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# Ozone-Depleting Substances and Fluorinated Greenhouse Gases Common Framework

Courtney Aitken, Annie Bosse, Sarah McKay and Alasdair Reid

This briefing discusses the Ozone-Depleting Substances and Fluorinated Gases Common Framework. The Framework sets out how the governments of the UK will work together on policies about substances which deplete the ozone and on fluorinated greenhouse gases. The briefing also provides background information on the common frameworks programme.

Common  
Framework

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# Contents

<b>Summary</b>	<b>4</b>
<b>What are common frameworks?</b>	<b>6</b>
<b>Why are common frameworks needed?</b>	<b>8</b>
<b>What is the process for developing frameworks ?</b>	<b>10</b>
<b>How will the Scottish Parliament consider frameworks?</b>	<b>11</b>
The Scrutiny Challenge	11
<b>Scrutiny at other legislatures</b>	<b>13</b>
House of Commons European Scrutiny Committee	14
<b>The UK Internal Market Act 2020</b>	<b>15</b>
Process for considering UK Internal Market Act exclusions in common framework areas	16
<b>Ozone-Depleting Substances and Fluorinated Greenhouse Gases</b>	<b>18</b>
Policy Area	18
Scope	18
International Obligations	19
UN Montreal Protocol on Substances that Deplete the Ozone Layer	19
Vienna Convention for the Protection of the Ozone Layer	20
EU-UK Trade and Cooperation Agreement	20
Northern Ireland Protocol	21
Definitions	21
Summary of proposed approach	22
Stakeholder engagement	23
Detailed overview of proposed framework: legislation	23
Domestic Enforcement Legislation	24
Detailed overview of proposed framework: non-legislative arrangements	26
<b>Ozone-Depleting Substances and Fluorinated Greenhouse Gases in practice</b>	<b>27</b>
Roles and Responsibilities: parties to the framework	27
Roles and responsibilities: existing or new bodies	27
Official Level Groups	27
Official Level Working Group	28
Senior Official Level Governance Group	28
Senior Official Programme Board	29
Ministers	29
Regulators	30
Decision-making	31

Principles of the GB-Wide System _____	31
Managing Divergence _____	33
Monitoring and enforcement _____	34
Review and amendment _____	34
Dispute resolution official level _____	35
Dispute resolution Ministerial level _____	36
Implementation _____	39
<b>Framework Analysis _____</b>	<b>40</b>
Current policy position _____	40
Key issues _____	41
<b>Bibliography _____</b>	<b>42</b>

# Summary

This briefing provides detailed information on the Ozone-Depleting Substances and Fluorinated Gases Common Framework. The [Net Zero, Energy and Transport Committee](#) will lead on scrutiny of this framework.

The Framework sets out how the governments of the UK will work together on policies about substances which deplete the ozone (ODS) and on fluorinated greenhouse gases (F-gases).

Prior to the UK leaving the EU, EU law governed the use of ODS and F-gases. Now that the UK is no longer a member state of the EU, the law which governs the area is retained EU law (a body of domestic law). The Protocol on Ireland/Northern Ireland requires that Northern Ireland must align with a limited set of EU laws relating to the Single Market for goods and the Customs Union.<sup>i</sup> The UK is also bound by international obligations on the use of ODS and F-gases. The framework sets out decision-making processes and governance structures for considering and managing policy and regulatory implications where:

- one government of Great Britain wishes to make a change in the policy areas which may affect the rest of the UK;
- rules in Northern Ireland change because of the alignment with the EU.

Background information on, for example, what common frameworks are and how they have been developed is also provided in this paper.

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

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

- their scope and the reasons for the framework approach (legislative or non-legislative<sup>ii</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"

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i The [Northern Ireland Protocol Bill was introduced to the UK Parliament](#) on 13 June 2022. If enacted, the arrangements for managing divergence in Northern Ireland that are set out in the framework documents may not apply.

ii 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.

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.

# What are common frameworks?

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

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

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

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

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

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

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

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

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

The framework outline went on to note that the framework:

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

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

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

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

# Why are common frameworks needed?

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

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

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

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

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



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

# What is the process for developing frameworks ?

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

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

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

## Common framework development

### Phase one



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

### Phase two



Focussed on detailed policy development.

### Phase three



Period of review, consultation and further policy development.

### Phase four



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

### Phase five



Post-implementation arrangements.

# How will the Scottish Parliament consider frameworks?

Frameworks which have reached phase four are available to be considered by the Scottish Parliament. Subject committees can consider frameworks which sit within their policy areas.

Each legislature in the UK can consider common frameworks. Issues raised by legislatures during this scrutiny are fed back to their respective government. Governments then consider any changes which should be made to frameworks in light of scrutiny by legislatures before implementing the framework. Changes in light of scrutiny are not, however, a requirement.

The Constitution, Europe, External Affairs and Culture Committee has an oversight role in relation to frameworks and will lead on cross-cutting issues around transparency, governance and ongoing scrutiny.

The Scottish Government has previously acknowledged the ongoing role of the Scottish Parliament in relation to frameworks:

“ Consideration will also need to be given to what role the Parliament might have in the ongoing monitoring and scrutiny of frameworks post-implementation.”

[Scottish Government response](#) to the session five Finance and Constitution Committee report on common frameworks, June 2019

## The Scrutiny Challenge

The way in which common frameworks have been developed and will operate raises some significant scrutiny challenges for the Scottish Parliament.

- Common frameworks are intergovernmental agreements and the scope for parliamentary influence in their development is significantly limited with scrutiny taking place at phase four.
- The ongoing operation of frameworks will take place at an official level between government departments. It is therefore unclear how much information the Parliament may be able to access to scrutinise the effect of frameworks on policy-making.
- The Scottish Government and the UK Government have differing objectives in relation to frameworks. The UK Government is seeking “high levels of regulatory coherence”.  
<sup>1</sup> The Scottish Government believes that they are about “allowing legitimate policy choices”.<sup>1</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>2</sup> .

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

## Scrutiny at other legislatures

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

The House of Lords Common Frameworks Scrutiny Committee [considered a summary of the framework during June 2021](#). After consideration of the framework summary, the Committee sought clarification on the proposed establishment of a single F-gas and ODS system and whether the delivery of this system would interact with the framework governance structures.

In [a response to the Committee dated 2 November 2021](#), Secretary of State for Environment, Food, and Rural Affairs, George Eustice MP, provided the following information:

“ The UK government, the Scottish Government and the Welsh Government have agreed to operate a single GB-wide system from 1 January 2021, subject to the consent and direction of functions by the Scottish and Welsh Ministers, which they have provided. The system is administered by the Environment Agency (EA) and includes the following:

- Registration of businesses to ODS and F-gas systems;”
- Licensing of imports and exports of ODS and the use of ODS for laboratory and analytical purposes;”
- Hydrofluorocarbon (HFC) quotas, which will use the same phasedown set out in the EU F-gas Regulation, and similar mechanisms for transferring and authorising quotas;”
- ODS quotas; and”
- Reporting requirements on businesses for ODS and F-gas.”

Where the Scottish and Welsh Ministers have given consent to the Secretary of State to exercise functions in a devolved area, or have directed the EA to exercise functions on behalf of the devolved regulators, working arrangements will continue to involve the Scottish and Welsh Governments (as well as the Department of Agriculture, Environment and Rural Affairs in Northern Ireland) as set out in the Framework, given they remain accountable to their respective legislatures. Although Scottish and Welsh Ministers have directed the EA to exercise certain administrative functions on behalf of the Scottish Environment Protection Agency (SEPA) and Natural Resources Wales (NRW), certain functions will continue to be exercised by SEPA and NRW. The regulators will need to cooperate, but their detailed working arrangements are not set out in the Framework. The regulators will determine what joint working arrangements are appropriate.”

The interaction between the Environment Agency (EA) and framework governance structures are discussed in the [Roles and Responsibilities](#) section.

At the time of writing, [the framework is being considered by the House of Commons' Environment, Food, and Rural Affairs Committee](#) alongside other frameworks within the remit of the UK Government Department of Environment, Food and Rural Affairs. In [a letter dated 8 June 2022 to George Eustice MP](#), Secretary of State for

Environment, Food and Rural Affairs, the Committee asked for clarification and expressed concern regarding the UK Government's views on policy divergence and expressed concern about provisions for stakeholder engagement.

## House of Commons European Scrutiny Committee

The House of Commons European Scrutiny Committee recently published its report on [Documents considered by the Committee on 8 June 2022](#) and recommended that two EU Commission's documents on ODS and F-gases are reported to the House as "politically important". The documents reported, and the reasons for their recommendation to the House as politically important, are:

- [Proposal for a Regulation on substances that deplete the ozone layer and repealing Regulation \(EC\) No 1005/2009](#)

“ This EU document is politically important because:”

- it will apply in Northern Ireland, creating potential divergence with regulation currently applicable in Great Britain, but also resulting in cost and administrative savings for businesses and administration in Northern Ireland;”
- the Commission is proposing changes to streamline existing EU law, in a similar process to that being followed in the UK's review of retained EU law; and”
- the UK may choose to take similar measures as it is similarly keen to streamline how ozone-depleting substances are regulated.”

- [Proposal for a Regulation on fluorinated greenhouse gases, amending Directive \(EU\) 2019/1937 and repealing Regulation \(EU\) No 517/2014](#)

“ This EU document is politically important because:”

- it will apply in Northern Ireland, creating divergence with regulation currently applicable in Great Britain;”
- the Government intends to take the Commission's proposal into account when reviewing GB legislation in this area; and”
- it is uncertain how the proposed phasedown of hydrofluorocarbons (HFCs) in heat pumps aligns with climate action objectives.”

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

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iii [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](#).

iv 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. <sup>3</sup>



## **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.

# Ozone-Depleting Substances and Fluorinated Greenhouse Gases

The Ozone-Depleting Substances and Fluorinated Greenhouse Gases 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 Net Zero, Energy, and Transport Committee.

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

## Policy Area

The policy area under consideration is Ozone-Depleting Substances (ODS) and Fluorinated Greenhouse Gases (F-gases). The use of ODS and F-gases is restricted in order to protect the ozone layer and mitigate climate change.

## Scope

The Earth's atmosphere contains a range of naturally occurring gases, known as greenhouse gases (GHG), that absorb heat from the sun and help to make the planet inhabitable. Manufactured fluorinated gases (F-gases) are much more powerful in this than naturally occurring gases and research has shown that their presence in the atmosphere contributes significantly to global warming.

The Earth's ozone layer also acts as a protective filter against harmful UV radiation from the sun. Ozone Depleting Substances (ODS) in the upper atmosphere cause this protective layer to break down resulting in more UV reaching the planet's surface with the potential to cause harm to human health and to the environment. These substances have been widely used in refrigeration, air conditioning, heat-pump and fire suppression technology.

The framework extends to legislation and systems within the ODS and F-gases policy area that were formerly governed at an EU level and intersect with devolved competence (see [Legislation](#)).

The systems referred to in the framework documents cover ODS and F-gas registration, quota, licensing, and reporting arrangements. The framework notes the following systems that were previously maintained at an EU level:

- Hydrofluorocarbon greenhouse gases (HFC) Registry – registration and quota allocation
- HFC Reporting
- ODS Licensing System
- ODS Laboratory and Analytical Registry

- ODS Reporting System

The framework may also be used to discuss matters that were not formerly governed at EU level and matters relating to reserved regulations in the ODS and F-gas policy area. A [list of reserved regulations](#) in the ODS and F-gas policy area is provided in the framework documents. The framework documents state:

“ Areas of devolved competence not previously governed by EU law, including enforcement, are not formally within scope of the Framework. However, where it is appropriate for an issue to be discussed between the Parties (in line with the 2012 Devolution Memorandum of Understanding) the engagement fora set out in this Framework (see ‘Decision-making fora’) will be utilised, without prejudice to the competence of the devolved Ministers.”

The framework documents do not note any interdependencies with other frameworks.

## International Obligations

The framework refers to two international conventions as being within the scope of the framework. These conventions are:

- The [UN Montreal Protocol on Substances that Deplete the Ozone Layer](#) (the Montreal Protocol), and
- The [Vienna Convention for the Protection of the Ozone Layer](#).

### UN Montreal Protocol on Substances that Deplete the Ozone Layer

The [Montreal Protocol](#) is an international agreement to phase out the use of ozone depleting substances and phase down the use of hydrofluorocarbon greenhouse gases (HFCs) globally. Under this treaty, the UK and all other parties have the legally binding obligation to phase down the production and consumption of ODS and HFCs according to a schedule set out in the Protocol, restrict trade with non-Parties, license imports and exports, and annually report data to the UN Ozone Secretariat.

The Montreal Protocol continues to be amended and adjusted in line with scientific and economic developments. Under the Montreal Protocol, ODS have largely been phased out in developed countries. ODS are permitted only in essential applications where no alternatives are available (e.g. fire extinguishers in ships and aircraft, laboratory and analytical uses).

F-gases are often used as substitutes for products and applications that previously used ODS (e.g. refrigeration, air-conditioning, insulation foams, aerosol sprays etc). While F-gases do not harm the ozone layer, they are considered harmful greenhouse gases. The 2016 Kigali Amendment to the Montreal Protocol requires developed countries to phase down HFCs (the main group of F-gases).

Previously, the UK met its international obligations under the UN Montreal Protocol through directly applicable EU legislation and systems (see [Legislation](#)). Under the [Protocol on Ireland/Northern Ireland](#), Northern Ireland remains in and subject to EU ODS and F-gas Regulations and systems.<sup>v</sup> Separate ODS and F-gas legislation and systems

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<sup>v</sup> This may not apply if the Northern Ireland Protocol Bill (introduced to the UK Parliament on 13 June 2022) is passed.

apply in Great Britain. The framework documents state:

“ The UK continues to comply with its international obligations under the Montreal Protocol in its entirety, despite the complex nature of separate NI (EU) and GB systems for ODS and F-gas. In order for the UK in its entirety to report to the UN, arrangements will be put in place to gather NI data. DAERA(NI) will need to report annually to the European Commission on the reporting requirements set out in Article 26 of the EU ODS Regulation. This information will also need to be reported to the Environment Agency. In addition, NI consumption data for controlled substances will also need to be collected. Initially, such data will be gathered through the implementation of an administrative, voluntary requirement on businesses to provide data on placing HFCs and ODS on the market in NI. More robust, longer term measures will be agreed by the UK and European Commission. The UK will have data for consumption in Great Britain through the annual reporting requirement set out in legislation.”

## **Vienna Convention for the Protection of the Ozone Layer**

The [Vienna Convention](#) serves as a framework for efforts to protect the ozone layer. The purpose of the Convention is to promote cooperation among nations by exchanging information on the effects of human activities on the ozone layer.

The Montreal Protocol sits under the Convention. Under the Vienna Convention, the UK Government contracts the Met Office and the University of Manchester to monitor the health of the ozone layer at sites in the UK.

## **EU-UK Trade and Cooperation Agreement**

The UK has cooperation and non-regression commitments on ODS and F-gases and the Montreal Protocol in Article 7.2 and Article 8.5.3 of the [EU-UK Trade and Cooperation Agreement \(TCA\)](#). The framework documents set out that parties to the framework (i.e. The UK Government and devolved governments) are expected to make decisions in line with the arrangements set out in the framework and associated Concordat as required, in order to fulfil UK implementation obligations under the TCA.

As the policy area covered by the framework intersects with the TCA, topics relevant to the framework may be considered from time to time by relevant TCA Specialised Committees or the Partnership Council.<sup>vi</sup> The framework states:

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<sup>vi</sup> 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.

“ 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 Scottish Government, Welsh Government and Northern Ireland Executive 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 Scottish Government, Welsh Government and Northern Ireland Executive as fully as possible in preparation for these meetings regardless of attendance, and on all relevant implementation matters.”

## Northern Ireland Protocol

Relevant EU law and governance structures continue to apply in Northern Ireland in respect of the Protocol on Ireland/Northern Ireland.<sup>vii</sup> The following sections of the [Protocol on Ireland/Northern Ireland](#) are relevant to this framework:

- Article 5 (4), Customs, Movement of Goods; and
- Annex 2, 26, Environment, Energy Efficiency.

The framework is UK-wide and notes 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. The framework indicates that 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. The 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.

## Definitions

The framework documents define the following terms:

- “**GB ODS and F-gas legislation**” or “**Retained EU law**” refers to the principal EU Regulations for ODS and F-gas ([Regulation \(EC\) No 1005/2009](#) on substances that deplete the ozone layer (“the ODS Regulation”) and [Regulation \(EU\) No 517/2014](#) on fluorinated greenhouse gases (“the F gas Regulation”)) and related implementing legislation, as retained in UK law, as amended by:
  - The [Ozone-Depleting Substances and Fluorinated Greenhouse Gases \(Amendment etc.\) \(EU Exit\) Regulations 2019](#), and the [Fluorinated Greenhouse Gases \(Amendment\) \(EU Exit\) Regulations 2021](#), which correct operability deficiencies and transfer powers and functions previously held by European

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vii 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.

Institutions (including the European Commission and European Environment Agency) to the appropriate UK authorities and regulators; and

- The [Ozone-Depleting Substances and Fluorinated Greenhouse Gases \(Amendment etc.\) \(EU Exit\) Regulations 2020](#), so that the UK retained EU legislation on ODS and F-gases does not apply in Northern Ireland and only applies to and in England, Scotland and Wales (Great Britain).
- **“GB system”** or **“GB-wide system”** refers to the single ODS and F-gas registration, quota, licensing and reporting systems in England, Scotland and Wales administered by the Environment Agency from 1 January 2021, subject to the consent and direction of functions by the Scottish and Welsh Ministers.

## Summary of proposed approach

The framework comprises of non-legislative arrangements. The ODS and F-gas policy area covers a [mixture of reserved and devolved competence](#). The parties to the framework have agreed a UK-wide framework is necessary to enable the functioning of the UK internal market, ensure compliance with international obligations, and support the management of regulatory coherence or divergence. EU legislation on ODS and F-gases continue to apply in Northern Ireland in accordance with the terms of the Protocol on Ireland/Northern Ireland Protocol.<sup>viii</sup>

Retained EU law provides the legislative context for regulating ODS and F-gases in Great Britain (GB). The framework notes that Ministers from the UK Government, Scottish Government, and Welsh Government have agreed to operate single ODS and F-gas systems and maintain current standards as minimum standards. In addition, the framework *“sets out a common approach for areas of the policy where it is agreed to be desirable”*. On the desired common approach, the framework documents state:

“ Ministers from the UKG, SG and WG have agreed to operate single ODS and F-gas systems across GB, subject to the consent and direction of functions by the Scottish and Welsh Ministers... The GB-wide systems cover ODS and F-gas registration, quota, licensing and reporting arrangements. The systems are based on common targets and trajectories.”

The framework documents also state:

“ Where a Minister in Scotland and Wales has given consent to the Secretary of State to exercise functions in a devolved area, or given direction to the Environment Agency to exercise functions on behalf of devolved regulators, working arrangements will continue to involve the Party in order to provide and maintain oversight of such functions.”

The non-legislative governance of the framework is supported by a Concordat which outlines processes for [decision making](#), [dispute resolution](#), [monitoring the framework](#), and a [review and amendment mechanism](#). The Concordat also sets out [principles of working together](#) to support the functioning of the framework. It is expected the non-legislative

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<sup>viii</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.

arrangements set out in the framework will be used to manage any potential divergence.

## Stakeholder engagement

The framework documents do not provide detail on stakeholder engagement that has taken place in the development of the framework. There is also very little detail provided on what stakeholder and parliamentary engagement will be necessary to support the ongoing functioning of the framework.

However, the framework documents indicate stakeholder engagement is a responsibility of certain bodies within the framework governance structure, namely, the Ozone-Depleting Substances and Fluorinated Greenhouse Gases Governance Group and the Working Group (see [Roles and Responsibilities](#) for further detail).

## Detailed overview of proposed framework: legislation

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

The elements of retained EU law in this area that intersect with devolved competence, and relevant international conventions and agreements, where applicable are:

- [Regulation \(EC\) No 1005/2009](#) on substances that deplete the ozone layer ("**the ODS Regulation**")
- [Regulation \(EU\) No 517/2014](#) on fluorinated greenhouse gases ("**the F-gas Regulation**")

Northern Ireland remains subject to the EU ODS and F-gas legislation and continues to operate under the EU ODS and F-gas systems, in accordance with the Protocol on Ireland/Northern Ireland.<sup>ix</sup> The provisions of the EU ODS and F-gas legislation have been retained in UK law as it applies in Great Britain, and separate ODS and F-gas systems operate in Great Britain. Secondary legislation was implemented to ensure operability in GB:

- [The Ozone-Depleting Substances and Fluorinated Greenhouse Gases \(Amendment etc.\) \(EU Exit\) Regulations 2019](#) and [The Fluorinated Greenhouse Gases \(Amendment\) \(EU Exit\) Regulations 2021](#), which correct operability deficiencies and transfer powers and functions from the European Commission and European Environment Agency to the appropriate UK authorities and regulators; and
- [The Ozone-Depleting Substances and Fluorinated Greenhouse Gases \(Amendment etc.\) \(EU Exit\) Regulations 2020](#) ensures the retained EU law on F-gases and ODS does not apply in Northern Ireland and only applies to and in Great Britain.

The GB ODS and F-gas legislation includes concurrent powers for Ministers and

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<sup>ix</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.

regulators, which enables functions to be administered jointly across England, Scotland and Wales or by the appropriate authorities and regulators within UK Government, Scottish Government or Welsh Government. The framework documents indicate that the UK Government, Scottish Ministers and Welsh Ministers have agreed to single GB-wide ODS and F-gas registration, quota, licensing and reporting systems, administered by the Environment Agency from 1 January 2021.

## **Domestic Enforcement Legislation**

The framework documents indicate a common approach to enforcement of ODS and F-gas policy is preferred. The framework documents state:

“ Despite the devolved nature of enforcement, the Parties agree that a level of commonality is beneficial, particularly for those businesses that operate across internal UK boundaries, and therefore have chosen to have a common UK approach that is implemented through domestic enforcement legislation.”

Domestic enforcement regulations set the enforcement and penalty provisions in the UK, and designate the bodies which may provide F-gas technicians with certification and training. The domestic regulations give powers to regulators in each government to enforce the provisions of the principal ODS and F-gas Regulations and related implementing acts.



The framework documents list the following legislation relating to domestic enforcement:

- The Fluorinated Greenhouse Gases Regulations 2015: Domestic legislation providing enforcement and penalties provisions and other measures, for offences under the F-gas regime set out in the principal F-gas Regulation and related implementing acts. Covers Great Britain and extends to NI only in so far as it deals with import and export controls and trade with any place outside the UK.
- The Fluorinated Greenhouse Gases (Amendment) Regulations 2018: Domestic legislation amending the Fluorinated Greenhouse Gases Regulations 2015. Covers Great Britain and extends to NI only in so far as it deals with import and export controls and trade with any place outside the UK.
- The Ozone-Depleting Substances Regulations 2015: Domestic legislation providing enforcement and penalties provisions for offences under the ODS regime set out in the principal ODS Regulation and related implementing acts. Covers Great Britain and extends to NI only in so far as it deals with import and export controls and trade with any place outside the UK.
- The Fluorinated Greenhouse Gases Regulations (Northern Ireland) 2015: Domestic enforcement legislation providing enforcement penalty provisions and offences in NI, designed to comply with the requirements of the EU F-gas Regulations.
- The Fluorinated Greenhouse Gases (Amendment) Regulations (Northern Ireland) 2018: Domestic enforcement legislation amending the Fluorinated Greenhouse Gases Regulations (Northern Ireland) 2015.
- The Controls on Ozone-Depleting Substances Regulations (Northern Ireland) 2011: Domestic enforcement legislation providing enforcement penalty provisions and offences in NI designed to comply with the requirements of the EU ODS Regulations relating to the control of emissions of ODS.
- Ozone-Depleting Substances (Qualifications) Regulations (Northern Ireland) 2011: Domestic enforcement legislation providing enforcement penalty provisions and offences in NI designed to comply with the requirements of the EU ODS Regulations relating to qualifications required for persons working with equipment containing ODS.
- The Fluorinated Greenhouse Gases and Ozone-Depleting Substances (Amendment) (Northern Ireland) (EU Exit) Regulations 2019: Amends the domestic legislation that applies in NI relating to F-gases and ODS, so it no longer refers to NI or the UK as being a Member State of the EU.
- Fluorinated Greenhouse Gases and Ozone-Depleting Substances (Amendment) (EU Exit) Regulations (Northern Ireland) 2020: Revokes the amendments in the Fluorinated Greenhouse Gases and Ozone-Depleting Substances (Amendment) (Northern Ireland) (EU Exit) Regulations 2019. This is to ensure that EU law continues to apply in NI under the terms of the NI Protocol.

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

The framework comprises of several non-legislative arrangements. These include [Joint Decision-Making Mechanisms](#) (including a [Process for Managing Divergence](#)), [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 agreements on the above non-legislative arrangements and lists [high level principles underpinning the GB ODS and F-gas system](#).

The framework also indicates the parties may work jointly on future policy approaches. Specifically, the framework documents state:

“ ***Future policy approach*** The UK Government, Scottish Government and Welsh Government are committed to taking additional action in the future to meet international obligations and climate targets. Approaches to achieving this will be agreed between the Parties through the Working Group and Governance Group”

# Ozone-Depleting Substances and Fluorinated Greenhouse Gases 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 are officials and Ministers from the UK Government, Scottish Government, Welsh Government, and the Northern Ireland Department for Agriculture, Environment, and Rural Affairs (DAERA).

The framework documents indicate that parties agree and recognise that co-operation is necessary to meet their respective policy objectives and statutory reporting requirements. As such, it is expected that the parties will keep each other informed on matters of mutual interest, including opportunities for collaboration and sharing of resources (e.g. research projects). The framework documents note that information sharing between parties is to be expected and may include:

- Policy issues;
- Stakeholder views;
- Preparations for and outcome of reviews, consultations and research;
- Media interest and lines to take;
- Emerging issues and intelligence (UK/EU/International);
- International obligations and negotiations;
- Compliance and enforcement issues; and
- Illegal trade.

Parties are also expected to ensure that information provided is subject to appropriate safeguards and that the confidentiality and sensitivity of such information is respected.

## 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.

### Official Level Groups

The framework documents set out that an official level [ODS and F-gas Working Group](#) and

a senior official level [ODS and F-gas Governance Group](#) have been formed to facilitate decision making and the management of the ODS and F-gas system. The Working Group and Governance Group are expected to adhere to the requirements of the GB-wide system and to the framework's principles for managing divergence. In addition, the official level groups are expected to oversee the maintenance of any consent and direction of functions, advise on technical matters relating to Northern Ireland, and enable decision making by DAERA<sup>x</sup> in the context of the Northern Ireland Protocol.

The Environment Agency is also a member of the two official level groups. In a [letter \(dated 2 November 2021\) to the House of Lords Common Frameworks Scrutiny Committee](#), Secretary of State for the Environment, Food, and Rural Affairs, George Eustice MP clarified the role of the Working Group and Governance Group, as well as the interaction with the role of Environment Agency within the framework governance structure. The letter states:

“ The Framework Working Group and the Governance Group have responsibility for the delivery of the F-gas and ODS systems. The EA sits on these Groups (with ‘observer’ status in respect of any final decision-making), to support the sharing of information and the policy development process. Matters relating to the internal, day-to-day operation of the GB systems, is within the remit of the EA.”

### **Official Level Working Group**

The Working Group is formed of official level policy representatives of the parties and the Environment Agency. The Working Group may consider policy issues or disagreements and make recommendations to the Governance Group. The Working Group is also expected to ensure that the Scottish Government and Welsh Government continue to be briefed on operations administered by the Environment Agency and involved in discussions on policy development that will be exercised by the UK Government Secretary of State for Environment, Food, and Rural Affairs. The framework documents also note that parties should engage with stakeholders on the decisions made by the Governance Group and Ministers. Parties to the framework are expected to decide methods for engagement with industry and other stakeholders at the Working Group.

The Working Group is supported by a [Terms of Reference included in the framework documents](#).

### **Senior Official Level Governance Group**

Senior officials provide strategic direction on the policy area and take key operational decisions.

The Governance Group is formed of senior official level policy representatives of the parties and a senior representative of the Environment Agency. The Governance Group may, by consensus of the parties, make decisions in respect of recommendations made by the Working Group.

The Governance Group is supported by a [Terms of Reference included in the framework documents](#).

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x Northern Ireland Department for Agriculture, Environment, and Rural Affairs.

## 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 the Inter-Ministerial Group for Environment Food and Rural Affairs (IMG-EFRA) sit above framework-specific governance structures for the following frameworks:

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

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

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

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

## Ministers

Ministers may receive advice from their officials either concurrently across governments as issues arise or in the course of business as usual for an individual government and make decisions on whether to implement recommended approaches. Ministers may also consider issues as part of the dispute resolution mechanism.

## Regulators

### The Environment Agency

The Environment Agency administers the GB ODS and F-gas system on behalf of UK Government Department for Environment, Food, and Rural Affairs (Defra), the Scottish Government and the Welsh Government, subject to the direction of the Scottish and Welsh Governments. The Environment Agency also sits on the Working Group and Governance Group. The GB system includes the following:

- Registration to ODS and F-gas systems
- Licensing of imports and exports of ODS and the use of ODS for laboratory and analytical purposes
- HFC quotas, which will use the same phasedown set out in the EU F-gas Regulation, and similar mechanisms for transferring and authorising quotas
- ODS quotas
- Reporting requirements for ODS and F-gas

The framework documents do not provide an exhaustive role description for regulators that are involved in administering the GB ODS and F-gas system. The framework documents state:

“ The arrangements between regulators for administering GB wide arrangements, in particular where Ministers in SG and WG direct the EA to administer functions on behalf of devolved regulators, are not set out in detail within this Framework. The regulators will determine what joint working arrangements are appropriate so that whether they are exercising functions or not, all are informed on the delivery of the overall GB system.”

### Scottish Environment Protection Agency

The framework documents show that the Scottish Environment Protection Agency (SEPA) will continue to exercise some functions, predominantly those relating to compliance and enforcement of provisions (e.g. leak checks, record keeping, use of banned substances, inspections, ensuring qualified personnel etc).

### Natural Resources Wales

Natural Resources Wales (NRW) will also continue to exercise some functions. As for SEPA, the framework documents indicate the functions carried out by NRW primarily relate to enforcement.

### Northern Ireland regulatory bodies

European institutions, such as the European Commission and the European Environment Agency, manage the EU system in respect of Northern Ireland. The Northern Ireland Environment Agency (NIEA) and district councils are the regulators for the application and enforcement of the EU ODS and F-gas Regulations in Northern Ireland. As with the GB regulators, the framework does not provide detail on working arrangements between Northern Ireland regulators, GB regulators, and EU regulators.

## Offshore installations

The Offshore Petroleum Regulator for Environment and Decommissioning (OPRED) is the regulator for the application of the ODS and F-gas Regulations to offshore installations in the UK. It is not clear from the information provided in the framework documents what role OPRED has within the framework governance structures.

## Decision-making

The framework documents set out that the Working Group and Governance Group will be the forums through which the governments collectively develop policy recommendations, exchange information, and reach consensus.

The framework documents describe the following process for decision-making:

1. A policy proposal is put forward by a party (i.e. one of the four governments) via the Working Group.
2. The Working Group considers the proposal and agrees that a GB-wide approach or divergence is acceptable.
3. With clearance from the Governance Group, common recommendations on the GB approach or divergence are made to Ministers.
4. Ministers consider the common recommendation.
5. Ministers make decisions on the implementation of the recommendation.

Issues discussed by the Working Group that cannot be resolved, can be escalated to the Governance Group, and then the Senior Officials Programme Board (SOPB) if required. The Working Group can reconvene and consider alternative approaches suggested by senior officials before making revised recommendations to the Governance Group. Issues are expected to only be escalated to Ministers if necessary, in line with the framework [dispute avoidance and resolution mechanism](#).

## Principles of the GB-Wide System

The framework documents indicate the parties to the framework agree to operate single ODS and F-gas systems across GB. This is subject to the ongoing consent and direction of functions by the Scottish and Welsh Ministers.

### Consent and Direction Process

[Annex VI of the framework documents](#) outlines a process for consent and direction of functions. Consent may be provided by Ministers in the Scottish and Welsh Governments to the exercise of any function relating to the ODS and F-gas Regulations retained in UK law by the UK Secretary of State for Environment, Food, and Rural Affairs. Consent may be modified or withdrawn at any time. Direction, or guidance, may be provided by Ministers in the Scottish Government and Welsh Government to the appropriate regulator for the exercise of a function once or more than once. Directions and guidance may be modified or withdrawn at any time.

The process sets out that the government wishing to diverge should provide "*reasonable notice*" before effecting any such modification or withdrawal of consent, and should seek consensus with the other governments, so that the impacts of divergence can be managed appropriately. The party wishing to diverge is also expected to provide reasonable notice of its intention to the appropriate regulator.

## Principles of the GB-wide System

The framework documents note the following principles for the GB-wide ODS and F-gas system:

- Where consent has been given to the Secretary of State for Environment, Food, and Rural Affairs to exercise functions in a devolved area, or direction to the Environment Agency to exercise functions on behalf of devolved regulators, working arrangements will continue to involve the Scottish Government and Welsh Government as they remain accountable to respective legislatures.
- The Scottish Government and Welsh Government will be involved at all levels to ensure oversight for effective implementation, and to ensure agreement with any proposed implementing regulations made using powers in the GB ODS and F-gas legislation.
- The UK Government, Scottish Government, and Welsh Government agree to adhere to and apply the provisions of the GB ODS and F-gas legislation in the operation of the GB-wide system and agree that current standards of the GB ODS and F-gas legislation in England, Scotland and Wales will be maintained as a minimum.
- Where the UK Government, Scottish Government, or Welsh Government considers a change is required to the GB-wide system or the legislative underpinning, the government will first discuss the rationale with the Working Group and seek consensus on the evidence.
- If the UK Government, Scottish Government, or Welsh Government considers a change is required to the provisions of the GB ODS and F-gas legislation outside of the GB systems, such as leak check requirements, record keeping and the use of certified personnel, the government will first discuss the rationale with the Working Group and seek consensus on the evidence.
- It may be agreed by the Working Group (and Governance Group as necessary) that the change should be made GB wide, in which case the UK Government, Scottish Government, and Welsh Government will agree next steps for implementation on a GB-wide basis and make common recommendations to Ministers. However, it may be agreed that a change in England, Scotland or Wales is acceptable, in accordance with the JMC(EN) principles.
- If a common recommendation supporting policy divergence is agreed, officials will provide Ministers with an explanation of the differing approaches and a summary rationale setting out why it is appropriate to diverge.
- The governments will aim to reach decisions by consensus at all stages, using the decision-making process. If agreement cannot be reached, then the dispute resolution process will be initiated.
- The Concordat defines the requirements the UK Government, Scottish Government,



and Welsh Government should adhere to if they wish to diverge from the GB ODS and F-gas legislation and systems, and instead put in place separate new arrangements (see [Managing Divergence](#)).

## Managing Divergence

The [Concordat](#) appended to the framework documents provide a set of principles and a process for when a party to the framework (i.e. one of the four governments) wishes to diverge from GB-wide ODS and F-gas legislation and systems.

If the UK Government, Scottish Government, or Welsh Government wishes to diverge from GB-wide ODS and F-gas legislation and systems, they should:

- Consult the other governments through the Working Group and Governance Group;
- Continue to comply with the governance arrangements set out in the concordat to ensure ongoing engagement and coordination between the governments, to ensure the Common Frameworks principles agreed by JMC(EN) continue to be met;
- Give reasonable notice, suggested 18 months minimum (unless agreed otherwise by all parties), to allow alternative systems and the following arrangements to be developed as necessary for the proposed divergence;
- Agree with the other governments a split of responsibilities under the UN Montreal Protocol to ensure the UK continues to fulfil its international obligations, including baselines and quota (restricting production and consumption), requirements for imports/exports and annual reporting;
- Agree with the other governments a robust reporting mechanism for each government that is comparable and facilitates a single report to the UN Ozone Secretariat;
- Have operable systems developed and resources available to manage any separate system of a government;
- Agree with the other governments the arrangements for the movement of gas and equipment between UK boundaries, including the approach to support and enable the functioning of the internal market;
- Ensure any new arrangements enable the UK to continue to fulfil its commitments under the EU-UK Trade and Cooperation Agreement;
- Ensure any new legislation required is ready and will come into force at the appropriate time;
- Withdraw relevant consent and direction of functions for operating GB-wide systems;
- Inform businesses of new system(s) and requirements as soon as possible.

## Monitoring and enforcement

The framework indicates that the Working Group will monitor the framework on an annual basis or more regularly if required. The purpose of monitoring is to assess the effectiveness of the implementation of the GB ODS and F-gas system and any exercising of functions by the relevant Ministers. It is also intended to monitor whether cooperation between the governments is working as intended and identify any remedial action required.

The conclusions of monitoring by the Working Group are expected to inform future decision-making and the next [review and amendment process](#).

## Review and amendment

The review and amendment mechanism (RAM) is intended to ensure the framework is able to adapt to changing policy and governance environments.

At the outset of the review stage, the governments must agree timelines for the process, including the possible amendment stage. The framework allows for third parties to be involved in an advisory capacity at the invitation of any party to the framework. These include other government departments or bodies as well as external stakeholders. If a decision is not reached in either the review or amendment stage, parties to the framework can raise it through the framework [dispute avoidance and resolution process](#).

The framework notes that the first review will take place one year after implementation of the framework. It should also be noted that the [European Union \(Withdrawal\) Act and Common Frameworks Quarterly Update \(26 December 2020 to 25 March 2021\)](#) indicates that the framework has been operating on a provisional basis since January 2021. Therefore, it is not clear whether the first review has taken place or when it could be reasonably expected to occur.

There are two types of review, periodic and exceptional, that can take place within the framework. The process for agreeing amendments should be identical regardless of the type of review and is set out in the framework as follows.

### Review stage

- Periodic review: the operation of the framework should be reviewed every three years and held in line with official or ministerial level meetings.
  - The period of three years starts from the conclusion of a periodic review and any amendment stages that follow.
  - During the periodic review, parties to the framework will discuss whether the governance and operational aspects of the framework are working effectively, and whether decisions made over the previous three years need to be reflected in an updated non-legislative agreement.
- Exceptional review: an exceptional review of the framework is triggered, with agreement of the Governance Group, by a 'significant issue'.

- A significant issue must be time sensitive and fundamentally impact the operation or the scope of the framework. The framework notes a significant issue may include but is not limited to:
  - Reviews required by the GB ODS and F-gas legislation<sup>xi</sup> and any resulting policy changes, including those that require legislation;
  - Changes to policy or legislation that occur internationally, which could have an impact on the UK;
  - A party to the framework calls for a review due to a change in Ministerial position (e.g. wish to set up and administer separate systems for reducing F-gas emissions and controlling ODS);
  - Northern Ireland wishing to join the GB regimes.

### **Amendment stage**

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

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

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

## **Dispute resolution official level**

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

The framework documents state that the dispute resolution process may be triggered where:

- consensus cannot be reached on a common recommendation at official level; or
- Ministers do not agree to a common approach (e.g. a GB-wide or divergent approach) following receipt of a recommendation.

The dispute resolution process sets out that parties to the framework will aim to resolve disputes at the earliest possible stage in the process. This means the majority of issues are expected to be resolved through Working Group meetings, including the views of senior officials via the Governance Group where necessary. It is expected that when a disagreement or dispute does occur that the governments are to reach a consensus on the scope and nature of the issue in dispute, the approach to take, the degree of urgency in reaching a resolution, and the content of the evidence base being relied upon. Third parties, commissioned by the Working Group or Governance Group, may provide

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xi The framework documents note a comprehensive review of the F-gas Regulation is due by 2022.

evidence or advice to support the resolution of disagreements and disputes.

In the event of a disagreement becoming a dispute, the framework dispute resolution process sets out that relevant policy officials and departmental leads responsible for maintaining intergovernmental relations should also be informed. If there is no resolution of the issue at the policy level (Working Group and Governance Group), the Senior Officials Programme Board (SOPB) is required to consider the issue further and take a view as to whether the dispute should be escalated to the Inter-Ministerial Group for Environment Food and Rural Affairs (IMG-EFRA) or another relevant Ministerial forum.

If portfolio Ministers do not agree to a common approach following receipt of a recommendation at any level of the dispute resolution process, senior officials through the Governance Group (and SOPB where needed) will reconvene to consider alternative approaches and revise the recommendation before re-submitting to Ministers. Senior officials may seek input and further evidence from the Working Group and third parties, before considering alternative approaches.

In the event of no agreement between parties at Ministerial level, the matter will be escalated to [inter-governmental structures for dispute resolution at Ministerial level](#) as a last resort.

## 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:

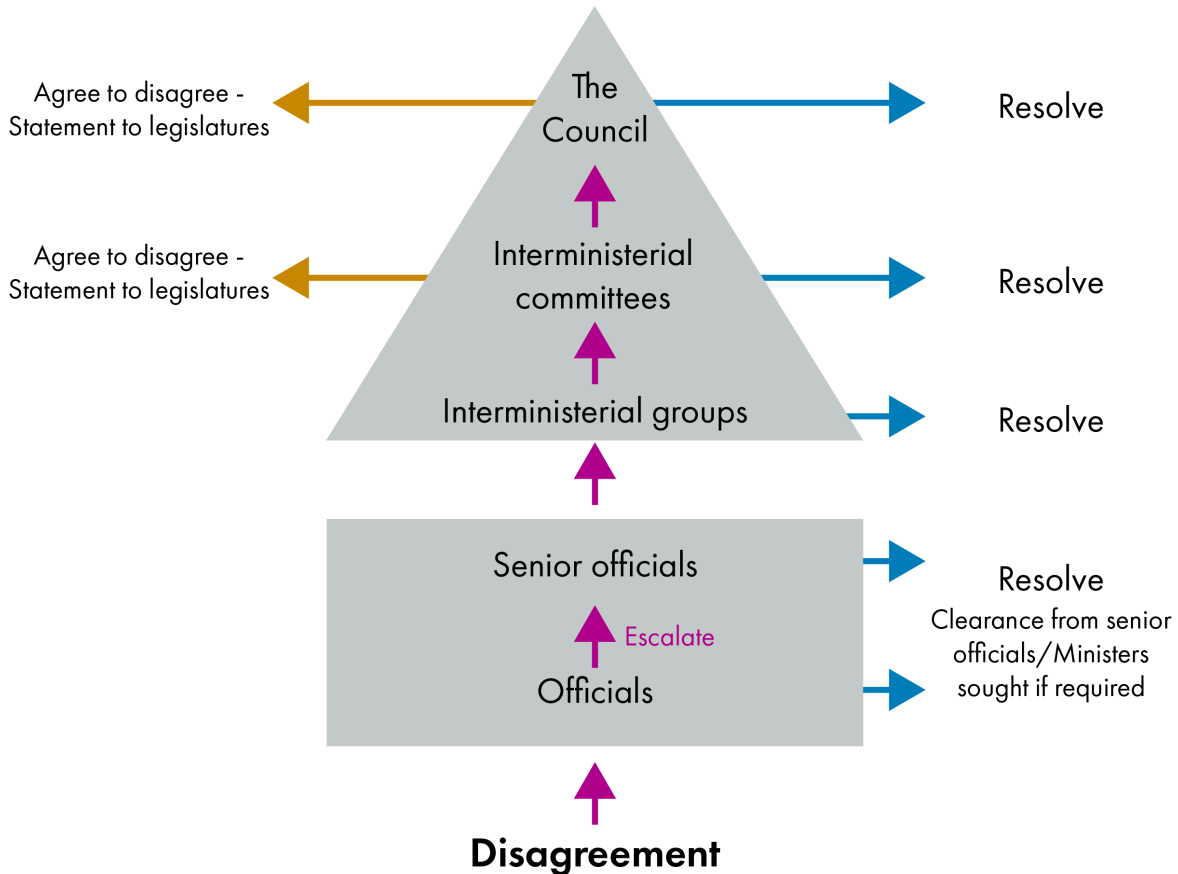
A number of interministerial groups (IMG) will be formed to discuss specific policy areas, such as on transport, Net Zero, and the Trade and Cooperation Agreement with the EU.

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).<sup>xii</sup>

xii [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 framework was provisionally confirmed and published on 17 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.

# Framework Analysis

As previously noted, areas of devolved competence not previously governed by EU law, including enforcement, are not formally within scope of the Framework. This section considers the current policy position and key issues.

## Current policy position

As part of the Scottish Government's target to achieve net-zero emissions by 2045, [a ban that will prohibit certain types of F-gases being used to service or refill refrigeration systems has been in place since 2020.](#)

There are two relevant UK regulations:

- Fluorinated Greenhouse Gases Regulations 2015 (SI 2015/310)
- Ozone-Depleting Substances Regulations 2015 (SI 2015/168)

These regulations were amended via the [Ozone-Depleting Substances and Fluorinated Greenhouse Gases \(Amendment etc.\) \(EU Exit\) Regulations 2019](#) and continue to function following EU Exit. They place obligations on equipment operators; including:

- Stopping the use of all Hydrochlorofluorocarbons<sup>xiii</sup> to maintain refrigerants from 1 January 2015
- Leak checks on equipment
- Record keeping
- Recovery of F Gases/ODS
- Appropriately qualified personnel
- Labelling

The UK Government's [Department for Environment, Food and Rural Affairs provides guidance for manufacturers, operators, contractors and others that make, sell or handle F Gases and ODS and associated equipment.](#)

The Scottish Environment Protection Agency is the main enforcing authority in Scotland for F- Gas and ODS regulations. They ensure compliance with relevant regulations, as part of wider regulatory duties, that apply to industrial sites permitted under Part A of the Pollution Prevention and Control (Scotland) Regulations 2012. Other industrial sites, commercial and retail businesses are regulated by local authorities and port health authorities. Scottish Offshore oil and gas installations are regulated by Scottish ministers.

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xiii Chemical compounds commonly used in the foam, refrigeration, and air conditioning sectors that destroy the Earth's protective ozone layer and contribute to climate change.



## Key issues

As [previously noted](#), the House of Lords Common Frameworks Scrutiny Committee [considered a summary of the framework in June 2021](#), and wrote to the Secretary of State for Environment, Food, and Rural Affairs, George Eustice MP, seeking to clarify practical aspects of how the single F-gas and ODS systems administered by the Environment Agency would function. A [response was received](#) in November 2021.

In short, in the absence of detailed working arrangements in the Framework itself, there will need to be ongoing cooperation between regulators to ensure a smooth transition to the new regime, and long-term, cooperative joint working.

The Framework Working Group and the Governance Group have overall responsibility for the delivery of the F-gas and ODS systems, and the Environment Agency (which has observer status) will be crucial to the sharing of information and the policy development process with devolved nations.

There do not appear to be any further significant concerns, however other issues include:

- There is very little detail on stakeholder engagement that has taken place to date, or on what stakeholder and parliamentary engagement will be necessary to support the ongoing functioning of the framework. Ongoing engagement is largely the responsibility of the Ozone-Depleting Substances and Fluorinated Greenhouse Gases Governance Group and the Working Group.
- If any of the relevant governments want to diverge from the GB wide legislation, there are [certain criteria](#) that must be fulfilled, including giving a minimum of 18 months notice to the other parties to allow alternative systems and arrangements to be developed. It is not clear how this timescale was agreed, or what the impact would be on policymaking in Scotland.

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