



The Scottish Parliament
Pàrlamaid na h-Alba

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An t-Ionad Fiosrachaidh

SPICe Briefing

Pàipear-ullachaidh SPICe

Public Procurement Framework

Andrew Feeney-Seale

This briefing discusses the common framework on procurement. The procurement common framework sets out the approach the UK Government, Scottish Government and other devolved administrations will take to policy development and regulation in relation to domestic and international procurement. The framework covers consultation and the exchange of information, the development of policies and legislation, engagement with the World Trade Organisation and other international agreements. It also provides background information on the common frameworks programme.

Common
Framework

25 February 2022
SB 22-14

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
Common Framework for Procurement	14
Policy area	14
Scope	14
Definitions	15
Summary of proposed approach	16
Stakeholder engagement	16
Detailed overview of proposed framework: legislation	16
Detailed overview of proposed framework: non-legislative arrangements	16
Procurement Common Framework in practice	17
Decision-making	17
Roles and responsibilities: parties to the framework	17
Roles and responsibilities: existing or new bodies	18
Monitoring and enforcement	18
Review and amendment	18
Dispute resolution official level	19
Dispute resolution Ministerial level	19
Implementation	22
Framework analysis	23
Current policy position	23
Key issues	23
Bibliography	24

Summary

This briefing provides detailed information on the [Procurement framework](#)¹. The Economy and Fair Work 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 briefly covered in this briefing.

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

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

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

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

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

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

What are common frameworks?

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

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

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

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

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

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

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

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

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

The framework outline went on to note that the framework:

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

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

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

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

Why are common frameworks needed?

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

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

The 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.

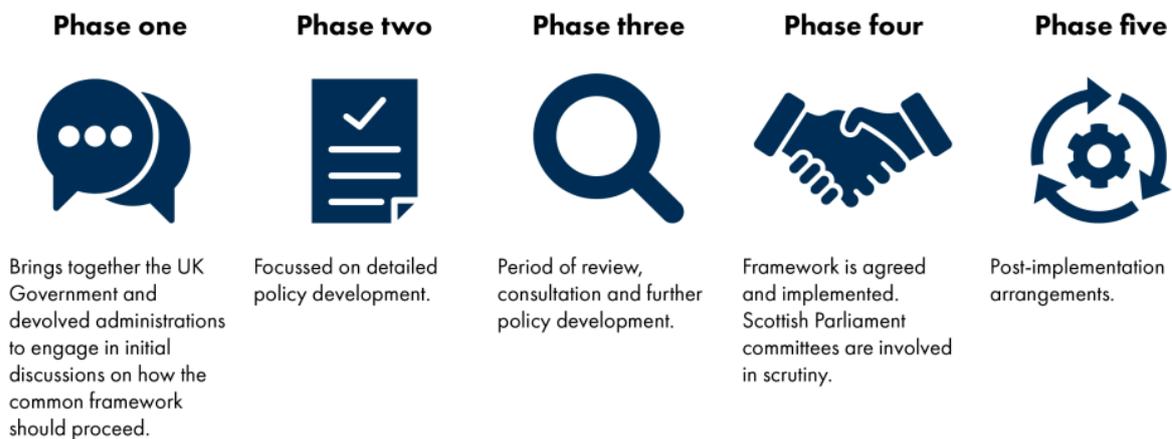
What is the process for developing frameworks ?

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



Scottish Parliament Information Centre

How will the Scottish Parliament consider frameworks?

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

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

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

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

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

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

The Scrutiny Challenge

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

- Common frameworks are intergovernmental agreements and the scope for parliamentary influence in their development is significantly limited with scrutiny taking place at phase four.
- The ongoing operation of frameworks will take place at an official level between government departments. It is therefore unclear how much information the Parliament may be able to access to scrutinise the effect of frameworks on policy-making.
- The Scottish Government and the UK Government have differing objectives in relation to frameworks. The UK Government is seeking “high levels of regulatory coherence”.² The Scottish Government believes that they are about “allowing legitimate policy choices”.²
- The interconnected nature of common frameworks and the UK Internal Market Act 2020 (see section on the [UK Internal Market Act](#)).
- The impact of common frameworks on the Scottish Government’s stated policy position of keeping pace with EU law.
- The fact that most frameworks have been operating on an interim basis since 1

January 2021 in spite of being unavailable for scrutiny by legislatures³.

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

Scrutiny at other legislatures

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

The House of Lords Common Frameworks Scrutiny Committee considered the provisional framework on 1 February 2022, and concluded that the provisional framework provided a good foundation for cooperation. In [correspondence with the UK Government](#), the House of Lords Committee made two recommendations:

“ We recommend that the framework should be updated to include a commitment to regularly update the House of Lords, House of Commons and the three devolved legislatures on the ongoing functioning of these frameworks.”

[Correspondence, House of Lords Common Frameworks Scrutiny Committee, 2 February 2022](#)

“ We recommend that Annex A is updated so that it is made clear the Common Framework Liaison Group will conduct their periodic reviews in their biannual meetings, rather than holding separate meetings.”

[Correspondence, House of Lords Common Frameworks Scrutiny Committee, 2 February 2022](#)

On 18 February 2021 the Northern Ireland Assembly Research and Information Service [published a briefing paper on the procurement framework](#). The Committee for Finance has not yet considered the framework.

The UK Internal Market Act 2020

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The process is set out in full below. ⁴

Proposal and consideration of exclusions

1. Sections 10 and 18 and Schedules 1 and 2 of the UK Internal Market Act contain provisions excluding the application of the United Kingdom market access principles in certain cases.
2. Whenever any party is proposing an amendment to those Schedules in areas covered by a Common Framework:
 - a. the exclusion seeking party should set out the scope and rationale for the proposed exclusion; and
 - b. consideration of the proposal, associated evidence and potential impact should be taken forward consistent with the established processes as set out in the relevant Common Framework, including an assessment of direct and indirect economic impacts.
3. It is recognised that all parties will have their own processes for considering policy proposals. Administrations should consult and seek agreement internally on their position before seeking to formally agree the position within the relevant Common Frameworks forum.

Agreement of an exclusion request

4. Where policy divergence has been agreed through a Common Framework this should be confirmed in the relevant Common Framework forum. This includes any agreement to create or amend an exclusion to the UKIM Act 2020's market access principles.
5. Evidence of the final position of each party regarding any exclusion and whether an agreement has been reached should be recorded in all cases. This could take the form of an exchange of letters between appropriate UK Government and Devolved Administration ministers and include confirmation of the mandated consent period for Devolved Administration ministers regarding changes to exclusions within the Act.
6. Parties remain able to engage the dispute resolution mechanism within the appropriate Common Framework if desired.

Finalising an exclusion

7. Under section 10 or section 18 of the UK Internal Market Act 2020 amendments to the schedules containing exclusions from the application of the market access principles require the approval of both Houses of the UK Parliament through the affirmative resolution procedure. Where agreement to such an exclusion is reached within a Common Framework, the Secretary of State for the UK Government department named in the Framework is responsible for ensuring that a draft statutory instrument is put before the UK Parliament.

Common Framework for Procurement

The procurement 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 Economy and Fair Work 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 has been developed collaboratively by the:

- UK government
- Scottish Government
- Welsh Government
- Northern Ireland Executive.

The procurement framework covers policy previously covered by EU legislation. The Procurement Regulations were transposed from a series of EU Directives:

- [2014/23/EU](#) Concession Contracts Directive 2014 ⁵
- [2014/24/EU](#) Public Contracts Directive 2014 ⁶
- [2014/25/EU](#) Utilities Contracts Directive 2014 ⁷
- 89/665/EEC Remedies Directive as amended by [2007/66/EC](#) ⁸

This framework explicitly excludes the [Procurement Reform \(Scotland\) Act 2014](#) and the [Procurement \(Scotland\) Regulations 2016](#), which relate to public procurement below the [WTO GPA thresholds](#).

Scope

This Common Framework will establish [agreed working practices](#) between the Parties in relation to domestic and international public procurement policy and legislation.

Specifically, it will cover:

- consultation and exchange of information
- development of policies and legislation
- engagement between the Parties on World Trade Organisation Government Procurement Agreement (WTO GPA) business
- international agreements e.g. the EU-UK Trade and Cooperation Agreement.

In Scotland the following regulations apply:

- [the Public Contracts \(Scotland\) Regulations 2015](#) ⁹
- [the Concession Contracts \(Scotland\) 2016](#) ¹⁰
- [the Utilities Contracts \(Scotland\) Regulations 2016](#). ¹¹

The Public Procurement (Amendment etc.) (EU Exit) Regulations 2020 and the Public Procurement etc. (EU Exit) (Scotland) (Amendment) Regulations 2020 were laid to amend the Procurement Regulations at the end of the transition period to ensure they continued to work. These statutory instruments implemented the Withdrawal Agreement and fixed deficiencies that were caused by the UK leaving the EU.

The following are out of the scope of this Common Framework:

- contract award procedures which are covered by the Defence and Security Public Contracts Regulations 2011
- contracts worth less than the relevant WTO GPA thresholds
- contracts otherwise excluded from the scope of the Procurement Regulations
- Procurement Reform (Scotland) Act 2014 and Procurement (Scotland) Regulations 2016.

Definitions

- “UKG” refers to the UK Government, while “SG” refers to the Scottish Government, “WG” refers to the Welsh Government and “NIE” refers to the Northern Ireland Executive.
- The “Parties” means the UK Government, the Scottish Government, the Welsh Government, and the Northern Ireland Executive.
- A "common framework" sets out a common approach to certain policy areas that fall under devolved competence, which were previously governed by means of EU legislation, where it has been recognised that a particular level of continued cooperation is required.
- References to “devolved competence”, “devolved matters” and “reserved matters” are to be construed in accordance with the relevant devolution settlement.
- The “Frameworks Principles” means the principles set out for the development of Common Frameworks in the JMC(EN) communique of October 2017.
- The Common Framework Working Group (also referred to here as “the Working Group”) and The Common Framework Liaison Group (also referred to here as “the Liaison Group”) are the two official level working groups operating as part of this Common Framework.

Summary of proposed approach

The framework notes that there was considerable scope for different parts of the UK to transpose the EU Directives differently, but that the Parties to the framework had not diverged significantly in respect of public procurement, at least with regard to procurement contracts above the regulated thresholds. Each of the parties will develop and publish their own policies for procurement, but will give full consideration to the impact on other Parties. Parties will notify and consult on proposed changes to policy and regulation at an early stage of development, with a view to achieving consensus.

This is a non-legislative framework, underpinned by an exchange of ministerial letters. It is intended this approach will maintain existing mutual understanding and joint ways of working between stakeholders. It will provide a forum to consult on developments within, or between, and to manage any divergence.

It was considered whether a concordat was required as part of the development of this common framework. However, it was agreed by all parties that a separate concordat is not required in this instance, as it would duplicate information that is already in the framework outline agreement.

Stakeholder engagement

According to the 'cover page' of [Scottish Government correspondence on the framework to the Economy and Fair Work Committee](#), the Scottish Government consulted with both private and public sector stakeholders and received three responses from each sector. No changes were made to the draft framework in light of these responses. The Scottish Government noted that some of these responses simply confirmed that the responder was content with the draft framework.

Detailed overview of proposed framework: legislation

The framework will not require primary or secondary legislation to implement the framework, so this section is 'not applicable'.

Detailed overview of proposed framework: non-legislative arrangements

All four governments have jointly agreed that legislation is not required to deliver this, with an exchange of letters being deemed appropriate to formalise existing ways of working.

Procurement Common Framework in practice

Decision-making

This common framework for public procurement is being established because it is considered necessary in order to achieve the following outcomes set out in the [frameworks principles](#):

- 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.

Parties acknowledge the benefit of commonality across the UK for contracting authorities and UK businesses, therefore they are aiming for consistent approaches where deemed advantageous.

Where one or more parties do plan to take a policy or regulatory approach which is different in substance to approaches in other parties, they will assess the likely impact of this divergence. Where this divergence is likely to have an impact on other parties, the party or parties will notify and consult other parties at the monthly official level [Common Framework Working Group](#). If any of the parties object, all parties will endeavour to find a mutually acceptable approach.

If no mutually acceptable approach can be agreed, the objecting parties may initiate the [formal dispute and resolution procedure](#).

Roles and responsibilities: parties to the framework

The UK Government will represent the interests of all Common Framework Parties at the WTO GPA Committee. UKG policy leads will share agenda items on devolved competence or which may impact devolved competence as soon as practical, and will consult with Scottish Government officials in relation to issues relevant to their devolved competence.

Parties all commit to consult and exchange information on matters which will impact upon another of the parties in relation to policy issues on public procurement. Regular engagement through a monthly Common Framework Working Group. Advance notice and consultation on policy initiatives and all primary and secondary legislation in relation to public procurement will take place no less than one month prior to the announcement.

Roles and responsibilities: existing or new bodies

External bodies do not currently have any role and a future role is not anticipated except as engaged in the Review and Amendment mechanism.

The Common Framework Working Group will be comprised of officials from procurement policy teams in the Northern Ireland, Welsh Government, Scottish Government and UK Government. The group will meet monthly, and will engage in regular discussion on the development of policy and regulation, and consult and exchange information on public procurement where there may be an impact on other parties.

The Common Framework Liaison Group will meet biannually, or by exception. This group will assess intergovernmental cooperation and collaboration as a result of the framework, whether the parties are implementing and complying with the framework, whether any divergence has taken place which contravenes the Common Framework principles, and any changes required to the framework as a result of a dispute. The membership of this group will comprise officials from procurement policy teams in the Northern Ireland, Welsh Government, Scottish Government and UK Government.

Monitoring and enforcement

The twice-yearly Common Framework Liaison Group meeting will provide for full proper consultation and cooperation between the Parties and assess:

- intergovernmental cooperation and collaboration as a result of the Common Framework
- whether Parties are implementing and complying with the Common Framework
- whether divergence has taken place in contravention of the Framework principles
- the impact of divergence across the UK
- if a change is required to the Common Framework as a result of any dispute.

The outcome of this meeting will be used to inform joint decision-making going forward and the next review and amendment process. If there is an unresolved disagreement, the dispute avoidance and resolution mechanism should be used.

Review and amendment

The Common Framework, and the functioning of intergovernmental relations generally, will be reviewed after one year after the frameworks finalisation, and every three years thereafter.

Any of the Parties may request an additional ('exceptional') review if they consider it necessary. The framework defines a significant issue as one which is time sensitive, if it has a fundamental impact on the operation of the framework, or if all parties agree that an exceptional review of governance structures is required. Once an issue has been

discussed in an exceptional review, the same issue cannot trigger an exceptional review until six months have passed.

Dispute resolution official level

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

Where differences do arise, the Parties should endeavour in good faith to resolve them at the earliest and lowest possible level, through the general framework for consultation set out in the common framework, the monthly official level Working Group meetings and with the involvement of senior officials if necessary, to avoid unnecessary escalation and the invoking of the dispute resolution mechanism in the overarching MoU on devolution.

If it is not possible to resolve a difference at the lowest level, a disagreement may be triggered by one or more of the Parties. In such a case, the complaining Party or Parties will [notify](#) the other Parties in writing, detailing the disagreement and establishing the reasons for invoking the common framework's formal dispute avoidance and resolution process.

In the first instance, a meeting will be convened involving officials from each of the Parties and, if appropriate, the Parties' respective legal departments. The purpose of such a meeting will be to identify a course of action acceptable to all of the Parties, in accordance with the mechanisms and principles set out in the Common Framework and [the MoU](#). If no mutually acceptable resolution is identified during this meeting, a further meeting of senior officials, at deputy director or director level, will be convened with a view to identifying a mutually acceptable resolution.

Dispute resolution Ministerial level

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

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

What will intergovernmental relations look like?

Proposed outline of new intergovernmental relations structure

Top tier:

The Council

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

Middle tier:

Standing committees

The Interministerial Standing Committee (IMSC)

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

The Finance Interministerial Standing Committee (F:ISC)

Will comprise Finance Ministers and consider finance and funding matters.

Additional interministerial committees

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

Lowest tier:

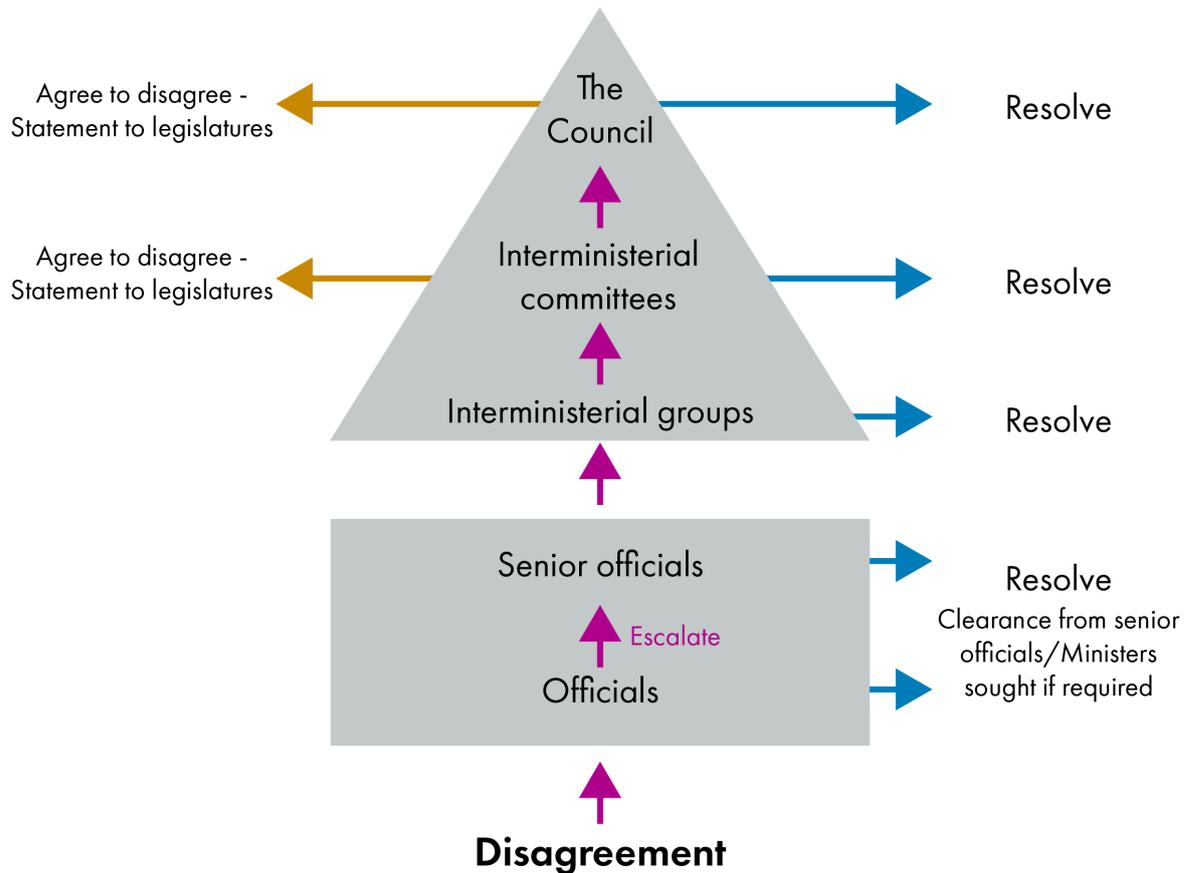
A number of interministerial groups (IMG) will be formed to discuss specific policy areas, such as on transport, Net Zero, and the Trade and Cooperation Agreement with the EU.

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

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

iv [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 final framework will be fully in place once scrutiny has been completed across all four legislatures and Ministerial letters exchanged.

Framework analysis

Current policy position

There was considerable flexibility within the rules for different parts of the UK to transpose Directives differently. However, [parties have not diverged significantly when transposing the Directives as flagged earlier in this briefing](#).

While there has been to date no significant policy divergence in relation to procurement above the regulated thresholds, the Scottish Government has diverged with respect to procurement below these thresholds, introducing what it has termed a '[Scottish model of procurement](#)' through the Procurement Reform (Scotland) Act 2014. This is out of the scope of this common framework.

The House of Lords Common Frameworks Scrutiny Committee noted in its [correspondence to the UK Government on the Framework](#) that Scotland has already taken its own position on procurement below the regulated thresholds, and that therefore the potential for 'significant divergence between devolved governments is highly likely'.

Key issues

There do not appear to be any substantive issues within the provisional procurement common framework.

Bibliography

- 1 Cabinet Office, UK Government. (2022, January). Common Framework for Public Procurement. Retrieved from https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1049436/common-framework-public-procurement-jan-2022.pdf [accessed 22 February 2022]
- 2 Finance and Constitution Committee, The Scottish Parliament. (2021, February 12). Legacy Expert Panel Report to the Finance and Constitution Committee 12 February 2021. Retrieved from [https://archive2021.parliament.scot/S5_Finance/General%20Documents/Legacy_Finaldoc\(1\).pdf](https://archive2021.parliament.scot/S5_Finance/General%20Documents/Legacy_Finaldoc(1).pdf) [accessed 13 December 2021]
- 3 Scottish Parliament . (2021, June 4). Common Frameworks in the new Parliamentary Session. Retrieved from <https://spice-spotlight.scot/2021/06/04/common-frameworks-in-the-new-parliamentary-session/> [accessed 13 December 2021]
- 4 Uk Government . (2021, December 10). Guidance: Process for considering UK Internal Market Act exclusions in Common Framework areas. Retrieved from <https://www.gov.uk/government/publications/process-for-considering-ukim-act-exclusions-in-common-framework-areas/process-for-considering-uk-internal-market-act-exclusions-in-common-framework-areas#agreement-of-an-exclusion-request> [accessed 13 December 2021]
- 5 European Parliament and of the Council. (2014, February 26). Directive 2014/23/EU. Retrieved from <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:32014L0023> [accessed 23 February 2022]
- 6 European Parliament and of the Council. (2014, February 26). Directive 2014/24/EU. Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014L0024> [accessed 23 February 2022]
- 7 European Parliament and of the Council. (2014, February 26). Directive 2014/25/EU. Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014L0025> [accessed 23 February 2022]
- 8 European Parliament and of the Council. (2007, December 11). Directive 2007/66/EC. Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32007L0066> [accessed 23 February 2022]
- 9 The Public Contracts (Scotland) Regulations 2015. (2015, December 18). Retrieved from <https://www.legislation.gov.uk/ssi/2015/446/contents/made>
- 10 The Concession Contracts (Scotland) Regulations 2016. (2016, February 2). Retrieved from <https://www.legislation.gov.uk/ssi/2016/65/contents/made>
- 11 The Utilities Contracts (Scotland) Regulations 2016. (2016, January 28). Retrieved from <https://www.legislation.gov.uk/ssi/2016/49/contents/made>

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