



SPICe Briefing

Pàipear-ullachaidh SPICe

Integrated pollution prevention and control: developing and setting of Best Available Techniques (BAT) Framework

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This briefing discusses the Integrated pollution prevention and control: developing and setting of Best Available Techniques (BAT) Framework. The BAT Framework sets out how the UK Government and devolved governments propose to work together on the regulation, control and prevention of pollution from industry through BAT processes. It also provides background information on the common frameworks programme.



**Common
Framework**

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Summary

This briefing provides detailed information on the Integrated pollution prevention and control: developing and setting of Best Available Techniques (BAT) Framework. The BAT Framework sets out how the UK government and devolved governments propose to work together on the regulation, control and prevention of pollution from industry through BAT processes. The Net Zero, Energy and Transport Committee will lead on scrutiny of this framework.

The framework is about the regulation, control, and prevention of pollution from industry. It is primarily about a subset of industrial emission controls, namely the development and operation of the process for developing Best Available Techniques (BAT). BAT processes are required to be used by larger industrial facilities undertaking specific types of activities.

Background information on, for example, what common frameworks are and how they have been developed is provided in this paper. The policy context of the framework is also briefly covered in this briefing.

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.

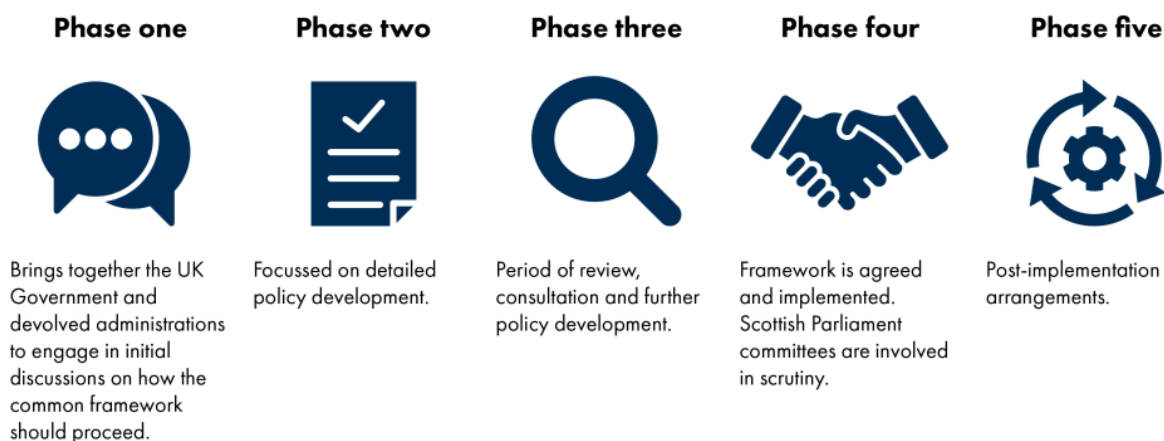
What is the process for developing frameworks ?

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 [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 but it is not clear whether this will happen.

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 \(EN\) Communiqué, 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.

BAT Framework

The BAT 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 the regulation, control, and prevention of pollution from industry, which is a devolved matter. The framework is primarily about a subset of industrial emission controls, namely the development and operation of the process for developing Best Available Techniques (BAT). BAT processes are required to be used by larger industrial facilities undertaking specific types of activities.

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 retained law that set the scope of the framework:

- **The Industrial Emissions Directive (2010/75/EU)** lays down rules to prevent or, where that is not practicable, to reduce industrial emissions into air, water and land and to prevent the generation of waste, in order to achieve a high level of environmental protection.
- **The Medium Combustion Plants Directive (2015/2193)** lays down rules to control emissions of sulphur dioxide (SO₂), nitrogen oxides (NO_x) and dust into the air from medium combustion plants, as well as to monitor emissions of carbon monoxide (CO). The aim is to reduce emissions to air and the potential risks to human health and the environment from such emissions.

The implementation of these directives is an area of devolved competence. The relevant regulations being the Pollution Prevention and Control (Industrial Emissions) Regulations (Northern Ireland) 2013, the Environmental Permitting (England and Wales) Regulations 2016 (and successive amendments), and the Pollution Prevention and Control (Scotland) Regulations 2012. These regulations also contain some provisions on industrial emissions standards which are of UK, not EU, origin.

Two EU exit SIs (set out in annex B of the framework) are also relevant to the framework. EU exit SIs addressed [deficiencies in retained EU law](#) to ensure that it would function effectively as domestic law in the UK. Devolved Governments are able to consent to the

^{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.

UK Secretary of State exercising the functions set out in these SIs on their behalf. [The framework documents 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 such regulations.

The policy area covered by the BAT framework is closely related to that covered by the [Air Quality Framework](#), and there are likely to be further interdependencies between it and the policy area that will be covered by the Emissions Trading Scheme Framework. The close relationship between the BAT and Air Quality frameworks is reflected in their [governance arrangements](#).

Non-BAT emission controls

Though the policy area in scope of the framework is the development of BAT in particular, the framework documents indicate that the framework could be used more widely.

For emission controls outside BAT, the framework documents say that the framework "offers the opportunity for collaborative discussions for potential joint working on emission controls." and "therefore extends informally to include the facilitation of joint working in relation to this interface as part of the broader ambition to reduce emissions from industry."

International Obligations

Although emissions control is devolved, the UK as a whole is subject to international emissions control agreements. Compliance with such obligations was one of the reasons cited the by JMC (EN) for establishing common frameworks in some areas.

Relevant international obligations are the 1979 UNECE Convention on Longrange Transboundary Air Pollution (CLRTAP) and in partiuclar:

- 1998 Protocol on Persistent Organic Pollutants (POPs) and its 2009 amended version;
- 1998 Protocol on Heavy Metals and its 2012 amended version;
- 1999 Protocol to Abate Acidification, Eutrophication and Ground-level Ozone and its 2012 amended version (Gothenburg Protocol).

Northern Ireland Protocol

As a result of the Protocol on Ireland/Northern Ireland Protocol, specifically [Annex 4](#), Northern Ireland will remain aligned with the EU on air quality rules.^v

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

^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.

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. This includes the right of the Northern Ireland Executive Ministers (or any other party to the framework i.e. any of the UK, Scottish or Welsh governments) to trigger a review of the framework if they feel that concerns about GB-only proposals have not been sufficiently addressed.

UK-EU Trade and Cooperation Agreement

The policy area in scope of the framework intersects with the [Trade and Cooperation Agreement \(2020\)](#) (TCA) between the EU and UK.^{vi} Specifically, article 391 of the TCA which sets out level playing field provisions relating to environmental protection which include industrial emissions standards.

As a result, these areas may be considered by the TCA Specialised Committees or the Partnership Council. [The UK government has stated its commitment](#) to facilitating the attendance of representatives from the devolved governments where topics concerning areas of devolved competence are discussed.

Definitions

The framework documents define a range of key terms:

- 'Best available techniques (BAT)' refers to the most effective and advanced stage in the development of activities and their methods of operation which indicates the practical suitability of particular techniques for providing the basis for emission limit values and other permit conditions designed to prevent and, where that is not practicable, to reduce emissions and the impact on the environment as a whole.
- 'BAT conclusions' refers to a document including but not limited to the conclusions on best available techniques, their description, information to assess their applicability, the emission levels associated with the best available techniques, associated monitoring, associated consumption levels and, where appropriate, relevant site remediation measures.
- 'Available techniques' refers to those techniques developed on a scale which allows implementation in the relevant industrial sector, under economically and technically viable conditions, taking into consideration the costs and advantages, whether or not the techniques are used or produced inside the United Kingdom, as long as they are reasonably accessible to the operator.
- 'Techniques' refers to both the technology used and the way the installation is designed, built, maintained, operated and decommissioned.
- 'Best' means most effective in achieving a high general level of protection of the environment as a whole.

^{vi} See the [House of Commons library briefing on the Level Playing Field provisions within the UK-EU Trade and Cooperation Agreement](#).

- 'Industrial Emissions Standards' refers to the regulatory framework that requires industry to improve the burden of their pollution to the environment, which includes BAT and non-BAT activities.
- 'Part A Activities' deal with large industrial activities, which fall under the scope of the Industrial Emissions Directive (Annex 1) and are required to use Best Available Techniques to reduce emissions to air, water and land.
- 'Part B Activities' deal with emissions to air only (as opposed to air, water and land)) are generally smaller industrial activities below the threshold of the Industrial Emissions Directive (Annex 1).

Summary of proposed approach

The framework documents state that a common framework was required for the policy area to ensure compliance with international obligations, and to enable a UK wide approach to be taken to the development of BAT in line with [JMC \(EN\) principles](#).

For industrial emissions controls outside the BAT system, the framework "sets out discursive mechanisms for considering wider policy to meet [the governments'] respective strategic aims through potential joint working to maximise environmental benefits." This means that the framework will be used "informally" to facilitate joint working in non-BAT areas.

The Concordat further [states](#):

“ Following the UK’s exit from the European Union, the Parties have committed to providing a future regime for the development of BAT within the UK. This is a devolved policy area and different governments within the UK may set different BAT Conclusions. However, whilst some aspects of BAT may be different, it is intended that a common approach to the process of development of BAT within the UK will be taken.”

In contrast to some other framework agreements, but in common with the [Fertilisers](#) and [Plant Health frameworks](#), the BAT Framework is explicit in its aim to maintain a common approach to BAT and minimise the level of divergence within the UK .

Stakeholder engagement

The framework documents mention a joint public [consultation on the future of the UK Best Available Techniques regime](#), which was launched by the UK Government and devolved governments in January 2021 and closed in April 2021. This consultation wasn't solely about the framework but included consultation on governance processes which now form part of the framework. The analysis of consultation responses [has not yet been published](#).

In addition, the framework documents also mention future stakeholder input through technical working groups and advisory board for industry stakeholders, which are described in the [section on roles and responsibilities of existing or new bodies](#). The framework documents do not reference the involvement in the future of legislatures and

they are not noted as stakeholders as is the case in other frameworks.

Detailed overview of proposed framework: legislation

This section provides information on the legislation associated with the framework. The framework does not involve any primary legislation.

The framework documents list [two Exit Statutory Instruments \(see also section on scope\)](#) that provide powers to UK Ministers to determine BAT conclusions, and for Ministers within the devolved governments to determine their own BAT conclusions in the absence of consensus:

- AQ/01 - The Air Quality (Miscellaneous Amendment and Revocation of Retained Direct EU Legislation) (EU Exit) Regulations 2018.
- ENV TF/01 - The Environment and Wildlife (Legislative Functions) (EU Exit) Regulations 2019.

Detailed overview of proposed framework: non-legislative arrangements

The framework comprises a non-legislative agreement, [a Concordat](#), which sets out operational details of how governments plan to work together in the policy area. These include [decision-making](#), [monitoring and enforcement](#), [dispute avoidance and resolution](#), and [review and amendment mechanisms](#).

BAT Framework in practice

Decision-making

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

- Policy decisions of future BAT within the UK.
- Resolution of issues, disagreements or disputes.
- Where necessary, referring issues to the overarching dispute avoidance and resolution mechanism outlined through the appropriate intergovernmental structures.
- Reviewing and amending the framework.

The framework documents articulate the guiding principle that decisions should be reached by consensus, which can include decisions to pursue joint or diverging approaches. Decision-making forums are described in the section on [roles and responsibilities of existing and new bodies](#).

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 **Standards Council** ('the Council') is anticipated to be the main forum for official level discussion. It will be attended by officials, specifically senior policy representatives, from all parties (i.e. All four governments of the UK). The purpose of the Council is to provide strategic oversight of the regime for BAT within the UK and communicate BAT decisions within the UK. The Council will convene at least once a month or more frequently if required.

The **Regulators Group** (RG) consists of representatives from each of the four UK environmental regulatory bodies and local authority regulators. Its purpose is to make recommendations on BAT to the Council. It will consider advice from **Technical Working Groups (TWG)**. TWGs will be attended by technical experts from UK Regulators and industry representatives.

The **Advisory Board** will include representatives of the parties, regulators and stakeholders. These stakeholders including stakeholders from industry, trading associations, local government, Non-Governmental Organisations, and academia. The Board will advise the Council on strategic BAT matters.

The **Small and Medium Industry sub-group** will consider non-BAT emissions standards and make recommendations on these to the Council. This group will have cross-cutting links with the Air Quality Framework.

The **UK Air Quality Governance Group (UKAQGG)** consists of senior officials. It governs both this framework and the Air Quality Framework and provides strategic oversight to the work of the Council, including through the dispute resolution process.

[Annex E](#) contains terms of reference for decision-making groups other than the Advisory Board.

Establishing a BAT regime

The Concordat includes the following provisional process for establishing a BAT regime:

1. Standards Council initiates the process, and Regulators Group provides input on the scope.
2. Implementation Team create an outline draft (O1).
3. Virtual Technical Working Groups review O1 and provide comments, which will help define the scope).
4. Draft BATC (D1) created based on feedback (Consultation).
5. Technical Working Groups formal meeting based on (D1).
6. Formal Draft (F1) created.
7. Virtual Technical Working Groups meeting(s) to approve (F1).
8. (F1) passed to Standards Council for review and start consultation.
9. UK Consultation on (F1) as part of a Statutory Instrument (SI).
10. (F1) consultation responses reviewed and UK BATC revised.
11. UK BATC SI sent to Ministers via SC for final approval.
12. UK BATC SI published.

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.”

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 [Council](#). Senior officials 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](#).

The parties also agree to share information such as scientific, technical and policy information including statistics, research, and representations from third parties. The parties agree not to disclose unpublished information without the written permission of the party that provided the information. It is unclear whether this applies only to information disclosed by one of the parties to the framework or also to information provided by third parties through one of the framework groups.

Monitoring and enforcement

The UK Air Quality Governance Group (UKAQGG) will monitor the framework with regards to:

- 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 [JMC\(EN\) principles](#); and
- whether divergence has taken place that impacts on the policy area covered by the framework.

Review and amendment

This monitoring is intended to feed into reviews by the Council. The framework documents distinguish between two kinds of reviews: periodic and exceptional.

Periodic reviews of the framework will take place every three years from the framework's publication date, i.e. for the first time 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](#)".

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.

Dispute resolution official level

This section considers the dispute resolution process set out within the framework. The framework documents state that any issues between parties will be recorded by a secretariat, hosted by Defra, so that they can feed into the [review process](#). The parties agree to act in accordance with principles of good communication and cooperation as well as to resolve disagreements at the lowest appropriate level. Disagreements are only considered as 'disputes' if they are judged to be significant. The framework documents [include the following clarification](#):

“ A disagreement could be in relation to areas covered by the JMC(EN) principles, but may also be raised for wider issues, for example on the working arrangements set out in this framework. This mechanism will be utilised only when genuine agreement cannot be reached and divergence would impact negatively on the ability to meet the JMC(EN) principles. In those areas where a common approach is not needed in order to meet these principles an "agreement to disagree" could be considered an acceptable resolution.”

Disputes that arise at the Technical Working Group level can be escalated to the Council.

The framework documents mention that an 'Implementation Project Team' first attempts to resolve the issue. The group is mentioned at several points in the framework documents, but what exactly the group is and its membership is unclear. For disputes arising at the Regulators Group, these can also be escalated to the Council, again, via the Implementation Project Team. Disputes that arise at or are otherwise dealt with by the Council can be escalated to the UKAQGG.

If disputes are escalated to the UKAQGG, parties to the disagreement set out their differing views, technical background and proposed solutions. If the UKAQGG can agree a resolution, this is communicated to the Council. If not, the issue can be escalated to the Senior Official Programme Board (SOPB), which will advise further on whether the issue needs to be escalated to Ministers, thus performing a filtering role. If issues can be resolved at the official level, they can be signed off by senior officials and Ministerial clearance is obtained if required.

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:

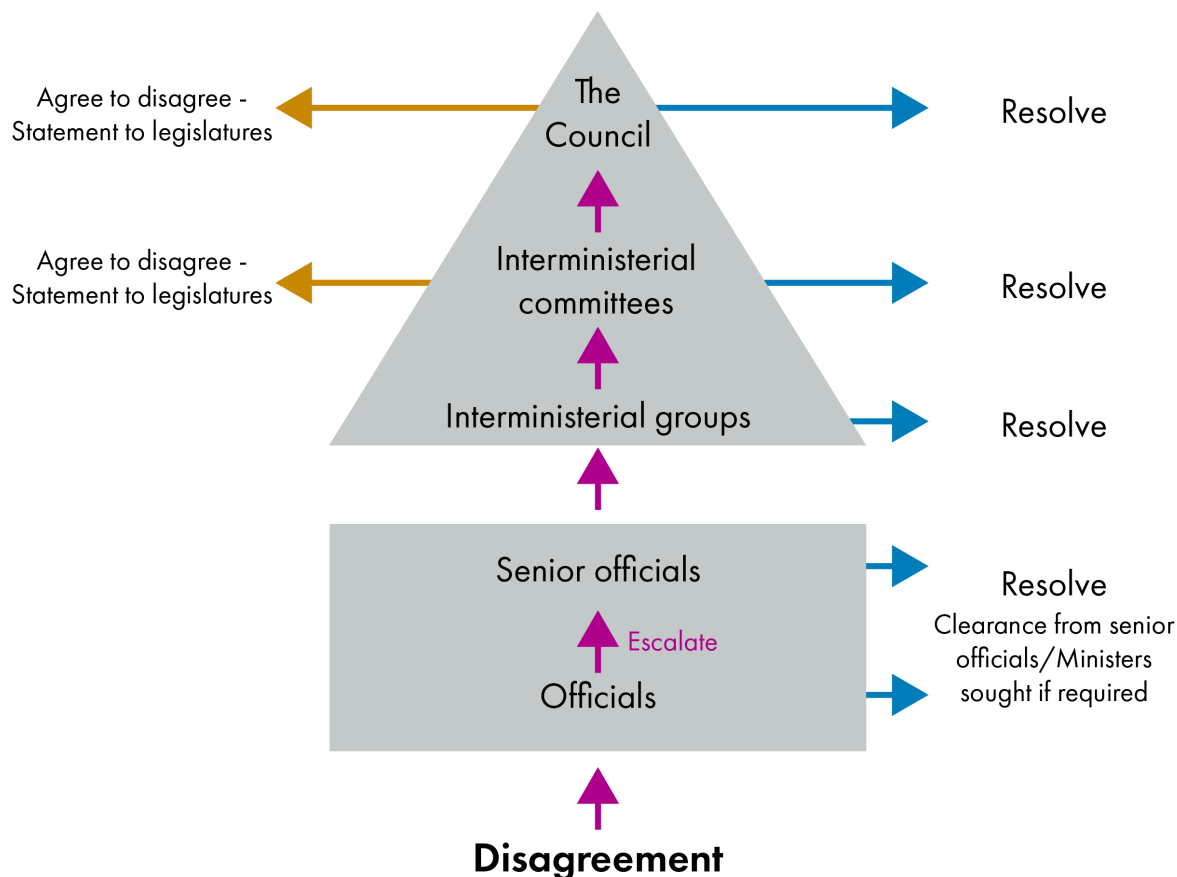
A number of interministerial groups (IMG) will be formed to discuss specific policy areas, such as on transport, Net Zero, and the Trade and Cooperation Agreement with the EU.

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, the relevant interministerial group is the IMG EFRA. 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

In contrast to many other frameworks, the framework documents provide information on the implementation of the framework. They confirm that the framework has been operational on an interim basis since 1 January 2021. On the work that has been conducted so far, [the framework documents state that](#):

“ The Council and Regulator’s Groups are already in place and are currently focussed on designing the BAT regime. Standards Council have made good progress and are agreed on a wide range of policy strands that will form the future BAT regime, which will also be part of the joint response to the UK BAT Consultation. Further work may be undertaken collaboratively in the future to look at the possibility of expanding the scope of the UK BAT.”

With respect to resource implications, the parties agree to share information on needs and budgets as well as to plan, review, monitor, and report on shared budgets through the appropriate governance groups.

Framework Analysis

This section considers the current policy position and key issues.

Current policy position

The UK introduced an integrated approach to controlling pollution to air, water and land in the Environmental Protection Act 1990, as well as the concept of BAT. These approaches were subsequently adopted and applied across the EU through the Integrated Pollution Prevention and Control (IPPC) Directive and the subsequent Industrial Emissions Directive (IED), which sets challenging standards for the most polluting industries including cement, iron and steel production and large combustion plants.

The IED (which has now been transposed in UK law) aims to prevent and reduce harmful industrial emissions, while promoting the use of techniques that reduce pollutant emissions and that are energy and resource efficient. The IED was initially adopted under the Environmental Authorisations (Scotland) Regulations 2018.

Larger industrial facilities undertaking specific types of activity are required to use BAT to reduce emissions. Techniques include both the technology used and the way the installation is designed, built, maintained, operated and decommissioned.

BAT reference documents (known as BREFs) and their associated emission limits form the basis of permitting requirements for each particular sector. The [Scottish Environment Protection Agency states](#):

“ BREFs bring together users’ real-world experiences of BAT to provide reference information for regulators to use when determining permit conditions. The documents describe, in particular, applied techniques, present emissions and consumption levels, techniques considered for the determination of best available techniques as well as BAT conclusions and any emerging techniques.”

The European IPCC Bureau [provides a list of BREFs](#), and notes that:

“ The majority of BREFs cover specific agro-industrial activities; such BREFs are referred to as 'sectoral BREFs'. However, there are also a number of 'horizontal BREFs' dealing with cross-cutting issues such as energy efficiency, industrial cooling systems or emissions from storage with relevance for industrial manufacturing in general.”

Key issues

As [previously noted](#), the framework has been scrutinised by both the [House of Lords Common Frameworks Scrutiny Committee](#) and the [House of Commons' Environment, Food, and Rural Affairs Committee](#). Key concerns related to:

- The scope for permitted policy divergence, and that not enough information was available about what would trigger a dispute, creating a lack of clarity about how much divergence would be permitted.

- Stakeholders have raised concerns over transparency and engagement in the new regime, and have requested improvements on EU levels of engagement, including making schedules of meetings, agendas and minutes available.
- The BAT Framework will interact with other relevant frameworks, including Air Quality, the Protocol on Ireland/ Northern Ireland, the UK Internal Market Act 2020, and the UK-EU Trade and Cooperation Agreement - significant levels of coordination and alignment will be required between officials and ministers working in these areas, and it is not yet clear what form this will take.

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