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SPICe Briefing

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Animal Health and Welfare framework

Courtney Aitken, Annie Bosse, Sarah McKay and Anna Brand

This briefing discusses the Animal Health and Welfare Common Framework. The Animal Health and Welfare Framework sets out how the UK Government and devolved governments propose to work together in animal health and welfare policy areas. It also provides background information on the common frameworks programme.



Common
Framework

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Summary

This briefing provides detailed information on the Animal Health and Welfare Common Framework. The Rural Affairs, Islands and Natural Environment (RAINE) Committee will lead on scrutiny of this framework.¹

The Animal Health and Welfare Common Framework is a non-legislative agreement formalising ways of working between the four governments on animal health and welfare policy. The Animal Health and Welfare Common Framework sets out the scope of the policy area, the roles and responsibilities of parties to it, as well as the mechanisms for monitoring, review, amendment, and dispute resolution.

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

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

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

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

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

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

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

What are common frameworks?

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

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

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

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

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

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

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

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

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

The framework outline went on to note that the framework:

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

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

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

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

Why are common frameworks needed?

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

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

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

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

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

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

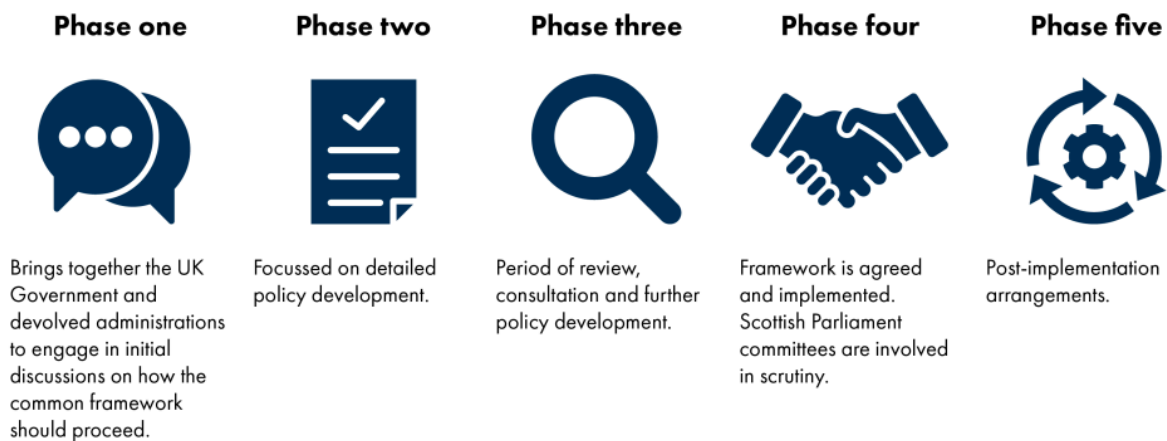
What is the process for developing frameworks ?

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

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

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

Common framework development



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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”.² The Scottish Government believes that they are about “allowing legitimate policy choices”.²
- 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 legislatures³.

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

Scrutiny at other legislatures

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

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

House of Lords Common Frameworks Scrutiny Committee

The House of Lords Common Frameworks Scrutiny Committee completed scrutiny of the framework on 23 March 2022. The Committee provided [its final recommendations in correspondence to George Eustice MP, Secretary of State for Environment, Food and Rural Affairs](#).

The Committee raised significant concerns with the quality of drafting in the framework documents. In addition to a list of drafting errors present in the framework, the Committee stated:

“ High-quality, transparent, and consistent common frameworks are essential for successful intergovernmental working; and to provide strong foundations for a cooperative Union. They must be taken seriously and all efforts should be made to draft them carefully and accurately. We recommend that far greater effort is taken to ensure all frameworks are drafted to a high standard before they are approved.”

The Committee also raised concerns on the lack of commitments on ongoing parliamentary engagement in the framework documents:

“ We are disappointed to note the absence in this framework of any commitments on ongoing engagement with Parliament. We note the absence of any commitments in the texts of these frameworks to publish reviews of the frameworks or to update legislatures on the outcomes of reviews. The Government has separately committed to improving transparency in Intergovernmental Relations. Transparency in this area should include regular statements to legislatures on the functioning of these frameworks. We recommend that the framework should be updated to include a commitment to update the House of Lords, House of Commons and the three devolved legislatures on the ongoing functioning of the framework after the conclusion of the scheduled reviews.”

The Committee also made recommendations to update domestic and international arrangements relevant to the framework, such as the necessity to include reference to the [UK Internal Market Act 2020](#) and its [exclusions process](#), cross-border issues relating to animal health that may involve the Government of Ireland, and clarification on the roles and responsibilities of various groups within the framework governance structure. We discuss these recommendations in the sections on the [Scope](#) of the framework, the [Roles and Responsibilities](#) of governance bodies within the framework, and the framework's [Decision-making processes](#).

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

The Northern Ireland Committee for Agriculture, Environment and Rural Affairs [published its position paper at the end of the 2017-22 mandate](#). The Committee noted several concerns on the framework's relations with the [Protocol on Ireland/Northern Ireland](#) and the [UK Internal Market Act 2020](#).

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

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

House of Commons Environment, Food, and Rural Affairs Committee

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

“ Several of the submissions highlighted concerns regarding transparency and stakeholder engagement, compared to the level of engagement that stakeholders were used to under the previous EU system. Stakeholders have requested to be involved early in the decision-making process and for the need to at least maintain, but ideally increase, the level of transparency that existed when the UK was a member of the EU. This includes making available schedules of meetings, agendas and minutes.”

In addition, the Committee received evidence from stakeholders as part of its enquiry on [DEFRA Common Frameworks](#). The inquiry sought views on the suitability of the framework to deliver a consistent policy approach across the UK, the balance between respecting devolved competence and ensuring fair competition between the UK nations, and practical challenges that may arise from the operation of the framework. The British Veterinary Association [submitted evidence with specific points relating to stakeholder consultation and transparency](#). The submission states:

“ We agree with the need for the four governments and agencies such as the FSA and FSS to agree common approaches. Where there are agreements between governments as opposed to decisions by a single government there is a risk of a lack of transparency and an exclusion of outside stakeholders. The approach taken to this collaborative framework should endeavour to be as transparent as possible and ensure opportunities for consultation and engagement with key stakeholders... The Animal Health and Welfare Common Framework notes that up until the end of the Transition Period most animal health and animal welfare law was harmonised at EU level, relying on EU processes and institutions to carry out most risk assessments, risk management decisions and develop and pass legislation. Legislation was developed by the European Commission and voted on at the Standing Committee on Plants, Animals, Food and Feed (SCoPAFF) by EU Member States. SCoPAFF has its own webpage which provides a schedule of meetings. Ahead of meetings, agendas are shared publicly, and minutes are shared soon after. This level of transparency should at least be maintained, but this is also an opportunity to increase transparency. Engagement with stakeholders outside government is essential and will add value to the decisions taken under the frameworks.”

The RSPCA in its submission queried the role of legislatures and elected representatives in the policymaking process where a proposal falls within a framework policy area. The RSPCA's [written submission states](#):

“ It is unclear if the Frameworks could risk restricting the power of legislatures, or Parliamentarians who are outside the Government. As the Common Framework on animal welfare covers all future policy, there is not a clear understanding of when a policy issue is put under the Common Framework process. For example, will the ability of elected representatives in the tabling of backbench proposals be restricted if they do not wish to align with the Framework. And if a proposal has been put to and accepted under Common Frameworks but then amended in a legislature in such a way it contradicts the principles agreed by governments under the Framework, would this need to be rediscussed in the Frameworks.”

The UK Internal Market Act 2020

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The process is set out in full below. ⁴

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.

Animal Health and Welfare

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

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

Policy Area

The policy area under consideration is Animal Health and Welfare (AHW). The framework notes that AHW is taken to include animal health and traceability, and animal welfare.

Scope

The framework notes that animal health and welfare policy, including powers to control the movement of animals and products of animal origin, is mostly devolved. However, there are exceptions to this. For example, trade in endangered species, procedures on live animals for scientific or educational purposes, veterinary medicines regulation, and veterinary professional standards are reserved matters within the policy area.

Unlike other frameworks, which tend to limit the scope of the framework to retained EU law within the policy area, the Animal Health and Welfare framework states that the whole of the policy area is within scope. This arrangement suggests that governments will be expected to make joint decisions in areas of animal health and welfare policy where they previously had regulatory autonomy whilst the UK was a member of the EU. The framework documents do not provide a rationale for this decision.

The framework also notes that it will include reserved areas such as veterinary medicines within its scope. The framework states:

“ In terms of reserved matters which impact the Parties, the Devolution Memorandum of Understanding (2013) states that adequate consultation to a reasonable timescale by the UK Government will be undertaken with the other Parties. This will cover the methodology and detail of any proposed revisions to the reserved matters. Furthermore, decisions will be carried out in accordance with legislative requirements including but not limited to gaining consent.”

The framework notes the following interdependencies and linked framework policy areas:

- [Official Controls Legislation](#)
- [Plant Health Framework](#)
- [Food and Feed Safety and Hygiene Framework](#)
- [Zootechnics Framework](#)

The framework indicates that "issues from other frameworks e.g. FFSH have an influence in AHW" are explicitly within the scope of the framework.^{iv} It is unclear what is meant by this. There is no indication elsewhere in the framework documents of where the framework will interact with other frameworks to assess any such issues.

Northern Ireland Protocol

[Annex 2 of the Protocol on Ireland/Northern Ireland](#) sets out the EU law that applies to Northern Ireland in the AHW policy area.^v As such, the following paragraphs from Annex 2 are relevant to this framework:

- Paragraph 36: Live animals, germinal products and products of animal origin
- Paragraph 37: Animal disease control, zoonosis control
- Paragraph 38: Animal identification
- Paragraph 39: Animal breeding
- Paragraph 40: Animal welfare
- Paragraph 43: Official controls and veterinary checks
- Paragraph 44: Sanitary and phytosanitary

The framework is UK-wide and states that it is intended to accommodate the specific circumstances in Northern Ireland that arise as a result of the Protocol.

The governance structures and decision making processes outlined in the framework are, the framework states, intended to allow for the full participation of Northern Ireland in the event policy changes are proposed. This may be when the UK or devolved governments propose policy changes that have "regulatory implications for the rest of the UK" or when the rules in Northern Ireland change with EU alignment.

It is not clear from the framework documents what policy changes would have regulatory implications for the other Parties to the framework. Northern Ireland Executive Ministers will be able to trigger a review of an issue as part of the [framework dispute resolution process](#) in the event that they have concerns over GB-wide proposals which they feel have not been satisfactorily addressed.

The House of Lords Common Frameworks Scrutiny Committee [made the following recommendations regarding Northern Ireland's requirement to comply with EU AHW law](#):

“ We recommend that the framework respects the fact that the Island of Ireland is a single epidemiological unit for the purposes of animal health and welfare. Therefore, the opinion and feedback of the Irish Government is sought on this common framework, and that the Irish Government is treated as a key stakeholder in future reviews of the framework. We recommend that the framework is updated to outline the processes used to facilitate communication between Northern Ireland and the Republic of Ireland on matters relating to animal health and welfare.”

iv FFSH refers to the [Food and Feed Safety and Hygiene Common Framework](#).

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.

EU-UK Trade and Cooperation Agreement

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

The framework states:

“ Where a UK-EU meeting agenda includes an item concerning implementation in an area of devolved competence, UK Government should facilitate the attendance of the Parties of a similar level to that of the UK Government representatives with final discretion as to the UK delegation a matter for the UK co-chair. UK Government should engage the Parties as fully as possible in preparation for these meetings regardless of attendance, and on all relevant implementation matters.”

International Obligations

While AHW policy areas are devolved matters, international trade is reserved. This creates an area of overlapping interests where UK trade negotiations and implementation may intersect with devolved matters. It is the responsibility of the UK Government to ensure that the UK complies with its international trading obligations. Parties to the framework are responsible for observing and implementing international obligations, such as trade agreements, which concern devolved matters that have been negotiated and agreed by the UK Government. The framework, in respect of specific trade issues relating to AHW, notes:

“ Negotiations on trade are led by the UK Government with discussions taking place through intergovernmental processes and Parties’ views will be sought timely on trade negotiations, regarding Animal Health and Welfare, through trade-specific engagement fora.”

The UK is an independent World Trade Organisation (WTO) member. Cross-departmental processes have been developed by Defra to ensure that all nations of the UK fulfil the UK’s WTO obligations, including consulting stakeholders on [Sanitary and Phytosanitary measures \(SPS\)](#). Defra, as the UK’s designated National Notification Authority and Enquiry Point, is also expected to conduct disease notification to WTO on behalf of the four nations of the UK.

The UK is also bound by World Organisation for Animal Health (‘OIE’) Standards which seek to set common internationally recognised standards. The OIE codes and manuals include:

- the Terrestrial Animal Health Code
 - the Manual of Diagnostic Tests and Vaccines for Terrestrial Animals
 - the Aquatic Animal Health Code
-

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

- the Manual of Diagnostic Tests for Aquatic Animals.

The framework also notes:

“ In terms of OIE Animal Disease Reporting and EU reporting it is expected that Defra’s International Affairs Team will report on behalf of the whole of the UK. However, work in this area is ongoing with the international disease project looking at how this process will work with Devolved Governments.”

Definitions

The framework lists the following definitions:

- Baseline Standards (Great Britain) - all animal health and welfare standards in place at 11pm on the 31st December 2020.
- Baseline Standards (Northern Ireland) - EU minimum standards in accordance with the Northern Ireland Protocol and the Withdrawal Agreement, otherwise they will be domestic animal health and welfare law in place at 11pm on the 31st December 2020.
- Concordat - an agreement between the four governments of the UK that sets out the principles, arrangements and processes that form the framework.

Summary of proposed approach

The framework comprises of non-legislative mechanisms that set out arrangements for joint working and managing divergence across AHW policy in all four nations of the UK. However, the framework indicates that there is a preference to deliver a common approach where possible. The framework documents state:

“ The intention is not to mandate harmonisation, but to recognise that businesses and consumers in all four nations of the UK (as well as international trading partners) often benefit from there being one consistent set of AHW legislation (where those rules are considered to be in their interests) and agreed approaches for changing AHW rules. In addition, the Framework should recognise the fact that diseases do not respect borders and this requires a coordinated approach for prevention and control.”

This framework also commits parties to baseline standards for AHW policy. These standards are derived from retained EU law at the end of the transition period in Great Britain, and EU standards as they apply in Northern Ireland (see [Definitions](#)). The framework documents set out the following commitments by Parties to the framework:

“ The Parties agree not to diverge from baseline standards in a manner harmful to biosecurity, welfare or the UK internal market across relevant policy areas. Whether a change is deemed harmful will be determined by the CVOs and relevant heads of policy. If Northern Ireland has to diverge in order to maintain parity with the EU the same review process will be followed and the same assessments are made as whether it would be in the best interests of GB to follow suit or to allow divergence.”

Stakeholder engagement

The [covering material for the framework sent to the RAINE Committee on 7 February 2022](#), sets out the stakeholder engagement that has taken place in the development of the framework. The covering material states:

“ Views were sought during each phase of the framework drafting process from a diverse range of stakeholder groups, including, but not limited to: Chief Veterinary Officers from all four nations, the Animal Disease Policy Group, the Animal Welfare Policy Group, the TB Liaison Group, the Veterinary Risk Group, the Outbreak Readiness Board, the Disease Emergency Response Committee, and other external agencies, third sector and private sector representatives.”

The framework documents do not set out a specific mechanism or process for engaging stakeholders in decisions made through framework processes.

Scrutiny from the Northern Ireland Assembly Committee for Agriculture, Environment and Rural Affairs

In its scrutiny of the framework, the Northern Ireland Assembly Committee for Agriculture, Environment, and Rural Affairs conducted stakeholder engagement. This raised a number of issues with particular relevance for Northern Ireland and some more general remarks on how the framework will function. The [Committee's position paper on the framework](#) summarised the issues raised through stakeholder engagement as follows:

- “
- There is uncertainty regarding divergence that will arise in the future in respect of the management of endemic animal diseases. NI will have to maintain compliance with EU reporting requirements in this regard and jurisdictions in GB will not have to follow the same practice, e.g. it is possible that Bovine Viral Diarrhoea (BVD) will become a notifiable disease across the EU, and by extension in NI via the Protocol, in the near future.”
 - The engagement between professionals/industry and DAERA in respect of policy matters is ad hoc and it is imperative that there are effective communication channels to ensure that the needs, interests and views of professionals are transmitted to DAERA through to the Framework groups, and vice versa.”
 - There is an overlap with the Common Framework and trade policy in respect of animal health and welfare standards. It is critically important to ensure that there is effective engagement between the Common Framework decision-making groups and the Department for International Trade in terms of establishing Free Trade Deals with other countries which may have less stringent animal welfare regulations in place and to ensure that UK-based producers will not be disadvantaged as a consequence.”
 - There could potentially be a competitive disadvantage for NI farmers having to maintain parity with higher welfare standards than their counterparts in GB due to the need to comply with EU legislation.”

Detailed overview of proposed framework: legislation

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

Retained EU AHW legislation can be broken down into three main areas which fall within devolved competence:

- Animal Health and Traceability
- Animal Welfare
- Trade in animals and related products.

The framework documents provide an extensive, but not exhaustive, list of AHW legislation in Annex 1 (pp. 32-49). The main objectives of AHW legislation are to:

- protect and uphold animal health and welfare standards
- protect public health from animal related diseases
- prevent disease entering the EU
- enable trade in animal commodities, including pets
- assure the safety, quality and efficacy of veterinary medicines.
- control diseases both endemic and exotic
- undertake surveillance for disease
- protect aquatic animal health
- protect bee health
- ensure animal welfare including on-farm, during transit, slaughter and at markets.

There are areas within AHW policy where EU legislation previously offered flexibility for the law to be applied in different ways. For example, there is a difference of policy approach between Parties in the areas of the management and monitoring of bovine tuberculosis, chicken stocking density and defined notifiable animal diseases. The framework states:

“ In these areas, different decisions may have been taken by each Party in the past, and different approaches may remain the norm and appropriate in future. This Framework is not being used to force a harmonised policy position where current divergence is operating effectively. However, any future and further divergence is subject to the Framework and the principles agreed between parties.”

Detailed overview of proposed framework: non-legislative arrangements

The framework comprises of several non-legislative arrangements. These include the [Joint Decision-Making Mechanisms](#), [Dispute Resolution Processes](#), [Framework Monitoring](#), and [Review and Amendment Mechanisms](#). A Concordat between the UK Government, Scottish Government, Welsh Government, and Northern Ireland Executive is also appended to the framework. This Concordat sets out agreed principles for ways of working and agreements on the aforementioned non-legislative arrangements.

Concordat: Agreed Principles

The Concordat sets out the following principles for ways of working:

1. Timing

- Where timelines are prescribed in law, decision-making processes should take full account of those timelines by ensuring enough time for discussions between Parties.

2. Consultation

- The Parties will inform each other of any matters - including the forming of policy, proposals for legislation, and the timing of public announcements as soon as they are being considered. This should also include good coordination of emergency response (e.g. when dealing with animal health and welfare and public health matters that require very quick decisions).

3. Impacts of decisions

- In coming to decisions or developing policies or legislation which may have an impact financially or otherwise on other Parties, or which may constrain others' policy development, each Party will seek the views of those potentially affected at the earliest reasonable opportunity and be mindful of those views in taking any decisions. Noting that if there are opposing views then this can go through the decision making and dispute avoidance process.

4. Transparency

- The decision-making processes should be transparent. Annex 2 [of the Concordat] shows how the decision-making process will work under the Framework with further information in the AHW Framework Outline.
- Parties should notify other Parties of their thinking on potential policy, public consultation or implementation of changes at an early stage, and in good time to have any necessary pan-UK discussions about the implications, before final decisions are made.
- Officials should be made aware when information goes to other Ministers to ensure their own Ministers are briefed as necessary.
- Parties agree to a wider requirement for transparency, aside from the sharing of data and information, the Parties agree to share policy, communication and general information that would prove useful to the other Parties where security is not deemed to be at risk.

5. Evidence

- Evidence used to inform decisions should be shared in an open and transparent way with all Parties.
- For good governance, there should be a separation between the gathering of

evidence and the provision of expert advice which forms the evidence base, from decision making. The evidence base should be fully available to all Parties, and independently sourced where possible, in order to enable decision makers to consider the same evidence base and mitigate the risk of disputes regarding the evidence.

- Resources will potentially come from joint sources in the form of expert opinion, analysis and advice, data reports, or other sources.
- In some instances, the decision-making fora may commission work to inform a decision. The scope and who is involved in that work should be decided at a joint decision-making forum including all four Chief Veterinary Officers (CVOs).

6. Risk assessment

- Risk assessments should be carried out by all Parties through the normal processes within Parties or as a common resource, depending on the situation.
- This information should be shared between the Parties to allow for open, transparent decision-making.
- Evidence-gathering underpinning decisions is often a shared resource, e.g. expert advice or data collection by a body which performs these functions on behalf of all Parties.

Animal Health and Welfare in practice

Roles and Responsibilities: parties to the framework

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

The Parties to the framework include:

- UK Government Department of Environment, Food and Rural Affairs (Defra)
- Scottish Government
- Welsh Government
- Northern Ireland Department for Agriculture, Environment and Rural Affairs (DAERA)

Roles and responsibilities: existing or new bodies

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

The framework documents indicate that the operation of the framework is supported by [official level discussion](#) and [decision-making groups](#). The four Chief Veterinary Officers (CVOs) also support the operation of the framework via these groups, and through existing cross-government decision-making and discussion fora.

The purpose of the discussion and decision-making groups includes:

- dispute resolution and escalation
- communications between Parties
- identifying and monitoring impacts of policy and regulatory divergence
- exchanging ideas, policy approaches and scientific research
- proposing decisions and brokering agreement
- managing disease outbreaks
- identifying threats
- escalation of issues

Official Level Discussion Groups

The framework lists the following official level discussion groups:

- Chief Veterinary Officers (CVOs)

- Veterinary Risk Group (VRG)
- Operational Readiness Board/Outbreak Readiness Board (ORB)
- Disease Emergency Response Committee (DERC)
- Policy Officials

These groups are not supported by a Terms of Reference and it is not clear what specific functions discussion groups are expected to carry out. The decision-making process illustrated in Annex 2 of the framework documents suggest that official level discussion groups report to official level decision making groups. The framework documents do provide some reasoning as to why discussion and decision-making groups are separate in its [principles for decision-making](#):

“ There should be a separation between evidence-gathering and decision-making. Evidence gathering underpinning decisions is often a shared resource, e.g. expert advice or data collection by a body which performs these functions on behalf of all Parties. The separation from decision-making means there is governance, including challenge and transparency within the evidence-gathering processes.”

The lack of clarity over the roles and responsibilities of these groups was raised by the [House of Lords Common Frameworks Scrutiny Committee in its final recommendations for the framework \(dated 23 March 2022\)](#):

“ We recommend that the framework is updated to provide terms of reference for the Chief Veterinary Officers (CVOs), Veterinary Risk Group (VRG), Outbreak Readiness Board (ORB), and Disease Emergency Response Committee (DERC)...”

“ We recommend that the framework is updated to state that the VRG reports to the CVOs, and to provide clarity on who the ORB and DERC report to...”

“ We were disappointed that your letter did not address our concerns as to whether the CVOs are a discussion or decision-making fora. In Annex 2, the CVOs are listed as a “Discussion fora”. Yet on page 32, the CVOs are listed alongside the decision-making groups. We recommend that the framework is updated to clarify what type of group the CVO is, and that any contradictory statements are removed...”

“ We were also disappointed that your letter did not address our concerns over the ORB. On page 20 we read that an existing discussion group is the “Outbreak Readiness Board (ORB)” which is overseen by the ADPG (page 60). Yet on page 59 the “Operational Readiness Board (ORB)” are mentioned, whose chair sits on the ADPG. Annex 2 also lists the “Operational Readiness Board” as a discussion group. The framework must be clear on who the ORB are, and if it is two groups or one. We recommend that the framework is updated to provide clarity on the ORB.”

Official Level Decision-making Groups

Officials will meet and make joint decisions at four new policy groups.

- Animal Disease Policy Group aims to reach official-level agreement on UK and GB controls for exotic animal disease.

- Aquatic Animal Health Policy Group aims to reach official-level agreement on UK and GB controls for aquatic animal disease.
- Tuberculosis (TB) Liaison Group aims to promote cooperation on bovine TB control. In “limited instances”, where the exercise of devolved powers affects the internal market, international trade or TB control, the group will seek to agree how to manage the impact of this.
- Animal Welfare Policy Group aims to facilitate the adoption of coordinated approaches to animal welfare where the four governments desire this.

Annexes 4-7 of the framework documents set out the Terms of Reference for the decision-making groups. There is some variability in the level of detail regarding the scope and membership (e.g. whether Chief Veterinary Officers and representatives from non-departmental public bodies are included in the group) in the respective Terms of Reference documents for each of the groups. The framework documents also indicate that decision-making groups can commission research and evidence-gathering in its [principles for decision-making](#):

“ In some instances, the decision-making group may commission work to inform a decision. The scope and who is involved in that work should be decided at a joint decision-making group or between all four CVOs.”

The House of Lords Common Frameworks Scrutiny Committee also [raised concerns on the Roles and Responsibilities of these groups](#):

“ On page 22, we read that decision-making groups may commission work where required to help inform their decision making. However, “The scope and who is involved in that work should be decided at a joint decision-making group or between all four CVOs”. You clarified that the joint decision-making group is made up of the ADPG, AWPG, AAHPG and TBLG. We recommend the framework is updated to clarify that the joint decision-making group is made up of the ADPG, AWPG, AAHPG and TBLG. The recommendations above all relate to the fact that we do not think the framework is clear in how groups interact with one another. This could be done through a clearer diagram or tables, or via an annex clearly setting out interactions between the groups. We recommend that the framework is updated to make it clearer how groups interact with one another.”

Senior Official Programme Board

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

- Agricultural support
- Animal health and welfare

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

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

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

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

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

Decision-making

The framework is delivered via a three-tiered governance structure.

The official level decision-making groups consisting of policy officials serve as the framework's primary deliberation and decision-making entities. These groups are:

- Animal Disease Policy Group;
- Animal Welfare Policy Group;
- Tuberculosis Policy Group; and
- Aquatic Animal Health Policy Group.

The SOPB acts as the senior official decision-making forum. The Board only meet to discuss significant strategic issues or to facilitate dispute resolution. The SOPB will not make substantive decisions on scientific, policy or technical matters without consulting appropriate experts, including respective CVOs. It is however expected to test, challenge and appraise evidence and recommendations which are presented by the various cross-

official groups.

IMG-EFRA has ultimate responsibility for making policy decisions based on the recommendations received and for engaging to resolve disputes where resolution has not been achievable at lower levels. The framework also notes the following on ministerial decision-making:

“ While Ministers will ultimately reserve the right to take individual decisions for their Government, for areas within the scope of the Framework a consensus should first be sought on the approaches to take at official level, and efforts made to avoid and resolve any disagreements and disputes.”

Principles for Decision-making

The framework sets out principles for decision-making that seem to mirror the [principles set out in the Concordat](#). The principles for decision-making can be summarised as follows:

- **Timely decision-making:** where timelines are prescribed in law, decision-making processes should take full account of those timelines and ensure sufficient time for discussions between the Parties.
- **Transparent decision-making processes:** Parties should notify other governments of its consideration of potential policy and in good time to have any discussions about the implications before final decisions are made.
- **Evidence-based decision making:** evidence, including risk assessments, used to inform decisions should be shared in an open and transparent way with all Parties.
- **Information sharing:** officials should be made aware when information goes to other Ministers to ensure their own Ministers are briefed in advance.
- **Balanced recommendations:** where officials cannot reach a shared position and “agree to disagree”, advice to ministers should be balanced, and the reason for a difference of opinion noted. Areas where agreement has been reached, should also be presented.
- **Dispute resolution:** where Ministers do not agree on the shared recommendation made by AHW bodies then usual Ministerial dispute mechanisms should be engaged.

Managing Divergence

While the aim of the framework is to develop common policy approaches, the framework sets out the process that should be used to manage divergence.

1. The governments notify each other of potential policy changes early on, and in time to have joint discussions about their implications.
2. Before one government diverges, the governments must see if they can agree a common approach that minimises divergence.
3. If a government still wants to diverge, they should set out why this is still the most

suitable course of action. At this stage, there should be an assessment of the implications for the UK internal market, the implementation of international agreements, and biosecurity. Policy officials and Chief Veterinary Officers will consider the impact of the changes.

4. If the governments cannot agree to maintaining a common approach or diverging, the dispute resolution process can be used.

The process for managing divergence also suggests a potential role for the UK-EU Joint/Specialised Committees in respect of assessing policy impacts on Northern Ireland. However, as noted by the [Northern Ireland Assembly Committee for Agriculture, Environment, and Rural Affairs in its position paper](#), it is unclear how this would manifest in practice. The framework documents only state:

“

- Key to assessing potential impacts of Great Britain diverging on Northern Ireland Trade will be an indication from the EU-UK Joint and Specialised Committees under the Withdrawal Agreement, on their views of any material divergence. The Joint Committee oversees UK and EU implementation, application and interpretation of the Withdrawal Agreement. The Joint Committee will also seek to resolve any issues that may arise during implementation of the Northern Ireland Protocol. The Joint Committee will supervise the work of the Specialised Committees including Committee on Ireland/ Northern Ireland and take decisions on their recommendations.”

Monitoring and enforcement

The framework provides limited detail on monitoring and enforcement. The Animal Disease Policy Group (ADPG) is expected to monitor the framework on an ad hoc basis.

The framework notes that the ADPG "*should agree what information is required and with what frequency to provide assurance the Framework is operating effectively*". There is no indication in the framework documents as to how future decisions on the monitoring and enforcement process will be communicated to other stakeholders.

The framework documents do not make reference to parliamentary engagement for the review and monitoring of the operation of the framework.

Review and amendment

The framework does not set out a clear Review and Amendment (RAM) process. Several details on the RAM process are vague or have been deferred. It is not clear when these decisions will be made or how they will be communicated to stakeholders. However the framework and associated Concordat provide the following indications as to how the RAM may operate.

The framework documents indicate that there will be an ongoing review of the framework. The ADPG is expected to conduct an initial annual review of the framework with the first post-implementation review one year after the framework is fully implemented. The

framework documents then note that the ADPG will "*report on the review to those with assurance responsibilities for the Framework*". It is not clear from the framework document which body (or bodies) is being referred to. After the first post-implementation review, it is for the ADPG to propose the frequency of the review process.

The framework documents also state that one or more Parties can request an independent review panel to be brought in to review the framework. In this case, ADPG would collectively agree a body. The framework documents also indicate that the review should include questionnaires and interviews to establish whether the framework is working effectively and to solicit recommendations for improvement.

The Concordat notes that the review process should consider:

- evidence regarding the operation of the Framework over a period of time;
- changes in international legislation pertaining to AHW in particular with the UK current or prospective trading partners
- changes in domestic AHW legislation and decision-making structures;
- significant changes, cases/disputes at World Trade Organisation (WTO) level;
- changes in the structure of domestic policy making and operational delivery of AHW across all four Governments;
- OIE/EU Animal Health Law lists of 'official' diseases, and
- changes to OIE Terrestrial Manual.

The framework states that amendment requests should be raised to the ADPG (or appointed reviewer). There is no further detail on how reviews should be initiated and how amendments are expected to be agreed.

Dispute resolution official level

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

The dispute resolution process expects that the governments will seek to resolve disagreements at the earliest opportunity (i.e. official level according to the framework governance structure). The framework also indicates that Parties should only engage the dispute resolution process once routine avenues have been exhausted.

The framework documents set out that disputes could arise if the governments do not agree on a common approach to a policy issue (or agree to diverge), or if the governments disagree about whether the principles and processes set out in the framework are being followed. The framework sets out the parameters for resolving disagreements and disputes and differentiates between:

- **A difference of view:** no impact on other parties.
- **A disagreement:** requires some resolution, ideally at official level.
- **A dispute:** a disagreement which cannot be resolved and needs escalation and/or

refers to a decision made with an unwanted impact on another party.

- **Agree to Disagree:** no consensus on a way forward but consequences can be managed.

Dispute resolution, like the framework decision-making processes, follows a three-tiered governance structure. As such, there is an Official level, Senior Official level and Ministerial level for resolving disagreements before the matter would then be escalated to intergovernmental structures in the event of no agreement. If agreement is reached at any stage of the process, the disagreement or dispute is considered closed and any changes proposed can proceed.

The framework also sets principles for the Parties to follow when disagreements and disputes arise:

- commitment to evidence-based approaches to resolving disputes;
- transparency and accountability (sharing of information auditable, open to scrutiny unless legal requirements for non-disclosure);
- timely resolution (meeting deadlines for actions/stages, agreement to accelerated timescale in emergencies), and
- compliance (with process and outcome).

Official level (Level 1)

It is expected that officials in each of the four Governments will follow the principles and processes set out in the framework. If and when a matter for potential dispute is identified, officials will put it in writing and refer it to an official level group within the framework. The official level group that the disagreement is referred to depends on the nature of the disagreement.

- Disease outbreak and framework review related issues are referred to the ADPG.
- Welfare related issues are referred to the AWPG.
- Aquatic related issues are referred to the TB Liaison Group and AAHPG, as appropriate.

If no agreement can be reached at the official level, the disagreement becomes a formal dispute. It is expected that relevant expertise in the field of the dispute and Chief Veterinary Officers (CVOs) will input at the earliest stages of resolving a disagreement or dispute. The framework documents also note that CVOs and policy officials are expected to agree the level of briefing required should the matter become a formal dispute and referred to senior officials.

Senior Official level (Level 2)

If no agreement can be made at the official level, the dispute is passed to the SOPB. The SOPB is required to take a view as to whether the dispute should be escalated to IMG-EFRA.

Ministerial level (Level 3)

Ministerial level (i.e. IMG-EFRA) in this framework's dispute resolution mechanism refers to a level of escalation overseen by junior or senior ministers before the dispute is referred to intergovernmental structures (see [Dispute resolution Ministerial level](#)). Escalation to intergovernmental dispute resolution mechanisms is expected to be a last resort and only used when steps for resolving disagreements within the framework's Ministerial level is unsuccessful.

While the framework expects that most disagreements will begin and be resolved at official level, the framework documents also acknowledge disagreements may begin at Ministerial level. For example, where one or more Minister(s) was not content to proceed with the recommendation from officials. In these cases, the issue would come back to officials in all Parties to carry out a review of the evidence (including the impacts of decision(s) taken) and provide further advice to Ministers. If the divergence was not considered to be acceptable, a dispute could be raised, following the same stages of escalation.

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.

Dispute resolution Ministerial level

What will intergovernmental relations look like?

Proposed outline of new intergovernmental relations structure

Top tier:

The Council

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

Middle tier:

Standing committees

The Interministerial Standing Committee (IMSC)

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

The Finance Interministerial Standing Committee (F:ISC)

Will comprise Finance Ministers and consider finance and funding matters.

Additional interministerial committees

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

Lowest tier:

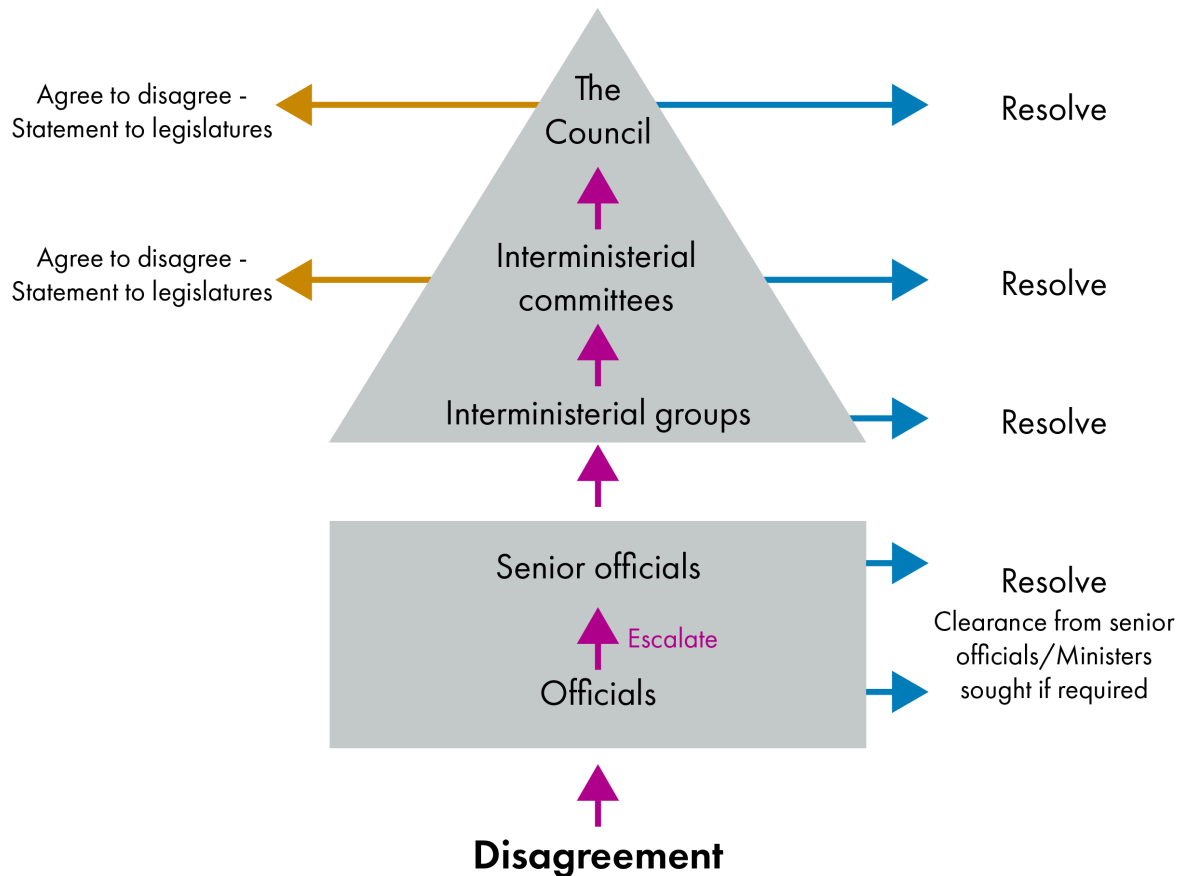
A number of interministerial groups (IMG) will be formed to discuss specific policy areas, such as on transport, Net Zero, and the Trade and Cooperation Agreement with the EU.

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

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

viii [A slightly different dispute resolution process](#) applies for disputes of a financial nature, which involve the Finance Interministerial Standing Committee.

Dispute Resolution at official and Ministerial levels



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

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

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

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

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

Implementation

The covering material associated with the framework documents notes that the published version of the framework was agreed by Ministers in January 2021. The framework was provisionally confirmed and published on 3 February 2022. UK legislatures now have the opportunity to scrutinise the framework and raise any concerns with their respective government. If scrutiny and any subsequent reappraisal of the framework leads to significant changes, the provisional framework may need to undergo further collective agreement before final confirmation and implementation. The framework has also [been operating provisionally since January 2021](#).

The framework also notes that the Parties are expected to review the framework to assess its functionality, how the Crown Dependencies might be affected, and to review lessons learnt from across the EFRA-related frameworks. In addition, the framework notes that future assurance policy and processes including international inspections are under development within the UK Office for SPS Trade Assurance.^{ix}

ix The UK Office for Sanitary and Phytosanitary Trade Assurance has been set up within Defra to coordinate trade assurance in the UK for live animals and animal products. It will ensure trading partners meet the requirement of the UK's biosecurity and SPS assurance regimes.

Framework Analysis

Key issues

Scope of the Framework

The framework sets out that the whole of animal health and welfare policy (not just policy governed by retained EU law) is within its scope. This is different from the approach in many other common frameworks. For example, the [Food and Feed Safety, and Hygiene Common Framework](#) provides that areas where retained EU law already allows divergence between different parts of GB will fall outside the scope of the framework.

It is not clear whether any assessment has been made of the impact of this approach on the exercise of devolved competence, or whether it is considered compatible with the principle that common frameworks should maintain “*as a minimum, equivalent flexibility for tailoring policies to the specific needs of each territory as was afforded by EU rules.*”⁵

Baseline standards

The framework documents commit governments to baseline standards set by the AHW standards in place prior to the end of the EU Exit transition period. This is not uncommon among frameworks. For example, both the [Blood Safety and Quality Common Framework](#) and the [Organs, Tissues and Cells Common Framework](#) set baseline standards and a commitment to non-regression from the EU approach in place at the end of the transition period. However, this may result in divergence between Northern Ireland and Great Britain since Northern Ireland is expected to align with EU AHW standards.^x This issue was reported in the [Northern Ireland Assembly Committee for Agriculture, Environment and Rural Affairs position paper on the framework](#).

The framework states in relation to Northern Ireland that:

“ If Northern Ireland has to diverge in order to maintain parity with the EU the same review process will be followed and the same assessments are made as whether it would be in the best interests of GB to follow suit or to allow divergence.”

The concordat makes it clear that the baseline standards "in England, Scotland and Wales...refer to all Animal Health and Welfare standards in place at 11 PM on the 31st December 2020."

'Animal Health and Welfare standards' are not defined explicitly in the framework, though it is made clear that the scope of the framework is all animal health and welfare legislation in the UK. Annex A provides an extensive, but not exhaustive list of the legislation within scope.

It is assumed therefore that 'baseline standards' refers to the legal standards in place in the UK at the end of the transition period. At EU level, a recognition of animal sentience and therefore a requirement to pay full regard to the welfare requirements of animals in formulating and implementing policy is enshrined in the Treaty on the Functioning of the

^x 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.

European Union. [The Treaty, as amended by the Lisbon Treaty in 2009](#), sets out that:

“ In formulating and implementing the Union's agriculture, fisheries, transport, internal market, research and technological development and space policies, the Union and the Member States shall, since animals are sentient beings, pay full regard to the welfare requirements of animals, while respecting the legislative or administrative provisions and customs of the EU countries relating in particular to religious rites, cultural traditions and regional heritage.”

The UK is no longer a party to the Treaty on the Functioning of the EU so there is no continued shared legislative basis for this principle in the UK. It is therefore assumed that this does not form part of the 'baseline standard', though some UK nations have separately addressed this, and [animal sentience is a shared recognition in the EU-UK Trade and Cooperation Agreement](#). [The UK Government has separately legislated on this topic for England](#). In Scotland, [then Cabinet Secretary for Constitution, Europe and External Affairs told the Scottish Parliament](#) in response to a question regarding alignment with EU principles for animal sentience in November 2020 that:

“ The Scottish Government fully accepts the scientific basis for animal sentience and will take all appropriate action to safeguard animal welfare standards. Animal sentience has been implicitly recognised in Scottish legislation for more than a century, most recently in the Animal Health and Welfare (Scotland) Act 2006. Our newly established Scottish animal welfare commission has a specific remit to report annually on how the welfare needs of sentient animals have been addressed in all areas of relevant legislation.”

Shared policy-making

The framework documents indicate a preference for shared policy-making which goes beyond managing divergence between UK nations. The framework states:

“ In making changes to AHW legislation, the Parties will aim to develop common policy approaches, where this is appropriate, through cross-cutting mechanisms.”

It stresses the need for Parties to make decisions, including on divergence, based on a shared and transparent evidence base:

“ Any policy divergence in the Animal Health and Welfare area on the part of any of the Parties should be based upon a common/shared scientific evidence and risk assessment approach.”

If Parties wish to diverge, the process for managing divergence under the framework states that

“ "Before divergence can happen, Parties must first see if they can agree a common approach that accommodates the desired outcomes of individual Parties in order to minimise divergence (which in itself can add complexity and costs for businesses etc).””

And if divergence is still proposed,

“ there should be an assessment of the impact on the functioning of the UK Internal Market, the ability of the UK to negotiate/ implement international trade agreements and other international obligations; and any divergent approaches must not change baseline standards in a manner harmful to biosecurity or welfare”

The framework makes clear that the ability to legislate for higher standards above the baseline will not be affected, but that any decisions to enhance standards should be raised and assessed within the common framework:

“ The ability for each Party to diverge above baseline standards (in simple terms, to raise or enhance in such a way that builds upon existing standards) will not be affected, but such decisions should also be notified to the other administrations, so that any risk of harmful divergence can be identified and addressed in line with the arrangements set out in the Framework.”

This may be relevant to the Scottish Government's commitment to align with the EU where appropriate, should the EU decide to enhance its baseline standards. The Scottish Government has specific powers, through [the UK Withdrawal from the European Union \(Continuity\) \(Scotland\) Act 2021](#), to 'keep pace' with EU legislative developments. That legislation makes clear that the purpose of the keeping pace power is "to contribute towards maintaining and advancing standards in relation to" animal health and welfare, among other things.

Transparency: Stakeholder Engagement and Role of Parliament

Agreements in the framework documents commit governments to routinely share evidence and notify governments of policy proposals at the point they are considered (see [Principles for Decision-making](#)). However, the framework documents only provide limited information which makes it difficult to determine how sharing evidence and seeking views between governments will work in practice.

Furthermore, it is unclear how governments will balance the framework's requirement to share information on policy formation between governments with the need to engage stakeholders in the policymaking process. The perceived lack of arrangements for stakeholder engagement was a common theme arising from [scrutiny activities at other legislatures](#). The [Northern Ireland Assembly Committee for Agriculture, Environment, and Rural Affairs \(2017-22 mandate\)](#) and the [House of Commons Environment, Food, and Rural Affairs Committee](#) received evidence from stakeholders indicating concerns that the level of engagement under the previous EU system may not be maintained (see [Stakeholder engagement](#)).

Moreover, the [House of Lords Common Frameworks Scrutiny Committee](#) also noted the lack of a commitment to engage with legislatures on the operation of the framework. On this issue, the Committee recommended that the framework documents are updated with the inclusion of a commitment to share information on the functioning of the framework with each of the UK legislatures. Similarly, [the House of Commons Environment, Food, and Rural Affairs Committee received evidence](#) querying the role of elected representatives in the policymaking process when there is an expectation and preference for joint policymaking between governments. The impact that the framework decision-making principles will have on the role of the Scottish Parliament and MSPs in developing Scottish AHW policy remains unclear.

Trade Agreements and Animal Welfare Standards

Alongside other production standards, animal health and welfare rules are key aspects of the level playing field between trading partners, and therefore can interact with trade agreements. It is clear from the documents that trade considerations are key drivers for managing divergence amongst common frameworks in general. The framework outline agreement states:

“ The Common Frameworks Principles agreed at JMC (EN) state that frameworks will be established where necessary to ensure the UK can negotiate, enter into and implement new trade agreements and international treaties, and ensure compliance with international obligations. These principles were established in the context of an ambition for close working between the UK Government and the other Parties on reserved matters that significantly impact devolved responsibilities in common frameworks. Common Frameworks will allow the parties, in a timely manner, to ascertain the impact of international trade on managing UK policy divergence. All parties to the framework will consider any impact in a way that meets the requirements of the JMC (EN) principles. Common Frameworks will afford an opportunity to consider any implications stemming from international trade which have a direct bearing on the operation of a Common Framework. The scope of this consideration will not extend beyond Common Frameworks.”

The purpose of the framework is, in part, to coordinate and manage divergence in the UK nations' domestic animal health and welfare rules and policies for the purpose of the internal market, but also to ensure that the UK can "negotiate, enter into and implement" international trade agreements. The framework affirms that "On the international stage, the UK trades as a whole on Animal Health and Welfare and is considered a single entity" and that international relations, including negotiating trade agreements are the responsibility of the UK Government.

The framework also recognises that the devolved authorities may have an interest in trade negotiations and agreements where this intersects with devolved responsibilities:

“ It is recognised that the Parties have an interest in international policy making and negotiations and in relation to devolved matters, notably where implementing action, by the Parties, may be required. The Parties do have relevant executive powers, including the power to make representations on matters impacting themselves and the power to do anything aimed at promoting or improving the economic, social or environmental well-being within their nations, which could be relied on to inform the UK Government's negotiating position and take part in the negotiations themselves.”

The introduction to the Concordat further affirms that devolved input will be sought, "where practicable, in a timely manner on trade negotiations":

“ Negotiations on trade are led by the UK Government with discussions taking place through intergovernmental processes. Scottish Government, Welsh Government and Northern Ireland Executive views will be sought, where practicable, in a timely manner on trade negotiations, regarding Animal Health and Welfare, through trade-specific engagement fora.”

It is assumed that those 'trade-specific engagement fora' are outwith the groups and processes established by the framework given that none of these have a specific trade focus, though this is not made clear. However, it is clear from the terms of reference to, for example, the Animal Welfare Policy Group, that trade policy is one area which can be discussed in that forum. More generally:

“ The group should consider any particular issues raised internationally (e.g. issues covered in EU, OIE and other forums) which have implications for policy development. The group should focus on policy areas that are devolved. In addition, the group should consider any policy areas which are not devolved, and which may raise issues relating to animal welfare.”

However, while it is acknowledged that the AHW framework is still provisional at the time of writing, the Scottish Government has raised that, from its perspective, intergovernmental engagement with regard to the trade agreements that have been struck to date has been insufficient, and made specific reference to concerns about animal welfare.

[Writing to the Rural Affairs, Islands and Natural Environment Committee on 28 June 2022 with regard to the new UK-Australia Free Trade Agreement](#), the Cabinet Secretary for Rural Affairs and Islands, Mairi Gougeon, and the Minister for Business, Trade, Tourism and Enterprise, Ivan McKee, stated that *"the involvement of the Scottish Government in the development of this FTA with Australia was limited"* and *"fell short of what we need"*.

The letter makes specific reference to animal welfare and antimicrobial resistance as areas of concern

“ We have consistently called for imports of Australian agri-food to be produced to the same animal welfare and environmental standards that Scottish producers are required to meet. However, this position has not been accepted by the UK Government. Whilst the agreement contains a non-regression clause on animal welfare, we are still not reassured that this will protect Scottish and UK farmers because Australian animal welfare standards are already lower than in the UK. This means Scottish farmers, crofters and food producers will not be competing on a level playing field with their Australian competitors from the outset. The agreement contains provisions on tackling antimicrobial resistance (AMR), however we do not believe they go far enough and represent a missed opportunity to have a meaningful impact on this significant threat to global health.”

Therefore, Committees and other stakeholders scrutinising the framework may wish to clarify to what extent it is expected that the fora established by the framework will be used to discuss animal welfare considerations in relation to trade policy, and ascertain how the framework has been operating in this regard so far.

Bibliography

- 1 SPICe has worked collaboratively with colleagues at Senedd Research on the scrutiny of common frameworks. This includes sharing material drafted by Senedd Research which informed this briefing and which forms part of its text. (2022). Animal health and welfare. Retrieved from <https://research.senedd.wales/media/1ivpstdz/22-55-provisional-common-framework-animal-health-and-welfare.pdf>
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