

FOOD AND FEED SAFETY AND HYGIENE FRAMEWORK CONCORDAT

between the UK Government, Scottish Government, Welsh Government, and Northern Ireland Executive

1. Introduction

- 1.1 This Concordat is an agreement between the UK Government (UKG), Scottish Government (SG), Welsh Government (WG), and Northern Ireland Executive (NIE), henceforth referred to as “the parties”, providing one of the non-legislative mechanisms which underpin the Food and Feed Safety and Hygiene (FFSH) framework¹. It is not intended to constitute a legally enforceable contract or create any rights or obligations which are legally enforceable.
- 1.2 This Concordat puts in place agreed ways of working between the four nations’ administrations to drive for consistent policy approaches in the areas within scope (where this is agreed by the parties), recognising that businesses and consumers in all four nations, as well as international trading partners, often benefit from consistent FFSH legislation. It sets out commitments to communication and cooperation between the parties regarding decision-making and dispute resolution after policy recommendations have been made by the food safety bodies (Food Standards Agency (FSA) in England, Wales and Northern Ireland and Food Standards Scotland (FSS) in Scotland.
- 1.3 This Concordat recognises and operates in accordance with the Memorandum of Understanding and Supplementary Agreements between the parties referred to as the ‘Devolution MoU’² (noting that this agreement is currently under review). It puts in place arrangements between the parties in line with those set out in the Food and Feed Safety and Hygiene Framework Outline Agreement.
- 1.4 This Concordat has been developed in line with UKG and Devolved Administration joint central guidance on common frameworks, notably the principles described in the Joint Ministerial Committee’s communique of 16 October 2017³. In line with this central guidance and the Devolution MoU, the arrangements set out in this Concordat allow for policy divergence, recognising that there will be instances where it is appropriate for nations in the UK to take different approaches to risk-based consumer protection.

¹ The Memorandum of Understanding between the Food Standards Agency and Foods Standards Scotland is the other non-legislative mechanism which sets out the operational detail of the FFSH Framework at official level.

² [Memorandum of Understanding and Supplementary Agreements Between the United Kingdom Government, the Scottish Ministers, the Welsh Ministers and the Northern Ireland Executive Committee, October 2013](#)

³ [JMC communique of 16 October 2017](#)

- 1.5 The Ireland/ Northern Ireland Protocol will create different circumstances in Northern Ireland from the other three nations of the UK. It specifies that Northern Ireland must follow European Union rules on agri-food matters. As changes are made to areas in scope of those rules, they will apply directly in Northern Ireland. The implementation of the Protocol means that, in some instances, Northern Ireland will not implement the same food and feed safety policy approaches as the GB nations.
- 1.6 Northern Ireland will, however, continue to play a role in the development of food and feed safety and hygiene policy under the FFSH Framework. Food and feed safety issues will continue to be considered on a four nations basis: officials and Ministers in Northern Ireland will continue to be involved in policy development and discussions to resolve disputes.

2. Scope

- 2.1. This Concordat applies to retained European Union FFSH legislation. A detailed breakdown of the legislation is set out in Annex 1: Retained European Union FFSH legislation. Broadly this includes:
- General Food and Feed Law and Hygiene
 - Food and Feed Safety Standards
 - Official Controls for Food and Feed
 - Public Health Controls on Imported Food and Feed
- 2.2. Changes to the above areas that would be considered in scope of the arrangements set out in the Concordat include:
- Proposals for changes to retained European Union legislation;
 - Proposals for new legislation in previously harmonised policy areas of retained European Union legislation;
 - Proposals for changes to technical standards in retained European Union legislation; and
 - Proposals for new technical standards in previously harmonised areas of retained European Union legislation.
- 2.3. Equivalent flexibility for tailoring legislation to the specific needs of each of the four UK nations as was afforded by previous European Union rules will be maintained. Within FFSH there are a number of areas where retained European Union legislation offers flexibility for the law to be applied in different ways, with scope for national measures to achieve common outcomes permitted by the legislation. These areas are out of scope of this Concordat, and include:
- a) Enforcement and execution - retained European Union legislation provides flexibility for different enforcement and official control provisions in certain areas.
 - b) Risk management decisions currently taken at national level where retained European Union legislation permits different approaches (for example raw drinking milk).

c) Incident management – well developed practical procedures for managing incidents and emergencies are already in place across the UK (while adhering to the broad requirements for incident management outlined in legislation which are in scope of the framework).

2.4 As foreign policy issues are reserved to the UK Government, UK Government retains overall policy responsibility for the formulation of UK policy. UK Government will involve the devolved administrations fully in discussions about the formulation of UK policy in this area as outlined in the current [Devolution: Memorandum of Understanding](#) (currently under review)⁴.

3. Principles for Working Together

3.1 All parties agree to the following principles to underpin shared ways of working while respecting and enhancing the devolution settlements and the democratic accountability of the devolved legislatures:

1. Processes for changing FFSH legislation should respect the JMC principles, devolved responsibilities and accountability across the UK.
2. Flexibility should be provided for administrations to act to meet local needs and circumstances while delivering the same outcomes.
3. The parties should have the ability to diverge within their territory (having followed the processes set out in this Concordat for managing divergence) where the recommendations from food safety bodies show that divergence is both necessary and proportionate for providing consumer protection across the UK.
4. Governance arrangements should be transparent, effective and proportionate whilst keeping administrative complexity and burdens to the minimum.

4. Ministerial Decision-making

4.1 Ministers representing each of the parties⁵ will take decisions on changes to all areas of retained European Union FFSH law, following recommendations from food safety bodies. This will include both technical changes made through secondary legislation as well as any changes to or new primary legislation that fall within scope of this Concordat. Annex 1 provides a detailed breakdown of the areas of retained European Union FFSH legislation where changes could occur. A diagrammatic summary of the decision-making process is set out in Annex 2.

4.2 For areas within scope of this Concordat, the parties agree that:

⁴ The text in 2.4 recognises that discussions are ongoing on the operation of Common Frameworks in areas where they intersect with the reserved matter of international trade negotiations. The outcome of these discussions will inform the content of all framework concordats, including FFSH. The text at 2.4 should therefore be considered only a “placeholder” while those discussions continue and will be formally agreed later in the process when more time is available to complete discussions.

⁵ With the exception of Ministers in Northern Ireland for issues that fall in scope of the Ireland/ Northern Ireland Protocol and where European Union FFSH legislation will apply in Northern Ireland.

- Where timelines are prescribed in retained European Union law, decision-making processes should operate to these.
- The parties should aim to implement policy decisions at approximately the same time.
- All parties should be informed of the recommendations made in the other nations (whether for common or divergent approaches) and the underpinning rationale.
- A consensus should be sought among the parties on the approaches to take, and efforts made to resolve any disputes that occur (see section 6).

4.3 Where it is an option, a GB-wide legislative vehicle will be considered for implementing changes to FFSH legislation applying to businesses or foods marketed across the GB. GB-wide legislation will only be taken forward where consent has been sought of devolved administration Ministers (as is the case at present) and parliaments as required under respective devolution settlements.

5. Managing Divergence

5.1 In making changes to retained European Union food & feed safety and hygiene legislation within scope of this Concordat, the parties⁶ commit to aiming to implement common policy approaches where appropriate.

5.2 Where it is considered that a common approach is not the most suitable for taking forward changes to FFSH legislation, the following principles for managing divergence will be followed:

- Where one or more parties wishes to diverge from a four nations approach to any area within scope of the Concordat, before divergence can happen, the parties must first attempt to agree a common approach that accommodates the desired outcomes of individual nations.
- Where a common approach cannot be agreed, and divergence within the UK is not considered acceptable by any party, then the dispute resolution mechanism should be engaged.
- In Northern Ireland, Ministers will still have the opportunity to fully participate in discussions on how potential divergence will managed even when those issues fall within scope of the Ireland/ Northern Ireland Protocol.

6. Dispute Resolution

6.1 Where disputes arise, they should be managed with adherence to the following principles:

- Commitment to evidence-based approaches to resolving disputes

⁶ With the exception of Ministers in Northern Ireland for issues that fall in scope of the Ireland/ Northern Ireland Protocol and where European Union FFSH legislation will apply in Northern Ireland.

- Transparency (auditable, open to scrutiny unless legal requirements for non-disclosure)
 - Timely resolution (meeting deadlines for actions, agreement to accelerated timescale in emergencies)
 - Compliance (with process and outcome)
- 6.2 In Northern Ireland, officials and Ministers will have the opportunity to be involved in any four nations correspondence or discussions that take place as part of dispute resolution processes to consider issues even when those issues fall in scope of the Ireland/ Northern Ireland Protocol.
- 6.3 If food safety body officials⁷ cannot agree either to recommending common approaches, or to recommending that divergence is appropriate, the issue should be escalated to the parties for a decision on how to proceed. In this situation, officials should highlight the disagreement alongside respective food safety bodies' advice to the parties including relevant evidence. The parties should review the impacts of the proposed approaches before taking a decision on whether to proceed with recommendations, or to raise a dispute with counterparts.
- 6.4 If the parties cannot agree to proceed with the recommended approaches having reviewed the evidence, the issue should continue through the stages of the dispute process: officials should provide assistance in reaching resolution, and further consideration of the issue should be given by the parties. If the dispute cannot be resolved during these stages, Ministers from all parties should meet in person to discuss the issue. If resolution could still not be reached, the issue should be escalated to the JMC dispute process for resolution. A diagrammatic summary of the process is set out in Annex 3.
- 6.5 If a dispute arises where one or more party⁸ wishes to take a decision that is different from the recommendations made by food safety bodies (whether this is for common or divergent approaches), the issue should come back to officials in all four nations to carry out a review of the evidence and the impacts of the alternative approach, and provide further advice to the parties. All parties should have the opportunity to consider whether they are content for the alternative approach to be implemented. If the alternative approach is not considered to be acceptable by any party, a dispute should be raised, following the same stages of escalation.

7. Review

- 7.1 This Concordat will be formally reviewed at one year and three years from the date of its implementation and thereafter at five-year intervals. Any changes to the Concordat must be agreed by all parties to it.

⁷ With the exception of officials in Northern Ireland for issues that fall in scope of the Ireland/ Northern Ireland Protocol and where European Union FFSH legislation will apply in Northern Ireland.

⁸ With the exception of Ministers in Northern Ireland for issues that fall in scope of the Ireland/ Northern Ireland Protocol and where European Union FFSH legislation will apply in Northern Ireland.

ANNEX 1 – SUMMARY OF RETAINED EUROPEAN UNION LEGISLATION

General food and feed law

Regulation (EC) No 178/2002 - on General Food Law.	The General Food Law (Amendment etc.) (EU Exit) Regulations 2019 2019/641
Regulation (EC) No 852/2004 - on the hygiene of foodstuffs.	The General Food Hygiene (Amendment) (EU Exit) Regulations 2019 2019/642
Regulation (EC) No 853/2004 - laying down specific hygiene rules for food of animal origin.	The Specific Food Hygiene (Amendment etc.) (EU Exit) Regulations 2019 2019/640
Regulation (EC) No 183/2005 - laying down requirements for feed hygiene.	The Animal Feed (Amendment) (EU Exit) Regulations 2019 2019/654
Regulation (EC) No 2074/2005 - laying down implementing measures for certain products under Regulation (EC) No 853/2004 and Regulation (EC) No 854/2004 and Regulation (EC) No 882/2004.	The Food and Feed Hygiene and Safety (Miscellaneous Amendments) (EU Exit) Regulations 2019 2019/1013

Food and feed safety standards

Regulation (EC) No 1829/2003 – GMOs and Food – authorisations and labelling.	The Genetically Modified Food and Feed (Amendment etc.) (EU Exit) Regulations 2019 2019/705
Regulation (EC) No 2283/2015– Novel foods.	The Novel Food (Amendment) (EU Exit) Regulations 2019 2019/702
Regulation (EC) No 1333/2008 – Food additives.	The Food Additives, Flavourings, Enzymes and Extraction Solvents (Amendment etc.) (EU Exit) Regulations 2019 2019/860
Regulation (EC) No 1935/2004 – Food contact materials.	The Materials and Articles in Contact with Food (Amendment) (EU Exit) Regulations 2019 2019/704
Council Regulation (EEC) No 315/1993 – Food contaminants.	The Contaminants in Food (Amendment) (EU Exit) Regulations 2019 2019/639
Commission Regulation (EC) No 2073/2005 – Microbiological criteria.	The Food and Feed Hygiene and Safety (Miscellaneous Amendments) (EU Exit) Regulations 2019 2019/1013
Regulation (EC) No 1831/2003 – Feed additives.	The Animal Feed (Amendment) (EU Exit) Regulations 2019 2019/654
Commission Regulation (EU) No 68/2013 - Catalogue of Feed materials.	The Animal Feed (Amendment) (EU Exit) Regulations 2019 2019/654
Regulation (EC) No 1332/2008 – Food enzymes.	The Food Additives, Flavourings, Enzymes and Extraction Solvents (Amendment etc.) (EU Exit) Regulations 2019 2019/860
Regulation (EC) No 1334/2008 – Food flavourings.	The Food Additives, Flavourings, Enzymes and Extraction Solvents (Amendment etc.) (EU Exit) Regulations 2019 2019/860
Commission Regulation (EU) No 234/2011 – Common Authorisation Procedure.	The Food Additives, Flavourings, Enzymes and Extraction Solvents (Amendment etc.) (EU Exit) Regulations 2019 2019/860

Food and feed law enforcement (official controls)

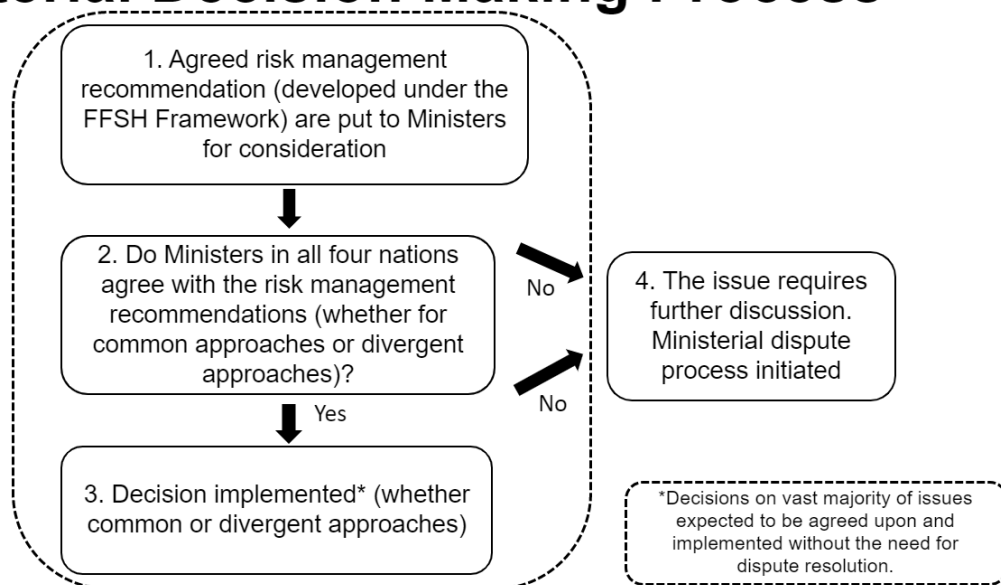
Regulation (EU) No 2017/625 - on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products.	The Official Feed and Food Controls (England) (Amendment) Regulations 2020 2020/738
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Public Health Controls on Imported Food

Commission Regulation (EC) No 669/2009 - regulates specific high risk product of non-animal origin now 2019/1793	The Food and Feed Hygiene and Safety (Miscellaneous Amendments) (EU Exit) Regulations 2020
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ANNEX 2 – MINISTERIAL DECISION-MAKING PROCESS

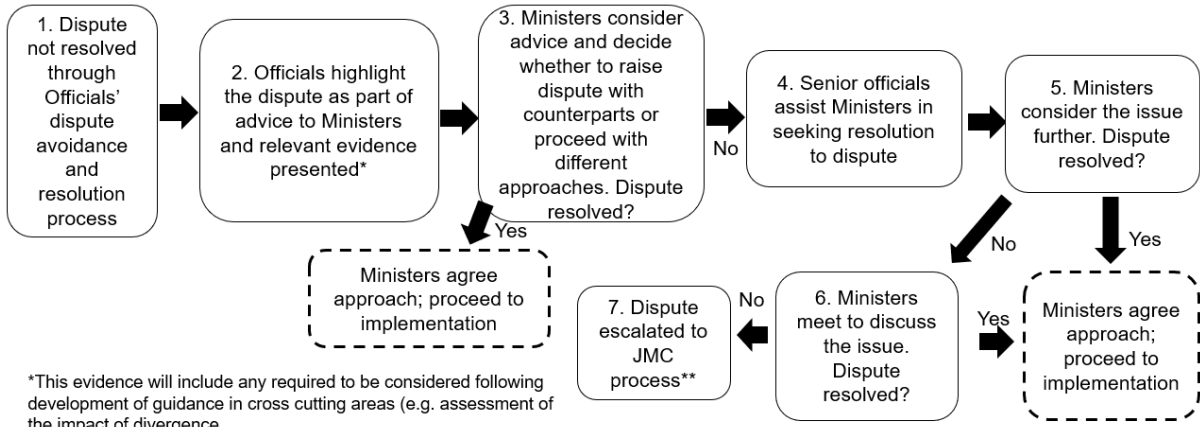
Ministerial Decision Making Process



*In Northern Ireland, changes to European Union food and feed safety and hygiene legislation in scope of Annex 2 will apply automatically

ANNEX 3 – DISPUTE AVOIDANCE & RESOLUTION PROCESSES

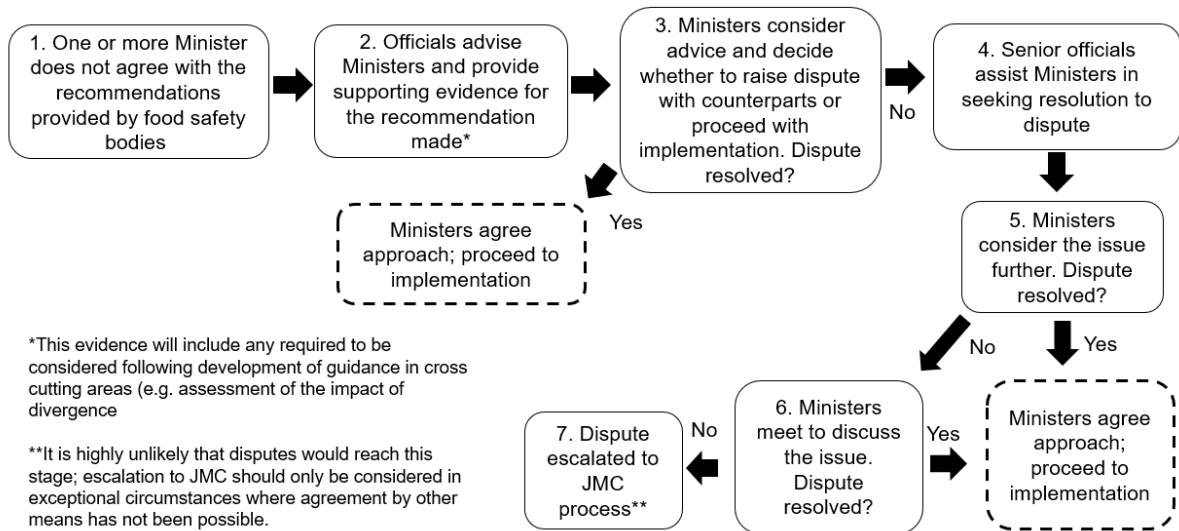
Ministerial Dispute Avoidance & Resolution Process – Dispute Arising at Official Level



*This evidence will include any required to be considered following development of guidance in cross cutting areas (e.g. assessment of the impact of divergence)

**It is highly unlikely that disputes would reach this stage; escalation to JMC should only be considered in exceptional circumstances where agreement by other means has not been possible.

Ministerial Dispute Avoidance & Resolution Process – Dispute Arising at Ministerial Level



*This evidence will include any required to be considered following development of guidance in cross cutting areas (e.g. assessment of the impact of divergence)

**It is highly unlikely that disputes would reach this stage; escalation to JMC should only be considered in exceptional circumstances where agreement by other means has not been possible.