correspondence dated 15 March 2022 from the House of Lords Common Frameworks Scrutiny Committee](#):

“ We were confused by the framework’s description of the decision-making process, particularly the role of senior officials. We read in paragraph 10.6 that “There is no specific senior official group that exists for fertilisers with regard to decision making. Policy officials also consider that there is no need for a specific senior official group only for fertiliser related decisions.” However, a different arrangement appears in the diagram labelled ‘Decision making Flow Diagram’, which shows ‘Senior Officials’ are consulted if there is a disagreement at official level. Then, to add further confusion, page 15 states that “If there is agreement [by officials] that ... divergence is acceptable, then this is referred to senior officials for their agreement.” This implies that senior officials are expected to approve divergence even when officials agree it is acceptable. Could you clarify what role senior officials play in the decision-making process?”

Monitoring and enforcement

The framework notes the UK Fertilisers Regulatory Committee (UKFRC) will meet regularly to monitor the framework. The purpose of monitoring is to assess:

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

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

Review and amendment

The review and amendment mechanism (RAM) is intended to ensure that the framework is able to adapt to changing policy and governance environments. The framework indicates the process is Minister-led and intended to rely on consensus at each stage of the process.

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

The framework notes that the first review will take place 12 months after commencement of the framework.^{xii} There are two types of review, periodic and exceptional, that can take

xii The Concordat notes that the framework (including the Concordat) has been in effect since the end of the EU Exit Transition Period which ended on 31 December 2020. This would suggest that the first Periodic Review should now be

place within the framework. The process for agreeing amendments should be identical regardless of the type of review and is set out in the framework as follows.

Review stage

- Periodic review: the operation of the framework should be reviewed every three years and held in line with official or ministerial level meetings. The period of three years starts from the conclusion of a periodic review and any amendment stages that follow.
- Exceptional review: an exceptional review of the framework is triggered by a 'significant issue'.
 - A significant issue must be time sensitive and fundamentally impact the operation or the scope of the framework.
 - This kind of review may include a review of governance structures if all parties agree it is required. Otherwise, these issues are handled in the periodic review.
 - The same significant issue cannot be discussed within six months of the closing of that issue.
 - The substantial amendment stage can only be triggered through unanimous agreement by Ministers.

Amendment stage

Following the parties jointly deciding to enter the amendment stage, parties will enter into discussion around the exact nature of the amendment. This can either be led by one party to the framework or all.

If an amendment is deemed necessary during either type of review, the existing framework will remain in place until a final amendment has been agreed.

All amendments to the framework must be agreed by all parties and a new Concordat signed by all parties. If agreement cannot be reached on whether or how a framework should be amended this may become a disagreement and, as such, could be raised through the framework [dispute resolution mechanism](#).

Dispute resolution official level

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

The dispute resolution process expects that the UK Fertilisers Regulatory Committee (UKFRC) will consider the disagreement first. The framework states that the dispute resolution process is initiated when a disagreement cannot be resolved at this level or there is agreement that a common recommendation cannot be found (including an agreement to diverge). At this stage, policy officials are expected to set out the dispute in writing including detail on the grounds for escalation to policy leads.

After this, there is a three-level process for dispute resolution. Policy leads (senior officials) consider the dispute after UKFRC policy officials. It appears (from diagram 2 on page 15 of

underway.

the framework documents) that policy leads convene at a Fertiliser Liaison Group. There are two Fertiliser Liaison Groups described in the framework documents.

- **Ad hoc Group:** Disputes are referred to an ad hoc four governments Policy Directors group if the dispute pertains to a policy issue.
- **Frameworks Management Group:** Disputes are referred to this group if the issue pertains to the functioning of the framework. This group consists of senior officials from all four governments who have a role in overseeing the functioning of the framework (e.g. the review and amendment mechanism).

At the policy lead level and within the relevant Fertiliser Liaison Group, it is expected disputes will be resolved through discussion to determine the source of the disagreement, establish whether it is a material concern and to work through possible solutions. It is expected that most disagreements would be resolved at this point.

If there is no resolution of the issue at the policy lead level. Senior officials may also decide that the Senior Officials Programme Board (SOPB) is required to take a view as to whether the dispute should be escalated to the Inter-Ministerial Group for Environment Food and Rural Affairs (IMG-EFRA) or another relevant Ministerial forum.

The role of the groups involved in the Dispute Resolution process has been queried by the [House of Lords Common Frameworks Scrutiny Committee on 15 March 2022](#):

“ We were also confused by the framework’s description of the dispute resolution process. According to the text outline of the dispute resolution process on page 15, and the diagram on page 20, the first stage of the process is said to be the ‘Fertiliser Liaison Group’. However, no information about this group is given in the framework, and elsewhere it is implied the UKFRC are really the first stage of the process. Could you clarify who the Fertiliser Liaison Group are? Additionally, while the text outline of the dispute resolution process on page 15 and the diagram on page 20 state the Fertiliser Liaison Group are ‘level one’ in the dispute resolution process, this is not reflected in the ‘Levels explained’ text on page 20. This text outlines that a dispute is discussed wither by the ‘four governments Directors group’ or the ‘fertiliser Frameworks management group’. Could you clarify how the dispute resolution process operates?”

Ministerial level

The framework expects that when disputes are resolved at the official level (UKFRC and policy leads) or the senior official level (including SOPB level), Ministers will consider advice put to them and agree or disagree to the implementation of the approach.

If Ministers are unable to agree to the recommended approaches, the issue would return to officials and then senior officials where they are expected to provide assistance to Ministers in seeking resolution as requested.

The framework also notes that it will be necessary to discuss the interdependencies of the dispute with other frameworks, and matters such as internal market considerations and international trade implications.

In the event of no agreement between parties at Ministerial level, the matter will be escalated to [inter-governmental structures for dispute resolution at Ministerial level](#) as a last resort.

Dispute resolution Ministerial level

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

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

What will intergovernmental relations look like?

Proposed outline of new intergovernmental relations structure

Top tier:

The Council

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

Middle tier:

Standing committees		
The Interministerial Standing Committee (IMSC)	The Finance Interministerial Standing Committee (F:ISC)	Additional interministerial committees
Ministers responsible for IGR consider issues that cut across different policy areas, and facilitate collaborative working between groups in the lowest tier.	Will comprise Finance Ministers and consider finance and funding matters.	These committees might be formed temporarily to consider issues that would otherwise be in the remit of IMSC, but which require special consideration.

Lowest tier:

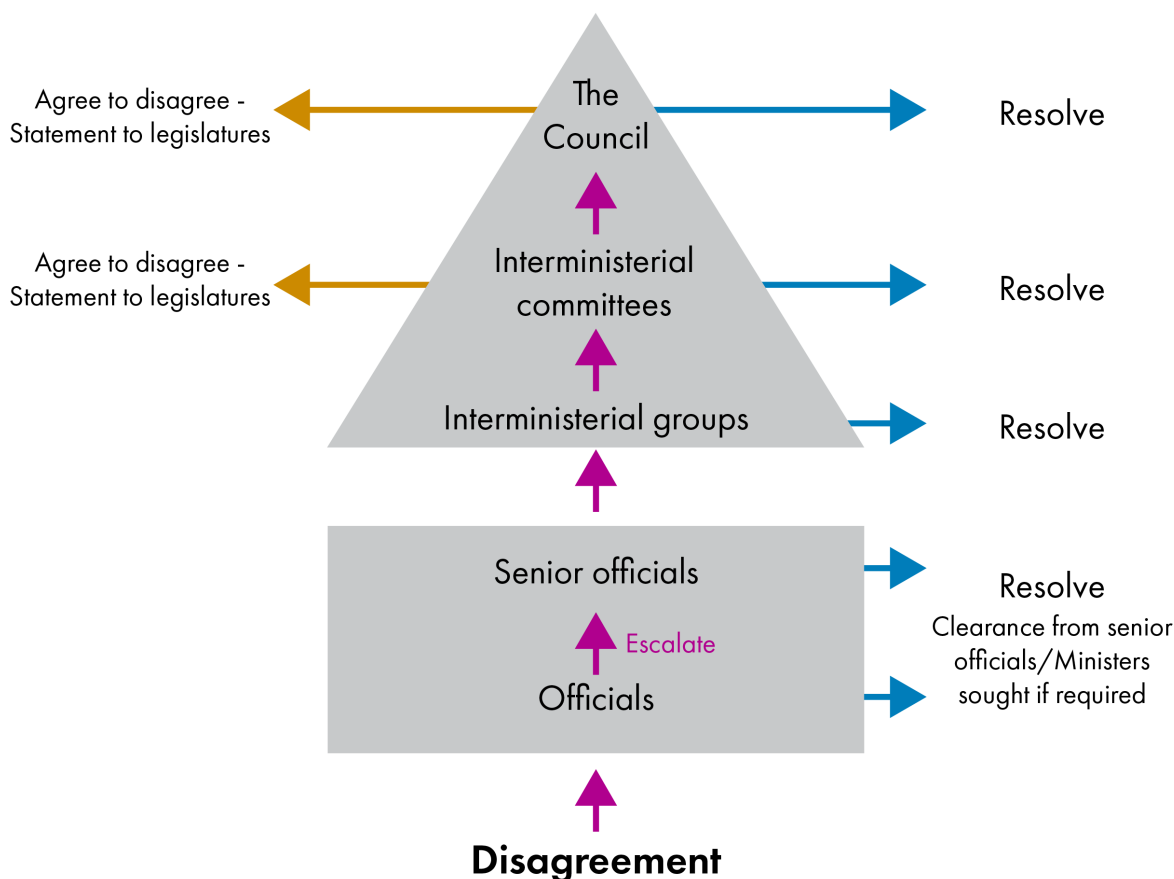
A number of interministerial groups (IMG) will be formed to discuss specific policy areas, such as on transport, Net Zero, and the Trade and Cooperation Agreement with the EU.

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

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

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

Dispute Resolution at official and Ministerial levels



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

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

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

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

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

Implementation

The framework was provisionally confirmed and published on 3 February 2022. UK legislatures now have the opportunity to scrutinise the framework and raise any concerns with their respective government.

If scrutiny and any subsequent reappraisal of the framework leads to significant changes, the provisional framework may need to undergo further collective agreement before final confirmation and implementation.

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