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SPICe Briefing

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UK Emissions Trading Scheme Common Framework

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This briefing discusses the UK Emissions Trading Scheme Common Framework. The framework sets out how the UK and devolved governments will work together to exercise decision-making powers and responsibilities relating to the UK Emissions Trading Scheme. It also provides background information on the common frameworks programme.



Common Framework

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Summary

This briefing provides detailed information on the [UK Emissions Trading Scheme Common Framework](#) ("the 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 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.

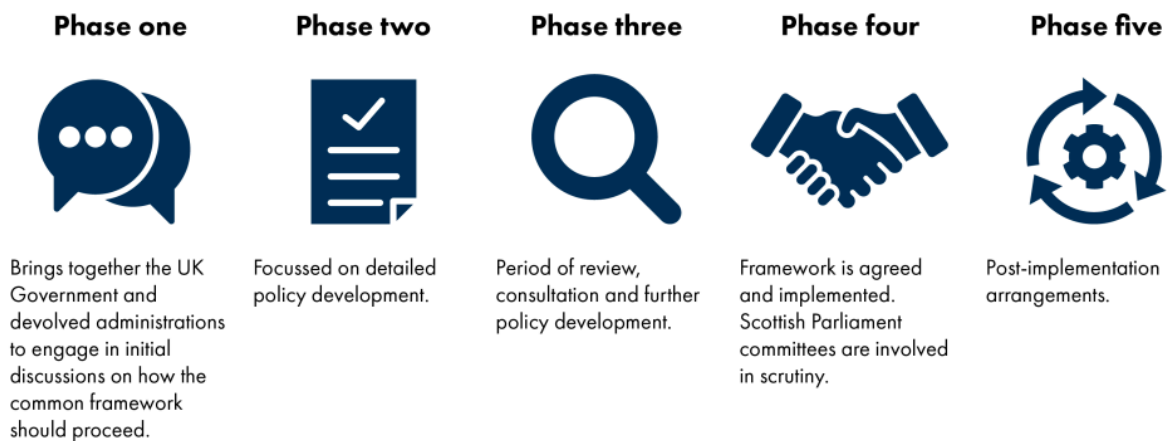
What is the process for developing frameworks ?

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



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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 leads on cross-cutting issues around transparency, governance and ongoing scrutiny. The Committee has undertaken a number of inquiries which have considered common frameworks amongst other issues, for example its inquiries on the ['UK internal market'](#) and ['the impact of Brexit on Devolution'](#).

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 of this framework at other legislatures

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

House of Lords

The House of Lords Common Frameworks Scrutiny Committee considered the Emissions Trading Scheme Common Framework and [reported its findings on 30 March 2023 in a letter](#).³ The Minister of State for Energy Security & Net Zero, Graham Stuart MP, responded to the Committee [in a letter dated 27 April 2023](#).⁴

Among the issues raised by the Committee are questions about the interaction between the framework and the [UK Internal Market Act 2020](#) as well as the [Retained EU Law \(Revocation and Reform\) Bill](#) (now the Retained EU Law (Revocation and Reform) Act 2023).ⁱⁱ Other concerns noted by the Committee are discussed in the relevant sections of this briefing.

With regards to the UK Internal Market Act 2020, the Committee queried "whether carbon emissions traded via the ETS constitute goods or whether the ETS provides a service?". Goods and services are [regulated differently by the Act](#).⁵ In response, the Minister stated:

" This framework does not interact with the UK Internal Market Act 2020. The allowances traded via the UK ETS, which are electronic units of account, do not constitute "goods" within the meaning of that Act. The ETS does not itself provide a service. Further, although installations are required to have "permits" to carry out a "regulated activity" under the UK ETS legislation, this does not come within the scope of Part 2 of that Act, as the permit relates to carrying out a particular activity at a particular location and does not relate to "carrying on a business of providing particular services". "

Rt Hon Graham Stuart MP, 2023⁴

With regards to the [Retained EU Law \(Revocation and Reform\) Act 2023](#), which gives Ministers powers to make changes to retained EU law, the Committee questioned why relevant retained EU law is not listed [in Annexe A to the framework](#) entitled "Legislation Relevant to UK ETS". The Committee also asked what plans the UK Government has for relevant pieces of retained EU law. In response, the Minister stated:

" Much retained EU law is inoperable and irrelevant to the UK ETS. However, we understand that the committee wishes to see this information made available. We will discuss this within the Authority, and propose to make these amendments to the Common Framework, or make the list of REUL available through the REUL process. The committee will be notified accordingly when this is agreed. "

Rt Hon Graham Stuart MP, 2023⁴

ii Information on the UK Internal Market Act 2020 is provided [in the relevant section of this briefing](#). The [Retained EU Law \(Revocation and Reform\) Act 2023](#) received royal assent in June 2023. See the [SPICe briefing on the Retained EU Law \(Revocation and Reform\) Bill](#) and [SPICe blogs on key amendments made to it during Report Stage](#) and [what retained EU law will be revoked at the end of 2023](#).

The UK Government [published a policy paper on regulatory reform](#) on 10 May 2023, which sets out how it sees future reform of REUL taking place in policy areas in which common frameworks are in operation:

“ Both the UK government and devolved governments agree that where Common Frameworks are operating they are the right mechanism for discussing REUL reform in the areas they cover. When using the powers in the bill, we will use Common Frameworks to engage with the devolved governments on decision-making across the UK.”

UK Government Department for Business & Trade, 2023⁶

However, in its [supplementary legislative consent memorandum](#) on the then Retained EU Law (Revocation and Reform) Bill, the Scottish Government stated:

“ The UKG [UK Government] has not been able to explain how the Bill would do anything other than radically undermine common frameworks. Were UKG Ministers to use concurrent powers to legislate in devolved areas for the whole of the UK/GB, common frameworks would be bypassed entirely.”

In its report on the Scottish Government's supplementary legislative consent memorandum, the Constitution, Europe, External Affairs and Culture Committee wrote that:

“ there is a real lack of clarity in how common frameworks are operating both generally and, in the context of this report, in relation to REUL. The Committee reiterates our previous view of the need for much greater transparency and accountability with regards to the operation of common frameworks.”

Constitution, Europe, External Affairs and Culture Committee, 2023⁷

The UK Internal Market Act 2020

What became the [UK Internal Market Act 2020](#) was introduced as a bill 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.^v

The process is set out in full below.⁹

^v At the time of publication, one [exclusion for single-use plastics is in place](#) for Scotland. A further proposed exclusion for the Scottish Deposit Return Scheme is under discussion. The UK Government has [offered a temporary exclusion](#) that does not cover glass as requested by the Scottish Government. See a [SPICe blog on these exclusions](#) for more information. The Scottish Government has not confirmed how it intends to proceed at the time of publication but has delayed the scheme until October 2025 at the earliest.⁸

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 Emissions Trading Scheme

The [UK Emissions Trading Scheme Common Framework](#) ("the framework") has reached phase four and has, as such, been received by the Scottish Parliament for scrutiny¹⁰. Scrutiny will be undertaken by the Net Zero, Energy and Transport Committee.

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

Policy Area

The policy area in scope of the framework can best be understood with reference to the EU Emissions Trading Scheme (ETS), which the UK was part of until the end of 2020.

The [EU ETS](#) was established by [Directive 2003/87/EC](#). The aim of the EU ETS is to incentivise cost-effective decarbonisation. It sets a maximum level of greenhouse gases to be emitted by participating operators, for example installations in the energy sector and manufacturing industry as well as aircraft operators. This cap is reduced over time. Emission permits are allocated to operators and can further be bought and traded amongst each other. This establishes a market for emissions permits and thereby sets a price for emissions, which in turn incentivises emissions reductions. After the UK's exit from the EU, the UK and devolved governments agreed that they wanted to establish a UK-wide replacement for the EU ETS.

Scope

Parties to the framework are collectively known as **the UK ETS Authority** (The Authority). They are:

- The Department for Energy Security and Net Zero (UK Government)
- The Scottish Government
- Department of Agriculture, Environment and Rural Affairs (Northern Ireland Executive)
- Welsh Government

The framework [also sets out the role of the Treasury and Department for Transport from the UK Government](#). The Department for Transport is responsible for aviation policy, a sector within the scope of the ETS.

The framework states that the "scope of this Common Framework includes any legislative and non-legislative arrangements applying to the design, implementation, and operation of a UK-wide emissions trading scheme as a replacement policy for the UK's participation in the EU ETS."

However, the framework also confirms that the scope does not extend to:

“

- Governance arrangements for a potential link between the UK ETS and the EU ETS, or other international ETS.”
- Arrangements relating to the Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA), although there may be instances where changes to UK ETS secondary legislation as a result of CORSIA obligations need to be considered through UK ETS governance arrangements. The Convention on International Civil Aviation (“the Chicago Convention”) places obligations on DfT that are relevant to this policy area, making their participation in affected policy decisions essential.”
- Emissions trading obligations placed on NI electricity generators, which are subject to the NI Protocol (and are therefore consistent with the requirements set out in the Northern Ireland (NI) Protocol).”

UK Government, 2023¹⁰ p.8

In its scrutiny of the framework, the House of Lords Common Frameworks Scrutiny Committee criticised some of these qualifications. It said that "given the fact that Northern Ireland remains partly aligned to the EU ETS due to the Northern Ireland Protocol, it would follow that this crucial policy matter should lie firmly in scope of this Common Framework". It also queried why arrangements relating to CORSIA are outside the scope of the framework and whether this is likely to change.

Though the framework says that governance arrangements for a potential link between the UK and EU ETS are outwith the scope of the framework, it states:

“ We recognise the importance of international cooperation on carbon pricing and the important role international carbon markets can play. The Authority is open to linking the UK ETS internationally in principle. The Trade and Cooperation Agreement with the EU makes clear both parties will have their own effective systems of carbon pricing in place to help fulfil their respective climate goals. The UK and EU have agreed to cooperate on carbon pricing, including through giving consideration to linking their respective carbon pricing systems, although neither side is under any obligation to do so. The development of a Framework in this area is without prejudice to the UK’s negotiations with the EU or internationally. This Framework Outline Agreement (FOA) focuses on arrangements for a domestic UK ETS. Linking arrangements with the EU ETS are subject to future negotiations. The role of the Scottish Government, Welsh Government, and DAERA in negotiations is the subject of ongoing quadrilateral Ministerial dialogue. The role of the Scottish Government, Welsh Government, and DAERA (Officials and Ministers) in the next phase will therefore be subject to further guidance.”

UK Government, 2023¹⁰ p.29

Competence

The policy area in scope of the framework is a mixed competence area in which some matters are devolved and others reserved. The environment, including climate change, is a devolved policy matter. The framework contains an explanation on different views about contested competences:

“ 27. The UK Government considers that fiscal, economic, monetary and tax policy and financial market regulation are reserved to the UK Government, with HMT [HM Treasury] responsible for policy in these areas. 28. The Welsh Government takes a different view on these financial elements, considering them to be the mechanism by which the ultimate goal of the system – environmental protection via incentivising decarbonisation – is achieved. Welsh Ministers retain the ability to seek the legislative consent of the Senedd for any provisions they believe have a purpose falling within the Senedd’s legislative competence. 29. The Scottish Government reserves the right to take a view on these matters on a case-by-case basis. The purpose and effect of any future provision that deals with these financial elements will require to be considered. Scottish Ministers retain the ability to seek the legislative consent of the Scottish Parliament for any provision they believe has a purpose falling within the Scottish Parliament’s legislative competence. 30. Recognising the divergent interpretations described in paragraphs 27 and 28, acknowledging the right of Welsh Ministers to seek the legislative consent of the Senedd as they consider appropriate and the right of Scottish Ministers to seek the legislative consent of the Scottish Parliament, and the process set out in paragraph 13(viii), the four governments nonetheless agree that responsibility for final decision making on decisions relating to the elements of a UK-wide emissions trading scheme set out in Finance Act provisions will lie with the Chancellor of the Exchequer, where relating to reserved matters.”

UK Government, 2023¹⁰ p.13

However, in the sections setting out decision-making processes, the framework states:

“ HMT, however, should ensure that issues relating to reserved matters are discussed with Scottish Ministers, Welsh Ministers, and DAERA within the governance structure prior to reaching a decision. HMT will be represented at UK ETS Working Groups, Board meetings and in ministerial discussions. HMT should use these meetings to engage and discuss with DESNZ, Scottish Government, Welsh Government, and DAERA on issues relating to reserved policy areas under the UK ETS. The example flowcharts in this section draw on examples from different policy areas to illustrate how best-practice decision-making should take place.”

UK Government, 2023¹⁰ p.39

Definitions

The framework documents define a number of names and key terms, including:

- CCA (2008) – The Climate Change Act 2008
- FB (2020) – The Finance Bill 2020
- JMC(EN) - The Joint Ministerial Committee (JMC(EN)) was a set of committees that comprised ministers from the UK and devolved governments, providing central coordination of the overall relationship between the UK Government, Scottish Government, Welsh Government and Northern Ireland Executive.
- [Link to the JMC\(EN\) Principles](#)
- [Link to Memorandum of Understanding \(MoU\) on Devolution](#)

Summary of proposed approach

The framework [sets out reasons for the development of a common framework for the UK-wide ETS](#). It states that a replacement carbon pricing policy was required after the UK (as a whole^{vi}) ceased to participate in the EU ETS in order to "maintain the national climate ambition, contributing to the UK's emissions reduction targets and goal of net zero greenhouse gas emissions by 2050."

While devolved institutions have the powers to establish separate emissions trading schemes, the framework states that the parties agreed to establish a UK-wide scheme for an initial period of ten years with pre-agreed review periods. Within the framework, the benefits of this UK-wide scheme are given as:

“

- A UK-wide system, rather than separate national schemes, will create a larger carbon market, with greater liquidity, and a consistent carbon price across the UK.”
- Access to a larger carbon market increases opportunity for emissions reduction and the cost effectiveness of emissions trading.”
- A common, UK-wide approach to carbon pricing avoids ‘carbon leakage’ between different parts of the United Kingdom and globally, which could have a negative effect on the contribution of the policy towards reducing emissions in line with international obligations, and the UK's pathway towards our net zero target.”

With reference to the [Joint Ministerial Committee \(EN\) principles](#) for the establishment of the common frameworks programme, the framework states that:

vi Northern Ireland electricity generators [remain participants in the EU ETS](#) by virtue of the Protocol on [Ireland/Northern Ireland](#) (now called 'Windsor Framework').

“ a UK-wide ETS therefore helps to ensure a future carbon pricing policy as it:

- enables the functioning of the UK internal market, while acknowledging policy divergence; and”
- ensures the UK can negotiate, enter into, and implement new trade agreements and international treaties.”

The Parties have consequently decided to establish a Common Framework in this area to support collaboration, co-operation, and co-ordination between the four nations, for example through early engagement and timely sharing of information.”

UK Government, 2023¹⁰ p.28

Stakeholder engagement

The framework does not mention any stakeholder engagement that took place as part of its development. It does note that a [public consultation on policy proposals](#) for a UK ETS was conducted in 2019, with a majority of respondents supporting the establishment of a UK ETS. However, this consultation was for the establishment of a UK-wide ETS, not the specific governance mechanisms set out in the framework. In addition, there was a [second consultation from March to June 2022](#) covering proposals to be implemented by 2023, but this is not mentioned in the framework.

The framework [sets out engagement with stakeholders](#) to be conducted as part of the operation of the framework:

“ The Working Group and Board shall, during their governance duties, engage with the regulators and other relevant bodies as necessary. These bodies shall include, but not be limited to:”

1. The Environmental Regulators (Environment Agency, Scottish Environment Protection Agency, Natural Resources Wales, the Northern Ireland Environment Agency and the Offshore Petroleum Regulator for Environment and Decommissioning), which are responsible for ensuring compliance and system integrity.”
2. The Financial Conduct Authority (FCA), which is responsible for ensuring the monitoring and enforcement of the financial integrity of the system, the identification and investigation of financial misconduct within the UK ETS, and the provision of advice in cases of non-compliance.”
3. The Courts within UK jurisdictions, which are the overall judicial authority and the highest court of appeal for the UK ETS.”
4. The Climate Change Committee (CCC). The Climate Change Act 2008, the Climate Change (Scotland) Act 2009, the Environment (Wales) Act 2016 and the Climate Change Act (Northern Ireland) 2022 require that the CCC perform an advisory and reporting role on the emission reduction targets of the UK, Scottish, Welsh and Northern Ireland Governments, respectively. The Working Group and Board shall engage with the CCC to secure advice and evidence to inform UK ETS policy (particularly as part of the planned review points in 2023 and 2028), as well as providing the CCC with the data necessary for it to execute its reporting function.”
5. The Office for Environmental Protection (OEP), Environmental Standards Scotland (ESS), and future equivalent governance bodies in Wales and NI. The four governments note that whilst UK ETS is a joint, UK-wide initiative, the establishment and remit of environmental oversight and regulatory bodies is a matter for each Government to determine unilaterally. Nonetheless, the four governments commit to exploring options for a cooperative approach between equivalent governance bodies in relation to the UK ETS.”

UK Government, 2023¹⁰ p.14

The framework mentions that such engagement is to take place but does not specify any frequency or extent of engagement and instead states that it is to be sought "[as necessary](#)".

As for engagement with legislatures, the [framework states as one of its UK ETS governance principles](#) that:

“ The UK ETS shall be governed to ensure full accountability of the Four National Authorities to their respective legislatures. This will include regular reporting to those legislatures and responding to any scrutiny initiated by those legislatures. All four Parties will work jointly to respond to scrutiny from any individual legislature.”

Detailed overview of proposed framework:

legislation

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

The UK ETS has primarily been established using secondary legislation under powers provided by the [Climate Change Act 2008](#) and [Finance Act 2020](#). This legislation is set out in [Annex A](#) and [Annex C](#) of the framework. [In its scrutiny of the framework](#), the House of Lords Common Frameworks Scrutiny Committee proposed that the annexes should be updated to include relevant retained EU law.

The [framework states that](#) "an ETS cannot be maintained (or created) by non-legislative approaches. Secondary legislation is needed to set out the rules for participants and roles of various parties to establish a UK ETS".

Detailed overview of proposed framework: non-legislative arrangements

The framework, comprising a Concordat and Framework Outline Agreement, supplements the [legislation associated with the framework](#) in setting out how the parties intend to work together in the development and operation of the scheme. However, the [framework notes that](#) the Concordat and Framework Outline Agreement "are expressions of political commitment and are not intended to be legally binding or enforceable".

UK ETS in practice

Decision-making

The framework provides detailed processes for decision-making under the UK ETS.

At a basic level, the decision-making process foresees that where a decision on a matter is required, the matter is discussed at the [Working Group](#) and that where agreement is reached, their recommendation can then be signed off at [Board level](#) and [IMG level](#) where required.

The framework lists decisions which would be likely to be taken through framework mechanisms:

- Policy decisions and related legislation including:

“ the scope (gases, sectors, qualification threshold and related exclusions/opt-outs etc.), the emissions cap and trajectory, the duration and phases, reviews of the scheme (trigger points, timing, scale, process for changes), the obligations on participants (permits, conditions, reporting, surrender of allowances), the creation of allowances, establishing a UK Registry, appointing an administrator for the scheme, establishing enforcement regimes (monitoring compliance, appeals), auctioning rules and the design and introduction of market stability mechanisms.”

UK Government, 2023¹⁰ p.34

- Scheme interventions, including the activation of price stability mechanisms and the management of in-phase reviews of the UK ETS.
- Rule enforcement and scheme administration, including the imposition of fines on participants and changing the account status of registry accounts.

The House of Lords Common Frameworks Scrutiny Committee expressed concern [as part of its scrutiny of the framework](#) that the framework does not sufficiently distinguish the governance processes relating to the UK ETS Framework from those for the UK ETS scheme itself. It also points out that there is a reference to section 8 of the Framework Outline Agreement which is advertised as broadly setting out how the Working Group and Board will operate. However, there is no section 8 in the Framework Outline Agreement. Further detail is provided in [section 3.5 of the Framework Outline Agreement](#) which includes flowcharts for different types of decisions.

In addition to decisions of the type set out above, day-to-day operational decisions on the UK ETS scheme made by regulators [are considered outside of the scope of the framework](#). The framework notes that relevant secondary legislation ^{11 12} sets out these responsibilities.

Divergence

The framework states that though the parties have chosen to establish a UK-wide ETS, parties are nevertheless able to raise proposals for policies which would lead to divergence across the UK. The framework states:

“ The process for considering proposals for divergence within the scheme should be considered using the same process as for UK-wide decisions. Proposals will be assessed against an evidence base which considers their potential impact on the functioning of the UK ETS as a shared scheme, including consideration of potential economic impact and implications for the UK internal market.”

UK Government, 2023¹⁰ p.35

Competence

With respect to policy areas regarding which there is disagreement about whether they are reserved or devolved, the framework states:

“ Given the interdependence with devolved elements of the ETS, including in areas where the UKG views powers as reserved, UKG has committed to discuss with the Scottish Government, Welsh Government, and DAERA any policy decisions, scheme interventions, or proposals to change the administration of the scheme, before decisions are taken by the UKG. Responsibility for the final decision relating to policy decisions in reserved areas will be taken by the UKG.”

UK Government, 2023¹⁰ p.33

Roles and Responsibilities: parties to the framework

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

The framework states [a number of principles](#) which the parties agree should guide decision-making, including principles that guide the use of evidence and decision-making in areas of contested competence.

Use of evidence

The parties have statutory duties under [section 34 of the Climate Change Act 2008](#) to seek and take into account advice from the Climate Change Committee. In addition to these duties, the [parties express commitment](#) in the Concordat to "seek to obtain appropriate and relevant evidence to support recommendations reached. Any relevant evidence obtained must be taken into account in reaching a recommendation."

Joint decision-making

The [framework states that the parties are committed](#) to "wherever possible, developing policy and taking decisions jointly". This includes decision-making in areas of contested competence, in which the framework states:

“ Where the Four National Authorities agree that an individual legislature holds exclusive legislative or executive competence over a particular matter, that administration will not exercise that competence to take a decision unilaterally without first having discussed it with all other governments. Where exclusive competence is disputed, the Four National Authorities shall consider this, and where appropriate seek legal advice and the view of the devolved legislatures. Where a competency dispute cannot be resolved by any of the three tiers of the UK ETS Authority governance structure (ETS Working Group, ETS Senior Official Board, and Net Zero IMG), it becomes a formal dispute, and shall be subject to the formal dispute resolution process set out at paragraphs 39-40 of the Concordat.”

UK Government, 2023¹⁰ p.37

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.

Legislation that established the UK ETS sets out some governance structures for the UK ETS.

“ The governance structure of the UK ETS comprises the core functions of the EU ETS structure: an Authority, a Scheme Administrator (the environmental regulators), a Financial Regulator, and the Enforcement system. The UK ETS Authority (the Authority) comprises Ministers from all four governments and is the core decision-making mechanism.”

UK Government, 2023¹⁰ p.29

The [basic governance structure of the ETS framework](#), which sets out governance arrangements within the Authority, can be divided into three main bodies:

1. **ETS Official Level Working Group:** The Working Group consists of officials from all parties and meet at least quarterly. The framework also states that it will include officials from the environmental regulators where appropriate, but does not state under what conditions this would be appropriate. The [framework states that](#) "this working group is where issues, evidence and proposals around any policy areas under the UK ETS [...] are first raised and discussed at the earliest opportunity and with sufficient time for all parties to engage effectively.
2. **Senior Official Level Board:** The Board includes officials at senior civil servants level from all parties. [The framework states that](#) the "function of the Board is to approve decisions reached by the Working Group, where necessary, and to act as a route for resolving disagreement at the Working Group."
3. **Net Zero, Energy and Climate Change Inter-Ministerial Group (IMG):** The IMG consists of Portfolio Ministers from all parties. The [framework states that](#) "The Ministerial level of the UK ETS Governance structure would provide final approval of decisions reached by the Board and would act as a route for resolving disagreement where agreement cannot be reached by the Board." See the section on [dispute resolution at the Ministerial level](#) for more information about the IMG and the structure in which it is embedded.

The framework also sets out the role of representatives from the Treasury and Department of Transport from the UK Government in framework groups at all levels where the framework notes they they [may participate as appropriate](#).

Monitoring and enforcement

According to the framework, [monitoring will be undertaken by the ETS Working Group](#). This will include compliance with the framework and the extent to which it is facilitating intergovernmental cooperation and collaboration. It will also include monitoring of divergence that has taken place and if so, whether this has had negative impacts. The monitoring of the framework will feed into the review and amendment process.

Review and amendment

The first review of the UK ETS is planned for 2023. The UK ETS Authority [consulted on changes in March 2022](#) with a [joint response with agreed changes](#) published in June 2023. In addition, the framework states that a governance review of the scheme should take place within three months after the conclusion of the first planned UK ETS review point in 2023 and notes:

“ This governance review shall provide the opportunity to assess decision-making and dispute resolution processes and allow for amendments to this Concordat or any subsidiary governance agreements or documentation. Any such amendments shall require unanimous agreement from the IMG before being adopted.”

UK Government, 2023¹⁰ p.16

In addition, the framework states that a schedule for further reviews will be established and that ad-hoc reviews of the framework if this is deemed necessary by consensus. The framework also says:

“ In the event that a link between the UK ETS and EU ETS is agreed, the Framework will need to be reviewed immediately by the Authority, in parallel with policy and legal development. In particular, implications for Northern Ireland electricity generators (who by virtue of the NI Protocol, participate in the EU ETS) must be considered, including their introduction into the UK ETS.”

UK Government, 2023¹⁰ p.16

In undertaking reviews, parties can use third-party advice or evidence. In cases of disagreement at either the review or amendment stage, any party can raise this as a [dispute under the agreed process](#).

Dispute resolution official level

This section considers the [dispute resolution process set out within the framework](#).

Where agreement cannot be reached at the [Working Group level](#), the matter can be escalated to the [Board level](#). The Board can resolve the matter (including by

commissioning and considering further evidence) and make a recommendation for [sign off to the IMG](#) or further escalate the matter. If a disagreement is referred to the IMG, it can commission further evidence and either send it back to the Board or resolve the matter itself. If the IMG cannot resolve the matter, it can further escalate the disagreement by referring it to the intergovernmental relations secretariat as a dispute. This process is described in the section on [dispute resolution at the Ministerial level](#).

With regards to disagreements that concern reserved matters, the framework states:

“ For decisions relating to reserved policy areas, responsibility for the final sign-off lies with the relevant UKG Minister. However, should a Minister from UKG or the Scottish Government, the Welsh Government or DAERA dispute a decision in a reserved policy area, this can be escalated to the IGR secretariat [...].”

UK Government, 2023¹⁰ p.50

Dispute resolution Ministerial level

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

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

Dispute resolution Ministerial level

What will intergovernmental relations look like?

Proposed outline of new intergovernmental relations structure

Top tier:

The Council

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

Middle tier:

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

Lowest tier:

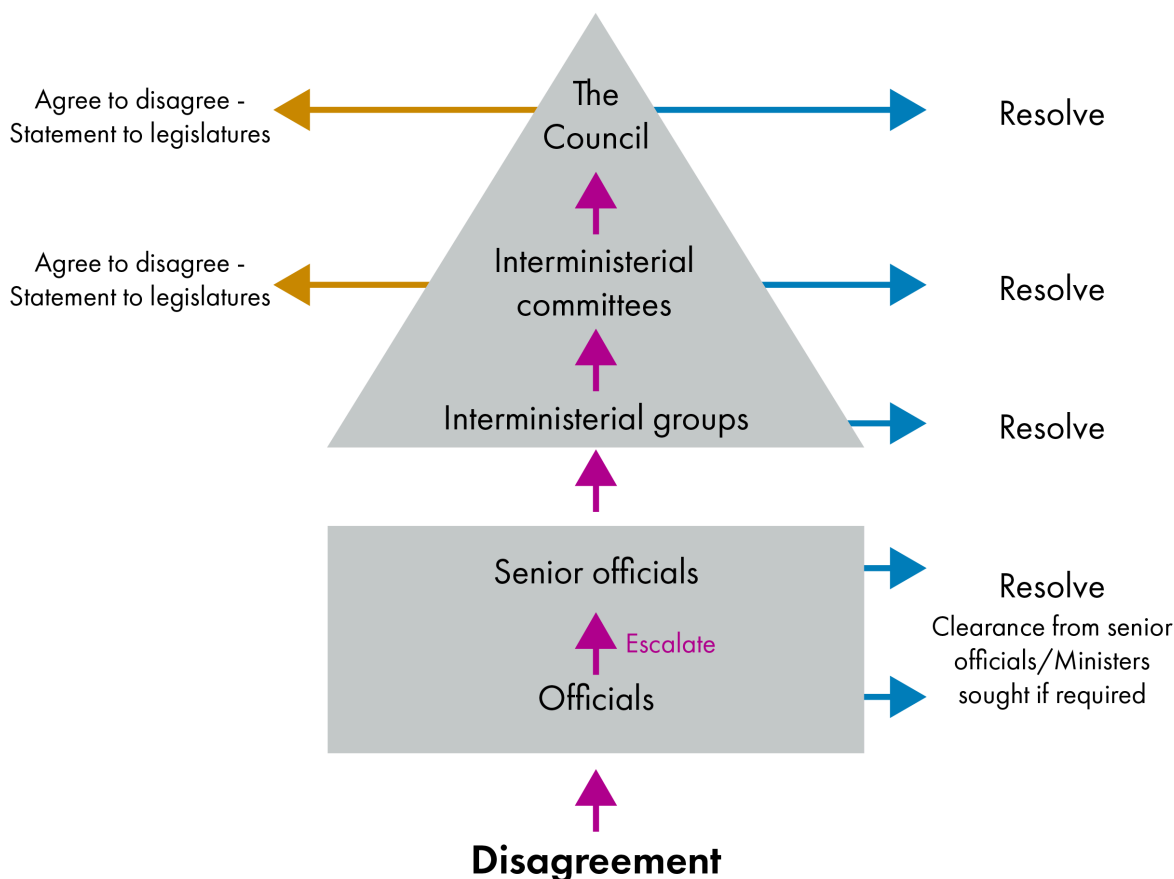
A number of interministerial groups (IMG) will be formed to discuss specific policy areas, such as on transport, Net Zero, and the Trade and Cooperation Agreement with the EU.

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

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



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

Once the framework has received scrutiny from legislatures and any changes are made, it [will be submitted to Portfolio Ministers](#) for final sign off.

Framework Analysis

Current policy position

While in the EU, the UK was a member of the EU-Emissions Trading Scheme (ETS). This was a 'cap and trade' scheme introduced in 2005. The UK ETS was established on 1st January 2021 by the UK ETS Authority (The Authority) (UK Government, Scottish Government, Welsh Government and the Department of Agriculture, Environment and Rural Affairs for Northern Ireland, (DAERA)). The [Impact Assessment covering the UK ETS operation from 2021-2024, concluded](#) that introducing a UK ETS as opposed to remaining in the EU scheme, would bring overall benefit to society, higher revenue to Government, and potentially higher costs to business.

Since 2021 the UK ETS has covered energy-intensive industries, the power sector, and aviation within the UK and European Economic Area (EEA), together making up about one-third of the UK's GHG emissions. The UK scheme is [similar to the EU scheme with the main difference](#) being the level of the cap, with the UK cap 5% lower than it would be under the EU scheme. Under the terms of the Trade and Cooperation Agreement (TCA), the UK and EU agreed to consider linking respective carbon pricing schemes. The [UK Government have suggested they are open to the possibility of linking the UK ETS internationally](#). States such as Switzerland have an ETS that is linked to the EU scheme.

In March 2022, the Authority consulted on a package of proposals to develop the UK ETS. The consultation included proposals on aligning the schemes cap with the net zero target ([the existing cap was not aligned](#)), reviewing the role of Free Allocation policy as a carbon leakage mitigation tool in the context of the net zero aligned cap (the assignment of free allowances to certain industries is intended to ensure they are not at a disadvantage to competing firms in other jurisdictions), and initial considerations on expanding the scope of emissions trading across the economy.

The [Climate Change Committee \(CCC\) were asked by the UK Government for advice](#) on various aspects of the proposed changes. On the level of the ETS cap they noted that due to previous emissions being lower than expected an excess of allowances existed which were likely to be released in the future and thus the 'downward path for emissions' set out by the Government 'will not be as steep as it appears'. They supported (in principle) the Government's plan to reduce the level of the industry cap and bring to market previously unallocated free allowances but noted that a transition from free allowances towards a carbon border adjustment mechanism (CBAM; a tariff on goods relating to their embedded carbon, that is intended to act as an effective carbon tax for imports) 'will provide a better approach to managing carbon leakage'. A consultation '[Addressing carbon leakage risk to support decarbonisation](#)' from the UK Government was launched in March 2023.

On the future scope of the UK-ETS, the CCC considered the expansion of scope to include the Shipping, Waste, Engineered greenhouse gas removals (GGRs) and Biological removals sectors. The incorporation of the Buildings sector was not considered appropriate until affordability concerns in the sector had subsided. The CCC thought there was a strong case to include domestic shipping in the UK-ETS, but that the inclusion of international shipping would require international agreement. They reiterated support for the inclusion of Energy from Waste. In the longer term, they state that it would be 'sensible to include engineered removals (i.e. those based on carbon capture and storage) in the UK ETS, so that participants with remaining emissions pay for engineered greenhouse gas

removals to balance these’.

The [Climate Change Committee’s \(CCC\) 2022 Scotland Progress report](#) highlighted the potential for interaction between the UK ETS and the Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA). Although this is a reserved matter it encouraged the Scottish Government to ‘continue to push the UK Government on the interaction between the UK ETS and CORSIA’. The CCC [published a letter to the UK and Scottish Government’s in 2021](#) which set out the issues relating to the interaction between UK-ETS and CORSIA.

In July 2023, the [UK ETS Authority announced a response to the consultation](#) and a [package of reforms](#) to tighten limits on the power sector, energy intensive industries and aviation emissions from 2024. This tightening is designed to align the ETS with the net zero target as advised by the CCC. Reforms included the emissions in scope expanding to include more sectors e.g. domestic maritime transport and waste. The reforms will also phase out free carbon allowances for the aviation industry in 2026. The UK Government also set out that it believed that the ETS was the ‘appropriate long-term market’ for Greenhouse Gas Removal (GGR) technologies and that there would be a consultation on their inclusion.

The Net Zero Energy and Transport Committee received [correspondence from the Cabinet Secretary for Net Zero and Just Transition on the 7th of July 2023](#), setting out the legislative amendments that will be required to implement the proposed changes. The letter noted that the changes to the cap would not be able to be introduced in the ‘usual way’ due to the absence of a Northern Ireland Executive. As a result, the Authority has agreed a temporary alternative route to introducing the cap by amending the Greenhouse Gas Emissions Trading Scheme Auctioning Regulations 2021 (the “Auctioning Regulations”) under the Finance Act 2020.

The UK and Scottish Government's provide support for the industrial sector to decarbonise through the [Industrial Energy Transformation Fund \(IETF\)](#) and the Scottish IETF – with over £500 million available in total. When the IETF was launched in 2020, the Scottish Government opted to deliver a separate [Scottish Industrial Energy Transformation Fund \(SIETF\)](#). SIETF co-invests with a range of Scottish manufacturers to reduce energy costs and emissions through increased energy efficiency and deep decarbonisation. The Programme for Government 2020-21, announced that £34 million would be made available for capital projects over the subsequent 5 years, an additional £8 million to the anticipated budget transfer from UK Government.

The House of Lords Common Frameworks Scrutiny Committee considered the Emissions Trading Scheme Common Framework and [reported its findings on 30 March 2023](#). The Committee were ‘deeply disappointed by the quality and the accuracy’ of the Framework and were ‘concerned at the lack of attention given to intergovernmental relations in this important policy area’. Some of the key issues that the Committee highlighted which relate to the devolved administrations include:

- That the ‘arrangements to link the UK ETS with the EU ETS are outside the scope of the Framework’ and that ‘given the fact that Northern Ireland remains partly aligned to the EU ETS due to the Northern Ireland Protocol, it would follow that this crucial policy matter should lie firmly in scope of this Common Framework’

The Retained EU Law (Revocation and Reform) Act (REUL) [passed through the UK Parliament in 2023](#). After amendment in the House of Lords it contains a schedule of

legislation to be revoked at the end of 2023 (Schedule 1). The Scottish Government lodged a supplementary legislative consent memorandum on 24 May 2023, which provides a list of 148 pieces of REUL the Scottish Government considers to relate to devolved matters. 28 of these pieces of legislation were in the policy area of emission trading schemes. The Scottish Government has agreed with the UK Government verdict that all of the ETS pieces of legislation are obsolete and does not object to their revocation.

Key issues

As set out in this briefing,

- 'devolved institutions have the powers to establish separate emissions trading schemes' but
- 'the UK and devolved governments agreed that they wanted to establish a UK-wide replacement for the EU ETS.'

In the [Summary of proposed approach](#) section of this briefing, the suggested benefits of a UK-wide scheme are set out.

- A UK-wide system, rather than separate national schemes, will create a larger carbon market, with greater liquidity, and a consistent carbon price across the UK.
- Access to a larger carbon market increases opportunity for emissions reduction and the cost effectiveness of emissions trading.
- A common, UK-wide approach to carbon pricing avoids 'carbon leakage' between different parts of the United Kingdom and globally, which could have a negative effect on the contribution of the policy towards reducing emissions in line with international obligations, and the UK's pathway towards our net zero target.

Given this, what are the potential reasons for (or benefits from) divergence between Scotland and the rest of the UK in emission trading schemes i.e. the development of a Scotland-specific ETS?

The recent UK ETS reforms have aligned the scheme with the net zero target. As Scotland has an earlier net zero ambition than the rest of the UK, can this be achieved whilst part of a UK ETS which is aligned to the UK-wide net zero target?

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