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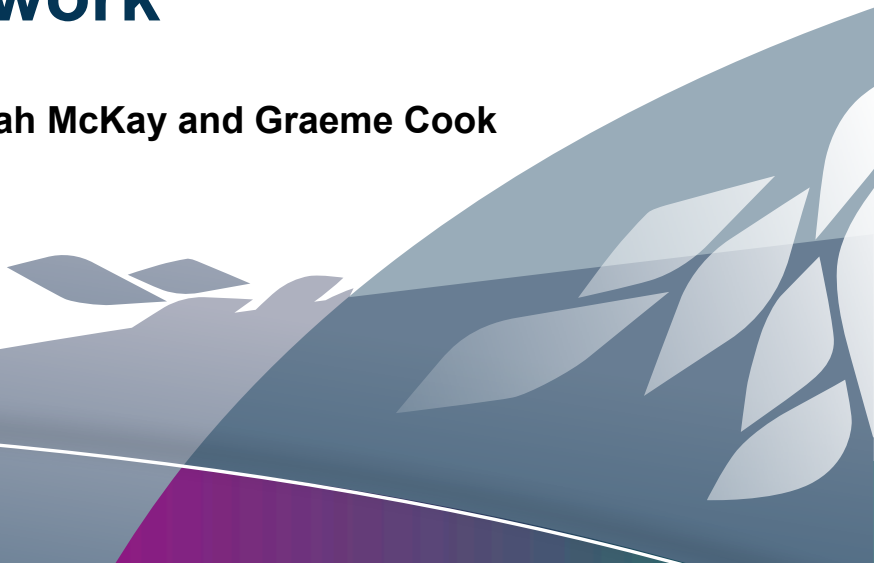
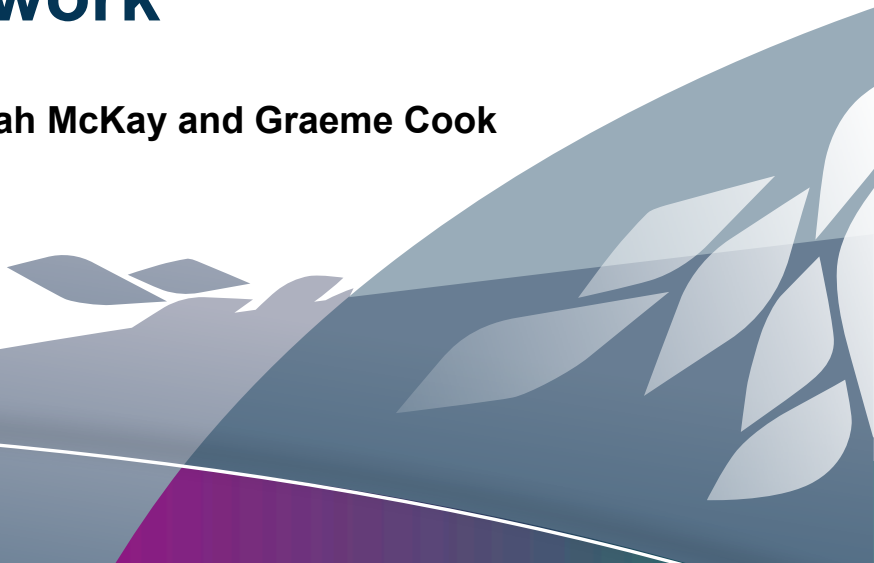
SPICe Briefing

Pàipear-ullachaidh SPICe

Nutrition Labelling Composition and Standards Framework

Courtney Aitken, Annie Bosse, Sarah McKay and Graeme Cook

This briefing discusses the Nutrition Labelling, Composition and Standards (NLCS) framework. The NLCS framework sets how the UK government and devolved governments propose to work together on nutrition related labelling and composition standards, developing common policy and managing potential policy divergence. This briefing also provides background information on the common frameworks programme.



**Common
Framework**

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Summary

This briefing provides detailed information on the Nutrition Labelling, Composition and Standards framework. The NLCS framework ("the framework") [was considered in session 5 by the Health and Sport Committee in the Scottish Parliament](#).

The framework sets how the UK government and devolved governments propose to work together on nutrition related labelling and composition standards, developing common policy and managing potential policy divergence. 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 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 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.

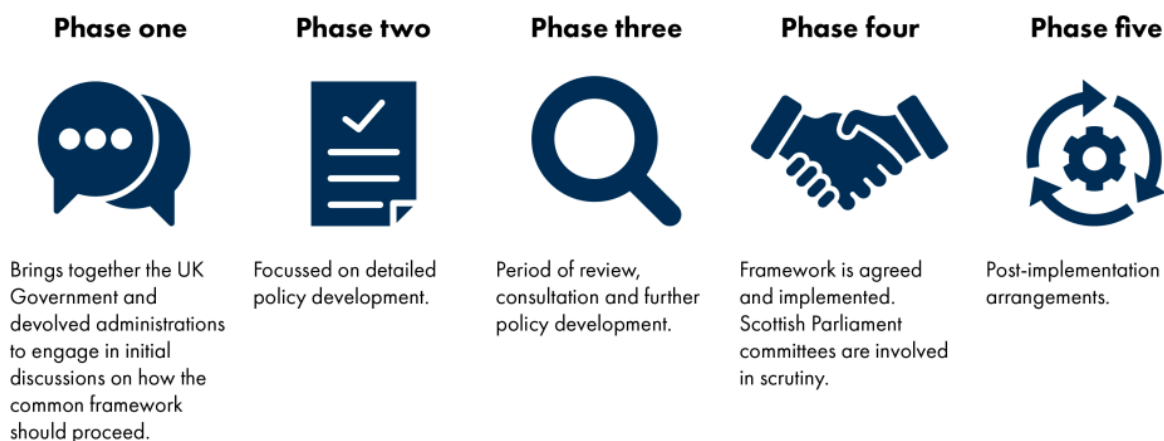
What is the process for developing frameworks ?

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 legislatures ² .

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

Scrutiny at the Scottish Parliament

The framework was considered by the Health and Sport committee during Session 5. The committee wrote [a letter to the then Minister for Public Health, Sport and Wellbeing about the framework](#). In it, the committee agreed with the [House of Lords Common Frameworks Scrutiny Committee's position](#) on matters such as the arrangements for parliamentary scrutiny and including parliamentary scrutiny in future reviews of the framework. In addition to concerns such as the consideration of similar frameworks "in silo" and developments in UK legislation (e.g. the UK Internal Market Act 2020), the Health and Sport Committee noted the lack of stakeholder engagement:

“ Stakeholders referred to frameworks as having been “invisible” and “under the radar”. Those stakeholders who had been consulted on the provisional framework suggested this had been at an introductory stage and wasn't extensive. We are concerned consultation on this framework has not been widespread. Our consideration has therefore brought the framework to the attention of a wider audience and raised its profile amongst stakeholders.”

Health and Sport Committee, 2020³

Scrutiny at other legislatures

The framework was published in October 2020 as a 'provisional framework' (i.e. a framework at [phase 4](#) which has been agreed by governments but which has not been scrutinised by legislatures).

As outlined above, the Scottish Parliament's session five [Health and Sport Committee](#) considered the framework. The [House of Lords Frameworks Scrutiny Committee](#) and the [Fifth Senedd's External Affairs and Additional Legislation Committee](#) and the [Northern Ireland Assembly Committee for Health](#) have also considered the framework. [The House of Commons Public Administration and Constitutional Affairs Committee launched an inquiry and call for evidence on the 13 January 2022](#) on the framework alongside seven others which closed on 21 February 2022. The Committee [wrote a letter to Neil O'Brien](#), UK Minister for Levelling Up, The Union and Constitution, in which it suggested that framework documents should be updated to include references to the [UKIMA exclusions process](#), [the new intergovernmental relations structure](#), and that separate policy context documents should be published for each framework area.

It is unclear whether legislatures which considered the framework initially may undertake further scrutiny. It is not anticipated that the Scottish Parliament will undertake additional scrutiny of this framework as the framework has not been updated.

House of Lords Common Frameworks Scrutiny Committee

The House of Lords Common Framework Scrutiny Committee is responsible for scrutinising and considering matters relating to all the Common Frameworks. It considered the framework on 20 October 2020. In correspondence to the Minister of State for Health, Edward Argar MP, [the Committee detailed some of its experiences and concerns for parliamentary scrutiny](#):

“ We consider parliamentary scrutiny to be an essential part of the common frameworks process. In a recent letter to Chloe Smith MP, the minister responsible for the common frameworks programme in the UK Government, we underlined the importance of receiving answers to any questions on Framework Summaries before receiving the Provisional Framework.ⁱⁱ We were therefore very disappointed by your response on 30 June to Lord McFall’s questions on the NLCS Framework Summary, in which you noted that “responses to your queries will become clear once the common framework and concordat have been supplied”. While your letter said that you had “requested that my officials endeavour to provide written responses to Lord McFall’s questions alongside the framework and concordat once they are submitted for scrutiny”, these were only provided four days into the formal 21 sitting day scrutiny period. This is unacceptable and has further limited our ability to give this Provisional Framework the effective parliamentary scrutiny that it deserves.”

In addition to this, the Committee noted that parts of the framework appeared to be "*out of date or unfinished*". Alongside questions on the status of the framework, international obligations, Northern Ireland considerations and the Internal Market Bill (now the [UK](#)

ⁱⁱ [Letter from Baroness Andrews to Chloe Smith MP, dated 14 October 2020.](#)

[Internal Market Act 2020](#)), the Committee queried the role of the UK Parliament and devolved legislatures in future reviews of the framework:

“ We note that there is no mention of Parliament being part of the review process. However, an annual report on the activities of the NLCS Policy Group, including on the levels of divergence and the extent to which the dispute resolution process has been utilised, will be submitted to Ministers and may be used to inform any reviews. Is there is a reason why this report could not be simultaneously provided to the UK Parliament and devolved legislatures? Do you envisage any other opportunities for parliamentary involvement in the review of this common framework?”

Senedd External Affairs and Additional Legislation Committee

The Senedd's session five External Affairs and Additional Legislation Committee considered the framework and [provided its conclusions on 20 January 2021](#).

The Committee expressed concerns about the state of the framework and the implications for future scrutiny of the framework, noting that:

“

- due to the timing of its drafting, [the framework] does not take account of significant material developments, such as the enactment of the UK Internal Market Act 2020, the UK-EU Trade and Cooperation Agreement, the European Union (Future Relationship) Act 2020, and on-going negotiation around reference to UK international obligations in framework documents.”
- These developments necessitate an almost immediate revision of the provisional framework, to the extent that it calls into question the utility of scrutinising the version of the provisional Framework that we have been considering.”

In light of these observations, the Committee recommended that the Senedd have another opportunity to scrutinise the framework:

“ In light of the significant revisions now needed...it is vital that the Senedd is afforded an opportunity to scrutinise the revised version of the provisional Framework once it has been provisionally agreed by the JMC EN (or an equivalent intergovernmental forum) but, crucially, before this revised version of the Framework is finally agreed.”

The Committee also agreed with recommendations made by the respective committees in the House of Lords and Scottish Parliament to have legislatures review annual reports from the NCLS policy group.

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*".ⁱⁱⁱ

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^{iv} on an approach to "securing exemptions to the Act for policy divergence agreed through common frameworks".

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.

“ 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 , 2021⁴

Nutrition Labelling, Composition and Standards Framework

Policy Area

The framework concerns policy on nutrition related labelling, composition, and standards (NLCS). It covers the following policy areas:

- nutrition and health claims made on foods;
- the addition of vitamins, minerals, and certain other substances to foods;
- the composition and labelling of food supplements;
- the composition and labelling of food intended for infants and young children, food special medical purposes, and total diet replacement for weight control;
- and the mandatory nutrition declaration (food labelling), including additional forms of expression and presentation in which it may be given.

Definitions

The framework documents define the following key terms:

- 'Foods for Specific Groups': refers to a group of foods that includes food intended for infants and young children, food for special medical purposes, and total diet replacement for weight control.
- 'Local': the framework documents utilises the food law code of practice that states that 'local sales' should mean 'sales within the supplying establishment's own county/local authority area plus the greater of either the neighbouring county/local authority area or counties/local authority areas or 30 miles/50 kilometres from the boundary of the supplying establishment's county/local authority' (in Northern Ireland this may also include neighbouring counties of Northern Ireland and the Republic of Ireland).

Scope

The framework documents list legislation in scope of the agreement:

- Regulation (EC) No 1924/2006
- Regulation (EC) No 1925/2006

- Directive 2002/46/EC
- Regulation (EU) No 609/2013
- Regulation (EU) No 1169/2011

The Regulations listed above were retained as retained EU law. They can be seen as currently unchanged on the [UK Government's retained EU law dashboard](#). Directive 2002/46/EC was implemented in Scotland by domestic legislation.

Devolved settlements

While NLCS is an area of devolved competence, it intersects with a reserved matter, international trade. This means that policy on NLCS can be affected by international trade agreements.

Overlap with other frameworks

The policy areas governed by this framework are also impacted by other frameworks designed to protect public health, in particular:

- Food and Feed Safety and Hygiene
- Food Labelling and Compositional Standards

Northern Ireland

The framework documents, published in October 2020, note that participation from Northern Ireland representatives was limited to civil servants as there was no Northern Ireland executive at the time the framework was being developed. Their input is described as "limited to analysis and factual responses only." Nevertheless, the Northern Ireland Executive is one of the parties to the agreement.

The framework documents state that in accordance with the [Joint Ministerial Committee \(EU Negotiations\) Communiqué - October 2017](#), the framework "will ensure recognition of the economic and social linkages between Northern Ireland and Ireland and that Northern Ireland will be the only part of the UK that shares a land frontier with the EU. " and "adhere to the Belfast Agreement".

However, the framework documents do not comment on the interaction between the framework and the Northern Ireland Protocol despite nutrition rules falling within its scope. This omission and wider considerations about the implementation of the framework in Northern Ireland was picked up by the House of Lords Frameworks Scrutiny Committee. [In a October 2020 letter to Edward Argar MP](#), Minister for Health, the Committee stated:

“ It appears that the framework and concordat have not been updated since January 2020, given the repeated references to “the absence of the Northern Ireland Executive”, even though it was provisionally agreed by ministers at the JMC(EN) in September. As there is a commitment to review the framework upon the establishment of the Northern Ireland Executive, has such a review taken place since January 2020? To what extent has the Northern Ireland provided further input on the Provisional Framework since the establishment of the Northern Ireland Executive, and do you expect any changes to be made in light of this? We note that there is no reference to the Northern Ireland Protocol in the Provisional Framework, despite nutrition rules falling within its scope. In response to Lord McFall’s questions on this issue, your officials explain that that the direct application of EU law in Northern Ireland will not prevent its continued participation in the framework or involvement in risk management decisions that will apply in the rest of the UK. While Northern Ireland officials and ministers will fully participate in the framework, do you anticipate any issues related to policy divergence between Northern Ireland and the rest of the UK at the end of the transition period?”

In a [response letter](#), the Minister for Health wrote:

“ “[...] I am mindful that while EU nutrition law will continue to be directly applicable in Northern Ireland, nutrition regulation will become an autonomous matter for each Appropriate Authority in England, Scotland and Wales. [...] We do not currently anticipate any issues arising as a result of policy divergence at the end of the transition period” ”

Some more recently published frameworks, for example those on agricultural and environmental matters, include substantially more information on the Northern Ireland Protocol. The frameworks in question:

- list those sections relevant to the specific framework and state that "such decision making and information sharing will always respect the competence of all Parties to the Framework and in particular the provisions in Article 18 of the Protocol on democratic consent in Northern Ireland."
- suggest that where divergence comes about, including as a result of rules in Northern Ireland changing in alignment with the EU, the framework is intended to help manage its impact.
- confirm that the framework "will ensure the full participation of Northern Ireland in discussions" and that where issues or concerns raised by the relevant Northern Ireland Executive Minister(s) in respect of GB-only proposals have not been satisfactorily addressed, they will have the right to trigger a review of the issue as set out in the dispute resolution process of this concordat."

Summary of proposed approach

The NLCS framework comprises one piece of secondary legislation (explained in more detail in the [legislation section of this briefing](#)), a concordat, and a number of appendixes.

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

- Open communications will be maintained, and information shared, to the extent permitted by law, at the earliest appropriate opportunity. This may include but is not confined to: policy issues; stakeholder views; preparations for, and outcomes of, consultations and research; media interest and lines to take; emerging issues and intelligence; local authority or enforcement issues, and food crime.
- All parties agree to respect the dispute resolution [...], when agreement cannot be reached at policy level.
- In relation to Scotland and Northern Ireland the boards of Food Standards Scotland and the Food Standards Agency will consider advice and evidence available, as appropriate, to provide recommendations and finalise advice prior to informing respective Ministers/Permanent Secretary.
- Discussions in relation to the development of this framework are confidential and without prejudice to Ministerial policy positions on particular issues.

Stakeholder engagement

The framework documents do not report any stakeholder engagement undertaken in developing the framework.

Detailed overview of proposed framework: legislation

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

The [Nutrition \(Amendment etc.\) \(EU Exit\) Regulations 2019](#) corrected deficiencies in retained EU law relating to nutrition. The framework lists relevant retained EU law (i.e. that which is within the scope of the framework at appendix II in the framework documents).

[The Nutrition \(Amendment etc.\) \(EU Exit\) Regulations 2020](#) were made on 7 December 2020. The regulations amended the Nutrition (Amendment etc.) (EU Exit) Regulations 2019 to reflect the Protocol on Ireland/Northern Ireland.^v The 2020 Regulations also made some technical deficiency fixes to new EU Regulations that had come into force since the 2019 Regulations had been made. The [notification to the Scottish Parliament](#) under [Statutory Instrument Protocol 1](#) explains the purpose of the 2020 Regulations.

^v The Northern Ireland Protocol Bill was introduced to the UK Parliament on 13 June 2022. If passed, the Bill may affect the current requirement for regulatory alignment between Northern Ireland and the EU.

Detailed overview of proposed framework: non-legislative arrangements

The framework comprises a concordat , which sets out the non-legislative mechanisms which underpin the framework. This means that the concordat governs the ways of working between officials. The specific mechanisms of the framework 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](#)

The 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 concordat, which gives effect to the agreement, lists the UK Government, the Scottish Government, the Welsh Government, and the Northern Ireland Executive as parties to the framework.

The concordat then delegates responsibility for the delivery of the arrangements set out in the framework to the:

- Department of Health and Social Care (DHSC) England
- Food Standards Scotland (FSS) Scotland
- the Welsh Government, and
- the Food Standards Agency (FSA) Northern Ireland

Additional powers for ministers

The framework documents note that a number of powers and responsibilities are transferred to Ministers:

- responsibilities regarding the: examination of notifications provided by food business operators when placing certain products onto the market
- sharing of relevant information with the Commission
- suspension or restriction of a product on public health grounds
- responsibilities regarding the establishment of working groups/expert panels to provide it with advice and expertise, and registers and lists.
- responsibilities related to the establishment of Dietary Reference Values, and the publication of guidance documents (including those regarding procedural requirements) which must be adhered to and, from time to time, updated to reflect technical, scientific, or public health developments.

The framework documents were published prior to the end of the implementation period, the [Nutrition \(Amendment etc.\) \(EU Exit\) Regulations 2019](#) transferred functions as set out in the [explanatory memorandum for the statutory instrument](#).

Information sharing

The agreement commits the parties to share information with one another. This includes sharing information on:

- policy issues
- stakeholder views
- preparations for and outcome of consultations and research
- media interest and lines to take
- emerging issues and intelligence (UK/EU/International)
- local authority/enforcement issues
- food crime

The parties commit themselves to sharing information on a regular basis at the [NLCS Policy Group](#) and as required. A shared portal will be established to enable information sharing.

The framework documents also mention the need to engage and inform "relevant UKG and DA [devolved administration] committees and other relevant bodies", but do not specify the way in which such information will be shared or what forms the engagement should take.

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 a **NLCS Policy Group**. The Policy Group is envisaged to provide a forum for discussion and thereby ensure collaborative working. It will comprise representatives from all parties.^{vi} The group will play an important role in general decision-making as set out in the next section of this briefing. It is given particular responsibilities with regards to evaluating nutrition and health claim applications and requests for amendments to lists/annexes within the framework.

In addition to forming and participating in the Policy Group, the parties commit to the following:

- the UK Government agrees to publish equivalent lists to current union/community lists, although devolved administrations may also do so separately
- agree to respect the special role of Food Safety Scotland and the Food Safety Agency in advising Scottish and Northern Irish Ministers.

vi The full [terms of reference for the group](#) are included in the framework documents.

Decision-making

The general decision-making process is outlined in the section on [dispute resolution](#) as the two are continuous. However, of particular note is the the risk assessment and management process. This process will take place in the NLCS Policy group.

The framework documents say that the group will agree policy recommendations based on "both scientific opinion and wider risk management considerations". However, the documents, including terms of reference for the group do not mention which stakeholders will be consulted or how consultation takes place. There is also no requirement for the recommendations to be published. The concordat which forms part of the framework documents requires that parties share a wide range of information with one another, but it does not require this information to be made public. Rather, the concordat emphasises the need for confidentiality.

Monitoring and enforcement

The Policy Group will provide an annual report to Ministers. This report will include information on attendance, discussions and decisions taken, levels of divergence, and disputes. This annual report is intended to feed into the review process outlined in the next section of this briefing.

Review and amendment

The framework document stipulates a review every three years, with earlier one-off reviews after six months, one year, and three years from implementation. The framework documents do not specify the scope of these reviews or how requests for amendments to the framework as a result of them may be made and adjudicated. The framework documents do not require that these reviews - in terms of any evidence received by them or the outcomes decided through them - are made public.

Given that the NI Executive was not involved in the development of the framework, the framework documents also suggest that a review would be conducted upon an executive being established, or at the request of any party to the agreement more generally. It is unclear whether any such review has taken place to date. [In a letter to the House of Lords Common Frameworks Scrutiny Committee](#), Edward Argar MP, Minister for Health, confirmed that as at 2 November 2020, no such review had taken place.

Dispute resolution official level

This section considers the dispute resolution process set out within the framework. The dispute resolution process proceeds in two stages at the official and two at the Ministerial level.

The framework documents specify that any issues should be resolved through NLCS Policy Group meetings if possible and anticipates that this will be the primary channel of

dispute resolution. This fits with the ambition reflected in other common frameworks that disputes will be resolved at the lowest possible level.

If officials from the NLCS Policy Group agree in favour of either a common or divergent approach, they recommend this approach to Ministers with Ministers taking a final decision. If there is no agreement, a dispute avoidance process is initiated with the matter escalated to senior officials, who again try to reach agreement. Senior officials consider Ministerial views and determine whether additional information could help senior officials reach agreement. If senior officials are able to find agreement, they submit recommendations to Ministers for approval. If senior officials are unable to agree, the dispute is escalated to Ministers.

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 and senior official level](#) has failed.

The framework sets out a resolution step at portfolio Minister level. If disputes cannot be resolved there, they are escalated to senior Ministers (Cabinet Secretary/Secretary of State). It may be helpful to note that this framework was drafted and published prior to the conclusions of the joint review of IGR which established a new ways of working for the four governments of the UK. As such it is anticipated that the portfolio Minister level discussions described in the framework may take place in the portfolio level IMGs which now form part of UK IGR mechanisms and which are described below.

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.

Proposed structure for intergovernmental relations

What will intergovernmental relations look like?

Proposed outline of new intergovernmental relations structure

Top tier:

The Council

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

Middle tier:

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

Lowest tier:

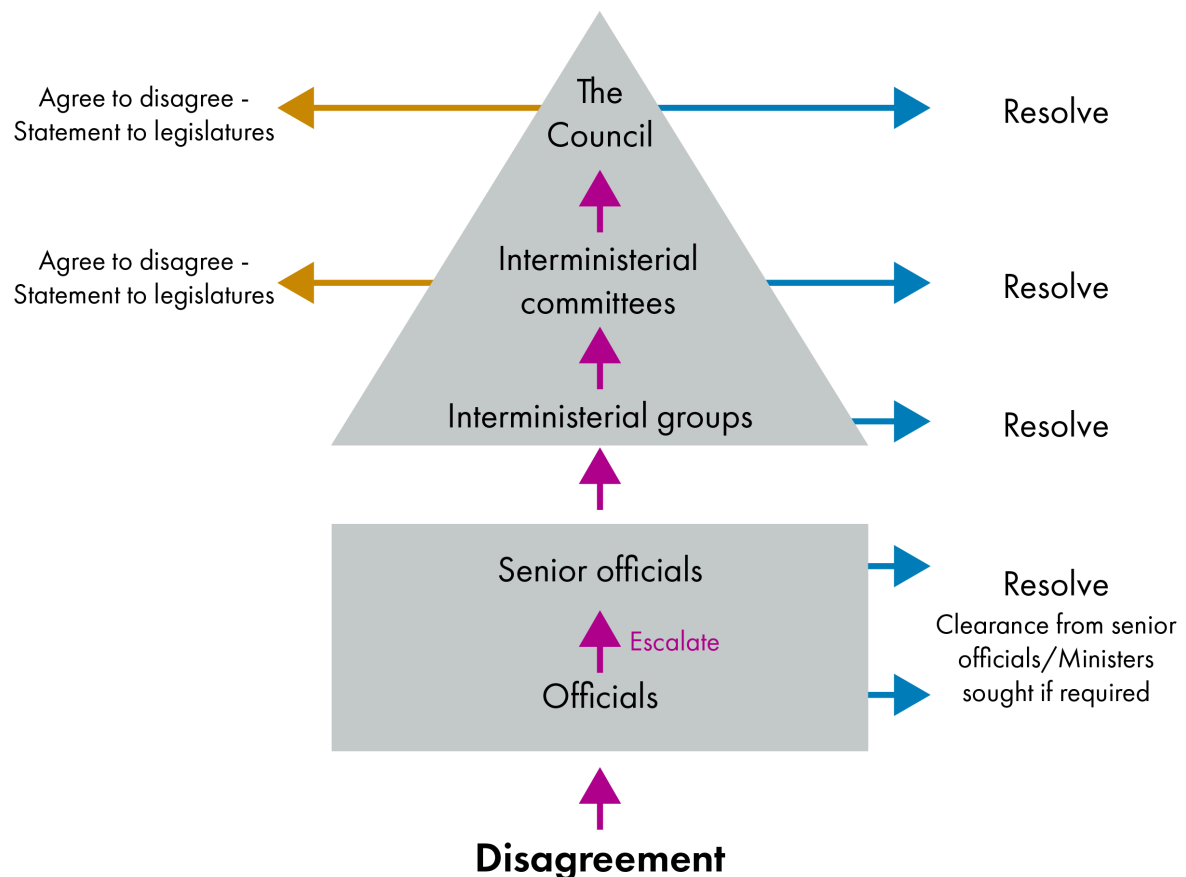
A number of interministerial groups (IMG) will be formed to discuss specific policy areas, such as on transport, Net Zero, and the Trade and Cooperation Agreement with the EU.

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

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

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

Dispute Resolution at official and Ministerial levels



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

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

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

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

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

Implementation

A working level agreement is in place to secure working arrangements until the framework is implemented. The framework documents also set out a timeline for implementation, according to which the agreement was supposed to have been confirmed and fully implemented by January 2021. Some scrutiny of the framework is currently still ongoing, but after it has concluded the agreement can be finalised and confirmed.

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