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# Public Health Protection and Health Security framework

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This briefing discusses the Public Health Protection and Health Security framework. The Public Health Protection and Health Security framework provides a formal basis and governance structure for collaboration between all parts of the UK on health security and health protection policy. The briefing also provides background information on the common frameworks programme.



**Common  
Framework**

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# Summary

This briefing provides detailed information on the Public Health Protection and Health Security framework. The Health, Social Care and Sport committee led on the scrutiny of this framework.<sup>1</sup>

Background information on, for example, what common frameworks are and how they have been developed is also 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-legislative<sup>i</sup>) 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.

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<sup>i</sup> 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 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 ?

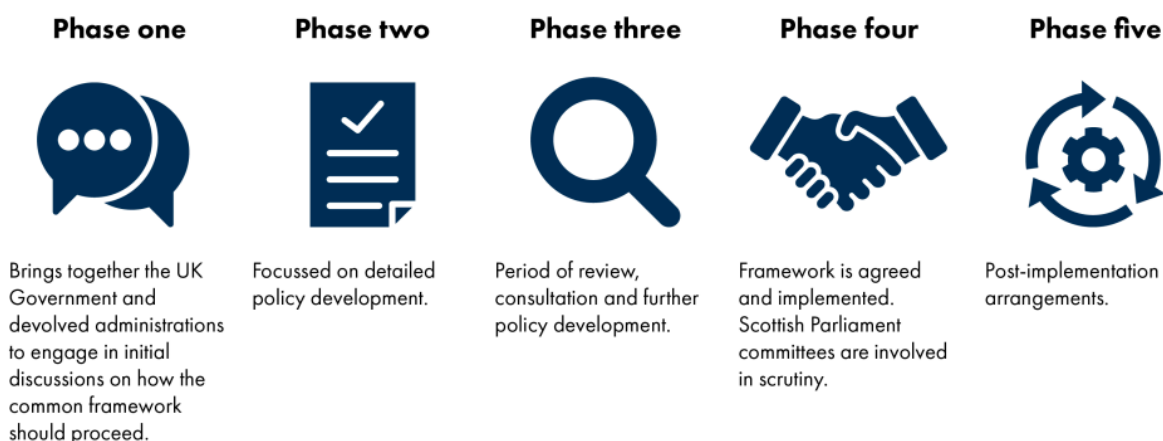
Frameworks are inter-governmental agreements between the UK Government and the devolved administrations.

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





# 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”.<sup>2</sup> The Scottish Government believes that they are about “allowing legitimate policy choices”.<sup>2</sup>
- 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 legislatures<sup>3</sup>.

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.

## House of Lords Common Frameworks Scrutiny Committee

The House of Lords Common Framework Scrutiny Committee are responsible for scrutinising and considering matters relating to all the Common Frameworks. It considered the Public Health Protection and Health Security Provisional Framework on 23 November 2021. In [correspondence to Minister of State for Health, Edward Argar MP, the committee noted its "broad concerns about ongoing parliamentary and stakeholder engagement with this framework"](#).

The committee made a specific recommendation with regard to parliamentary engagement:

“ We recommend that the framework should be updated to include a commitment to update each of the 4 UK legislatures on the ongoing functioning of this framework after the conclusion of the three-yearly reviews.”

In addition, the committee gave its views on stakeholder engagement as part of developing the framework and made a specific recommendation for including stakeholder engagement in the Review and Amendment process:

“ We welcome the commitment in the framework to continue stakeholder engagement through the framework process. However, we have heard external concerns about a lack of consultation so far. On 25 May, Dr Julie Cavanagh, Convener of the Faculty of Public Health in Scotland told the Committee that there had been “nothing resembling the level of involvement that we would prefer”. We also note that workshops were held in London, Cardiff and Belfast but not in Edinburgh and hope that Scottish audiences are adequately consulted about this framework. In our Committee’s March 2021 report, we concluded that frameworks were weakened by the lack of stakeholder consultation and recommended that future reviews of frameworks should include an open and well-publicised stakeholder consultation process that reaches beyond the small number of stakeholders previously consulted. We believe that this is necessary in this framework as it is with other frameworks. **We recommend that the first three-year review should include an open consultation process with stakeholders.** ”

# 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*".<sup>iii</sup>

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 administrations<sup>iii</sup> on an approach to "securing exemptions to the Act for policy divergence agreed through common frameworks".

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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.

**“ 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.”

Uk Government , 2021<sup>4</sup>

# Public Health Protection and Health Security

The [Public Health Protection and Health Security Framework](#) ("the framework") has reached phase four and has, as such, been received by the Scottish Parliament for scrutiny.

Scrutiny was [undertaken by the Health, Social Care and Sport 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 concerns the devolved competency of public health protection and health security.

- Public Health Protection policy aims to protect populations from health threats such as communicable diseases and environmental hazards.
- Health Security policy aims to minimise vulnerability to acute public health events that endanger the collective health of populations living across geographical regions and international boundaries.

The framework considers all hazards but focusses in particular on infectious disease and non-infectious threats which cross borders.

The framework notes that it does not impact on the UK's internal market.

## Scope

The policy area under consideration is the devolved competency of public health protection and health security. This framework is intended to implement an optimum operating model and governance arrangements between the UK Government, the devolved administrations and the public health agencies of the UK. The framework is intended to strengthen strategic and operational cooperation.

The EU law intersecting with devolved competence and relevant to this framework is listed below. It set rules on epidemiological surveillance, monitoring, early warning of and combatting serious cross-border threats to health, including preparedness and response planning related to those activities, in order to coordinate and complement national policies.

- [Decision No 1082/2013/EU of the European Parliament and of the Council of 22 October 2013](#) on serious cross-border threats to health and repealing Decision No 2119/98/EC (Decision 1082).
  - Formalised the EU Health Security Committee (HSC) as an advisory group to reinforce the coordination and sharing of best practice and information on

national preparedness activities at EU level.

- Member States consult each other within the HSC with a view to coordinating national responses to serious cross border threats to health, including events declared a public health emergency of international concern by World Health Organization in accordance with the International Health Regulations.
- [Regulation EC No. 851/2004 of the European Parliament and of the Council of 21 April 2004](#) establishing a European centre for disease prevention and control.
- [Commission Implementing Decision \(EU\) 2017/253 of 13 February 2017](#) laying down procedures for the notification of alerts as part of the early warning response system established in relation to serious cross border threats to health and for the information exchange, consultation and coordination of responses to such threats pursuant to Decision No 1082/2013.
- [Commission Implementing Decision \(EU\) 2018/945 of 22 June 2018](#) on the communicable diseases and related special health issues to be covered by epidemiological surveillance as well as relevant case definitions.

The framework states that it is in line with existing national policies and the UK's international obligations including the [Trade and Cooperation Agreement \(TCA\)](#) and [International Health Regulations \(2005\)](#) as explained below:

- The International Health Regulations (2005) is an international treaty requiring all World Health Organization (WHO) Member States to work together to build their capacities to detect, assess and report public health events. The WHO plays the coordinating role in the International Health Regulations (2005).
- Title 1 of Part 4 (Thematic Cooperation) of the TCA supports arrangements and information sharing between the UK and the EU in the event of a serious cross-border threat to health which spreads or entails a risk of spreading across the borders of at least one EU Member State and the UK.
  - The TCA includes a mutual obligation on the UK and the EU to inform each other of such threats and enables the UK to request access to Early Warning and Response System (EWRS) in the event of a such a threat.
  - The EU may also invite the UK to participate in a committee of the Member States to support the exchange of information in the event of such a threat.
  - The TCA also makes provision for cooperation on scientific and technical matters between the UK and the European Centre for Disease Prevention and Control (ECDC).

Given that the policy area intersects with the TCA, topics relevant to the framework may be considered by the Partnership Council. The framework notes that the UK Government will facilitate attendance at the Partnership Council by the devolved administrations where meetings discuss implementation of policy in an area of devolved competence.

The UK Health Security Agency (UKHSA) has been designated to act as the UK's Focal Point under the terms of TCA.



## Definitions

The framework defines the following key terms:

- **‘Public Health Protection’** means protecting individuals, groups and populations from infectious disease and non-infectious public health threats including radiation, chemical and environmental hazards.
- **‘Health Security’** means the activities required, both proactive and reactive, to minimise vulnerability to acute public health events that endanger the collective health of populations living across geographical regions and international boundaries.
- **‘Serious cross-border threat to health’** means a life-threatening or otherwise serious hazard to health of biological, chemical, environmental or unknown origin which spreads or entails a significant risk of spreading across the borders of at least one Member State and the United Kingdom, or may necessitate a coordinated response by the UK authorities in order to ensure a high level of human health protection. This definition includes events that may constitute public health emergencies of international concern under the International Health Regulations (2005) and is aligned with the definition of serious cross-border threat to health agreed between the UK and the EU for the purposes of TCA.

## Summary of proposed approach

The framework comprises both legislative and non-legislative mechanisms.

The UK Government, devolved administrations and the UK public health agencies in England, Wales, Scotland and Northern Ireland have agreed that the proposed approach is necessary according to [Section 1 of the JMC\(EN\) Frameworks Principles](#).

## Stakeholder engagement

The framework notes the "extensive" engagement already taken place with the UK's four public health agencies. This has included three one-day workshops held in London, Cardiff and Belfast, and a series of virtual sessions during the COVID-19 pandemic.

The main form of engagement has been via the Four Nations Health Protection EU Transition Group, which consists of representatives from the UK Government and devolved administrations and the four UK public health organisations. The framework notes that the four nations group has been meeting regularly to discuss the framework over the last two years.

The establishment of the new UK Health Security Agency (UKHSA) has been recognised by the group. UKHSA's establishment has been taken into consideration in the drafting of the framework and the associated Memorandum of Understanding.

The outline agreement for the framework notes that stakeholder engagement will continue through the frameworks process, including with UK-wide professional bodies such as the [Faculty of Public Health](#) which may have an interest in the development and implementation of the framework.

Given the stakeholder engagement to date, the parties to the framework consider it unlikely that the direction or detail of the framework will change at this time. The [outline agreement states](#):

“ Due to the extensive engagement taken to date with technical stakeholders, we do not expect anything significant to occur that might impact on the direction or the detail of the framework at this stage.”

## Detailed overview of proposed framework: legislation

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

The [Health Security \(EU Exit\) Regulations 2021](#), which came into force on 1 September 2021, use the powers conferred by section 8(1) of, and paragraph 21 of Schedule 7 to the [European Union \(Withdrawal\) Act 2018](#) to address failures of retained EU law related to health security. The Regulations were laid in UK Parliament with the consent of the Scottish Government, the Welsh Government, and the Northern Ireland Executive.

The Regulations establish a stand-alone regime where all parts of the UK continue to coordinate on data sharing, epidemiological surveillance, and their approach to the prevention and control of serious cross-border threats to health.

The Regulations also support the implementation of the UK's arrangements with the EU for cooperation on health security under TCA in exercise of the powers conferred by section 31 of the [European Union \(Future Relationship\) Act 2020](#).

## Detailed overview of proposed framework: non-legislative arrangements

A Memorandum of Understanding (MoU) sits alongside the [legislation](#). The MoU has been agreed by officials from the UK Government and devolved administrations. The MoU will be reviewed and amended if there are substantial changes made to the framework following the parliamentary scrutiny process.

The MoU is based on full information sharing in which:

“ each administration will aim to provide each other with as full and open as possible access to scientific, technical and policy information including statistics and research and, where appropriate, representations from third parties.”

The MoU establishes the approach to cooperation by the parties to the framework and details:

- the dispute avoidance and resolution mechanism;
- a review and amendment mechanism, and
- a joint approach to international engagement.

The areas of work covered by the MoU are:

- communication and coordination of health protection activities, including policy development, public campaigns and messaging and expert committees;
- principles for coordinated use of mutual aid;
- international obligations and engagement;
- workforce;
- education and training;
- research, and
- data and intelligence

The operation of the framework will also be underpinned by a work programme, which has been agreed by the UK Health Protection Committee.

# Public Health Protection and Health Security in practice

## Decision-making

Once the framework is in operation, the key joint decisions that will be taken, or could be taken, by the parties to this framework are:

- informing of policy decisions;
- technical and operational decisions;
- resolution of issues;
- referring issues to the overarching dispute avoidance and resolution mechanism outlined in the [Memorandum on Understanding on Devolution](#), and
- reviewing and amending the framework.

The framework will be governed through a tiered system of oversight which includes senior officials and strategic and operational forums comprising of representatives from the eight parties to the framework (i.e. the UK Department of Health and Social Care, the devolved administrations and public health agencies).

The framework notes that the:

“ For the proposed governance structure to operate most effectively, it is envisaged that recommendations for the majority of proposals will be agreed at official level.”

Public Health Protection and Health Security Framework Outline Agreement, page 12

The three level approach to decision-making is established as:

- The [Chief Medical Officers Group](#)
- The [UK Health Protection Committee](#) (strategic)
- The [Four Nations Health Protection Oversight Group](#) (operational)

It is expected that recommendations for the majority of proposals will be agreed at official level. The framework notes that to develop an appropriate evidence base at official level, the following activities may be carried out:

- commissioning evidence from analysts;
- commissioning advice from legal teams;
- seeking advice from external bodies;
- engagement with industry (possibly through consultations, working groups etc.)

Where this type of evidence is gathered it will be shared across the UK Government and devolved administrations.

## Chief Medical Officers Group

The UK Chief Medical Officers (CMO) Group is the most senior level group with an oversight role in relation to the framework.

The [UK Health Protection Committee](#) will be accountable to the UK CMO Group. In relation to the framework, the UK CMO Group will:

1. Collate annual information on meetings relevant to this framework held between the parties to the framework and request supplementary information on attendance; the nature of discussions and decisions taken; and whether, and to what extent, the dispute resolution mechanism has been utilised.
2. Adopt decisions in respect of any CMO matters which this agreement or any supplementing agreement provides.
3. Consider any matter of common interest relating to an area covered by the framework.

The UK CMO Group is described as "an additional senior level body in the decision-making process."

## The UK Health Protection Committee

The UK Health Protection Committee ("the Committee") is established as the main forum for strategic level discussion and decision-making.

The Committee will be the senior level group responsible for monitoring the application of the framework and ensuring its delivery<sup>iv</sup>. Committee members will include representatives from all parties to the framework.

The [Four Nations Health Protection Oversight Group](#) will be accountable to the UK Health Protection Committee.

The terms of reference for the Committee are set out at [Annex C of the framework](#). The objectives of the Committee are to:

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<sup>iv</sup> It may be helpful to note that in the framework section on roles and responsibilities senior level officials are designated as Deputy Directors and Directors.

“

- Support and monitor the application of the Common Framework on Public Health Protection and Health Security, including by agreeing the underpinning work programme;”
- Facilitate multilateral policy development on public health protection and health security and seek, where agreeable, to develop and jointly decide common policy approaches;”
- Support UK-wide surveillance of communicable diseases and related special health matters, including by: – reviewing, and where appropriate making a recommendation to the Secretary of State to add or otherwise amend the list of communicable diseases and related special health matters that are subject to UK-wide surveillance; – specifying case definitions applying to the list of communicable diseases and related special health matters that are subject to UK-wide surveillance to ensure the comparability and compatibility of the data collected from across the UK; – establishing and reviewing procedures for the collection and sharing of such information;”
- Maintain the TCA National Focal Point communications protocol for bringing the UK authorities into permanent communication with one another in order to facilitate the prevention and control of serious cross-border health threats affecting the UK and at least one EU Member State and/or those threats which may necessitate a coordinated response by the UK authorities in order to ensure a high level of human protection; •”
- Facilitate consultation between the UK authorities with a view to coordinating their efforts to develop, strengthen and maintain their respective capacities for the monitoring, early warning and assessment of, and response to, serious cross-border health threats;”
- Manage potential divergence, and promote a collaborative approach to public health protection policy between the four UK nations in a way that respects the Devolution Settlements and the principles set out in the UK framework;”
- Escalate issues relating to the application of the framework as per the dispute avoidance and resolution process;”
- Review and amend the framework as per the R&A process set out in the framework.”

## **The Four Nations Health Protection Oversight Group**

The Four Nations Health Protection Oversight Group is described as the main forum for operational level discussion and decision-making. As such, the group is responsible for the implementation and delivery of the framework, the associated MoU and the programme of work that will be established through the framework.

The group is made up of senior professionals and officials level representing all parties to the framework.

The group will be responsible for monitoring work which is relevant to the framework but

which has been delegated to other teams and groups to deliver (e.g. to public health protection policy teams in UK Government and the devolved administrations or to technical forums consisting of representatives from all four UK public health organisations).

The terms of reference for the group are detailed at [Annex D of the framework](#). The objectives of the group are listed as:

“ i. Effectively implement the Common Framework on Public Health Protection and Health Security, including by developing and monitoring the underpinning work programme; ii. Support multilateral policy development on public health protection and health security and seek, where agreeable, to develop and agree upon common policy approaches; iii. Deliver UK-wide surveillance of communicable diseases and special health issues, including by: a) Monitoring, and where necessary recommending discussion at the UK Health Protection Committee regarding amendments to the list of communicable diseases and special health issues that are subject to UK-wide surveillance, and associated case definitions; b) Establishing, where appropriate, common procedures for the collection of such information for approval by the UK Health Protection Committee; iv. Support consultation between the UK authorities to coordinate their efforts to develop, strengthen and maintain their capacities for the monitoring, early warning and assessment of, and response to, serious cross-border health threats; v. Facilitate discussion between the four nations on developing the UK Government’s approach to public health protection issues that require engagement with international partners, including World Health Organisation (WHO) Euro, European Centre for Disease Prevention and Control (ECDC) and EU Member States. vi. Escalate issues as per the dispute avoidance and resolution process;”

In relation to operational level matters included within the framework, the group, will:

1. Collate quarterly information on meetings held between the parties relevant to the framework, including for the delivery of work programmes. The Group may request information on attendance; the nature of discussions and updates from operational or delivery groups associated with implementation of specific areas of the framework or associated work programme.
2. Establish technical forums that are temporary or subject to change, reflecting the nature of work programmes.
3. Make decisions related to technical or operational activities relevant to four nation cooperation conducted under the framework.

## Disagreements

The framework explains that if there is a disagreement "every effort will be made to resolve the matter at the lowest possible level."

It is anticipated that resolution for disagreements will be sought and reached at either the [Four Nations Health Protection Oversight Group](#), or the [UK Health Protection Committee](#), depending on the nature of the disagreement. The framework refers to disagreements being policy or technical. Given that the Four Nations Health Protection Oversight Group is the operational lead it seems likely that technical matters will be resolved in this forum.

The [UK Health Protection Committee](#) is the strategic lead and, as such, it would appear that policy disagreements will be considered by that Committee.

It is noted that the views of senior officials will only be sought where necessary. It would appear that the members of the [Chief Medical Officers Group](#) are the relevant senior officials and will be required to seek resolution to disagreements (see also [Roles and Responsibilities](#))

The framework explains that differences can be resolved either on a UK-wide basis, or by working to manage divergence on the issue.

“ may be resolved either by a decision to adopt a UK wide approach or a “decision to disagree” with a commitment to manage divergence on specific issues.”

Public Health Protection and Health Security Framework Outline Agreement, page 13

Where disagreements cannot be resolved, the disagreement will become a dispute and will follow the [Dispute resolution official level](#) process.

Any disagreements between parties will be recorded to inform the ongoing [Review and Amendment process](#).

In relation to Ministerial oversight, the framework states that:

“ Disagreement will only be escalated to Ministers where a decision at official level cannot be reached.”

## **Roles and Responsibilities: parties to the framework**

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

- UK Government and devolved administrations

The UK Government and devolved administrations are expected to hold day-to-day discussions on the policy covered by the framework so that officials are able to inform and advise Ministers on the approaches taken within a policy area, including, for example, on where divergent policies may be necessary. Officials across administrations should discuss policy issues and keep colleagues regularly informed of any ramifications that policy will have across administrations.

- UK public health agencies

Senior officials within public health agencies are responsible for taking operational decisions and for discharging agency responsibilities as delivery organisations. The UK's public health agencies lead on the operational side of the framework given their roles in surveillance, early alerting, management, prevention and control of serious cross-border threats to health. Officials at public health agencies provide technical and scientific advice to officials working in the UK Government and across devolved administrations, who are then responsible for presenting policy recommendations to Ministers for decision.



- Chief Medical Officers

The Chief Medical Officer in each of the four UK nations is the most senior government adviser on matters relating to public health.

- Ministers and Senior Ministers<sup>v</sup>

Ministers may receive advice from their officials either concurrently across administrations as issues arise or in the course of business as usual for individual administrations. Ministers may accept or reject advice. Where ministers consider issues as part of the framework's [dispute avoidance and resolution mechanism](#) this could be at inter-ministerial meetings or by correspondence. In some cases, Ministers may seek advice from Senior Ministers. In other areas, Senior Ministers may be the Minister responsible for the framework.

## 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.

As explained in the [decision-making section of this briefing](#), three decision-making bodies are being established as part of the framework. It is, however, likely that some of the groups, for example that of the UK Chief Medical Officers, is an existing forum.

1. The UK Chief Medical Officer's Group provides a forum for the UK CMOs to discuss matters of mutual interest and areas where four nation coordination is required, including on matters relating to public health protection policy. The group will meet quarterly. Secretariat functions are carried out by the UK Department of Health and Social Care. The CMO Group is not expected to have a prominent role in the application of the framework. The framework explained that where issues cannot be resolved in either the UK Health Protection Committee or the Four Nations Health Protection Oversight Group, the CMO Group can be looked to to help resolve disagreements. In addition, specific policy areas or topics addressed within the framework may be considered by the CMO Group and advice given.
2. The UK Health Protection Committee is responsible for the application of the framework and is accountable for its delivery. The Committee will meet twice a year to discuss health protection policy and to make joint decisions aimed at upholding the [JMC\(EN\) frameworks principles](#). It is proposed that the Committee would fulfil functions under the Health Security (EU Exit) Regulations 2021 (e.g. reviewing and making a recommendation to the Secretary of State to amend the list of communicable diseases and related special health matters that are subject to UK-wide surveillance). The Secretariat for the Committee will be carried out by the UK Health Security team at the Department of Health and Social Care.
3. The Four Nations Health Protection Oversight Group is the operational forum responsible for the delivery of the framework. The Group will meet quarterly to discuss operational information exchange, mutual support, sharing of best practice and

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<sup>v</sup> The framework notes that "Terminology distinguishing ministerial hierarchy is not universal across administrations" but explains that at a UK Government level a senior minister would be a Secretary of State. It is therefore likely that a Senior Minister in the Scottish Government would be a Cabinet Secretary.

provide oversight to operational working groups. The secretariat for this group is carried out by Public Health England. The Group is responsible for the development of work plans to deliver the agreed work programmes, which may involve the oversight of time limited Technical Forums and/or task and finish groups responsible for delivery of relevant work (e.g. UK Emergency Preparedness, Protection and Response Group).

## Monitoring and enforcement

The UK Health Protection Committee will monitor the framework. The purpose of monitoring is to assess:

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

The outcome of monitoring will be used to inform future joint decision-making as well as [review and amendment](#) of the framework.

## Review and amendment

There are two types of review outlined in the framework. The process for agreeing amendments should be identical regardless of the type of review.

The framework states that the:

“ Review and Amendment Mechanism (RAM) ensures the framework can adapt to changing policy and governance environments in the future.”

At the outset of the review stage, the Parties must agree timelines for the process, including the possible amendment stage. If a decision is not reached in either the review or amendment stage, parties to the framework can raise it as a dispute through the framework dispute avoidance and resolution process.

### Review Stage

- Periodic review: the operation of the framework will be reviewed at six months, one year and three years from the date it comes into operation. Thereafter, a periodic review will take place every three years.
  - The period of 3 years starts from the conclusion of the last periodic review, including any amendment stages that follow.
  - During the periodic review, parties to the framework will discuss whether the

governance and operational aspects of the framework are working effectively, and whether decisions made over the previous three years need to be reflected in an updated non-legislative agreement.

- Exceptional review: an exceptional review of the framework is triggered by a significant issue as determined by one or more of the parties.
  - A significant issue must be time sensitive and fundamentally impact the operation or the scope of the framework.
  - This kind of review may include a review of governance structures if all parties agree. Otherwise, governance issues are handled in the periodic review.
  - The same significant issue cannot be discussed within six months of the closing of that issue.

The amendment stage can only be triggered through unanimous agreement by UK Health Ministers. If parties agree that no amendment is required, the relevant time period begins again for both review types (i.e. it will be three years until the next periodic review and at least 6 months until the same significant issue can trigger an exceptional review).

The RAM relies on consensus at each stage of the process from the Ministers responsible for the policy areas covered by the framework. Third parties can be used to provide advice to the Parties at any stage in the process. These include other government departments or bodies as well as external stakeholders such as NGOs and interest groups.

## Amendment Stage

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

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

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

## Dispute resolution official level

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

The dispute resolution process for this framework mirrors the [decision-making process outlined earlier in this briefing](#). Dispute resolution is anticipated to only be required in a very small number of cases.

When an issue is raised at official level, consideration will be given to how quickly a decision is required. This assessment will guide timescales for escalation of disagreement within the governance structure, with decisions requiring a more immediate resolution (e.g.

an emergency response) being escalated more quickly. At each stage further evidence may be requested from the preceding forum before the disagreement is discussed.

A principle of subsidiarity to dispute resolution has been agreed. This requires a dispute to be addressed at the lowest possible level. There is also a commitment to seeking every opportunity to resolve differences in good faith and without the use of the formal dispute resolution process where possible. All of the parties to the framework should be represented, and will be fully involved, at all stages of the dispute resolution process.

Where formal dispute resolution processes are needed, this begins with discussion at the Four Nations Health Protection Oversight Group. If resolution cannot be reached in that forum, it would escalate to the UK Health Protection Committee for discussion. If resolution cannot be reached at Committee, it would recommend the issue be discussed at the UK CMO Group. That Group may choose to escalate the matter to UK Health Ministers. Disputes should only be escalated to Ministers where official level agreement cannot be reached.

Dispute resolution routes will be used:

“ only when an understanding cannot be reached, and divergence would impact negatively on the ability to meet the common frameworks principles.”

Public Health Protection and Health Security Framework Outline Agreement, page 18

## Dispute resolution Ministerial level

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

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

# What will intergovernmental relations look like?

Proposed outline of new intergovernmental relations structure

## Top tier:

The Council

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

## Middle tier:

### Standing committees

#### The Interministerial Standing Committee (IMSC)

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:

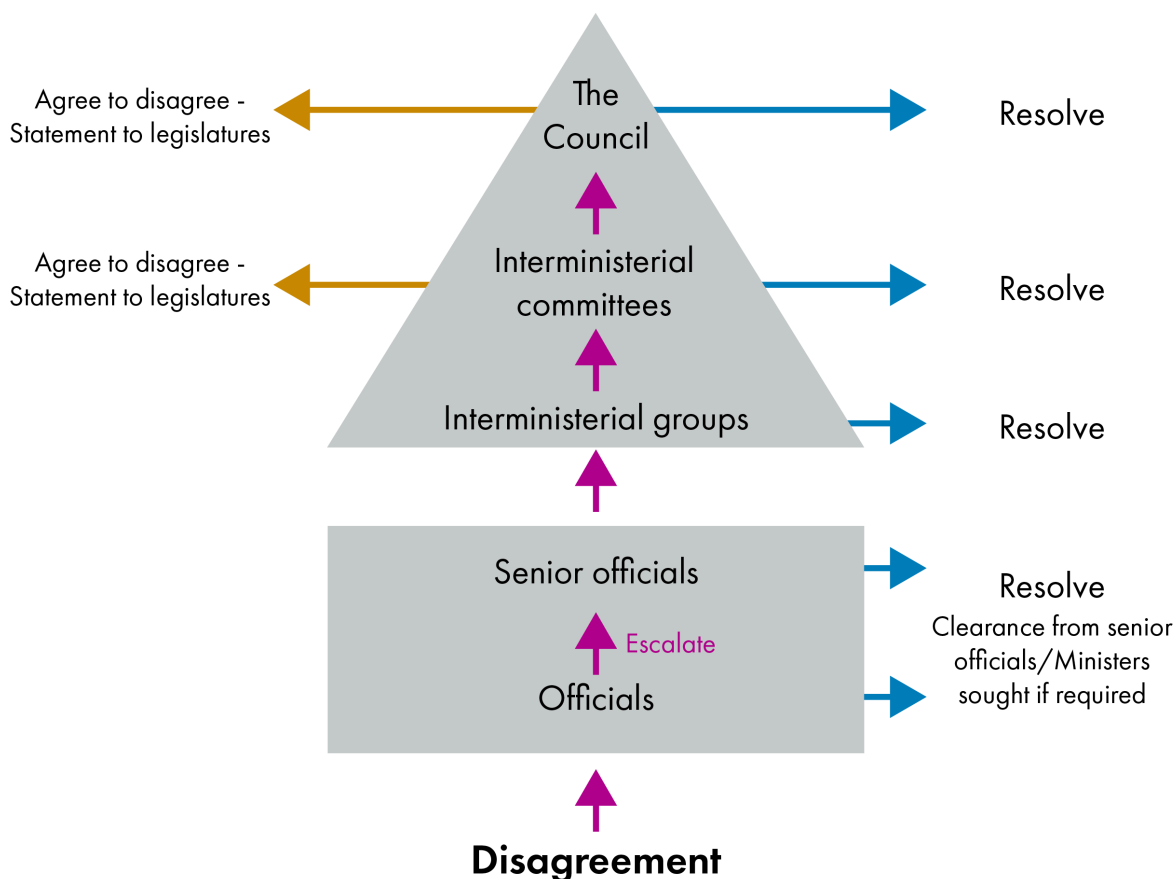
A number of interministerial groups (IMG) will be formed to discuss specific policy areas, such as on transport, Net Zero, and the Trade and Cooperation Agreement with the EU.

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).<sup>vi</sup>

<sup>vi</sup> 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



Scottish Parliament Information Centre

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

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

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

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

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

## Implementation

The framework was provisionally confirmed by the JMC(EN) and published on 27 October 2021.

UK legislatures now have the opportunity to scrutinise the framework and raise any concerns with their respective government. If scrutiny and any subsequent reappraisal of the framework leads to significant changes, the provisional framework may need to undergo further collective agreement before final confirmation.

After implementation, the [review and amendment](#) process will begin.

# Framework Analysis

## Current policy position

This common framework relates to the policy areas of public health protection and health security, which are devolved competencies. The overarching aim of the Framework is:

“ To improve the effectiveness of UK-wide arrangements for prevention and control of cross-border threats to health and the strengthening cooperation in areas of shared strategic importance for health protection and health security.”

"Health protection" refers to the protection of individuals, groups and the population from infectious disease and non-infectious public health threats including radiation, chemical and environmental hazards.

"Health security" is a term that is used to describe the activities required, both proactive and reactive, to minimise vulnerability to acute public health events that endanger the collective health of populations living across geographical regions and international boundaries.

EU law previously set rules around epidemiological surveillance, early warning systems and combating serious cross-border health threats. This included rules on preparedness and response planning and was intended to coordinate and complement Member States' response to such threats.

Although health protection and health security are devolved competencies, the four UK administrations have long been aware that infectious diseases and environmental hazards do not respect borders. Therefore, the need for close collaboration between administrations within the UK and the rest of the world is recognised.

## Key issues

The COVID-19 pandemic has given a real-world insight into the application of law and policy to health protection and health security. It has also highlighted the global nature of such health threats and the need for cross-border collaboration both within the UK and internationally.

### *UK Collaboration*

Policy divergence between countries has been a key focus of the pandemic coverage, highlighting the plethora of possible responses that can be taken in response to a public health threat.

The potential for policy divergence was raised during the Health, Social Care and Sport Committee evidence taking. In response to questioning, the [Cabinet Secretary for Health and Social Care stated](#):



“...although the framework has overarching principles, it does not prevent any of the four nations from acting in a different way if it wishes to do so. In essence, the framework is policy neutral. It does not prevent the Scottish Government, the Welsh Government, the Northern Ireland Executive or, indeed, the UK Government from taking decisions that diverge from those of the other home nations.”

The framework requires each government to consider how any changes on their part might impact on the other parts of the UK, and where possible agree common approaches. The framework accepts a common approach may not always be suitable and therefore does not change the ability for a government to consider and respond to individual factors and priorities.

### *International Collaboration*

Although health protection and health security are devolved, there are still some international obligations required by the [International Health Regulations](#) and the [Trade and Cooperation Agreement](#).

Negotiations around these would fall under the terms of ‘international relations’ and as such would be reserved to the UK Government. However, the Memorandum of Understanding commits to taking a coordinated approach and seeking agreement from each of the UK nations in relation to international engagement.

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