



HM Government

The Organs, Tissues and Cells (apart from embryos and gametes) Provisional Common Framework



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Presented to Parliament
by the Secretary of State for Health and Social Care
by Command of Her Majesty

December 2021

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Provisional Common Framework

OUTLINE

SECTION 1: WHAT WE ARE TALKING ABOUT

1. Policy Area

Organs and Tissues and Cells (apart from embryos and gametes).

- 1.1 The Joint Ministerial Committee (EU Negotiations) agreed that officials should work together to develop arrangements for common frameworks (see Appendix I). This Framework relates to policy on the safety and quality of organs, tissues and cells, excluding reproductive tissues and cells. It encompasses elements of the EU Organs Directive (2010/53/EU) and the EU Tissues and Cells Directive (2004/23/EC) and the implementing acts which relate to the quality and safety of organs, tissues and cells for treating patients. This Framework sets out arrangements for co-operation between officials in the UK Government (UKG), Scottish Government (SG), Welsh Government (WG), and Northern Ireland Department of Health.
- 1.2 The Directives aim to establish minimum safety and quality standards for organs, tissues and cells to ensure a high level of health protection. For organs, it covers all steps in the organ transplantation process from donation, procurement, testing, characterisation, preservation, transport and finally transplantation. For tissues and cells, it covers issues such as donation, procurement, testing, processing, preservation, storage and distribution of human tissues and cells intended for human application. The Directives do not cover the use of organs, tissues and cells where they are not for human application (i.e. transplantation or transfusion) so do not regulate their use for e.g. research, education or training. The Directives that intersect with devolved competence in this policy area are listed in the section below.
- 1.3 In accordance with the retained EU law that implements the Organs and Tissues and Cells Directives, the UKG, SG, WG and NI Department of Health are obliged to ensure that quality and safety standards are maintained.

2. Scope

- 2.1 **Intersection with devolved competence:** This policy area (safety and quality of organs and tissues and cells) was previously governed by harmonised EU

Directives (set out below). The EU Directives are implemented in domestic legislation applicable across the whole of the UK. Enforcement of the implementing legislation is delegated to the UK-wide regulator, the Human Tissue Authority (HTA).

- 2.2 As the Transition Period has ended, the different governments have wider scope to use their powers to make changes to organs, tissues and cells safety and quality regulation.
- 2.3 This 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 which shares a land frontier with the EU. It will also adhere to the Belfast Agreement.
- 2.4 **EU Legislation:** Retained EU legislation is currently implemented on a UK-wide basis. The two main pieces of EU legislation that intersect with devolved competence in this policy area are Directive 2004/23/EC ('the European Tissues and Cells Directive') and Directive 2010/53/EU ('the European Organ Directive').
- 2.5 The implementing directives below, that implement the main EU directives, also intersect with devolved competence (for Northern Ireland, Scotland and Wales).
- 2.6 **Tissues and cells:**
- **Commission Directive 2006/17/EC:** regarding certain technical requirements for the donation, procurement and testing of human tissues and cells.
 - **Commission Directive 2006/86/EC:** concerning traceability requirements, notification of serious adverse reactions and events, additional technical requirements for the coding, processing, preservation, storage and distribution of human tissues and cells.
 - **Commission Directive 2012/39/EU:** amending Directive 2006/17/EC as regards certain technical requirements for the testing of human tissues and cells. **Commission Directive 2015/565:** amending Directive 2006/86/EC as regards certain technical requirements for the coding of human tissues and cells.
 - **Commission Directive 2015/566:** implementing Directive 2004/23/EC concerns the procedures for verifying the equivalent standards of quality and safety of imported tissues and cells.
 - **Commission Decision 2010/453/EC:** establishing guidelines concerning the conditions of inspections and control measures, and on the training and qualification of officials, in the field of human tissues and cells.

- **Commission Decision (2015) 4460:** establishing a model for agreements between the Commission and relevant organisations on the provision of product codes for use in the Single European Code (SEC).

2.7 Organs:

- **Commission Directive 2012/25/EU:** regarding the information procedures for exchange of human organs intended for transplantation, between EU countries.

2.8 Broadly, the retained EU law in this area sets the quality and safety standards for organs, tissues and cells which include:

- the procurement, testing, processing, and storage of tissues and cells (including reproductive cells);
- organ and donor characterisation, meaning the collection of the relevant information on the characteristics of the donor and the organ, including tissue typing tests, needed to evaluate suitability for organ donation and optimise organ allocation;
- transportation conditions of organs and distribution conditions of tissues and cells, including labelling and documentation;
- traceability requirements in respect of organs for transplantation and tissues such as corneas or bone and stem cells; and
- notification requirements in the event of serious adverse events or reactions which may impact the quality and safety of organs, tissue and cells.

2.9 Transfer of Commission Powers: The safety and quality of organs and non-reproductive tissues and cells is an area of devolved competence. Statutory instruments made in 2019 under powers in the European Union (Withdrawal) Act 2018 transferred to the UKG, SG, WG and the NI Department of Health power to make regulations on matters previously included in implementing Directives made by the European Commission. This includes powers to update technical requirements, for example, requirements to ensure traceability in line with scientific and technical developments. These powers are limited to authorities in Great Britain by statutory instruments made in order to implement the Ireland/Northern Ireland Protocol as the 2018 Act confers the necessary powers on the NI department.

2.10 Competence: Legislative competence for non-reproductive human tissues, cells and organs is devolved to Scotland, Wales and Northern Ireland. Therefore, the Framework has been made on a UK-wide basis with the agreement of the UKG, SG, WG and NI Department of Health. This will facilitate the continuity of good working relations, open communication and the maintenance of a compatible minimum set of high standards of safety and quality for organs, tissues and cells. The UKG, SG, WG and NI Department of

Health have agreed with the principles that will govern the development of the framework.

2.11 Extent: This Framework is UK-wide (covering England, Northern Ireland, Scotland and Wales), but does not cover the Crown Dependencies or Overseas Territories.

2.12 Scope within rules for different parts of the UK to do things differently: Maintaining a compatible minimum set of safety and quality standards between the UKG, SG, WG and NI Department of Health will make it easier for organs, tissues and cells to continue to be shared across the UK. This Framework Agreement sets out a process by which a government can suggest future changes to the standards and how such a proposal will be collectively considered before one or more governments introduce a change. It will allow for necessary divergence by one or more governments, as required, in order to respond to needs such as location-dependent public health concerns.

2.13 Interdependencies include:

- **The Common Framework for the safety and quality of blood and blood components** as there are joint UK-wide groups that advise Ministers and health departments on the most appropriate ways to ensure the safety of blood, cells, tissues and organs for transfusion/transplantation.
- **Medical devices legislation:** as reagents (medical devices) are used in the collection and processing of organs, tissues and cells.

3. Definitions

3.1 Memorandum of Understanding (MoU) on Devolution: The overarching MoU which sets out the understanding of, on the one hand, the UKG, and on the other, the Scottish Ministers, the Welsh Ministers, and the Northern Ireland Executive Committee of the principles that will underlie relations between them. This is separate to the Joint Ministerial Committee (EU Negotiations) Communique of October 2017.

3.2 Joint Ministerial Committee (EU Negotiations) (JMC(EN)) Communique October 2017: The committee members included representatives from the UKG, SG, WG and NIE. The group was established to provide a means for the devolved governments to be fully engaged in determining the UK's approach to EU and trade related issues. On 16 October 2017 agreement was reached on the principles and definitions for the Common Frameworks for areas where EU law intersected with devolved competence. In June 2020, NIE Ministers agreed to the principles set out in the communique, following the restoration of the NIE in January 2020.

3.3 **Concordat:** Joint non-legislative agreement that gives effect to the Common Framework.

SECTION 2: PROPOSED BREAKDOWN OF POLICY AREA AND FRAMEWORK

4. Summary of proposed approach

- 4.1. **Purpose and general principles**¹: In 2018 it was agreed that a Common Framework in this area would be desirable across the UK. The JMC (EN) principles are described in the Joint Ministerial Committee's communique of 16 October 2017. The communique sets out that Common Frameworks will be established where they are necessary in order to:
- **enable the functioning of the UK internal market, while acknowledging policy divergence:** for organs, tissues and cells this will enable the transplant material to be shared around the UK;
 - ensure compliance with international obligations: this does not apply to the Organs, Tissues and Cells Framework;
 - ensure the UK can negotiate, enter into and implement new trade agreements and international treaties: this does not apply to the Organs, Tissues and Cells Framework;
 - enable the management of common resources;
 - administer and provide access to justice in cases with a cross-border element: this does not apply to the Organs, Tissues and Cells Framework;
 - **safeguard the security of the UK:** for organs, tissues and cells, the sharing of serious adverse events or reactions (SAERs) information to maintain patient safety.
- 4.2. The outcomes of the intergovernmental relations review are in the process of being implemented. Once confirmation has been provided from each government, the outcomes of the review and appropriate intergovernmental structures will be reflected in this Common Framework.
- 4.3. A level of commonality would be beneficial particularly for organisations that operate across UK borders and therefore, as is currently the case, close collaboration between the governments should continue.
- 4.4. There is currently good information sharing and collaboration across the UK. This Framework agreement should support the continuation of this.
- 4.5. **EU Exit SIs:** Although competence in respect of organs, tissues and non-reproductive tissues and cells is devolved, it was agreed that there would be

¹ The principles that are relevant for organs, tissue and cell safety and quality are in bold.

UK-wide legislation regarding the safety and quality standards for organs, tissues and non-reproductive tissues and cells in the event of a 'no-deal' EU exit (The 2019 Organs, Tissues and Cells Safety and Quality EU Exit SIs²). The legislation was made to ensure that the regulatory framework for organs, tissues and non-reproductive tissues and cells could operate as intended following the UK's departure from the EU, and to retain the safety and quality standards for organs, tissues and cells. The legislation also includes transfers of power to update certain aspects of the quality and safety regulations (such as updating safety and quality standards in response to technological advances) to either the Secretary of State for Health and Social Care on behalf of the UK (with the consent of Scottish and Welsh ministers and the Department of Health in Northern Ireland) or, to each of the Ministers in relation to their part of the UK.

- 4.6. The 2019 Organs, Tissues and Cells Safety and Quality EU Exit SIs were amended by the 2020 Organs, Tissues and Cells SIs³ to implement the Protocol on Ireland/Northern Ireland. These SIs limit the regulation-making powers in the 2019 SIs to Great Britain, as the EU (Withdrawal) Act 2018 now contains regulation making powers (section 8C and paragraph 11M of Schedule 2) enabling the Secretary of State and the NI Department to make regulations to implement the Protocol including in response to future changes in EU law.
- 4.7. **Non-legislative:** As the UKG, SG, WG and NI Department of Health will have the power to diverge from UK Regulations should they choose, a concordat (Annex I) between the four nations will be put into place to formally agree the ways of working set out in this Framework.
- 4.8. **Four governments collaborative working:** The governments agree not to introduce changes to safety and quality standards legislation without first discussing proposals with each other and considering the UK-wide impact of such changes. They will follow the approach in this Framework to support collaborative decision making with a view to supporting continued sharing of organs, tissues and cells across the UK.
- 4.9. There is a need for continued robust policy development encompassing policy and technical expertise from all four governments, including the need to fully

² The Quality and Safety of Organs Intended for Transplantation (Amendment) (EU Exit) Regulations 2019/483 and The Human Tissue (Quality and Safety for Human Application) (Amendment) (EU Exit) Regulations 2019/481;

³ The Quality and Safety of Organs Intended for Transplantation (Amendment) (EU Exit) Regulations 2020/1305 and The Human Tissue (Quality and Safety for Human Application) (Amendment) (EU Exit) Regulations 2020/1306.

assess the potential impacts of legislative changes on all affected stakeholders. Governments may wish to do this work individually or in collaboration before initiating a UK-wide discussion of a potential change to the standards.

- 4.10. **Risk assessment and management:** As stated above, maintaining a compatible minimum set of safety and quality standards between the UKG, SG, WG and NI Department of Health will make it easier for organs, tissues and cells to continue to be shared across the UK.
- 4.11. One or more governments may initiate a risk assessment process that should include discussions with the national transplant services and the regulator, as appropriate. The assessment should include seeking advice from the relevant scientific advisory bodies. Final decisions at the end of the risk assessment process should require collective sign-off (e.g. legislative or operational changes) by all Ministers across the UK. While the ability to diverge is always available to any individual government, it will be important for any diverging government to consider the impact on patient safety and confidence and the JMC(EN) Common Frameworks principles.
- 4.12. Where appropriate, joint recommendations may be made to Ministers. Ministers will ultimately retain the right to take individual decisions for their government. For Ministers and officials, for areas within the scope of the Framework, a consensus/discussion to inform the other parties should first be sought.
- 4.13. The dispute resolution process is outlined in section 13 of this document.
- 4.14. **Divergence:** Maintaining a compatible minimum set of quality and standards between the UKG, SG, WG and NI Department of Health will make it easier for organs, tissues and cells to continue to be shared across the UK. The Framework sets out a process by which any government can suggest changes to the standards and how such a proposal will be collectively considered before one or more governments introduce a change. It will allow for necessary divergence by one or more governments as required, in order to respond to needs such as location-dependent health concerns.
- 4.15. **Dispute Resolution:** All four governments will retain the ability to diverge from generally harmonised rules within their part of the UK. Where divergence is not considered acceptable by one or more governments in the UK, every effort will be made to address disagreement at the lowest level possible. Only when all opportunities for avoiding a dispute at the policy level have been sought will the dispute resolution mechanism be engaged. Dispute resolution

is anticipated to only be required in a very small number of cases and is set out in section 13 of this agreement should it be needed.

The Protocol on Ireland/ Northern Ireland

4.16. The Agreement on the Withdrawal of the United Kingdom from the EU sets out the current arrangements where, although remaining within the UK's custom territory, Northern Ireland will remain aligned with the EU. The following paragraphs of Annex 2 of the Northern Ireland Protocol are relevant to this framework.

- Paragraph 22 - substances of human origin

4.17. This Framework reflects the specific circumstances in NI that arise as a result of the Protocol and remains UK wide in its scope. As 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.

4.18. Where one or more of UK Government, the Scottish Government or the Welsh Governments propose to change rules in a way that has policy or regulatory implications for the rest of the UK, or where rules in Northern Ireland change in alignment with the EU, the Framework is intended to provide governance structures and consensus-based processes for considering and managing the impact of these changes.

- As rules evolve to meet the emerging regulatory needs of the UK, Scottish and Welsh Governments, this Framework will ensure the full participation of Northern Ireland in discussions such that the views of the relevant Northern Ireland Executive Minister(s) are taken into account in reaching any policy or regulatory decisions by the UK, Scottish or Welsh Governments.
- Where rules in Northern Ireland change in alignment with the EU, the Framework will form the basis of a mechanism to ensure consideration by the four governments of any changes, and will enable them to determine any impacts and subsequent actions arising from these changes.

4.19. 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 at section 13 of this document.

4.20. **The UK and EU Trade and Cooperation Agreement (TCA):** The area of policy covered by this Common Framework does not fall directly within the provisions of the Trade and Cooperation Agreement, although both the

Common Framework and that agreement will impact significantly on devolved and reserved responsibilities.

5. Detailed overview of proposed framework: legislation (primary or secondary)

5.1. N/A – no legislation to support the Framework is considered necessary.

6. Detailed overview of proposed framework: non-legislative arrangements

6.1. A concordat between UKG, SG, WG and NI Department of Health provides the basis for managing and maintaining the collaborative ways of working set out in this framework. Adopting a non-legislative approach maintains the existing good working relationships between the governments and allows for flexibility to adapt where change is needed.

6.2. The underlying principle is that the governments agree not to introduce changes to safety and quality standards legislation without first discussing proposals with each other and allowing sufficient scope for UK-wide discussion and decision making.

6.3. If one or more government wishes to diverge from the UK-wide standards for safety and quality, it is agreed that this should be done after consultation with the other UK governments and after consideration of the impact on the existing standards of safety and quality for organs, tissues and cells.

7. Detailed overview of areas where no further action is thought to be needed

7.1. Not applicable.

OPERATIONAL DETAIL

SECTION 3: PROPOSED OPERATIONAL ELEMENTS OF FRAMEWORK

8. Decision making

8.1. Individual governments will be able to make decisions (at a Ministerial level where it relates to changes in legislation or significant policy changes) on the safety and quality standards for organs, tissues and cells where these are not routine decisions made by the licenced establishments themselves. This includes, but is not limited to, the following:

For non-reproductive tissues and cells

- updating technical requirements relating to tissues and cells;

- prescribing traceability requirements and notification requirements in relation to SAERs; and
- verifying equivalent standards of safety and quality where tissues and cells are imported from third countries.

For Organs

- updating requirements for organ and donor characterisation to mitigate risk to human health, usually in response to an emerging disease outbreak; and
- responding to SAERs which present a serious risk to human health.

8.2. If a government wants to make a change to the organs and/or tissues and cells safety and quality legislation, they will:

- notify all governments, setting out details of the proposal and invite comments;
- arrange a meeting with policy officials to discuss the detail of the proposals if a government requests this;
- seek to agree a way forward on the issue; and
- depending on the issue, seek input from the following:
 - advice from an advisory body, the regulator, the donation or blood services; and
 - consultation with stakeholders.

8.3. Officials will share information, advice and views so that each government can advise Ministers on the proposal and its impacts and seek Ministerial decisions.

8.4. If agreement is not reached on a way forward to assess a proposal or on the factual information within the advice to Ministers, any government can escalate the issue so that it can be discussed at senior official level. If an agreement is not reached at senior official level and all alternatives have been exhausted, the proposal can be escalated to be discussed at Ministerial level.

9. Roles and responsibilities of each party to the framework

9.1. The following sets out the role and responsibilities of officials and Ministers in this Framework.

Officials:

9.2. Regular meetings will continue to take place around Advisory Committee on the Safety of Blood, Tissues and Organs (SaBTO) meetings to provide an opportunity to discuss organs, tissues and cells policy, share updates and consider the short-term and long-term impact of any developments. This will provide an opportunity to discuss this policy and share updates and consider the short-term and long-term impact of any developments. Advice will be shared with Ministers with the rationale for the approach taken (e.g. a UK/GB-wide approach), or why divergent policies may be necessary.

- 9.3. Specific ad-hoc meetings and day-to-day discussions on the policy covered by this Framework will continue. Advice will be put to Ministers outlining the rationale for the approach taken within this policy area (e.g. a UK/GB-wide approach), or why divergent policies may be arranged if/when a proposal arises. Officials across governments will convene to discuss policy issues as appropriate and keep colleagues regularly informed of any ramifications the policy may have on governments.
- 9.4. If officials do not agree when making decisions, issues discussed at a working level can be escalated to senior officials in line with the Framework's dispute avoidance and resolution mechanism (Appendix II).

Senior Officials:

- 9.5. Senior officials will provide strategic direction on the policy governed by this Framework. They may review an issue as per a framework's dispute avoidance and resolution mechanism if officials are not able to agree an approach, in another attempt to reach agreement. Senior officials should convene to discuss issues as appropriate where there is a dispute, either by meeting regularly or on an ad hoc basis.

Ministers:

- 9.6. Ministers may receive advice from their officials either concurrently across governments as issues arise or in the course of business as usual work for individual governments. If work is remitted to senior officials and an issue remains unresolved, the issue may be escalated to Ministers. Where Ministers are considering issues as part of the Framework's dispute avoidance and resolution mechanism this could be via several media, including inter-ministerial meetings or by correspondence.

Senior Ministers:

- 9.7. Terminology distinguishing Ministerial hierarchy is not universal across governments. Where there is a distinction, it is likely that advice presented to a Minister who is not a Senior Minister, will be copied to a Senior Minister who may provide an additional steer if needed. In some circumstances, the Senior Minister will also be the most appropriate Minister to make a decision and therefore the distinction between Senior Minister and Minister will not be relevant. In the case of UKG, a Senior Minister would be a Secretary of State (SofS).

Information sharing:

- 9.8. Each government will aim to provide each other with a full and open (as possible) access to scientific, technical and policy information including

statistics and research and, where appropriate, representations from third parties.

10. Roles and responsibilities of existing or new bodies

10.1. The current scientific advisory bodies are:

- **Joint United Kingdom (UK) Blood Transfusion and Tissue Transplantation Services Professional Advisory Committee (JPAC)**

The purpose of the JPAC is:

- To ensure that all relevant aspects dealing with the safety of blood and tissues in the UK are covered, and that the professional advice emanating from JPAC is communicated appropriately and in a timely fashion.
 - To prepare detailed service guidelines for the United Kingdom Blood Transfusion Services, taking account of the Blood Safety and Quality Regulations (2005), the Human Tissue (Quality and Safety for Human Application) Regulations 2007 and future UK legislation affecting the blood and tissue services. For example, the Tissue Donor Selection Guidelines - Deceased Donors.
 - To be an Advisory Committee to the United Kingdom Blood Transfusion Services, normally by reporting to the Medical Directors of the individual Services who are themselves individually accountable to the Chief Executives/ Directors of the Services. Decisions on policy and implementation would be vested in the individual Chief Executives/Directors and their Service boards and, where appropriate, their respective Health Departments.
- **[Advisory Committee on the Safety of Blood, Tissues and Organs \(SaBTO\)](#)**: Provides policy advice to Ministers in the four governments of the UK on the most appropriate ways to ensure the safety of blood, cells, tissues and organs for transfusion / transplantation.

10.2. Both of the groups above are independent from the UKG, SG, WG and NIE and provide advice to the whole of the UK.

10.3. **Official level meetings:** All parties will continue to regularly share information with one another in relation to the scope of this agreement and will continue to discuss:

- the impact of decisions on other governments, including any impacts on cross-cutting issues;
- prospective policy changes;
- emerging issues and intelligence, etc.

10.4. As mentioned in section 9, Senior Official meetings will be convened to provide strategic direction and to discuss issues as appropriate where there is a dispute, either by meeting regularly or on an ad hoc basis. Officials or Senior Officials will then report to the relevant Ministers if necessary, to provide an update or to escalate an issue.

11. Monitoring and enforcement

11.1. Ad-hoc official level meetings will continue to take place to monitor the Framework, where it is not monitored in the course of routine business. The purpose of monitoring is to assess:

- intergovernmental co-operation and collaboration as a result of the Framework;
- whether parties are implementing and complying with the Framework;
- whether divergence has taken place in contravention of the Common Framework principles;
- whether divergence has taken place in contravention of the appropriate intergovernmental structures; and
- whether harmful divergence has taken place that impacts on the policy area covered by the Framework.

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

12. Review and amendment

12.1. Process:

- The Review and Amendment Mechanism (RAM) ensures the Framework can adapt to changing policy and governance environments in the future.
- There are two types of review which are outlined below. The process for agreeing amendments should be identical regardless of the type of review.
- The RAM relies on consensus at each stage of the process from the Ministers responsible for the policy areas covered by the non-legislative agreement.
- Third parties can be used by any party to the framework to provide advice at any stage in the process. These include other government departments or bodies as well as external stakeholders such as non-governmental organisations (NGOs) and interest groups.

- At the outset of the review stage, parties to the framework must agree timelines for the process, including the possible amendment stage.
- If agreement is not reached in either the review or amendment stage, parties to the Framework can raise it as a dispute through the Framework's dispute avoidance and resolution mechanism.

12.2. **Review Stage:**

- An initial review will take place one year after the Framework comes into effect; it will be used to determine if the arrangements are functional.
- Following the initial review, a periodic review of the Framework will take place every two years and will be, in line with official or, if required, ministerial-level meetings.
 - The period of two years starts from the conclusion of a periodic review and any amendment stages that follow.
 - During the periodic review, parties to the Framework will discuss whether the governance and operational aspects of the Framework are working effectively, and whether decisions made over the previous two years need to be reflected in an updated non-legislative agreement.
- An exceptional review of the Framework is triggered by a 'significant issue':
 - A significant issue must be time sensitive and fundamentally impact the operation and/or the scope of the framework.
 - The exceptional review may include a review of governance structures if all parties agree it is required. Otherwise, these issues are to be handled in the periodic review.
 - The same significant issue cannot be discussed within six months of the closing of that issue.
- The amendment stage can only be triggered through unanimous agreement by Ministers. If parties agree that no amendment is required, the relevant time period begins again for both review types (for example, it will be [2] years until the next periodic review and at least 6 months until the same significant issue can trigger an exceptional review).

12.2 **Amendment Stage:**

- Following agreement that all parties wish to enter the amendment stage, parties will enter into discussion around the exact nature of the amendment. This can either be led by one party to the framework or all.
- If an amendment is deemed necessary during either type of review, the existing framework will remain in place until a final amendment has been agreed.

- All amendments to the Framework must be agreed by all parties and a new non-legislative agreement signed by all parties.
- If parties cannot agree whether or how a framework should be amended this may become a disagreement and as such could be raised through the framework's dispute avoidance and resolution mechanism.

12.3 Changes to the Framework and concordat will be communicated to stakeholders via the current communication channels.

13. Dispute resolution

13.1. The goal of the dispute avoidance and resolution mechanism is to avoid escalation to the appropriate intergovernmental structures, by resolving any disagreements at the lowest possible level. A disagreement between parties of this framework becomes a 'dispute' when it enters the formal dispute avoidance and resolution process through the appropriate intergovernmental structures.

13.2. This mechanism will only be utilised when genuine agreement cannot be reached, and divergence would impact negatively on the ability to meet the Common Frameworks principles (as defined by the JMC (EN) principles). In those areas where a common approach is not needed in order to meet these principles, an "agreement to disagree" could be considered an acceptable resolution.

Process

13.3 The below diagram (Figure 1) states the levels of escalation of a disagreement to a dispute and the interaction between each level.

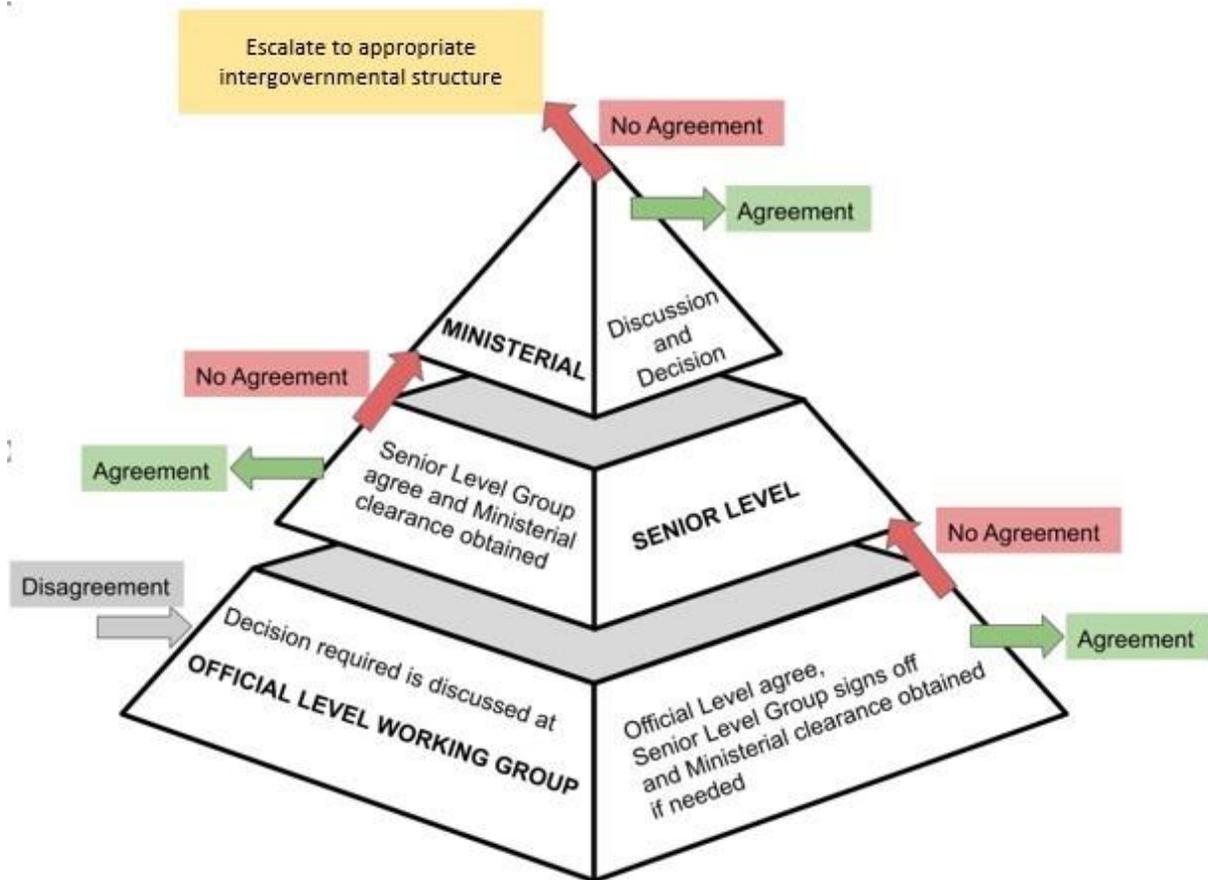


Figure 1: The levels of escalation for disagreements and disputes.

13.3.1 **Official level:** Following the approach set out in sections 8 and 9 and Appendix II of this Common Framework and within the spirit of the concordat, the four governments will seek every opportunity to resolve differences and reach agreement; either to recommend a UK-wide approach or to accept divergence, at official level through discussions. Regular official level meetings will continue to provide an opportunity to discuss organs and non-reproductive tissues and cells safety and quality policy, share updates and consider the short-term and long-term impact of any developments. Policy leads (e.g. Team Leaders) will provide strategic direction on the policy governed by this framework and take key operational decisions.

13.3.2 Where officials become aware of proposals, potential issues or areas of disagreement via any means, the first step will be to seek to resolve this amongst policy leads without escalation. This will usually be resolved via discussion with policy colleagues in each government, to determine the source of the disagreement, to examine evidence, to establish whether it is a significant concern and to work through possible solutions to the satisfaction of all parties. It is expected that most disagreements would be resolved at this point.

13.3.3 Senior Official level: Where it has not been possible to resolve any disagreement at official level, this will initially be referred to Senior Officials for resolution. At this stage Senior Officials can decide whether it would be appropriate to arrange a meeting with counterparts across governments. Alternatively, or after such a meeting, Senior Officials may determine that the issue cannot be resolved at this stage at which point the involvement of Ministers will be required.

13.3.4 Ministerial level: Any continuing disagreement, which cannot be resolved at official level in the ways set out above, will be referred to Portfolio Ministers for resolution and as set out in the Organs, Tissues and Cells Common Framework, the making of legislation may need to be postponed until all four governments are in agreement on how to proceed. The parties may conclude, having considered potential impacts on patient safety, the JMC (EN) principles and the appropriate intergovernmental structures, that divergence is appropriate.

13.3.5 Resolve through appropriate intergovernmental structure: As a last resort, where the above steps for resolving a disagreement have been unsuccessful, the issue will be escalated for resolution under the appropriate intergovernmental structures

Timescales for escalation

13.4 When a proposal is raised at official level, consideration will be given to the urgency of the proposal (i.e. how quickly a decision is required). This assessment will guide timescales for escalation of disagreement within the governance structure, with decisions requiring a more immediate resolution being escalated more quickly.

Evidence gathering

13.5 At each stage, further evidence may be requested from the preceding forum before the disagreement is discussed.

Third parties

13.6 JPAC and SaBTO may be used to provide scientific or technical advice to the UKG, SG, WG and the NI Department of Health.

SECTION 4: PRACTICAL NEXT STEPS AND RELATED ISSUES

14. Implementation

This Framework will take effect once agreed by all parties and approved by Ministers. The Common Framework will only be put in place once there is final ministerial sign off from all four governments.

APPENDIX I: Joint Ministerial Committee (EU Negotiations) Communique - October 2017

JOINT MINISTERIAL COMMITTEE (EU NEGOTIATIONS) COMMUNIQUE October 2017

The fifth Joint Ministerial Committee (EU Negotiations) met today in 70 Whitehall. The meeting was chaired by the Rt Hon Damian Green MP, First Secretary of State and Minister for the Cabinet Office.

The attending Ministers were:

From the UK Government: the First Secretary of State and Minister for the Cabinet Office, Rt Hon Damian Green MP; the Secretary of State for Exiting the EU, Rt Hon David Davis MP; the Secretary of State for Wales, Rt Hon Alun Cairns MP; the Secretary of State for Scotland, Rt Hon David Mundell MP; and, Parliamentary Under Secretary of State for Northern Ireland, Lord Bourne of Aberystwyth.

From the Welsh Government: Cabinet Secretary for Finance and Local Government, Mark Drakeford AM.

From the Scottish Government: the Minister for UK Negotiations on Scotland's Place in Europe, Michael Russell MSP.

In the absence of Ministers from the Northern Ireland Executive, a senior civil servant from the Northern Ireland Civil Service was in attendance.

The Chair opened the meeting by summarising the bilateral engagement and political developments that had taken place since JMC(EN) last met. The Secretary of State for Exiting the EU provided an update on the previous rounds of negotiations with the EU and the Committee discussed forthcoming priorities and the future relationship with the EU. The Committee discussed the establishment of common frameworks.

Ministers noted the positive progress being made on consideration of common frameworks and agreed the principles that will underpin that work (attached).

Common Frameworks: Definition and Principles

Definition

As the UK leaves the European Union, the Government of the United Kingdom and the devolved administrations agree to work together to establish common approaches in some areas that are currently governed by EU law, but that are otherwise within areas of competence of the devolved administrations or legislatures. 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.

Context

The following principles apply to common frameworks in areas where EU law currently intersects with devolved competence. There will also be close working between the UK Government and the devolved administrations on reserved and excepted matters that impact significantly on devolved responsibilities.

Discussions will be either multilateral or bilateral between the UK Government and the devolved administrations. It will be the aim of all parties to agree where there is a need for common frameworks and the content of them.

The outcomes from these discussions on common frameworks will be without prejudice to the UK's negotiations and future relationship with the EU.

Principles

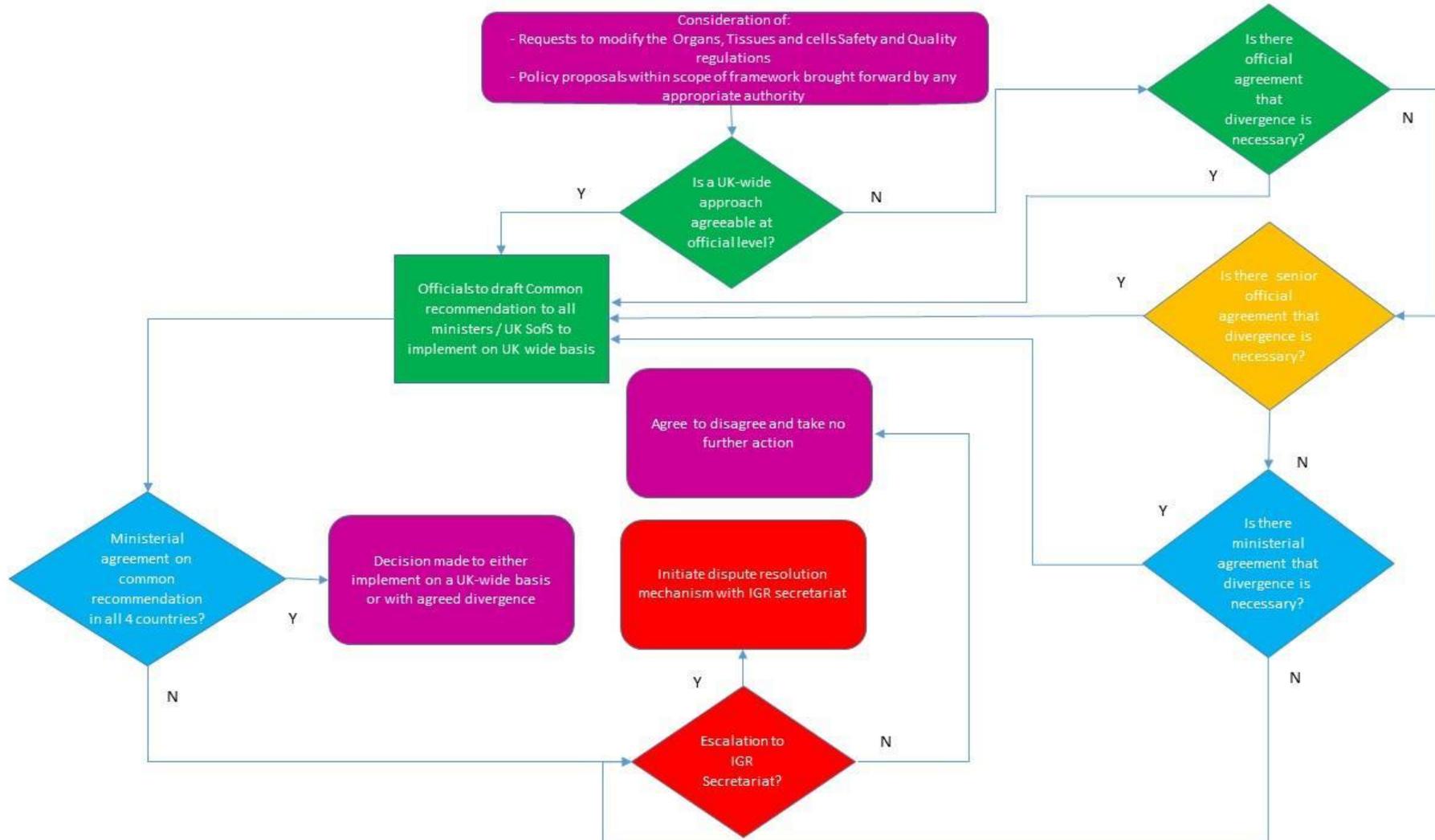
Common frameworks will be established where they are necessary in order to:

- 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;
 - safeguard the security of the UK.
1. 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;
 - lead to a significant increase in decision-making powers for the devolved administrations.
2. Frameworks 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. They will also adhere to the Belfast Agreement.

APPENDIX II: Joint Decision-making Dispute Avoidance and Dispute Resolution Process

Key				
Inputs/Outputs	Senior Officials	Officials	Secretary of State (SofS)/ Portfolio Ministers	The ministerial committee outlined in the MoU on Devolution



Joint Decision-making	Dispute Avoidance	Dispute Resolution (THE MINISTERIAL COMMITTEE OUTLINED IN THE MOU level)
<p>Framework process</p> <p>In accordance with section 9 of the Framework Outline Agreement policy colleagues will meet regularly. Requests to modify legislation and policy proposals within scope of the framework may be brought forward by the appropriate authority.</p>	<p>1. Further discussions at official and senior official level.</p>	<p>1. Further discussion of issues.</p>
<p>Decisions on divergence</p> <ul style="list-style-type: none"> ● Scientific advice and wider risk management issues are considered to reach a consensus for a common recommendation to Ministers. ● All four governments submit the same common recommendations to Ministers for a decision (either for common approaches across the UK or divergent approaches). ● Where agreement cannot be reached at official level issues are referred to senior officials for consideration. 	<p>2. Dispute avoidance initiated:</p> <ul style="list-style-type: none"> ● Pause work progressing implementation of Ministerial decision until differences are resolved. ● Senior officials from all four governments meet to consider ministerial views and determine whether there is any additional information available to support an agreed approach revert to consider any alternative approach. ● Officials submit risk management common recommendations, informing Ministers of the revisions with rationale for the approaches now being recommended across all four governments. 	<p>2. Dispute avoidance initiated: Escalation to highest level, dispute resolution process initiated</p> <ul style="list-style-type: none"> ● Pause work progressing implementation of SofS / Cab Sec / Perm Sec* level decision until differences are resolved. ● Officials submit further/ revised common recommendations, informing the appropriate intergovernmental structures of the approaches being recommended across all four governments. ● The appropriate intergovernmental structures consider common recommendations and SofS / Cab Sec / Perm Sec views and consider any additional information available to support decision making. ● If the approach being recommended is not the same across the UK, officials provide explanation of the different approaches being recommended and a summary rationale setting out why it is appropriate to diverge and why agreement has not been reached to date. If the approach being recommended is agreed across the UK, proceed to a ministerial decision. ● The appropriate intergovernmental structures consider the common recommendation individually and provide a response to SofS / Min / Perm Sec private offices.

<p>3. Ministers review recommendation seeking decisions. Officials will be asking Ministers to agree to the recommended approach.</p>	<p>3. Recommendations made to Ministers in the four governments:</p> <ul style="list-style-type: none"> ● Officials submit further/ revised common recommendations, informing Ministers of the approaches being recommended across all four governments. ● If the recommended approach differs across the UK, officials provide explanation and a summary rationale setting out why it is appropriate to diverge. ● If the approach being recommended is NOT agreed by Ministers and officials from the four governments meet again. 	<p>3. SofS / Min/ Perm Sec reach agreed decision on common recommendation.</p> <ul style="list-style-type: none"> ● Private offices inform officials in their own respective government of the decision. ● Policy officials in all four governments share information on SofS / Min / Perm Sec decisions.
<p>4. Ministers reach agreed decision on common recommendations.</p>	<p>4. Ministers receive risk management common recommendation seeking decision.</p> <ul style="list-style-type: none"> ● Each Minister considers the common recommendation individually and provides a response. ● If the approach being recommended is NOT agreed across the UK, senior officials meet to discuss the issues. 	
	<p>5. Ministers reach agreed decision on common recommendations.</p> <ul style="list-style-type: none"> ● If the approach being recommended (either for common approaches across the UK or divergent approaches) is agreed across the UK: <ul style="list-style-type: none"> ○ Private Offices inform officials in their own respective governments of the decision to implement agreed approach. 	

	<ul style="list-style-type: none">○ Policy officials in all four governments share information on the Ministers' decisions	
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SofS / Cab Sec / Perm Sec = Secretary of State/Cabinet Secretary/Permanent Secretary

SofS / Min/ Perm Sec = Secretary of State/Ministers/Permanent Secretary

ANNEX I:

Concordat on the safety and quality of organs and tissues and cells (apart from embryos and gametes)

Introduction

1. This Concordat is an agreement between the UK Government (UKG), Scottish Government (SG), Welsh Government (WG), and Northern Ireland Department of Health in the area of safety and quality of organs and non-reproductive tissues and cells. It gives effect to the Organs, Tissues and Cells (apart from embryos and gametes)⁴ Common Framework. It also sets out the continuation of good working relations, open communication; the maintenance of a compatible minimum set of high standards of safety and quality for organs and non-reproductive tissues cells; a dispute avoidance and resolution mechanism; and a review and amendment mechanism.
2. This agreement is a political commitment and is not intended to be legally binding or enforceable. It is in accordance with the overarching Memorandum of Understanding (MoU) on Devolution⁵ and the Common Frameworks principles agreed at the Joint Ministerial Committee (EU Negotiations) (JMC(EN)) on 16 October 2017⁶.

Scope

3. This agreement covers the subject matter of the EU Organs Directive (2010/53/EU) and EU Tissues and Cells Directive (2004/23/EC) and implementing acts. The 2019 Organs, Tissues and Cells safety and quality statutory instruments⁷ retain the UK's safety and quality standards for organs and non-reproductive tissues and cells and amends the regulations to ensure that they will operate as intended following the UK's departure from the EU. The 2019 Organs, Tissues and Cells Safety and Quality EU Exit SIs were amended by the 2020 Organs, Tissues and Cells SIs⁸.

Principles for working together

4. This agreement 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 which shares a land frontier with the EU. It will also adhere to the Belfast Agreement.
5. The parties affirm their mutual commitment to work together on the application of retained EU law in relation to organs and non-reproductive tissues and cells safety and quality policy and their respective responsibilities. This co-operation is intended to give all parties the assurance, that working relationships will be conducted in a

⁴ References to non-reproductive tissues and cells means cells apart from embryos and gametes

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/316157/MoU_between_the_UK_and_the_Devolved_Administrations.pdf

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/652285/Joint_Ministerial_Committee_communique.pdf

⁷ The Quality and Safety of Organs Intended for Transplantation (Amendment) (EU Exit) Regulations 2019/483 and The Human Tissue (Quality and Safety for Human Application) (Amendment) (EU Exit) Regulations 2019/481.

⁸ The Quality and Safety of Organs Intended for Transplantation (Amendment) (EU Exit) Regulations 2020 and The Human Tissue (Quality and Safety for Human Application) (Amendment) (EU Exit) Regulations 2020/1306.

manner that is both collaborative and helpful, aiming, where possible and appropriate, to achieve agreement on policy. In addition, all parties agree that regular contact will continue to discuss ongoing business of mutual interest.

6. This Concordat is intended to provide the basis for the management and maintenance of a compatible minimum set of safety and quality standards by setting out governance arrangements and a dispute resolution process. All parties to the Concordat agree that a Common Framework approach, that recognises the Common Frameworks principles agreed at JMC(EN) in 2017 and the finalised principles for intergovernmental relations, is highly desirable across the UK. The outcomes of the intergovernmental relations review are in the process of being implemented. Once confirmation has been provided from each government, the outcomes of the review and appropriate intergovernmental structures will be reflected in this Common Framework
7. Open communications will be maintained and information shared, to the extent permitted by law, at the earliest opportunity. This may include but is not confined to policy issues, stakeholder views, preparations for and outcome of consultations and research, media interest and lines to take, and emerging issues and intelligence (UK/EU/international).
8. The parties acknowledge that there may be a need for their separate responsibilities to be tackled with uniformity. For example, events could transpire that would require urgent action (such as, but not limited to, responding to emerging diseases). Each party shall consider promptly and thoroughly any concerns raised by the others. Where all agree that consistency is needed, consultation on a common approach shall be undertaken.
9. The parties shall inform each other at the earliest opportunity of any new policy proposals, before they are made public, to allow full consideration and a common approach to be reached wherever possible. Each party will also appraise the others of the ongoing development of such proposals. Where this will not be possible, each party will inform the others as soon as possible.
10. The parties to this agreement commit to resolving any issues at the lowest possible level and recognise that agreement to disagree can be an acceptable outcome, provided the JMC(EN) Common Frameworks principles remain upheld.
11. Where common recommendations may be made, Ministers will retain the right to take individual decisions for their government. For those areas within the scope of the Organs and Tissues and Cells (apart from embryos and gametes) Common Framework, the opportunity for consistency of approach across governments will be sought in the first instance. The ability for divergence must be retained, while taking account of its impact on patient safety and confidence, and the functioning of the UK internal market. Every effort will be made at working level to resolve any disagreements in difference of approach. Where a consensus cannot be reached by these arrangements (whether that is agreement to a UK wide approach or to accept divergence) the dispute avoidance and resolution mechanism would come into play.

Dispute avoidance and resolution

12. The goal of the dispute avoidance and resolution mechanism is to avoid escalation to formal processes through the appropriate intergovernmental structures, by resolving any disagreements at the lowest possible level. A disagreement between parties of

this Framework becomes a 'dispute' when it enters the formal dispute avoidance and resolution process through the appropriate intergovernmental structures.

13. This mechanism will only be utilised when genuine agreement cannot be reached, and divergence would impact negatively on the ability to meet the JMC (EN) Common Frameworks principles. In those areas where a common approach is not needed in order to meet these principles, an "agreement to disagree" could be considered an acceptable resolution.

Process

14. The below diagram (Figure 1) states the levels of escalation of a disagreement to a dispute and the interaction between each level.

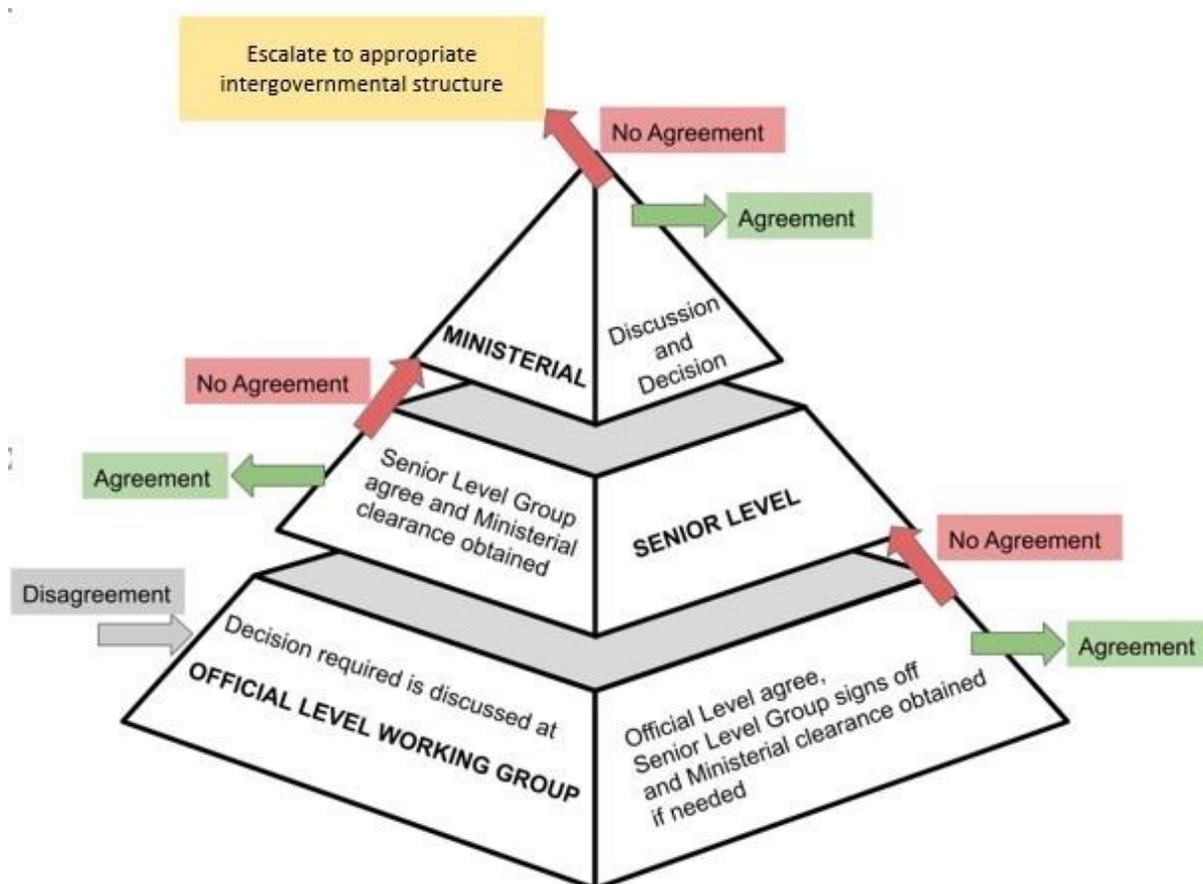


Figure 1: The levels of escalation for disagreements and disputes.

15. Following the approach set out in section 8 and 9 and Appendix II of the Organs, Tissues and Cells Common Framework and within the spirit of this Concordat, all governments will seek every opportunity to resolve differences and reach agreement; either to recommend a UK-wide approach or to accept divergence, at official level through discussions.
16. Where it has not been possible to resolve any disagreement in approach at official level, this will initially be referred to Senior Officials for resolution.
17. Any continuing disagreement, which cannot be resolved at official level in the ways set out above, will be referred to Portfolio Ministers for resolution and as set out in the Organs, Tissues and Cells Common Framework. The parties may conclude, having

considered potential impacts on patient safety and the JMC principles and reflecting appropriate intergovernmental structures, that divergence is appropriate.

18. As a last resort, where the above steps for resolving a disagreement have been unsuccessful, the issue will be escalated to appropriate intergovernmental structures for resolution under the dispute resolution process set out in the appropriate intergovernmental structures.

Timescales for escalation

19. When a proposal is raised at official level, consideration will be given to the urgency of the proposal (i.e. how quickly a decision is required). This assessment will guide timescales for escalation of disagreement within the governance structure, with decisions requiring a more immediate resolution being escalated quicker.

Evidence gathering

20. At each stage further evidence may be requested from officials at the preceding level, or from stakeholders (listed below), before the disagreement is discussed.

Third parties

21. The Human Tissue Authority (HTA), the Advisory Committee on the Safety of Blood, Tissues and Organs (SaBTO) and the Joint United Kingdom (UK) Blood Transfusion and Tissue Transplantation Services Professional Advisory Committee (JPAC) may be used to provide advice on the most appropriate ways to ensure the safety of cells, tissues and organs for transfusion/transplantation.

Official level meetings

1. **Official level organs and non-reproductive tissues and cells meetings:** All parties will continue to regularly share information with one another in relation to the scope of this agreement and will continue to discuss:
 - the impact of decisions on other governments, including any impacts on cross-cutting issues;
 - prospective policy changes;
 - emerging issues and intelligence, etc.
22. As previously mentioned, Senior Official meetings will be convened to provide strategic direction and to discuss issues as appropriate where there is a dispute, either by meeting regularly or on an ad hoc basis. Senior Officials will then report to the relevant Ministers as necessary, to provide an update or to escalate an issue.

Review and amendment mechanism

Process

23. The Review and Amendment Mechanism (RAM) ensures the Framework can adapt to changing policy and governance environments in the future.
24. There are two types of review which are outlined below. The process for agreeing amendments should be identical regardless of the type of review.
25. The RAM relies on consensus at each stage of the process from the Ministers responsible for the policy areas covered by this non-legislative agreement.

26. Third parties can be used by any party to the Framework to provide advice at any stage in the process. These include other government departments or bodies as well as external stakeholders such as non-governmental organisations (NGOs) and interest groups.
27. At the outset of the review stage, parties to the Framework must agree timelines for the process, including the possible amendment stage.
28. If agreement is not reached in either the review or amendment stage, parties to the Framework can raise it as a dispute through the Framework's dispute avoidance and resolution mechanism.

Review stage

29. An initial review will take place one year after the Framework comes into effect, it will be used to determine if the arrangements are functional.
30. Following the initial review, a periodic review of the Framework will take place every two years.
 - The period of two years starts from the conclusion of a periodic review and any amendment stages that follow.
 - During the periodic review, parties to the Framework will discuss whether the governance and operational aspects of the Framework are working effectively, and whether decisions made over the previous two years need to be reflected in an updated non-legislative agreement.
31. An exceptional review of the Framework is triggered by a 'significant issue':
 - A significant issue must be time sensitive and fundamentally impact the operation and/or the scope of the Framework.
 - The exceptional review may include a review of governance structures if all parties agree it is required. Otherwise, these issues are to be handled in the periodic review.
 - The same significant issue cannot be discussed within six months of the closing of that issue.
32. The amendment stage can only be triggered through unanimous agreement by Ministers. If parties agree that no amendment is required, the relevant time period begins again for both review types (for example, it will be two years until the next periodic review and at least six months until the same significant issue can trigger an exceptional review).

Amendment stage

33. Following agreement that all parties wish to enter the amendment stage, parties will enter into discussion around the exact nature of the amendment. This can either be led by one party to the Framework or all.
34. If an amendment is deemed necessary during either type of review, the existing Framework will remain in place until a final amendment has been agreed.
35. All amendments to the Framework must be agreed by all parties and a new non-legislative agreement signed by all parties.

36. If parties cannot agree whether or how a Framework should be amended this may become a disagreement and as such could be raised through the Framework's dispute avoidance and resolution mechanism.
37. Changes to the Framework and Concordat will be communicated to stakeholders via the current communication channels.

The Protocol on Ireland/ Northern Ireland

38. The Agreement on the Withdrawal of the United Kingdom from the EU sets out the current arrangements where, although remaining within the UK's custom territory, Northern Ireland will remain aligned with the EU. The following paragraphs of Annex 2 of the Northern Ireland Protocol are relevant to this framework.

Paragraph 22 - substances of human origin

39. This Framework reflects the specific circumstances in NI that arise as a result of the Protocol and remains UK wide in its scope. As 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.
40. Where one or more of UK Government, the Scottish Government or the Welsh Governments propose to change rules in a way that has policy or regulatory implications for the rest of the UK, or where rules in Northern Ireland change in alignment with the EU, the Framework is intended to provide governance structures and consensus-based processes for considering and managing the impact of these changes.
 - As rules evolve to meet the emerging regulatory needs of the UK, Scottish and Welsh Governments, this Framework will ensure the full participation of Northern Ireland in discussions such that the views of the relevant Northern Ireland Executive Minister(s) are taken into account in reaching any policy or regulatory decisions by the UK, Scottish or Welsh Governments.
 - Where rules in Northern Ireland change in alignment with the EU, the Framework will form the basis of a mechanism to ensure consideration by the four governments of any changes, and will enable them to determine any impacts and subsequent actions arising from these changes.
41. 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 at section 13 of this document.

