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# Food and Feed Safety and Hygiene Framework

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This briefing discusses the Food and Feed Safety and Hygiene (FFSH) Framework. The FFSH Framework sets out how the UK Government and devolved governments propose to work together in key food and feed policy areas. 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 Food and Feed Safety and Hygiene (FFSH) Framework.<sup>1</sup> The FFSH Framework sets out how the UK Government and devolved governments propose to work together in key food and feed policy areas. 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 FFSH Framework was provisionally confirmed by the JMC (EN) and published on 27 November 2020. It [was considered by the session 5 Health and Sport Committee of the Scottish Parliament](#).

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

In session 5, 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 framework outline for this framework, 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:

“ 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 comprises 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 ?

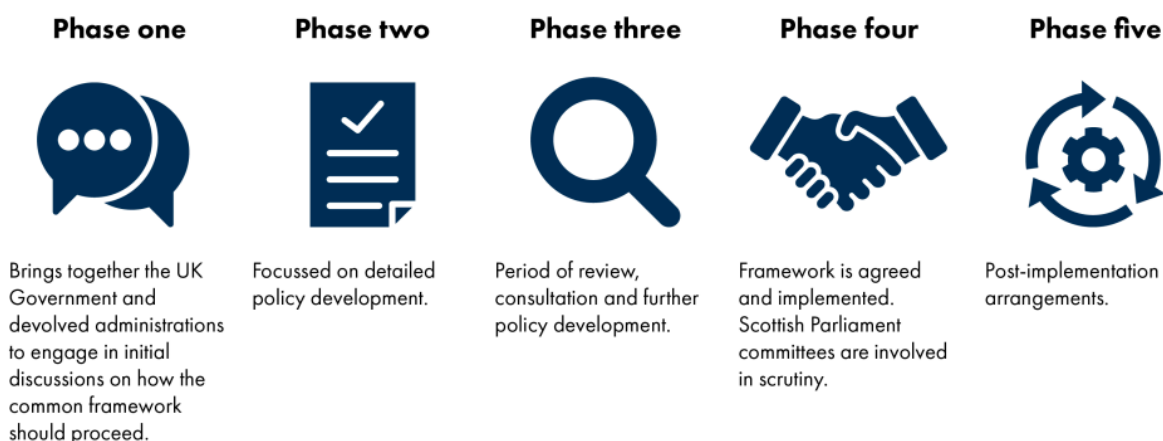
Frameworks are inter-governmental agreements between the UK Government and the devolved administrations.

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 the Scottish Parliament

The FFSH Framework [was considered in session 5 by the Health and Sport Committee in the Scottish Parliament](#). As part of its scrutiny, the Committee [wrote a letter](#) to then Minister for Public Health and Sport, Mairi Gougeon MSP.

In this letter, the Committee asked a number of questions, including how the implementation of frameworks and their effect on standards would be monitored, about the interoperability between the framework and the Northern Ireland Protocol, and how the Scottish Parliament would be notified if [exemptions to the Internal Market Act market access principles were granted through the framework](#).

The Committee also requested confirmation that the [annual review](#) be made publicly available, and that input from the Scottish Parliament is sought when "material changes in Scottish procedures under this framework are proposed".

[In response to the Committee's letter](#), the Minister addressed the issue of parliamentary engagement, stating that:

“ “[W]here any changes to legislation are proposed, including where changes to any food and feed safety and hygiene processes are proposed in law, Ministers will follow standard procedures for engaging the parliament. For any significant changes, a full consultation process will be undertaken by FSS and these consultations should be notified to parliament through the existing SPiCE network. I have asked FSS officials to make sure this is the case. Secondly, where a substantive change in framework (rather than food law) process is proposed having been identified as part of the ‘real time’ testing environment in which we find ourselves, then we would expect to notify the Scottish Parliament ahead of any annual report”.”

# Scrutiny at other legislatures

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

The framework was [scrutinised by the Welsh Senedd's External Affairs and Additional Legislation Committee](#), and the [House of Lord's Common Frameworks Scrutiny Committee](#), and the [Northern Ireland Assembly's Committee for Health](#).

The House of Commons Environment, Food and Rural Affairs Committee also considered the framework. [In correspondence dated 17 December 2020, the Committee wrote:](#)

“ "We understand that stakeholders were well engaged in the development of the FFSH Common Framework. However, that engagement was time-constrained and based on a summary of the provisional common framework, which limited opportunities for detailed feedback. We recommend that the FSA [Food Standards Agency] and FSS (Food Standards Scotland] seek stakeholder input should significant changes be made to the provisional FFSH Common Framework as a result of the ongoing negotiations with the EU and the development of the UK internal market." ”

# 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>

# Food and Feed Safety and Hygiene Framework

## Policy Area

The framework covers stages of food and feed production, including:

- risk analysis;
- food safety labelling;
- distribution;
- incident handling; and
- food and feed law enforcement.

The framework breaks down food and feed safety and hygiene (FFSH) into four broad policy areas:

- general food law and hygiene;
- food safety standards;
- official controls for food and feed; and
- public health controls on imported food.

## Scope

FFSH overlaps with some policy areas that are the subject of other common frameworks, including:

- [nutrition labelling, composition and standards](#);
- [food compositional standards and labelling](#);
- [animal health and welfare](#);
- [plant health](#); and
- [pesticides](#).

FFSH is a devolved policy area. The policy area does, however, link closely with international trade which is a reserved matter. As such, it is the UK government's responsibility to ensure that all UK nations comply with international trading obligations<sup>iv</sup>

which already exist, and any future obligations as the result of the UK entering into a trade deal.

With regards to FFSH, the UK has obligations as a member of the World Trade Organisation, including through the WTO's Organisation's Sanitary and Phytosanitary Agreement (SPS). The UK was not previously represented on the WTO's SPS Committee as a individual member, but was represented by EU experts as a member state of the EU. The UK is now an independent member of the WTO SPS Committee. Alongside the framework, new processes have been established by the UK Department for Environment, Food, and Rural Affairs (Defra) to enable cross-departmental working aimed at helping the UK meet its SPS commitments.

The framework documents note that though Northern Ireland is one of the parties to the agreement, relevant EU FFSH legislation will continue to apply in Northern Ireland as a result of the Protocol on Ireland/Northern Ireland.<sup>v</sup> The framework documents also confirm that that FSA (Food Standards Agency) officials in Northern Ireland had input into the development of the framework and suggest that the Northern Ireland Government and its officials will continue to shape UK FFSH policy through its involvement with the framework.

As the framework was published before the UK Internal Market Act (UKIMA) was passed in December 2020, the framework documents include a note to the effect that the interaction between the framework and the internal market will be reviewed once the internal market legislation is in place. No information on such interaction is given in the framework documents. [Given the process for agreeing exclusions to market access set out above](#), agreement about any such exclusions would likely have to be sought through the [relevant common frameworks forum](#). While framework documents for some other frameworks are being updated, at the time of writing, there is no indication that this framework will be one of them.

## Definitions

The framework documents define the following key terms:

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iv This obligation is set out in, for example, the World Trade Organisation Sanitary and Phytosanitary Agreement Article 13 according to which members can devolve the implementation of the agreement to non-central government bodies, but nevertheless remain responsible for ensuring compliance.

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.



- **'Food and feed safety'** refers to the handling, preparation, and storage of food and feed in ways that prevent food-borne illness. Food and feed safety requirements lay down the high-level principles underpinning the placing of safe food and feed on the market, and establish institutions and bureaucratic functions concerning food and feed safety. The main objective of food and feed law is to guarantee a high level of protection of human life and health and the protection of consumers' interests.
- **'Food and feed hygiene'** refers to the conditions and measures needed to ensure that the safety of food and feed is not compromised throughout the food chain from primary production to sale or supply to the final consumer. Food and feed hygiene requirements establish the general principles for food hygiene controls, including food hygiene rules for food and feed businesses, specific controls for products of animal origin, microbiological criteria for certain commodities, and conditions and arrangements for ensuring traceability.
- **'Regulated products'** refers to food and feed products that require an authorisation, which involves a scientific assessment to evaluate their safety, before they can be placed on the market. Regulated products include substances used in food and feed (such as additives, enzymes, flavourings), food contact materials and pesticides, genetically modified organisms, novel foods and food-related processes, and processing aids.
- **'Food defence'** refers to procedures adopted to assure the security of food and drink and their supply chains from malicious and ideologically motivated attack leading to contamination or supply disruption. • Food fraud refers to dishonest act or omission, relating to the production or supply of food, which is intended for personal gain or to cause loss to another party.

## Summary of proposed approach

The framework documents list the following principles as guiding shared ways of working:

1. The framework for changing UK FFSH legislation should respect the JMC principles, devolved responsibilities and accountability across the UK.
2. The four nations should work together to develop evidence based approaches for ensuring protection of public health and wider consumer interests, with the aim being to have common approaches to UK food & feed safety and hygiene policy developed and agreed by all four nations where evidence presented supports that position.
3. Flexibility should be provided for administrations to act within the framework to meet local needs and circumstances while delivering the same outcomes.
4. Within the framework, all four administrations should have the ability to diverge within their territory (having followed the principles set out in the framework for managing divergence) where the outputs of risk analysis undertaken by food safety bodies show that divergence is both necessary and proportionate to the risk to provide appropriate consumer protection in all nations.
5. Governance arrangements should be effective and proportionate whilst keeping administrative complexity and burdens to the minimum.
6. The framework should operate transparently: the framework's governance arrangements should be publicly available, and principles for transparency should be built into the framework where appropriate.

The framework documents note that in early discussions between the UK Government and the devolved governments there was disagreement on whether a common approach across all areas of FFSH was necessary, or desirable:

“ It was proposed in a number of areas that it was necessary to have a common approach according to the JMC(EN) framework principles. Colleagues from Scottish Government would only accept a common approach was desirable, because of a concern that agreeing a common approach was necessary would mean that a harmonised approach was required. It has subsequently been discussed and agreed by officials that common approaches for creating FFSH policy should be developed through the framework, noting that such approaches may still result in evidence based divergence where this is considered appropriate.”

Food and Feed Safety and Hygiene Common Framework, 2020<sup>5</sup> paragraph 4.2

## Stakeholder engagement

The framework does not report on what stakeholder engagement took place as part of its development.

## Detailed overview of proposed framework: legislation

FSSH is governed by a number of pieces of EU retained law, these are listed as Annex 1 to the concordat for the framework (page 55 of the framework documents).

It is not a framework which requires legislation to implement it. The framework documents do, however, mention a plan to undertake an exercise in 2021, which would determine whether additional concurrent powers to implement consistent decisions across the UK in this policy area would be beneficial. This means that UK Ministers would have the power to make secondary legislation to change the law across the UK in this policy area (or specific parts of the policy area), with consent required from Ministers of the devolved governments. This exercise is listed as a potential legislative requirement. Nevertheless, it does not appear that this is required for the implementation of the framework, rather that it could be a legislative vehicle by which to implement decisions arising from the operation of the framework.

“ Officials from the four nations will undertake an exercise in 2021 to assess where within FFSH policy areas (within scope of the Framework) it would be beneficial to have concurrent powers<sup>2</sup> available so that one statutory instrument can be used to implement consistent decisions across the UK. It should be noted that UK wide SIs under FFSH legislation could only be made with the explicit consent of DA Ministers, and if considered appropriate would likely be limited to certain technical areas. The FFSH Framework will be fully functional from the end of the transition period regardless of the outcome of this assessment.”

Food and Feed Safety and Hygiene Common Framework, 2020<sup>5</sup> paragraph 4.6

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

The framework is implemented through non-legislative means. The framework documents include, in addition to the concordat signed by Health Ministers of all four governments, a memorandum of understanding between the two relevant food safety bodies of the UK, the Food Safety Agency (FSA) and Food Safety Scotland (FSS).

The next sections of this briefing will set out the non-legislative mechanisms that are supposed to support the [framework principles](#), such as [decision-making procedures](#), [role and responsibilities](#), [monitoring and reviewing procedures](#), and [dispute resolution processes](#).

# Food and feed safety and hygiene in practice

## Decision-making

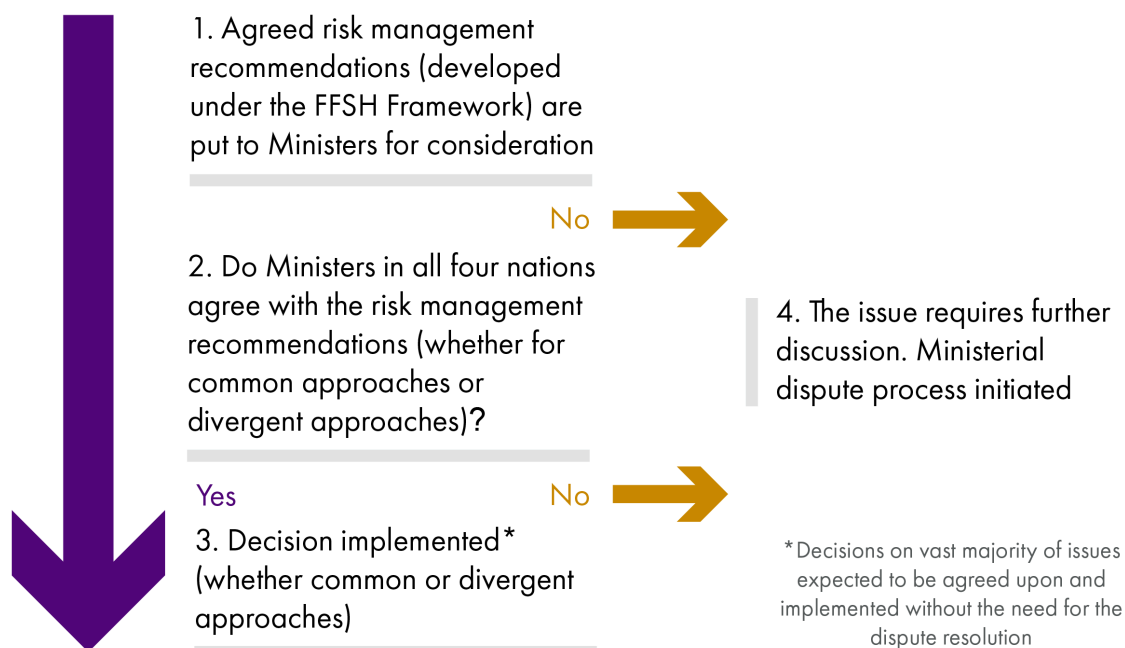
The framework will be governed through a tiered system of oversight which includes senior officials and strategic and operational forums comprising of representatives from the parties to the framework (i.e. the UK Government and devolved governments ) as well as food safety bodies (the FSA and FSS).

The framework documents emphasise the need to seek consensus and resolve differences early on with regards to decisions on any changes to FSSH policy or legislation within the scope of the framework based on recommendations made by food safety bodies (for either a divergent or common approach). Officials provide explanations of the recommendations and summarise any evidence that supports them, which is generated through the risk-analysis process.

According to this process, if any one party to the agreement raises an issue, all others are committed to engaging in the process. Although these are mentioned in the framework documents, neither terms of reference nor membership for joint risk management groups are included in the framework documents. At the time of writing this information does not appear to have been published elsewhere. It is unclear whether following scrutiny at phase 4, governments will publish a final framework at phase 5. If a final framework is published, this may contain such information.

Officials are to seek decisions from relevant Ministers in accordance with any timescales prescribed in retained EU law. The below diagram illustrates the Ministerial decision-making process.

## Ministerial Decision Making Process



\* In Northern Ireland, changes to European Union food and feed safety and hygiene legislation in scope of Annex 2 will apply automatically

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## Roles and Responsibilities: parties to the framework

This section sets out the roles and responsibilities of each party to the framework: the UK Government, the Scottish Government, the Welsh Government, and the Northern Ireland Executive.

The framework documents comprise a Concordat, which commits all parties other than the Northern Ireland Executive (see below) to go through the following steps if they want to diverge from a uniform four-nations approach:

- Where one or more parties wishes to diverge from a four nations approach to any area within scope of the Concordat, before divergence can happen, the parties must first attempt to agree a common approach that accommodates the desired outcomes of individual nations.
- Where a common approach cannot be agreed, and divergence within the UK is not considered acceptable by any party, then the dispute resolution mechanism should be engaged.
- In Northern Ireland, Ministers will still have the opportunity to fully participate in discussions on how potential divergence will be managed even when those issues fall within scope of the Ireland/ Northern Ireland Protocol.

This requirement also applies to the Northern Ireland Executive, but only when the policy areas in question do not fall within the scope of the [Protocol on Ireland/Northern Ireland](#), where EU FFSH legislation continues to apply.<sup>vi</sup>

Even before the UK's exit from the EU, many decisions on enforcement and incident handling were taken at a national level, by the Food Safety Agency (FSA) on behalf of England, Wales and Northern Ireland, and Food Safety Scotland (FSS) on behalf of Scotland. Both bodies also play an important role in developing FFSH policy. As part of the framework, a memorandum of understanding sets out how the FSA and FSS will work together in more detail.

## Roles and responsibilities: existing or new bodies

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

The framework describes three bodies with particular responsibilities in FFSH. In addition to the three bodies described below, officials from all nations are expected to work together closely, outwith the framework forums, on day to day issues.

**FFSH Frameworks Management Group:** A group comprising senior representatives from food safety bodies from all four nations, will be established. The FFSH Frameworks Management Group will be established to provide oversight of the FFSH framework. The Frameworks Management Group is envisaged to consider amendments to the framework, review and report on it as well as resolve working-level disputes about the agreed framework processes.

**Four Nations Director Group:** A group comprising directors of the food safety bodies, will be established. The Four Nations Director Group is envisaged to meet at an ad-hoc basis and act as the initial stage of escalation within the official level dispute resolution process for policy disputes.

From the framework documents, it appears as though the main groups operating the framework are the Frameworks Management Group and The Four Nations Director Group.

<sup>vi</sup> 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.

In addition, the boards of relevant food safety bodies will also play a role in the framework.

**FSA and FSS Boards:** The boards of the FSA and FSS will play an advisory role, working collaboratively on risk analysis that feeds into the forming of FFSH recommendations to Ministers. They will publish any advice and relevant evidence they provide to the parties of the agreement. In addition, they also have an oversight role as they agree to assure the annual review of the FSA and FSS MoU, and the joint annual framework report provided by the FSA-FSS Frameworks Management Group. This will involve an agreed assurance process for risk analysis and input into the annual review carried out by the Frameworks Management Group, although it is unclear from the frameworks document what form this input will take.

## Monitoring and enforcement

The framework documents envisage that monitoring of the framework will be done principally by the Frameworks Management Group. The Group will monitor the functioning of the framework regularly, though the framework documents don't specify how often.

Monitoring will also occur through the dispute resolution process, as potential breaches of agreed framework processes will be dealt with through that process. .

## Review and amendment

The framework documents set out a process for reviewing the framework. They propose that the Frameworks Management Group meets every quarter to review the delivery and operation of the framework.

One year after the framework is implemented, the Frameworks Management Group will undertake a review and report to the FSA and FSS Boards as well as to portfolio Ministers. The framework documents also mention the Joint Ministerial Committee on EU negotiations (JMC (EN)). The JMC (EN) was an intergovernmental forum established to provide a means for the devolved governments to be engaged in the UK's approach to EU exit. JMC (EN) has, however, been disbanded since the publication of the framework documents (see section on [dispute resolution at the Ministerial level](#))

As per the [Joint Review of Intergovernmental relations](#), a relevant Interministerial Group is likely to take its place in the framework.

The framework documents also describe how amendments to the framework can be proposed. Any nation can put forward amendments to the Frameworks Management Group, which decides whether the proposal should be accepted. Amendments to the Concordat require Ministerial agreement. In the case of disagreements among members of the group, whether a policy change or on a matter concerning the operation of the framework, the official's dispute avoidance and resolution process can be invoked.

## Dispute resolution official level

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

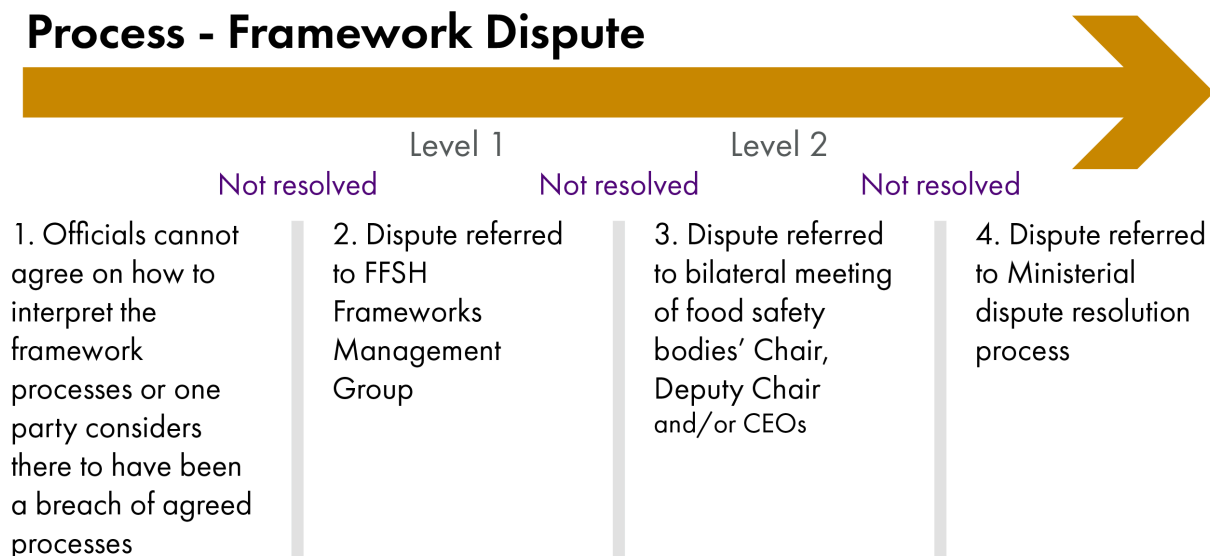
The framework documents anticipate that disputes could arise either over disagreements about approaches to policy issues or over disagreement on the functioning of the framework, for example if officials in some nations believe officials in another nation to not be acting in accordance with the agreement.

### Official Level Dispute Avoidance and Resolution Process

#### Official Level Dispute Avoidance and Resolution Process - Policy Dispute



#### Official Level Dispute Avoidance and Resolution Process - Framework Dispute



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In case of a policy dispute, the case would be referred to the Four Nations Directors Group. In the case of a framework dispute, the matter would be referred to the FFSH Frameworks Management Group. If the disagreements cannot be resolved there, they can



be further escalated to a bilateral meeting of the food safety bodies' chairs, deputy chairs or CEOs. If the dispute still cannot be resolved, the issue can be further escalated to the Ministerial level and the process outlined below takes place.

## Dispute resolution Ministerial level

In contrast to other common frameworks published more recently, the FFSH framework sets out a dispute resolution process at the lower Ministerial level in addition to the general inter-governmental dispute resolution process.

Disputes which arise under the FFSH framework can arise either when official-level differences have failed to be resolved, or where differences arise at the lower Ministerial level.

If a dispute is raised, officials and Ministers work together to seek a resolution to the issue which is then discussed between officials at a framework level. If required, the dispute is escalated to portfolio Ministers who would meet in person to attempt to resolve the issue. Although this process is written into the framework, it is not found in every common framework. It may be helpful to note that this framework was drafted and published prior to the conclusions of the joint review of IGR which established a new way of working for the four governments of the UK. The process described in the framework is almost identical to the manner in which interministerial groups are envisaged to function in the new intergovernmental mechanisms, described further below in this section. As such it is anticipated that the portfolio Minister level discussions described in the framework may take place in the portfolio level interministerial groups which now form part of UK IGR mechanisms and which are described below.

Across common frameworks, 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.

Image showing the proposed structure for intergovernmental relations.

# What will intergovernmental relations look like?

Proposed outline of new intergovernmental relations structure

## Top tier:

The Council

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

## Middle tier:

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

## Lowest tier:

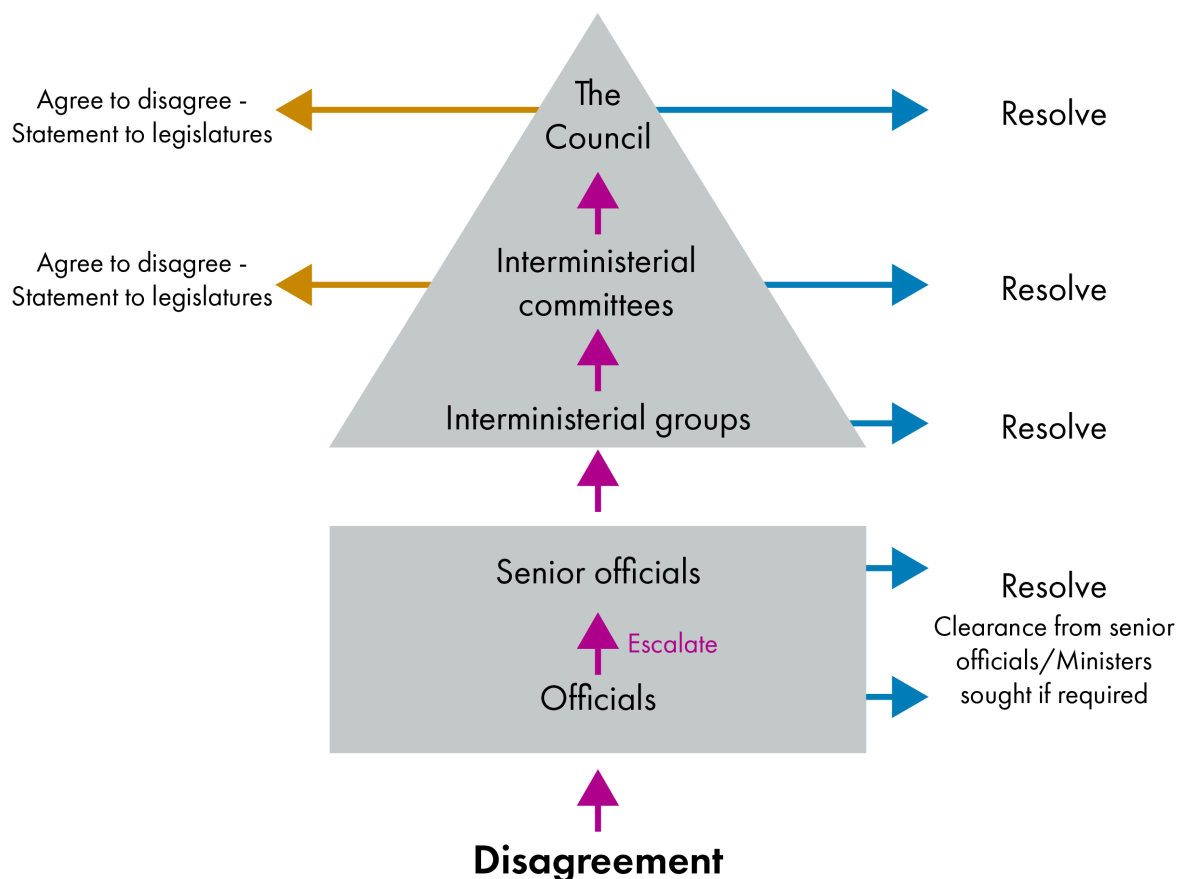
A number of interministerial groups (IMG) will be formed to discuss specific policy areas, such as on transport, Net Zero, and the Trade and Cooperation Agreement with the EU.

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

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

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



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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 documents note resource requirements for implementing the framework and supporting its ongoing operation, but do not specify what these requirements are. However, framework documents state that:

“ "taking a four nations approach under the framework will ensure that expertise is shared and resource requirements are actually lower overall than if the four nations were taking this work forward individually.””

Food and Feed Safety and Hygiene Common Framework, 2020<sup>5</sup> paragraph 13.5

Given that the framework has been scrutinised by legislatures, it is understood that the framework is now [in phase 5 of the frameworks development process](#) . At this point, post-implementation arrangements are made. A final framework document is expected to be published once a framework is confirmed and fully implemented.

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