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SPICe Briefing

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Radioactive Substances Framework

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This briefing discusses the Radioactive Substances framework. The Radioactive Substances framework sets out to provide governance mechanisms to ensure that the UK Government and devolved governments can work together to maintain or improve on current standards for radiological protection, to develop common policy and manage potential divergence. This briefing also provides background information on the common frameworks programme.

Common
Framework

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Contents

Summary	3
What are common frameworks?	4
Why are common frameworks needed?	6
What is the process for developing frameworks ?	7
How will the Scottish Parliament consider frameworks?	8
The Scrutiny Challenge	8
Scrutiny at other legislatures	10
The UK Internal Market Act 2020	11
Process for considering UK Internal Market Act exclusions in common framework areas	12
Radioactive Substances Framework	14
Policy Area	14
Scope	14
International obligations	14
Devolved settlements	15
Northern Ireland	16
Summary of proposed approach	16
Stakeholder engagement	16
Detailed overview of proposed framework: legislation	17
Detailed overview of proposed framework: non-legislative arrangements	17
Radioactive Substances framework in practice	18
Roles and Responsibilities: parties to the framework	18
Roles and responsibilities: existing or new bodies	18
Decision-making	19
Radioactive Substances Policy Group	20
Monitoring and enforcement	23
Review and amendment	23
Dispute resolution official level	24
Dispute resolution Ministerial level	25
Implementation	27
Framework Analysis	28
Current policy position	28
Key issues	29
Bibliography	30

Summary

This briefing provides detailed information on the Radioactive Substances framework. [The Net Zero, Energy and Transport Committee](#) will lead on scrutiny of this framework.

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

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

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

What is the process for developing frameworks ?

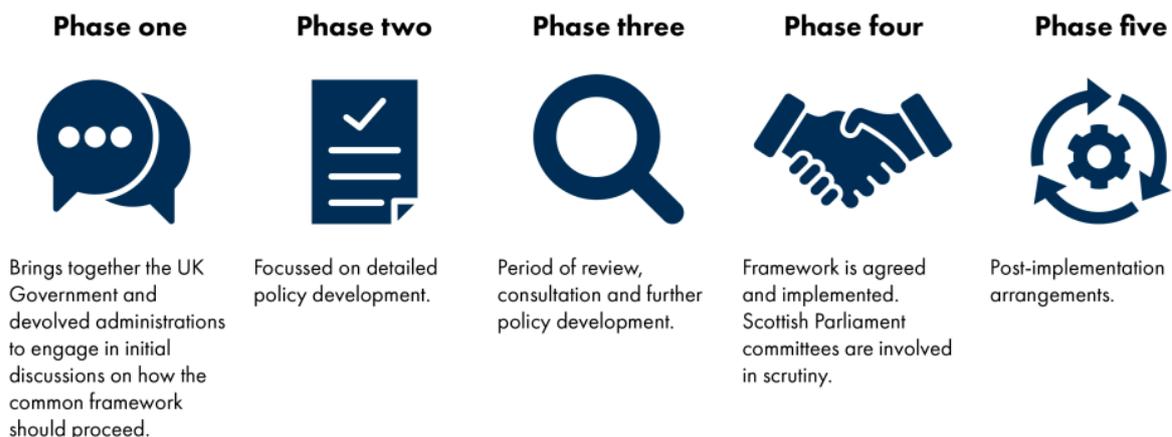
Frameworks are inter-governmental agreements between the UK Government and the devolved administrations.

They are approved by Ministers on behalf of each government prior to being sent to all UK legislatures for scrutiny.

[The UK Government Cabinet Office](#) is coordinating the work on developing common frameworks.

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

Common framework development



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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”.
¹ The Scottish Government believes that they are about “allowing legitimate policy choices”.¹
- The interconnected nature of common frameworks and the UK Internal Market Act 2020 (see section on the [UK Internal Market Act](#)).
- The impact of common frameworks on the Scottish Government’s stated policy position of keeping pace with EU law.
- The fact that most frameworks have been operating on an interim basis since 1

January 2021 in spite of being unavailable for scrutiny by legislatures².

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

Scrutiny at other legislatures

This section provides information on scrutiny of the framework at other legislatures. At the date of publication, only the House of Lords Common Framework Scrutiny has [considered the framework](#). The view of the committee are discussed in the [Framework Analysis section](#) of this briefing.

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 \(EN\) Communique, 16 October 2019](#).

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

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

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

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

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

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

The process is set out in full below.

“ Proposal and consideration of exclusions 1. Sections 10 and 18 and Schedules 1 and 2 of the UK Internal Market Act contain provisions excluding the application of the United Kingdom market access principles in certain cases. 2. Whenever any party is proposing an amendment to those Schedules in areas covered by a Common Framework: a. the exclusion seeking party should set out the scope and rationale for the proposed exclusion; and b. consideration of the proposal, associated evidence and potential impact should be taken forward consistent with the established processes as set out in the relevant Common Framework, including an assessment of direct and indirect economic impacts. 3. It is recognised that all parties will have their own processes for considering policy proposals. Administrations should consult and seek agreement internally on their position before seeking to formally agree the position within the relevant Common Frameworks forum. **Agreement of an exclusion request** 4. Where policy divergence has been agreed through a Common Framework this should be confirmed in the relevant Common Framework forum. This includes any agreement to create or amend an exclusion to the UKIM Act 2020’s market access principles. 5. Evidence of the final position of each party regarding any exclusion and whether an agreement has been reached should be recorded in all cases. This could take the form of an exchange of letters between appropriate UK Government and Devolved Administration ministers and include confirmation of the mandated consent period for Devolved Administration ministers regarding changes to exclusions within the Act. 6. Parties remain able to engage the dispute resolution mechanism within the appropriate Common Framework if desired. **Finalising an exclusion** 7. Under section 10 or section 18 of the UK Internal Market Act 2020 amendments to the schedules containing exclusions from the application of the market access principles require the approval of both Houses of the UK Parliament through the affirmative resolution procedure. Where agreement to such an exclusion is reached within a Common Framework, the Secretary of State for the UK Government department named in the Framework is responsible for ensuring that a draft statutory instrument is put before the UK Parliament.”

Uk Government , 2021³

Radioactive Substances Framework

The Radioactive Substances framework ("the framework") has reached phase four and has, as such, been received by the Scottish Parliament for scrutiny. Scrutiny will be undertaken by the Net Zero, Energy and Transport Committee.

The framework has also been received by other UK legislatures.

This briefing is intended to facilitate scrutiny of the framework by the Scottish Parliament.

Policy Area

The framework concerns policy on radioactive substances. The term 'radioactive substances' is inclusive of radioactive sources, materials and radioactive waste, nuclear and non-nuclear. The scope of the framework is limited to radioactive substances policy in civil applications. The framework applies to policy in the following areas:

- Radioactive sources (permitting/licensing the use of radioactive sources, security, import and export);
- Radioactive waste management and the environment (clearance & exemptions, disposal, import and export);
- The Radioactive Waste Inventory;
- Radioactive contaminated land;
- The Justification of Practices Involving Ionising Radiation Regulations
- Interaction of all radioactive waste policies (nuclear and non-nuclear) across the Parties, including:
 - All categories of radioactive waste,
 - Naturally Occurring Radioactive Materials (NORM)
 - Spent Fuel and Nuclear Materials declared as waste

Scope

International obligations

As part of the UK's exit from the EU, the UK is no longer a member of the European Atomic Energy Community (Euratom).^{iv} However, the UK and Euratom continue to work together with regards to nuclear safeguards, nuclear safety and security, and to this end signed a Cooperation Agreement. This agreement commits both parties to key nuclear

^{iv} However, Northern Ireland is still a member of Euratom as a result of the Northern Ireland protocol. See the next section.

safety conventions, to seek to improve global standards, and to not weaken respective domestic standards, unless not doing so would be incompatible with legally binding interactional nuclear safety standards. In addition, the UK is also committed to comply with recommendations and safety standards issued by the International Commission on Radiological Protection (ICRP) and the International Atomic Energy Agency (IAEA)

International safety standards and recommendations which the UK takes into account when setting its own legislative and regulatory standards, as well as international treaties and conventions to which the UK is a party, are listed in the frameworks as including:

- IAEA safety standards and guidance series
 - Fundamental Safety Principles SF-1
 - Radiation Protection and Safety of Radiation Sources: International Basic Safety Standards GSR Part 3
 - IAEA General Safety Requirements (Part 3), Radiation Protection and Safety of Radiation Sources: International Basic Safety Standards, 2014
- Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management ('the Joint Convention')
- IAEA Code of Conduct on the Safety and Security of Radioactive Sources
- ICRP Recommendations
- Oslo/Paris Convention (for the Protection of the Marine Environment of the North East Atlantic)

Devolved settlements

Radioactive substances and environmental protection are predominantly devolved matters, however there is some intersection with reserved matters, such as policies on the security, and import and export, of radioactive substances. The framework documents state that the framework will:

- 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 nation as is afforded by current EU rules;
- lead to a significant increase in decision-making powers for the devolved administrations.

Northern Ireland

The framework documents note that, in contrast to the rest of the UK, the Euratom Council Directive 2006/117/Euratom continues to apply to Northern Ireland as a result of the Protocol on Ireland and Northern Ireland. The framework also confirms that it will adhere to the Good Friday/Belfast Agreement.

One of the purposes of the framework is to deal with cases in which rules on radioactive substances change in Northern Ireland as a result of its membership of Euratom. The governance structures and decision-making mechanisms set out in the framework documents are envisaged to help manage the impact of such changes.

Summary of proposed approach

The framework articulates the following aims alongside the [general principles for common frameworks](#) agreed at the Joint Ministerial Committee on EU Negotiations (JMC(EN)):

- the standards of radiological protection in force upon the UK's exit from Euratom should at least maintain, or exceed EU standards;
- an effective regulatory framework that protects the environment and people will continue to be maintained;
- the continuation of effective regulatory enforcement regimes;
- mutual recognition of training and certification requirements for those carrying out radioactive substance activities will be observed;
- international commitments of the UK will continue to be met; and
- the terms of this agreement are acknowledged to be without prejudice to the [Northern Ireland] Protocol.

The framework does not require any additional legislation. Instead, it establishes which roles and responsibilities fall on different bodies and proposes decision-making, monitoring reviewing and dispute resolution processes - discussed in the following sections of this briefing.

The framework notes that policy divergence is already an accepted reality across the UK and thus the existence of at least *some* policy divergence is not contentious. The framework document gives the example of radioactive waste disposal. While the UK Government, Welsh Government and the NI Department of Agriculture, Environment and Rural Affairs manage high-activity waste through geological disposal, the Scottish Government favours near surface storage, treatment and/or disposal.

Stakeholder engagement

The framework document does not report on any stakeholder engagement undertaken in

its development. The rest of this section describes parliamentary scrutiny of the framework at other legislatures.

Detailed overview of proposed framework: legislation

This section provides information on the legislation associated with the framework. The framework itself does not require any new legislation. However, it relates to several European Atomic Energy Community (Euratom) directives that have been transposed into domestic law:

- Directive 2013/59/Euratom: relates to basic safety standards for protection against the dangers arising from exposure to ionising radiation including prevention of exposure of workers and the public to ionising radiation arising from inadequate control of high-activity sealed radioactive sources and orphan sources
- Directive 2011/70/Euratom and Directive 2006/117/Euratom: relate to the responsible and safe management of spent fuel and radioactive waste and transfrontier shipment of radioactive waste and spent fuel.
- Regulation (Euratom) No 1493/93: relates to shipments of radioactive substances between Member States, which has been retained in UK law.

Detailed overview of proposed framework: non-legislative arrangements

The framework documents comprise a Radioactive Substances Concordat, which sets out ways of working between parties to the agreement and other bodies. These are described in further detail in the next section of this briefing and include:

- [Decision-making processes](#)
- Roles and responsibilities for [parties](#) and [external bodies](#)
- [Monitoring and enforcement processes](#)
- [Reviewing and amendment mechanisms](#)
- [Plans for implementation](#)

Radioactive Substances framework 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:

- UK Government, Department for Business, Energy and Industrial Strategy (BEIS)
- Scottish Government
- Welsh Government
- Northern Ireland Department of 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.

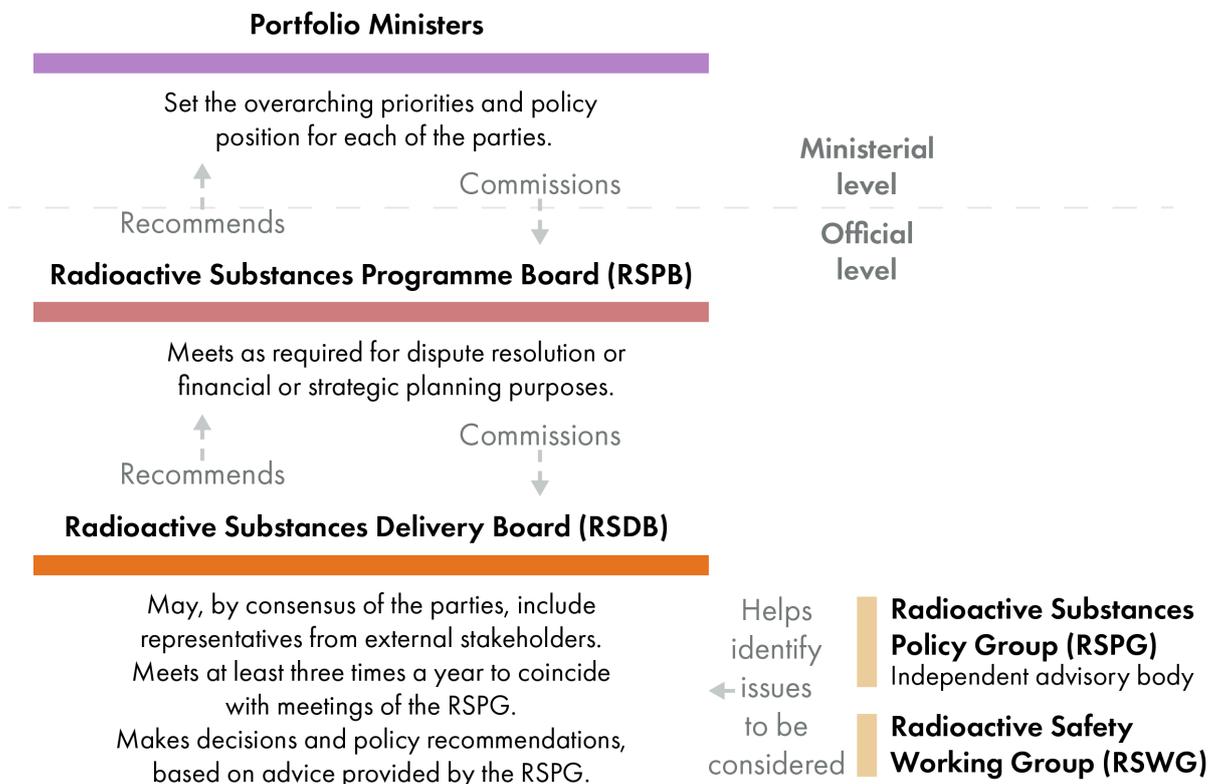
The framework establishes two new radioactive substances boards. The first, the lower level **Radioactive Substances Delivery Board (RSDB)** comprises policy officials from the UK Government and each of the devolved governments. The higher-level **Radioactive Substances Programme Board (RSPB)** comprises senior officials from each government. The framework documents include terms of reference for each body.

Most day-to-day decision-making is expected to take place through the RSDB, which will meet regularly. Higher-level, strategic decision-making will be conducted by the RSPB, which will meet 'as required' to make strategic and/or financial decisions or to [resolve disputes](#). The RSPB will set a yearly work programme and review it annually. Both boards will be chaired by the UK Department for Business, Energy and Industrial Strategy (BEIS), which will also provide secretariat support.

The below diagram illustrates the governance structure of the framework:

Governance Structure

The diagram depicts a three-tiered governance structure. At the top-tier are Portfolio Ministers, at the middle-tier sits the Radioactive Substances Programme Board, and at the bottom-tier, the Radioactive Substances Delivery Board. Higher tiers commission lower tiers, who, in turn, make recommendations to higher tiers. The diagram also shows the Radioactive Substances Policy Group and the Radioactive Safety Working Group as helping the Radioactive Substances Delivery Board identify issues to be considered.



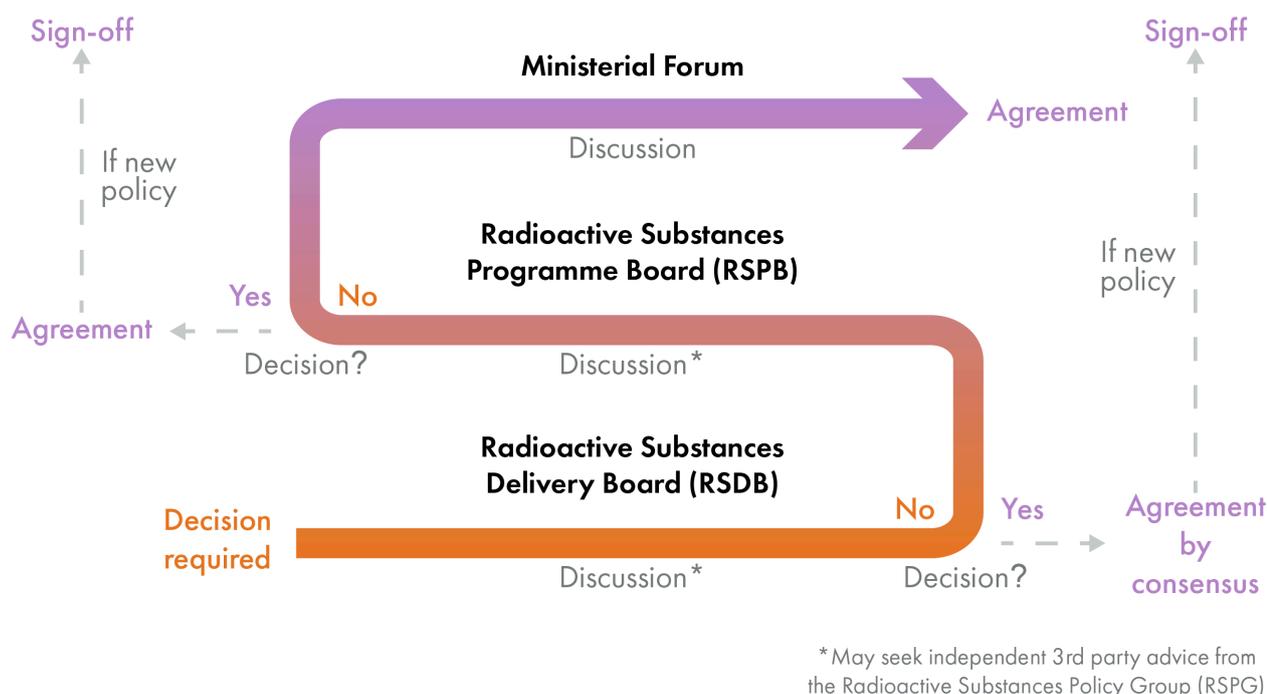
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Decision-making

A central part of the decision-making processes in the framework are the [radioactive substances boards \(RSDB and RSPB\)](#) described in the previous section. The below diagram illustrates the decision-making process.

Decision Making Process

An image illustrating the decision-making mechanism within the framework. It consists of an s shape line going from orange to pink to purple. . At the bottom the line is orange which represents , the Radioactive Substances Delivery Board, at the middle the line is pink and represents the Radioactive Substances Programme Board. The top of the line is purple and represents a Ministerial Forum. Each decision is to be made at the lowest appropriate level and then signed off at the Ministerial level. Any agreement can also include input from the Radioactive Substances Policy Group.



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Decisions are made by consensus at one of three tiers. At the lowest level, decisions can be made in the RSDB. If a decision cannot be made at this level, it is escalated to the RSPB. If a decision cannot be made at this level, it is escalated to the Ministerial Forum. Each decision is to be made at the lowest appropriate level. Any decisions made at a level below the Ministerial Forum, have to be signed off at the Ministerial level. The decision-making mechanism does not feature any input from legislatures. The diagram does suggest that parties can seek independent third party advice from the Radioactive Substances Policy Group for agreements taken at any level.

Radioactive Substances Policy Group

The Radioactive Substances Policy Group (RSPG) is an existing body, which will act as an advisory body for the Radioactive Substances Boards. Its purpose is to:

“ provide a forum for the review and development of proposals for change with respect to policies, strategies, legislation, regulatory standards and good practise on radioactive substances, across the four Parties.”

The RSPG is not a decision-making body, but provides information and advice to aid decision-making at any level. The framework document includes (at Annexe A) terms of

reference for the group, which list the following members:

Core membership:

- Department for Business, Energy and Industrial Strategy (BEIS)
- Scottish Government (SG)
- Welsh Government (WG)
- Department of Agriculture, Environment and Rural Affairs (DAERA)
- Environment Agency (EA)
- Scottish Environment Protection Agency (SEPA)
- Natural Resources Wales (NRW)
- Northern Ireland Environment Agency (NIEA)
- Office of Nuclear Regulation (ONR)
- Nuclear Decommissioning Authority (NDA)

Supporting membership: Representatives from the following organisations will be invited to attend according to the work programme. This is a non-exhaustive list.

- UK Health Security Agency (UKHSA)
- Office for Health Improvement and Disparities (OHID)
- Health Protection Scotland (HPS)
- Public Health Wales (PHW)
- Public Health Agency (PHA)
- Department for Environment Food and Rural Affairs (Defra)
- Health and Safety Executive (HSE)
- Health and Safety Executive Northern Ireland (HSENI)
- Ministry of Defence (MoD)
- Home Office (HO)
- Department of Health and Social Care (DHSC)
- Oil and Gas Authority (OGA)
- Food Standards Agency (FSA)
- Ministry of Housing Communities and Local Governments (MHCLG)
- HM Revenue & Customs (HMRC)

- Planning Inspectorate (PI)
- Department for Infrastructure Northern Ireland (DINI)
- Radioactive Waste Management (RWM)
- Low Level Waste Repository (LLWR)
- Nuclear Legacy Advisory Forum (NuLeAF)
- Relevant stakeholder working group leads, with whom interaction may be required according to the agenda / work programme.

The framework document papers also mention another existing group, the Radioactive Substances Safety Working Group (RSWG), which is intended to fulfil a similar advisory function to the RSPG. However, the framework document contains no terms of reference or further information on this group, who is a part of it, or how it is intended to feed into decision-making and other processes established by the framework.

The framework documents do not require any advice given by the RSPG or RSWG, or indeed any minutes of meetings at which their advice is discussed, to be published. It is unclear whether this is because of security concerns or other reasons.

Monitoring and enforcement

The framework documents do not specify any specific monitoring requirements for the parties or boards but simply say that all parties share the monitoring and enforcement of the JMC(EN) Common Framework principles and that any concerns will be raised in the RSDB in the first instance. The main monitoring mechanism will be through the annual review, as described in the next section of this briefing.

Review and amendment

Review

The framework document stipulates an annual review. This review is to include discussions of the governance, operational aspects and whether any previous decisions need updating. In addition to this annual review, any party to the agreement (i.e. the UK government or any of the devolved governments) can request additional reviews. If these reviews result in agreement that an amendment to the terms of reference is needed, an 'amendment stage' is triggered.

Amendment

If all parties agree that amendments are needed, they meet to discuss these and agree a timeline for any changes. Once an amendment is agreed by all parties they must sign a new non-legislative agreement to give effect to the amendment. The framework outline

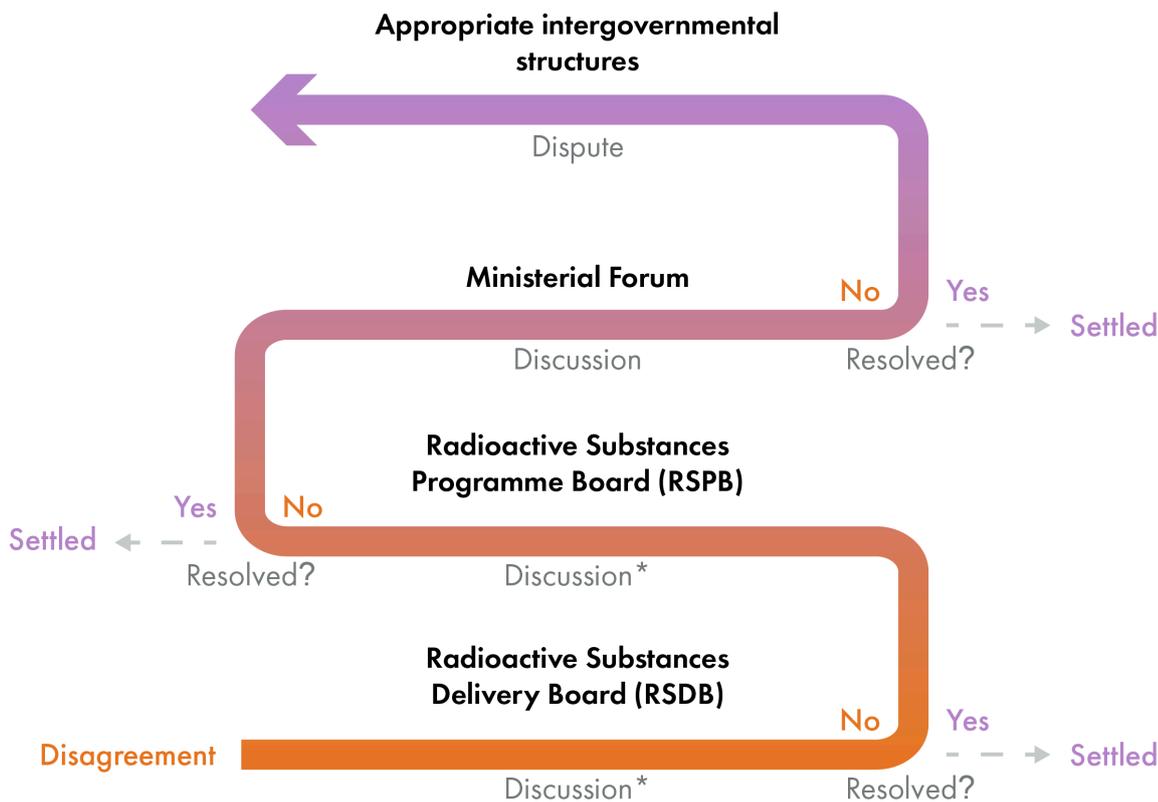
document does not specify what happens if one or more, but not all parties, agree that an amendment is required. However, the framework documents include a separate [dispute resolution process](#).

Dispute resolution official level

This section considers the dispute resolution process set out within the framework. The below diagram illustrates the dispute resolution process at both the official and Ministerial level.

Dispute Resolution

The diagram shows an S shape line. The bottom of the line represents the lowest level the RSDB, the mid section represents the the RSPB, the higher section of the line a Ministerial Forum, and the highest section represents intergovernmental structures. Each disagreement is to be resolved at the lowest possible level, but escalates to the next level if it cannot be resolved



* May seek independent 3rd party advice from the Radioactive Substances Policy Group (RSPG)

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According to the framework documents, any dispute should be resolved at the lowest level of governance possible. Any disputes that arise at the official level can be discussed in the RSDB in the first instance. If the issue cannot be resolved at this level, the dispute is escalated to the RSPB who try to resolve it. If this step is unsuccessful, the dispute can be escalated to a senior civil servant or director level. This last official step is not depicted on the dispute resolution diagram, but is mentioned in the framework documents. If all these

attempts to resolve the dispute at an official level are unsuccessful, the dispute can be escalated to the Ministerial level set out in the next section.

Dispute resolution Ministerial level

In contrast to other common frameworks, the Radioactive Substances framework also sets out a dispute resolution process at the lower Ministerial level in addition to the general inter-governmental dispute resolution process. Disputes can arise either when official-level differences have failed to be resolved, or where differences arise at the Ministerial level. In either case, the Ministers responsible convene a discussion of the dispute and try to resolve it. If they are unsuccessful, the dispute will be referred to the appropriate intergovernmental structures. However, the framework document notes that parties to the agreement also have the option of choosing to agree to disagree, rather than escalate further.

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

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

What will intergovernmental relations look like?

Proposed outline of new intergovernmental relations structure

Top tier:

The Council

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

Middle tier:

Standing committees

The Interministerial Standing Committee (IMSC)

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

The Finance Interministerial Standing Committee (F:ISC)

Will comprise Finance Ministers and consider finance and funding matters.

Additional interministerial committees

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

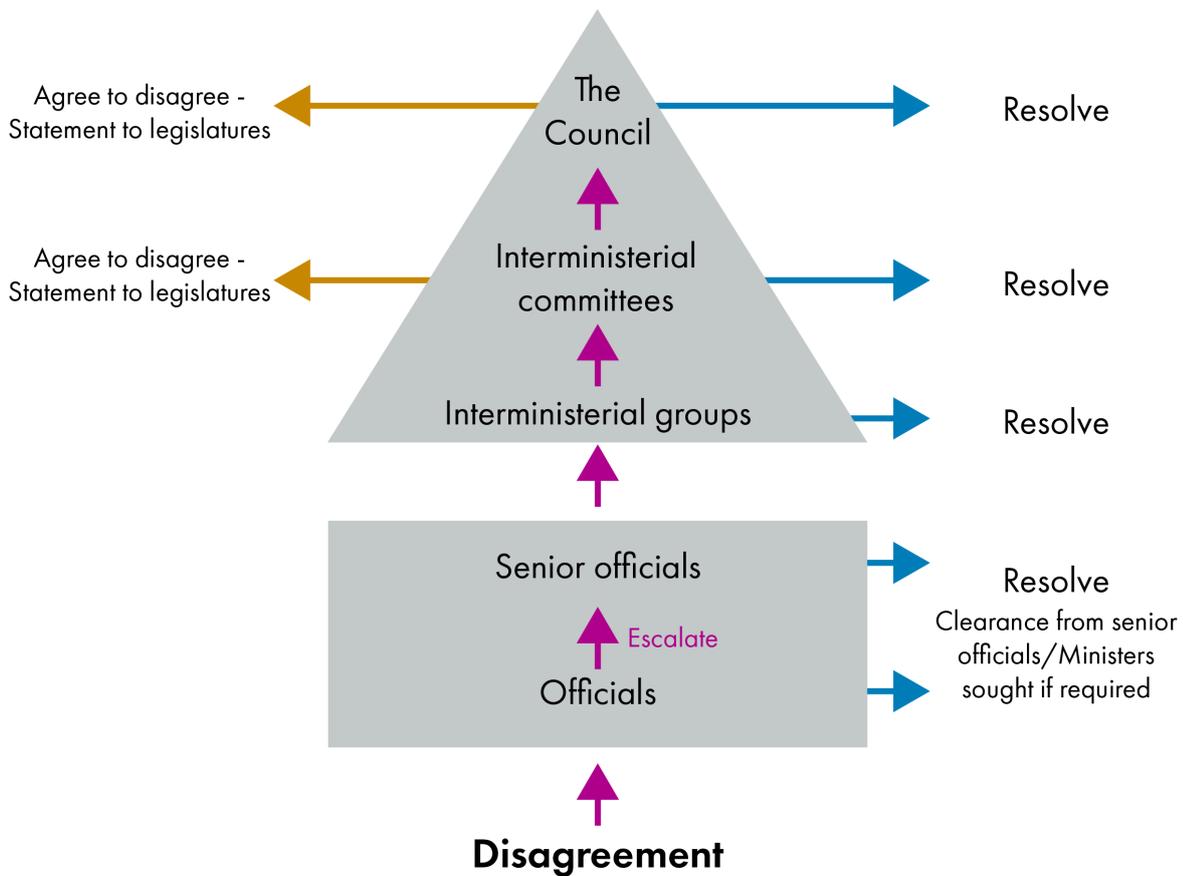
Lowest tier:

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

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

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

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,

^v A slightly different dispute resolution process applies for disputes of a financial nature, which involve the Finance Interministerial Standing Committee.

including on any third-party advice received. Each government is also required to lay this report before its legislature.

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

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

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

Implementation

The framework documents anticipate that the two Radioactive Substances boards (RSDB and RSPB) will have been established by the time the agreement documents are finalised and confirmed. The frameworks [have been operational on an interim basis since at least December 2020](#). The framework documents do not mention any other implementation requirements.

Framework Analysis

As previously noted, this draft Framework relates solely to radioactive substances policy in civil applications. The term “radioactive substances” is inclusive of radioactive sources, materials and waste. This section considers the current policy position and key issues.

Current policy position

Radioactive substances and environmental protection policy are devolved matters.

Radioactive waste can originate from research, the health sector, and nuclear power and decommissioning. The Scottish Government states that it aims to "achieve a high level of safety in radioactive waste management that protects individuals and the environment and doesn't place undue burden on future generations" ⁴ .

Scotland's overarching policy on radioactive waste is set out in the [radioactive waste policy statement](#) which supports ⁵ :

“ [...] long-term 'near surface, near site' storage facilities so that the waste is monitorable and retrievable and the need for transporting it over long distances is minimal.”

This differs from the UK and other devolved Government's approaches which is for geological disposal ⁶ . The Scottish Government states ⁴ :

“ we do not accept that it is right to seek to bury nuclear waste, which will remain radioactive for thousands of years, in underground sites. This out of sight, out of mind policy should not extend to Scotland.”

The framework documents recognise that divergence "is already part of the landscape of Radioactive Substances policy across the UK and, therefore, should not necessarily be considered as novel or contentious".

The Scottish Environment Protection Agency (SEPA) is [responsible for the regulation of all radioactive substances](#) through an integrated framework, put in place by [the Environmental Authorisations \(Scotland\) Regulations 2018](#).

Further detail on the Scottish Government's position is provided in the following documents:

- [Scotland's higher-activity radioactive waste policy](#)
- [Higher-activity radioactive waste: implementation strategy](#)

The Implementation Strategy sets out three key phases ⁷ :

Phase 1 (2016-2030) includes a review of the higher activity waste that is expected to arise in Scotland. The suitability of disposal as a waste management option for these wastes under current technologies is also being reviewed.

In **Phase 2 (2030-2070)** the Scottish Government will work with the Nuclear

Decommissioning Authority, radioactive waste producers and regulators to help develop a near-surface disposal concept for waste suitable for this management route under current technologies.

In **Phase 3 (2070 onwards)** the Scottish Government anticipates that replacement near-surface storage facilities will be constructed. Disposal technologies will be further developed and new near-surface disposal facilities will be constructed.

Key issues

As [previously noted](#), the framework [was considered by the House of Lords Common Framework Scrutiny Committee on 18 January 2022](#).

[In correspondence](#) with Minister of State for Energy, Clean Growth, and Climate Change, Greg Hands and Minister for Small Business, Consumers, and Labour Markets, Paul Scully, the Committee highlighted the following key issues:

- There is an "absence in these frameworks of any commitments on ongoing engagement with Parliament". Therefore, the final framework documents should include a commitment to include legislatures in stakeholder consultations and make available the outcome of its reviews to them. It suggested that to fail to do so would be contrary to the spirit of the [recent commitment by all governments of the UK to improve transparency in intergovernmental relations](#).
- The final framework documents should refer to the updated process for [agreeing exclusions from the Internal Market Act \(2020\)](#), to clarify the role of civil servants in the dispute resolution process.
- Whilst the Radioactive Substances Delivery Board is able to include stakeholders in discussions, the Committee regrets "the absence of a commitment to meaningful ongoing stakeholder engagement in either framework". The first review should therefore "include an open consultation process with stakeholders and the frameworks should be updated to include an ongoing commitment to stakeholder engagement where necessary".
- Framework documents should explain clearly where they interact with the [Internal Market Act](#) and identify associated risks. It is "especially unclear" where the proposed framework interacts with the Act.
- The framework documents state that "the standards of radiological protection in force upon the UK's exit from Euratom **should** at least maintain, or exceed standards". The Committee recommends that for consistency, and to demonstrate a strong commitment to all core principles within the framework, "should" ought to be changed to "will".

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