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SPICe Briefing

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Air Quality Framework

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This briefing discusses the Air Quality Framework. The Air Quality Framework sets out how the UK and devolved governments propose to work together on policies that aim to reduce harmful emissions and concentrations of air pollutants that can damage human health and the environment. It also provides background information on the common frameworks programme.

Common
Framework

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Summary

This briefing provides detailed information on the Air Quality Framework framework. The Air Quality Framework sets out how the UK and devolved governments propose to work together on policies that aim to reduce harmful emissions and concentrations of air pollutants that can damage human health and the environment. The Net Zero, Energy and Transport Committee will lead on scrutiny of this framework.

Background information on, for example, what common frameworks are and how they have been developed is 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

Phase one



Brings together the UK Government and devolved administrations to engage in initial discussions on how the common framework should proceed.

Phase two



Focussed on detailed policy development.

Phase three



Period of review, consultation and further policy development.

Phase four



Framework is agreed and implemented. Scottish Parliament committees are involved in scrutiny.

Phase five



Post-implementation arrangements.

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 [House of Lords Common Frameworks Scrutiny Committee](#) considered a [summary of the framework during May 2021](#). The Committee requested clarifications about some of the working practices and interactions between the framework and the Protocol on Ireland/Northern Ireland, the UK Internal Market Act 2020, and the EU-UK Trade and Cooperation Agreement. The Committee indicated in 2021 that it expected to undertake further scrutiny.

The framework was also considered by the Senedd Cymru's Climate Change, Environment, and Infrastructure Committee. [In its report](#), the Committee made 16 recommendations to the Welsh Government. These include requests for:

- Information on how the framework will impact on the Welsh Government's planned Clean Air (Wales) Bill;
- Clarification regarding the scope of the framework;
- Annual reports on the operation of the framework;
- Improved provisions for parliamentary engagement; and
- Information and further commitments on stakeholder engagement.

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*".ⁱⁱⁱ

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.

Air Quality Framework

The Air Quality 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 Net Zero, Energy and Transport 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 framework is about air quality policy - that is policies which are intended to reduce harmful emissions and concentrations of air pollutants. This includes reporting, compliance with national and international targets, international air quality, monitoring and modelling, and product standards.

The policy area in scope of the framework interacts with policy areas in the scope of other frameworks, in particular the framework on [Integrated Pollution and Control - The Developing and Setting of Best Available Techniques \(BAT\)](#).

Scope

The policy area in scope of the framework was previously governed by EU law, which comprised EU regulations and directives. With the requirement to comply with EU law now at an end, most of this legislation was converted into domestic law as retained EU law.^{iv} [The framework documents list relevant pieces of EU law](#) that set the scope of the framework:

- The Ambient Air Quality Directive (2008/50/EC) and Fourth Daughter Directive (2004/107/EC)
- National Emission Ceilings Directive (2016/2284/EC)
- The Industrial Emissions Directive (2010/75/EU) (including linkages to Commission Implementing Decision EU 2018/1135)
- The Medium Combustion Plants Directive (2015/2193)
- Regulation (EC) No166/2006 concerning the establishment of an EU Pollutant Release and Transfer Register and amending Council Directives 91/689/EEC and 96/61/EC
- The Sulphur Content in Certain Liquid Fuels Directive (Directive 2016/802)
- The Control of Volatile Organic Component emissions resulting from the storage of petrol and its distribution from terminals to service stations (Directive 94/63/EC)

^{iv} You can read more about why and how this happened in a [SPICe briefing that answers frequently asked questions](#) about the new constitutional arrangements.

- The Directive on Stage II petrol vapour recovery during refuelling of motor vehicles at service stations (2009/126/EC)

A number of [EU Exit Statutory Instruments \(SIs\) made under the EU Withdrawal Act \(2018\)](#), are listed. [These SIs made changes to retained EU law](#) to ensure that it worked effectively in the domestic UK context.

- AQ 01: The Air Quality (Miscellaneous Amendment and Revocation of Retained Direct EU Legislation) (EU Exit) Regulations 2018
- AQ02: The Air Quality (Amendment of Domestic Regulations) (EU Exit) Regulations 2019
- X/01: The Environmental Permitting (England and Wales) (Amendment) (EU Exit) Regulations 2018
- The Environment (Amendment etc.) (EU Exit) Regulations 2019
- TF01: The Environment and Wildlife (Legislative Functions) (EU Exit) Regulations 2019
- TF02- The Environment (Legislative Functions from Directives) (EU Exit) Regulations 2019
- The Environment (Miscellaneous Amendments) (EU Exit) Regulations 2020 (ENV/23)
- The Air Quality (Amendment) (Northern Ireland Protocol) (EU Exit) (No. 2) Regulations 2020
- The Air Quality (Legislative Functions) (Amendment) Regulations 2021 (ENV/27)

However, the Concordat that makes up part of the framework states that:

“ The Parties agree that the scope of this Concordat may not be limited to those regulations covered at the time of inception. The scope of the Concordat can be extended if all parties consent.”

[The Concordat also notes](#) that the parties agree to use the framework forums for more general discussions, including on returning powers that are either devolved or reserved. The framework documents do not further specify which such powers the parties anticipate discussing using framework mechanism. Nevertheless, this would appear to mean that the framework will be used, at least informally, for matters outside the scope of retained EU law and therefore matters which were not previously governed by the EU.

[The documents also state](#) that the mechanisms contained in this framework will be used as engagement mechanisms for the Secretary of State, when they are legally required to obtain consent from Ministers of the Scottish Government, Welsh Government, and the Northern Ireland Executive to make regulations. The Concordat gives some examples of specific regulations of this kind, but it is unclear whether the mechanism may be used more widely for other legislation.

UK-EU relationship

The policy area in scope of the framework intersects with the EU-UK [Trade and](#)

[Cooperation Agreement \(2020\)](#).^v As a result, these areas may be considered by the TCA Specialised Committees or the Partnership Council. [The UK government commits](#) to facilitating the attendance of representatives from the devolved governments where topics concerning areas of devolved competence are discussed.

It should be noted that some sections of the framework documents that concern the UK-EU relationship are outdated and do not reflect current arrangements. For instance, [the section on legal implications of the framework](#) speaks about the end of the transition period as being in the future and unfinished negotiations between the UK and EU, although these concluded in 2020.

Northern Ireland

As a result of the Protocol on Ireland/Northern Ireland (the Protocol), Northern Ireland will remain aligned with the EU on air quality rules as set out in [Annex 2](#) and [Annex 4 of the framework documents](#).^{vi}

The framework documents affirm that the provisions in Article 18 of the Protocol on democratic consent will be respected and state that the governance structures and decision-making, dispute resolution and review processes set out in the framework are intended to help manage cases in which rules in Northern Ireland change in alignment with the EU, or where GB-only proposals are made.

International Agreements

A number of international obligations to which the UK is subject intersect with policy in the scope of the framework, and as such, policy in devolved areas. The international obligations include:

- UNECE Convention on Long-range Transboundary Air Pollution (CLRTAP) and its protocols
- UNECE PRTR protocol (under Aarhus Convention)
- UNECE Convention on Access to Information, Public Participation in Decisionmaking and Access to Justice in Environmental Matters ('the Aarhus Convention')

Compliance with these international obligations is the responsibility of the UK Government, but implementing air quality obligations is the responsibility of the devolved governments. [The framework documents state](#) that because of this, all parties to the framework will be fully involved in the formulation of relevant UK policy and will work collaboratively with the intention of agreeing a UK position.

^v Read more about the [Trade and Cooperation Agreement in our SPICe blog](#).

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

Definitions

The framework documents define a number of names and key terms, including:

- 'UNECE' refers to the [United Nations Economic Commission for Europe](#), which is one of the five regional commissions under the jurisdiction of the United Nations Economic and Social Council.
- 'OPRED' refers to the [Offshore Petroleum Regulator for Environment & Decommissioning](#).
- 'SEPA' refers to the [Scottish Environment Protection Agency](#), Scotland's principal environmental regulator.
- 'NRW' refers to [Natural Resources Wales](#), which is a Welsh Government sponsored body.
- 'EA' refers to the [Environment Agency](#), which is a non-departmental public body, funded by the UK Department for Environment, Food & Rural Affairs.

Summary of proposed approach

The framework documents state that a framework on air quality is needed in order to comply with two of the [JMC \(EN\) frameworks principles](#):

- ensuring compliance with international obligations, and
- enabling the management of common resources

These principles are, however, quite broad which makes it difficult to know where divergence would be compatible/incompatible with the principles. The framework documents also do not clarify what is meant by common resources.

They further express consensus between the parties that a framework is necessary to:

“ "control trans-boundary air pollution, ensure future regulatory coherence and enable the functioning of the UK internal market". ”

Stakeholder engagement

The framework documents do not list any stakeholder engagement that was conducted in its development. The Concordat includes the following [section on stakeholder engagement, albeit nothing specific about parliamentary engagement](#):

“ The Parties agree to deliver timely and consistent messages to stakeholders by utilising the most appropriate communications tools and tailored to the appropriate audience. All Parties agree to share timely details of policy announcements or relevant information which may or will have an impact, including resource consequences, on other nations or their Parties.”

However, the majority of the sections on stakeholder engagement are about the need for confidentiality and restrict how information can be shared. For example:

“ The Parties agree to deliver timely and consistent messages to stakeholders of all Parties by utilising current methods of stakeholder engagement. Policy announcements affecting areas of devolved competence, which will have an impact on other administrations/ nations will not be made until the policies being announced have been formally agreed by the Parties concerned.”

UK Government, 2022⁴ p.20

In comparison to other frameworks, the level of control set out on information sharing in this framework is significant. Where there is no legal duty to disclose information, parties commit to only disclosing information if the party that disclosed it agrees in writing. Even where there is a legal duty to disclose, parties commit to:

“ advise the others of its intentions and consider any legal argument by the one or more other Parties challenging the duty to disclose all or part of the information under consideration.”

p.33

Detailed overview of proposed framework: legislation

The framework documents state that no primary legislation is required to implement the framework.

Detailed overview of proposed framework: non-legislative arrangements

The framework documents include a Concordat which sets out shared principles and future ways of working, such as [decision-making](#), [role and responsibilities](#), [monitoring](#), [reviewing](#), [dispute resolution](#), and [implementation](#) as set out in the remainder of this briefing.

Air Quality Framework in practice

Decision-making

The framework documents list several types of decisions that can be made through framework processes:

- decisions about air quality policy;
- resolution of issues or referring them through the dispute resolution process;
- reviewing and amending the framework;

Roles and Responsibilities: parties to the framework

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

Officials are expected to work together day-to-day and provide advice to Ministers. They will meet via the [Common Framework Working Group \(CFWG\)](#). Senior officials, specifically Deputy Directors and Directors, will engage on issues where strategic input is required, or where operational decisions need to be taken that don't meet the threshold for Ministerial input through the [Air Quality Governance Group \(UKAQG\)](#). Ministers will engage with issues by receiving advice from their officials or if a dispute arises that requires Ministerial input as described in the [dispute resolution process](#).

It should be noted that paragraphs on the roles and responsibilities of parties to the framework, for instance on Ministers and Senior Ministers, appear twice on [p.19](#) and [p.22](#) of the framework documents.

In addition to the two official-level groups, the framework documents also describe a wider governance structure. This structure is the same for this framework and the [BAT framework](#), which is also overseen by the UK Air Quality Governance Group (UKAQGG).

1. Portfolio Ministers and the Inter-Ministerial Group
2. Senior Officials Programme Board
3. UKAQGG will serve both:
 - a. Air Quality (AQ) Common Framework, with the following groups:
 - i. Common Framework Working Group (CFWG)
 - ii. AQ Policy Sub-Groups
 - b. BAT Common Framework, with the following groups:
 - i. Standards Council

ii. BAT Policy Sub-groups

The roles and responsibilities of the CFWG and UKAQGG are described in more detail in the section on [roles and responsibilities of new and existing bodies](#).

The framework also includes specific commitment with respect to information-sharing and reporting.

Sharing Information

The parties commit to sharing information, specifically scientific, technical and policy information (including statistics and research), and where appropriate, representations from third parties. The framework documents also note that parties have a collective responsibility to deliver official statistics and respond to requests from Ministers.

Reporting

The parties have a number of reporting obligations including Ambient Air Quality Reporting, National Atmospheric Emissions Inventories Reporting, National Emission Ceilings Reporting, and Industrial reporting. They agree to cooperate on the following areas in preparation of UK reports, including through policy subgroups which report to the UKAQGG.

- UK Pollutant Release and Transfer Register
- UK registry on industrial sites
- Industrial Emissions Directive Annex II reporting, waste incineration and waste co-incineration plants
- Sulphur content of liquid fuels (SCLF) reporting
- B[a]P and Nickel measures reporting
- Volatile Organic Compounds in Paints, Varnishes and Vehicle Refinishing Products reporting
- Medium Combustion Plant reporting.

Roles and responsibilities: existing or new bodies

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

The framework documents describe two principal decision-making forums, one for official level and one for senior official level discussions. The decision-making forum at the official level will be the **Common Framework Working Group (CFWG)**. This group will be involved in developing an evidence base on the basis of which decisions can be taken. This can involve commissioning evidence from analysts or legal teams, seeking advice

from external bodies, or engagement with industry. Discussions within this group are informed by various **Air Quality policy sub-groups**. These subgroups can provide advice to working the CFWG, the UKAQGG, or Ministers on whether a divergent approach should be taken. The framework documents state that different groups may be formed depending on need, but to date the following groups have been agreed:

- The Transboundary sub-group is expected to work on ensuring compliance with legal obligations and "strengthen capacity among official scientists and analysts to deliver first class scientific research and evidence for policy making."
- The Air Quality Inventory steering group gathers expert evidence on inventory science, compilation and validation methods. It is also intended to strengthen the governance process behind prioritising, approving and implementing changes and improvements to the Air Quality Pollutant Inventory elements of the UK National Atmospheric Emissions Inventory .
- The Ambient Air Quality sub-group provides advice on how to comply with the transposed Ambient Air Quality Directive.
- The Industrial reporting sub-group provides advice on industrial emissions reporting.

At the senior official level, higher-level decisions will be taken through the **Air Quality Governance Group (UKAQGG)**, which oversees this framework and the [BAT framework](#).

Agreements reached at either levels, will be put in writing and then provided as a recommendation to Ministers, who convene via the **EFRA Interministerial Group (IMG)**. If they sign off the decision, the decision is implemented and otherwise dealt with through the [dispute resolution process](#).

In addition to these groups, [regulators](#) are expected to take "[a large volume of operational decisions](#)" and "[determine what joint working arrangements are appropriate and shall be involved at the sub-group level of decision making](#)".

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 sit above framework-specific governance structures for the following frameworks:

- Agricultural support
- Animal health and welfare
- Air Quality
- Plant varieties and seeds
- Integrated pollution prevention and control: developing and setting of Best Available Techniques (BAT)
- Fertilisers

- Plant health
- Organics
- Chemicals and pesticides
- Fisheries management and support
- Ozone Depleting Substances (ODS) and Fluorinated Greenhouse Gases (F-gases)

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

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

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

Monitoring and enforcement

The parties commit to meeting regularly through the [Common Framework Working Group](#) to monitor the operation of the framework. This includes evaluating:

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

The framework documents do not specify any specific intervals in which monitoring is to take place.

Review and amendment

The framework documents distinguish between two kinds of reviews: periodic and exceptional ones.

Periodic reviews of the framework will take place every three years from publication date, i.e. the first periodic review is due to take place on 3 February 2025. Exceptional review can take place when significant issues arise, which must be ["time sensitive and](#)

fundamentally impact the operation and/or scope of the framework". Input by third parties can be requested at any stage of the process.

The Concordat separately states that it will be reviewed "at six months, one year, and three years from the date of its implementation and thereafter at five-year intervals". It is unclear whether these reviews are meant to take place in addition to reviews of the framework as a whole or will be synchronised and what additional issues will be considered in the whole-framework reviews that would not already be considered in the Concordat reviews.

The review and amendment mechanism relies on consensus at every stage, which means that unless there is unanimous agreement between parties, no review or amendment decisions can be agreed. In such cases, the [dispute resolution process can be invoked](#). Amendments can only be agreed at the Ministerial level. If amendments are agreed, the parties sign a new non-legislative agreement.

The framework documents do not specify which groups will undertake reviews, or what role regulators play in the process. Further, there is no requirement for reviews to be published.

Dispute resolution official level

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

There is a general expectation that disputes will be dealt with at the lowest possible level. If an issue is identified, it can be considered by officials through the [CFWG](#) as a dispute. If the dispute isn't resolved, it can be escalated to the [UKAQGG](#) for consideration by senior officials. If the dispute cannot be resolved at this level, the [SOPB](#) consider whether it should be escalated for [Ministerial](#) consideration, or should be pushed back to receive further consideration by officials.

The dispute resolution process, at both the official and Ministerial level, does not contain any set time scales. Third-party advice can be sought in considering an issue at any level, but the framework documents state that those parties will have no active role in decision-making.

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 framework documents acknowledge the publication of this review and state [that it will be reflected in](#)

the framework once confirmed by all governments. The joint review created a new three-tiered system for intergovernmental discussions, doing away with the old Joint Ministerial Committee structure.

Dispute resolution Ministerial level

What will intergovernmental relations look like?

Proposed outline of new intergovernmental relations structure

Top tier:

The Council

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

Middle tier:

Standing committees

The Interministerial Standing Committee (IMSC)

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

The Finance Interministerial Standing Committee (F:ISC)

Will comprise Finance Ministers and consider finance and funding matters.

Additional interministerial committees

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

Lowest tier:

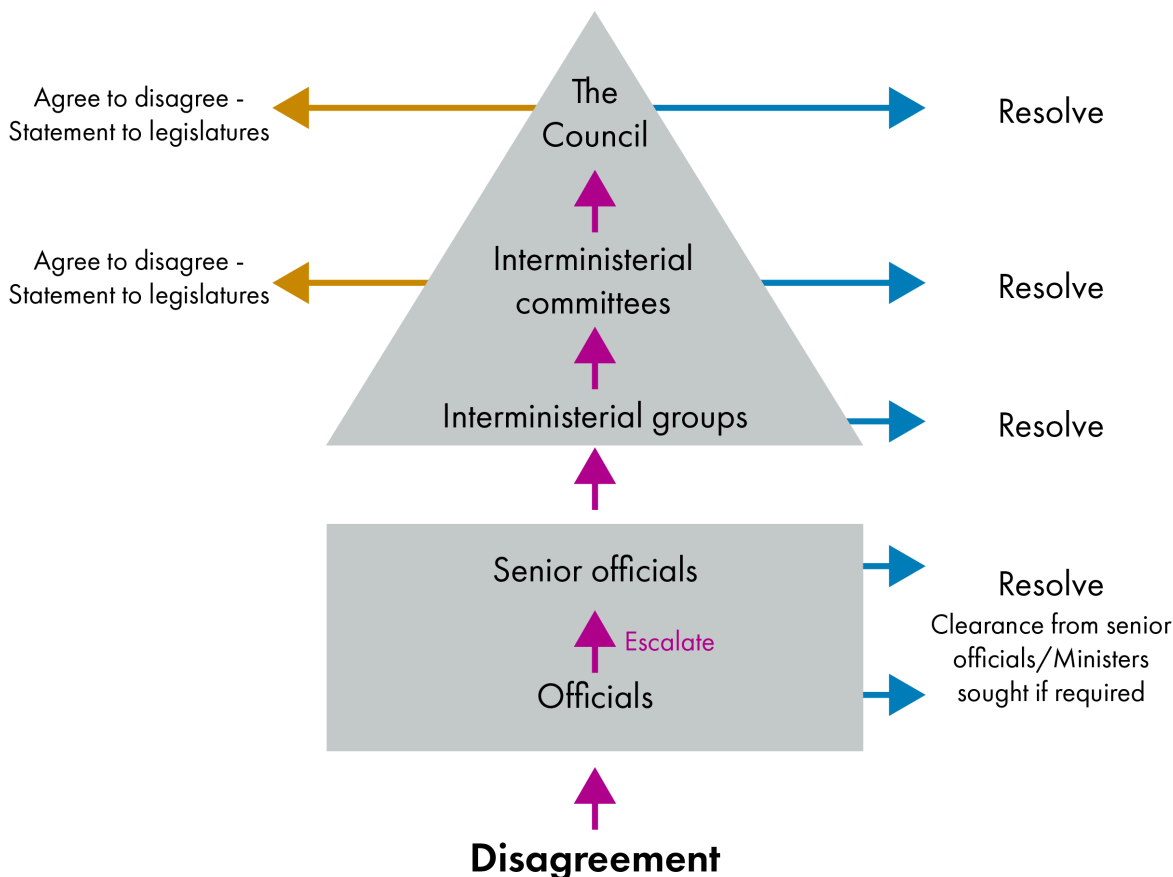
A number of interministerial groups (IMG) will be formed to discuss specific policy areas, such as on transport, Net Zero, and the Trade and Cooperation Agreement with the EU.

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

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

vii 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. In the case of this framework, disputes will be considered by the EFRA IMG. If its 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 documents do not contain any information on what specific steps are required for the implementation of the framework.

However, the parties commit to agreeing work programmes and business plans with one another to manage framework requirements, including setting deadlines, and to review these regularly.

The framework documents state that the parties commit to:

“ "share information and priorities for evidence needs and available budgets. The scope of sharing evidence budgets between administrations will be agreed through an appropriate governance group.””

UK Government, 2022⁴ p.18

Framework Analysis

Current policy position

The Scottish Government published [Cleaner Air For Scotland 2 Towards a Better Place for Everyone](#) in July 2021. It is the second national air quality strategy, following a consultation in 2020 and [an independent review of the Cleaner Air for Scotland strategy was published in 2019](#).

The review found that the previous strategy appeared to have had a positive impact but had an overly complex structure, was not wholly implemented and required effort to tackle governance. It also set out that more effective use of Air Quality Management Areas and Low Emission Zones (LEZs) should lead to improvements in air quality. General recommendations included taking a precautionary approach to public health, obtaining better data, conducting behavioural research, and improving governance, accountability and delivery for air quality.

The new Clean Air Strategy sets out policy commitments across 10 themes, which include:

- **Health – A Precautionary Approach** - stating that evidence justifies adopting a precautionary public health approach to air pollution reduction, and efforts should be made to go beyond legal compliance.
- **Integrated Policy** - Highlighting linkages between air quality policy and strategies around placemaking, transport and climate change . It also emphasises the key roles played by local government, largely responsible for implementing the Local Air Quality Management System as well as planning, transport delivery, public health and regulatory roles.
- **Placemaking** - stating that the fourth National Planning Framework will "transform how Scotland's planning system shapes our places and society". The [Scottish Government committed in Session 5 that NPF4](#) "will be redesigned to support the population's health and wellbeing and address longstanding health inequalities", and stated "We know that planning and place can compound problems such as poor diet and obesity, noise or air pollution, or it can be part of a solution".
- **Industrial Emissions Regulation** - stating a commitment to maintain or exceed EU standards.
- **Transport** - With objectives to increase active travel, provide better public transport and establish [Low Emission Zones \(LEZs\)](#). The National Transport Strategy published in 2020, is strongly related to the Clean Air Strategy, as is the Climate Change Plan update, which includes a commitment to reduce motor vehicle kilometres by 20% by 2030. LEZs enable local authorities to restrict the entry of certain types of vehicle into specified areas. The pandemic caused a delay to the roll out of LEZs. In 2017, the Scottish Government committed to the introduction of LEZs into Glasgow, Edinburgh, Aberdeen and Dundee by 2020. Glasgow's LEZ came in to force in 2019 but LEZs in Edinburgh, Aberdeen and Dundee, due to start in 2020, were put on hold. The Scottish Government has committed that LEZs will now be established in these cities by May 2022.

Environmental Standards Scotland investigation

Environmental Standards Scotland (ESS) is an independent environmental governance body established on 1 October, 2021 under the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021. ESS occupies the environmental governance role, formerly played by European institutions, to ensure that public authorities, including Scottish Government, comply with environmental law in the exercise of their regulatory functions, and to promote the effectiveness of environmental law and its implementation.

In November 2021, ESS launched an investigation into air quality in Scotland, citing a [European Court of Justice judgement](#) in March 2021 that, across the UK, statutory air quality limit levels in respect of nitrogen dioxide, a key component of air quality issues, had been 'systematically and persistently' exceeded for at least seven years (2010-2017). At the time of writing the investigation is ongoing.

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