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Convener
Economy and Fair Work Committee
The Scottish Parliament
EH99 1SP

02 February 2022

Dear Convener,

The Cabinet Secretary for Finance wrote to the Economy, Energy and Fair Work Committee on 11 December 2020 with a summary of the proposed common framework on public procurement. I am now writing to share the text of the provisional public procurement framework with your Committee.

My officials, together with their counterparts in the UK Government, Welsh Government and the Northern Ireland Executive have been working jointly to develop this. The provisional framework has been confirmed by the portfolio Ministers of the four governments in December 2021. I am sharing this provisional framework for your Committee to scrutinise.

The provisional framework consists of a Framework Outline Agreement. Since the summary was shared with Parliament, it has been agreed that there be no separate Concordat, as one would duplicate information that is already in the Common Framework. Please find an updated cover page attached, with the Framework Outline Agreement included as annexes.

My officials are happy to provide any further information if that would be helpful. I am copying this letter and all attachments to Clare Adamson MSP, Convener of the Constitution, Europe, External Affairs and Culture Committee due to the Committee's interest in the overall UK Common Framework programme.

IVAN MCKEE

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Cover page template:**1. Framework ownership**

- Public Procurement
- Minister for Business, Trade, Tourism and Enterprise
- Contact officials: Iain Moore 07824 499341 / Alasdair Hamilton 07810 853194
- The lead Committee for this Framework is the Economy and Fair Work Committee

2. Points for the Parliamentary committees to note**a. Procedural**

- The published version of the framework was agreed by UK portfolio Ministers in December 2021.

b. Content

- The purpose of the Common Framework on public procurement is to establish agreed working practices between the four Administrations in relation to public procurement policy and legislation.
- The Common Framework states that decision making in relation to public procurement is carried out consistently with the principles set out for the development of Common Frameworks in the Joint Ministerial Committee communiqué of October 2017, whilst acknowledging policy divergence, and respecting devolution and the democratic accountability of all the legislatures.
- The Framework recognises that each of the Parties will continue to develop and publish their own policies for procurement, and it provides the vehicle to discuss these policies.
- The Framework applies to policies that were governed by EU procurement Directives and explicitly excludes the Procurement Reform (Scotland) Act 2014 and the Procurement (Scotland) Regulations 2016.
- This is a non-legislative framework and is not underpinned by a separate SSI/SI.
- There is no significant differences between the provisional framework and the phase 3 summary.

Stakeholder engagement was undertaken in October 2020. We consulted

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with both public and private sector stakeholders, and received a total of 6 responses; three from each sector. Having considered the responses, some of which were simply to confirm that the responder was content with the draft Framework, no changes were made to the draft Framework. Copies of the responses were shared with the Committee in September 2021.

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Cabinet Office

Common Framework for Public Procurement

Updated Provisional Framework Agreement

January 2022

CP 609



Common Framework for Public Procurement

Updated Provisional Framework Agreement

Presented to Parliament by the Paymaster General by Command of Her
Majesty

27 January 2022

CP 609



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Common Framework for Public Procurement

1. Policy area

1.1. Public Procurement

2. Preamble

- 2.1. The UK Government, Scottish Government, Welsh Government and Northern Ireland Executive have agreed to work together to establish common approaches, or frameworks, in some areas that have historically been governed by EU law but which otherwise fall within areas of devolved competence¹. The establishment and content of frameworks are guided by the principles (“the Frameworks Principles”) set out in the Joint Ministerial Committee (EU Negotiations) (JMC(EN)) communique of 16 October 2017.
- 2.2. This Common Framework for public procurement is being established because it is considered necessary in order to achieve the following outcomes set out in the Frameworks Principles:
- enable the functioning of the UK internal market, while acknowledging policy divergence
 - ensure compliance with international obligations, and
 - ensure the UK can negotiate, enter into and implement new trade agreements and international treaties
- 2.3. This Common Framework is to be read in conjunction with the:
- a. Devolution Memorandum of Understanding and supplementary agreements (“the MoU”) dated October 2013 between the UK Government and the Scottish Ministers, the Welsh Ministers, and the Northern Ireland Executive, taking into account any future amendments to the MoU.
 - b. Devolution settlements for Scotland, Wales and Northern Ireland.²
- 2.4. References to devolved competence, devolved matters and reserved matters are to be construed in accordance with the relevant devolution settlement.
- 2.5. This Common Framework between the UK Government, the Scottish Government, the Welsh Government, and the Northern Ireland Executive (“the Parties”, also referred to as “the Parties to the Common Framework”), is not intended to confer any rights or obligations which are legally enforceable.

¹https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/652285/Joint_Ministerial_Committee_communique.pdf.

² The Acts of Parliament dealing with devolution: the Scotland Acts 1998, 2012 and 2016, the Government of Wales Act 1998 and 2006 and Wales Act 2014 and 2017, and the Northern Ireland Act 1998.

3. Scope

- 3.1. This Common Framework (see definitions in section 4) will establish agreed working practices between the Parties in relation to domestic and international public procurement policy and legislation. Specifically, it will cover:
- Consultation and exchange of information
 - Development of policies and legislation
 - Engagement between the Parties on World Trade Organisation Government Procurement Agreement (WTO GPA) business
 - International agreements e.g. the EU-UK Trade and Cooperation Agreement
- 3.2. Management of common resources is not part of the rationale for this Common Framework.
- 3.3. It is intended to guide the actions of the Parties in respect to these matters, in particular the actions of officials working on procurement policy.
- 3.4. The relevant legislation (“the Procurement Regulations”) for this Common Framework, as may be amended from time to time, is as follows:
- The Public Contracts Regulations 2015
 - The Concession Contracts Regulations 2016 and
 - The Utilities Contract Regulations 2016
- In Scotland the following regulations apply:
- The Public Contracts (Scotland) Regulations 2015
 - The Concession Contracts (Scotland) 2016 and
 - The Utilities Contracts (Scotland) Regulations 2016
- The Procurement Regulations were transposed from a series of EU Directives:
- 2014/23/EU Concession Contracts Directive 2014
 - 2014/24/EU Public Contracts Directive 2014
 - 2014/25/EU Utilities Contracts Directive 2014
 - 89/665/EEC Remedies Directive as amended by 2007/66/EC
- 3.5. The EU Commission and Member States negotiated the contents of the Directives.
- 3.6. The Directives provided a framework based around the Treaty principles of equal treatment, non-discrimination, proportionality, and transparency.
- 3.7. The Public Procurement (Amendment etc.) (EU Exit) Regulations 2020 and the Public Procurement etc. (EU Exit) (Scotland) (Amendment) Regulations 2020³ were laid to amend the Procurement Regulations at the end of the transition period to ensure they continued to

³ The Public Procurement (Amendment etc.) (EU Exit) Regulations 2020. <https://www.legislation.gov.uk/ukdsi/2020/9780348212952> and The Public Procurement etc. (EU Exit) (Scotland) (Amendment) Regulations 2020 <https://www.legislation.gov.uk/sdsi/2020/9780111047545/contents?title=procurement>

work. These statutory instruments implemented the Withdrawal Agreement and fixed deficiencies that were caused by the UK leaving the EU.

- 3.8. There was considerable flexibility within the rules for different parts of the UK to transpose Directives differently. However, Parties have not diverged significantly when transposing the Directives.
- 3.9. The UK has participated in the WTO GPA under EU membership since its inception and continued to participate as if it were an EU member during the transition period. The UK joined the WTO GPA in its own right from 1 January 2021 and consequently will continue to comply with the WTO GPA rules.
- 3.10. Each of the Parties will develop and publish their own policies for procurement.
- 3.11. Public procurement is governed by legislation and seeks to align itself with other policies/principles where appropriate and proportionate including, but not limited to:
- [Anti-corruption strategy](#)⁴
 - Value for public money principles (see HMT [Managing Public Money](#)⁵, WG [Managing Welsh public money](#)⁶, [Scottish Public Finance Manual](#)⁷, [NI Public Expenditure Guidance](#)⁸)
 - [Transparency policy](#)⁹, [Welsh Government Publication Scheme](#)¹⁰, [Scottish Procurement Open Contracting Strategy](#)¹¹, [NI Publication Scheme](#)¹²
 - Public sector duties/code of conduct/[Corporate Governance Code/Open government](#)¹³.
 - Social value/wellbeing legislation e.g. [Well-Being of Future Generations \(Wales\) Act 2015](#)¹⁴, [Northern Ireland Public Procurement Policy](#)¹⁵, [UKG Public Procurement Policy](#)¹⁶, Scottish Government's [National Performance Framework](#)¹⁷, [Welsh Government Public Procurement Policy](#)¹⁸
 - Government funding policies
- 3.12. 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.
- 3.13. The policy area covered by this Common Framework intersects with the EU-UK Trade and Cooperation Agreement and therefore topics relevant to the framework may be considered from time to time by relevant TCA Specialised Committees or the Partnership Council.

⁴ <https://www.gov.uk/government/publications/uk-anti-corruption-strategy-2017-to-2022>

⁵ <https://www.gov.uk/government/publications/managing-public-money>

⁶ <https://gov.wales/managing-welsh-public-money>

⁷ [Scottish Public Finance Manual - gov.scot \(www.gov.scot\)](#)

⁸ <https://www.finance-ni.gov.uk/topics/finance/public-expenditure-guidance>

⁹ <https://www.gov.uk/government/groups/public-sector-transparency-board>

¹⁰ <https://gov.wales/welsh-government-publication-scheme-2018>

¹¹ [Scottish procurement: open contracting strategy - gov.scot \(www.gov.scot\)](#)

¹² <https://www.finance-ni.gov.uk/foi-and-publication-scheme>

¹³

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/609903/P_U2077_code_of_practice_2017.pdf

¹⁴ <https://www.futuregenerations.wales/about-us/future-generations-act/>

¹⁵ <https://www.finance-ni.gov.uk/topics/procurement/public-procurement-policy-northern-ireland>

¹⁶ <https://www.gov.uk/government/collections/procurement-policy-notes>

¹⁷ <https://nationalperformance.gov.scot>

¹⁸ <https://gov.wales/procurement-policy-notes>

Where a UK-EU meeting agenda includes an item concerning implementation in an area of devolved competence, the UK Government should facilitate the attendance of the Scottish Government, Welsh Government and Northern Ireland Executive of a similar level to that of the UK Government representatives with final discretion as to the UK delegation a matter for the UK co-chair. The UK Government should engage the Scottish Government, Welsh Government and Northern Ireland Executive as fully as possible in preparation for these meetings regardless of attendance, and on all relevant implementation matters.

3.14. There is no intersection between procurement policy and the Northern Ireland Protocol.

3.15. **Not in scope**

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

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

4. Definitions

- “**UKG**” refers to the UK Government, while “**SG**” refers to the Scottish Government, “**WG**” refers to the Welsh Government and “**NIE**” refers to the Northern Ireland Executive.
- The “**Parties**” means the UK Government, the Scottish Government, the Welsh Government, and the Northern Ireland Executive.
- A “**Common Framework**” sets out a common approach to certain policy areas that fall under devolved competence, which were previously governed by means of EU legislation, where it has been recognised that a particular level of continued cooperation is required. This Common Framework proposes to formalise agreed approaches through an exchange of ministerial letters.
- References to “**devolved competence**”, “**devolved matters**” and “**reserved matters**” are to be construed in accordance with the relevant devolution settlement¹⁹.
- The “**Frameworks Principles**” means the principles set out for the development of Common Frameworks in the JMC(EN) communique of October 2017.
- The **Common Framework Working Group** (also referred to here as “**the Working Group**”) and The **Common Framework Liaison Group** (also referred to here as “**the Liaison Group**”) are the two official level working groups operating as part of this Common Framework. Terms of Reference are linked at Annex A.

5. Summary of proposed approach

5.1. With due regard to the democratic accountability of the UK Parliament and the devolved legislatures, in a way that respects the devolution settlements, the Common Framework

¹⁹ The Acts of Parliament dealing with devolution: the Scotland Acts 1998, 2012 and 2016, the Government of Wales Act 1998 and 2006 and Wales Act 2014 and 2017, and the Northern Ireland Act 1998.

ensures that decision making in relation to public procurement is carried out consistently with the Framework Principles.

- 5.2. Each of the Parties will continue to develop and publish their own policies for procurement, and the Common Framework provides the vehicle to discuss those policies. The Parties will ensure that they give full and proper consideration to each other's views and will endeavour to achieve consensus in areas of mutual interest without prejudice to the respective competence of each of the Parties. Ministers and officials of each of the Parties will maintain close working relationships and will inform each other at an early stage of any relevant proposals or other developments at domestic level on, or which may affect, public procurement, including any proposals to legislate or litigation of potentially wider significance. The Parties undertake to conduct their relationship on a "no surprises" basis. The Parties also agree to the need for confidentiality of discussions, without which it would be impossible to maintain such close working relationships.
- 5.3. The Common Frameworks Principles agreed at JMC (EN) state that frameworks will be established where necessary to ensure the UK can negotiate, enter into and implement new trade agreements and international treaties, and ensure compliance with international obligations. These principles were established in the context of an ambition for close working between the UK Government and the Devolved Governments on reserved matters that significantly impact devolved responsibilities in Common Frameworks.
- 5.4. Common Frameworks will allow the Parties, in a timely manner, to ascertain the impact of international trade on managing UK policy divergence. All Parties to the framework will consider any impact in a way that meets the requirements of the JMC (EN) principles. Common Frameworks will afford an opportunity to consider any implications stemming from international trade which have a direct bearing on the operation of a Common Framework. The scope of this consideration will not extend beyond Common Frameworks.
- 5.5. International policy formulation will be developed in line with the current Devolution MoU and its accompanying International Relations Concordat. International obligations will be implemented in line with these agreements. In this respect, the Parties will automatically use any updated IR Concordat, and the wider outcomes of the Joint IGR Review, as the basis for such international considerations.

6. Overview of proposed framework: legislation (primary or secondary)

- 6.1. Legislation will not be required to implement this Common Framework.

7. Overview of proposed framework: non-legislative arrangements

- 7.1. An exchange of ministerial letters will formalise these arrangements.

8. Decision making

General

- 8.1. In considering any new such policies relating to public procurement, and any proposals to legislate, the Parties commit to work consistently with the Frameworks Principles. The Parties will also maintain principles of non-discrimination, equal treatment and transparency in respect of economic operators from the UK.
- 8.2. The Parties acknowledge that contracting authorities and UK businesses can benefit from consistent approaches to public procurement policy and regulation and will therefore, where

it is deemed advantageous, seek to identify common approaches in these areas. Any common approach will be subject to agreement between the Parties. The Parties reserve the right to develop policies and regulate independently in accordance with their respective competence where they consider it appropriate.

- 8.3. Where one or more of the Parties does identify an area in which they wish to take a policy or regulatory approach which is different in substance from that taken by the other Parties, they should assess the impact of that approach on the other Parties and its compatibility with the Frameworks Principles. In accordance with the mechanisms set out in this Common Framework, where such an approach is likely to impact upon another of the Parties, the Party or Parties will notify and consult the other Parties in respect of their intended action at a monthly official level Common Framework Working Group. Should any of the Parties object to the action in question on the grounds that it is contrary to the provisions set out in the Common Framework, the Parties will endeavour to identify a mutually acceptable approach which would achieve an equivalent, or preferably identical, outcome. If no mutually acceptable resolution is found, the objecting Party or Parties may initiate the formal dispute avoidance and resolution procedure set out in the Common Framework.
- 8.4. In addition to the monthly official level Working Group, a twice-yearly Common Framework Liaison Group meeting will be held between officials. This will provide the Parties with the opportunity to consult on any matters relating to the operation of this Common Framework or the furtherance of its objectives. The Parties will share the chairing of this meeting on a rotating basis.
- 8.5. Decisions will be tracked through the minutes of the official level monthly Common Framework Working Group and biannual Common Framework Liaison Group, which will include representatives from each of the Parties. Individual Parties will clear any amendments/updates to the Common Framework through their own processes.
- 8.6. No decisions will need to be taken by third parties.
- 8.7. The following roles will apply in the context of decision making and dispute avoidance:

Role	Description
Officials	Put advice to ministers with rationale for UK wide approach or why divergence is appropriate. If officials don't agree, escalate to senior officials.
Senior Officials	Senior officials may review an issue if officials are not able to agree an approach, or if ministers have remitted the advice back to officials, in another attempt to reach consensus.
Ministers	Advice from officials is submitted to ministers for decision. Ministers will serve as the primary actors in the joint decision-making process. If an issue is remitted to senior officials and remains unresolved it may be escalated to ministers via the

	dispute avoidance process.
Senior Minister	Where required on a case by case basis, Ministers may need to seek the approval of Senior Ministers.
	<p>Dispute resolution mechanism agreed following the implementation of the intergovernmental relations review.</p> <p>If ministers and senior ministers cannot resolve an issue, escalation to the overarching process for dispute avoidance and resolution through the appropriate intergovernmental structure takes place.</p>

Roles and Responsibilities of Common Framework Parties on WTO GPA business

- 8.8. Interests of all Common Framework Parties will be represented at the WTO GPA Committee by the UKG.
- 8.9. Agenda items on areas of devolved competence (or areas that may impact on devolved competence) will be shared by UKG policy leads with other Common Framework Parties for comment as soon as practicable once received from the WTO. The UKG lead will consult with SG, WG and NIE officials on the most appropriate involvement of SG, WG and NIE officials related to issues relevant to their devolved responsibilities.
- 8.10. For interventions in an area of devolved competence, the UKG GPA lead will involve relevant officials of the other Common Framework Parties as fully as possible in the intervention process and seek to agree the approach and wording prior to the GPA Committee meeting. This is to ensure consistency of the UK's membership 'voice'. SG, WG and NIE commit to providing timely information to support UK interventions, engagement and notifications as needed.
- 8.11. UKG leads are responsible for distribution of, and final clearance for, any GPA Committee materials and sharing updates and information with other Common Framework Parties following GPA Committee meetings.

9. Roles and responsibilities of each Party to the Common Framework

- 9.1. The Parties confirm their commitment to consult and exchange information on matters which will impact upon another of the Parties in relation to the handling of policy issues on public procurement, including any proposals to legislate, in a timely and cooperative manner, and to give appropriate consideration to the views of each other. There will be regular consultation between public procurement officials from the Parties to ensure that there is effective cooperation between the Parties and that the business of all operates effectively and efficiently in relation to these matters. To this end and unless agreed otherwise, there will be a monthly Common Framework Working Group meeting between officials of the Parties, normally by teleconference, to discuss general operational matters.
- 9.2. In accordance with the coordination mechanisms set out in the MoU, advance notification of and consultation on policy initiatives and associated announcements likely to impact upon one or more of the Parties, as well as all legislative proposals relating to public procurement (including subordinate legislation), will normally take place between officials not less than

one month prior to the announcement. In the case of legislative proposals, including subordinate legislation, advance notification and consultation will normally take place at least three months prior to the introduction of primary legislation and the making of secondary legislation.

- 9.3. In addition to official-level engagement, Ministers from the Parties will continue to correspond in writing as appropriate.
- 9.4. In accordance with the MoU, all Parties will also encourage joint working by, for example, inviting officials of the other Parties to joint working groups which may be of interest to them.
- 9.5. The monthly Working Group and twice-yearly Liaison Group described in paras 8.3 and 8.4 above will provide Parties with the opportunity to consult on any matters relating to the operation of this Common Framework or the furtherance of its objectives.

10. Roles and responsibilities of existing or new bodies

- 10.1. External bodies do not currently have any role and a future role is not anticipated except as engaged in the Review and Amendment mechanism (see below).
- 10.2. Each of the Parties will continue to consult existing third parties/groups on matters of procurement policy, and significant policy changes will be subject to engagement with key stakeholders including representative sector groups. There is also an option to consult such parties/groups on amendments to the Common Framework.

11. Monitoring and enforcement

- 11.1. The twice-yearly Common Framework Liaison Group meeting will provide for full proper consultation and cooperation between the Parties and assess:
 - intergovernmental cooperation and collaboration as a result of the Common Framework
 - whether Parties are implementing and complying with the Common Framework
 - whether divergence has taken place in contravention of the Framework principles
 - the impact of divergence across the UK
 - if a change is required to the Common Framework as a result of any dispute
- 11.2. The outcome of this meeting will be used to inform joint decision-making going forward and the next review and amendment process. If there is an unresolved disagreement, the dispute avoidance and resolution mechanism should be used.

12. Review and amendment mechanism

- 12.1. The Common Framework, and the functioning of intergovernmental relations generally, will be reviewed after one year of its coming into operation, and every three years thereafter. Any of the Parties may request an additional ('exceptional') review if they consider it necessary (for example to propose new provisions as the relationship develops).
- 12.2. This Review and Amendment Mechanism (RAM) ensures the Common 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.

12.3. The RAM relies on consensus at each stage of the process from the Ministers responsible for the policy areas covered by the Common Framework.

12.4. At the outset of the review stage, Parties to the Common Framework must agree timelines for the process, including the possible amendment stage.

12.5. If agreement is not reached in either the review or amendment stage, Parties to the Common Framework can raise it as a dispute through the Common Framework's dispute avoidance and resolution mechanism.

12.6. **Review Stage**

- After the initial review following the first year of operation, a periodic review of the Common Framework will take place every three years, in line with official or ministerial level meetings.
 - The period of three years starts from the conclusion of a periodic review and any amendment stages that follow.
 - During the periodic review, Parties to the Common Framework will discuss whether the governance and operational aspects of the Common Framework are working effectively, and whether decisions made over the previous three years suggest the Common Framework needs to be updated.
- An exceptional review of the Common Framework is triggered by a 'significant issue'.
 - A 'significant issue' could be time sensitive or fundamentally impact the operation and/or the scope of the Common Framework.
 - The exceptional review may include a review of governance structures if all Parties agree it is required. Otherwise, these issues are 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 from date of that agreement for both review types (for example, it will be three years until the next periodic review and at least six months until the same significant issue can trigger an exceptional review).

12.7. **Amendment Stage**

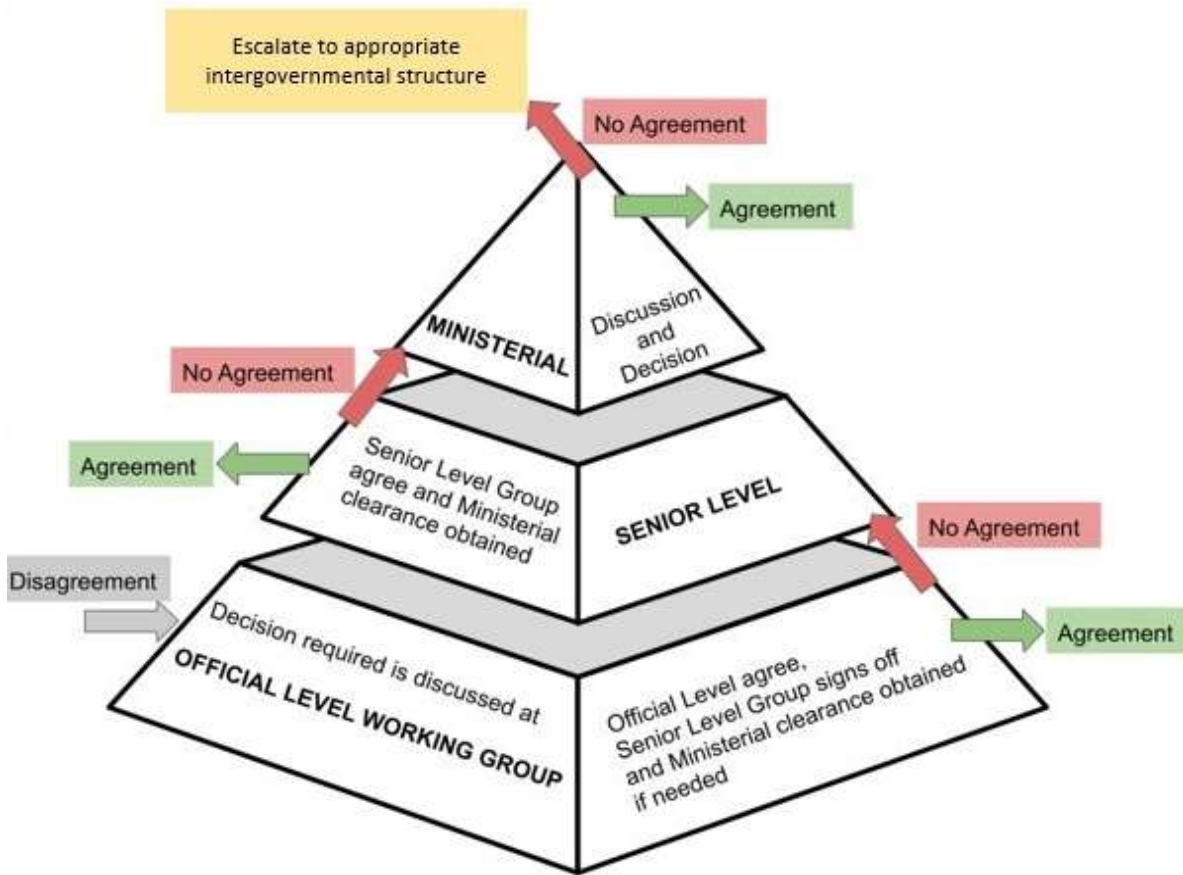
- Following agreement that all Parties wish to enter the amendment stage, Parties will enter into discussion around the exact nature of the amendment. This can either be led by one Party to the Common Framework or all.
- If an amendment is deemed necessary during either type of review, the existing Common Framework will remain in place until a final amendment has been agreed.
- All amendments to the Common Framework must be agreed by all Parties and a new non-legislative agreement signed by all Parties.
- If Parties cannot agree whether or how the Common Framework should be amended this may become a disagreement and as such could be raised through the Common Framework's dispute avoidance and resolution mechanism.

Any changes to this Common Framework must be agreed unanimously by ministers in writing.

13. Dispute resolution

- 13.1. A difference may arise in cases where one or more of the Parties consider that another of the Parties has taken or intends to take an action which does not adhere to the provisions set out in the Common Framework. This is termed a 'disagreement'. A disagreement between Parties of this Common Framework becomes a 'dispute' when it enters the formal dispute avoidance and resolution process set out in the overarching MoU on Devolution that is the subject of the ongoing Intergovernmental Relations Review.
- 13.2. The main intention of the Common Framework is to provide a framework for full and proper consultation and cooperation. The Parties intend that this will minimise the chances of disagreements and disputes occurring. Where differences do arise, the Parties should endeavour in good faith to resolve them at the earliest and lowest possible level, through the general framework for consultation set out in the Common Framework, the monthly official level Working Group meetings and with the involvement of senior officials if necessary, to avoid unnecessary escalation and the invoking of the dispute resolution mechanism in the overarching MoU on devolution.
- 13.3. If a change is required to the Common Framework as a result of any dispute it will be referred to the twice-yearly Common Framework Liaison Group meeting, or if necessary an extraordinary Liaison Group meeting will be called.
- 13.4. If it is not possible to resolve a difference at the lowest level, a disagreement may be triggered by one or more of the Parties. In such a case, the complaining Party or Parties will notify the other Parties in writing, detailing the disagreement and establishing the reasons for invoking the Common Framework's formal dispute avoidance and resolution process. This mechanism will be utilised only when genuine agreement cannot be reached and divergence would impact on the ability to meet the Frameworks Principles.
- 13.5. In the first instance, a meeting will be convened involving officials from each of the Parties and, if appropriate, the Parties' respective legal departments. The purpose of such a meeting will be to identify a course of action acceptable to all of the Parties, in accordance with the mechanisms and principles set out in the Common Framework and the MoU. If no mutually acceptable resolution is identified during this meeting, a further meeting of senior officials, at deputy director or director level, will be convened with a view to identifying a mutually acceptable resolution.
- 13.6. In the event that senior officials are unable to find a mutually acceptable resolution, the disagreement may be escalated to the Parties' respective Ministers, who may provide a steer to their officials for further engagement. At this point or subsequent to this, Ministers may also, subject to mutual agreement, choose to engage informally at pre-existing Ministerial fora or to convene a formal quadrilateral meeting.
- 13.7. Where no satisfactory resolution is found regarding a disagreement, despite the best endeavours of the Parties to do so via the procedures set out in the Common Framework, then a dispute may be referred to the appropriate intergovernmental structures.

13.8. The below diagram states the levels of escalation of a disagreement to a dispute and the interaction between each level:



14. Implementation

14.1. An exchange of ministerial letters will formalise arrangements once Parties have provided final confirmation.

Annex A: Common Framework for Public Procurement Officials Groups – Terms of Reference

	Common Framework Working Group	Common Framework Liaison Group
Purpose	The Public Procurement Common Framework Working Group (“the Working Group”) provides a vehicle for the Parties to the Common Framework to discuss matters affecting public procurement at an early stage of any relevant proposals or other developments at international and domestic level.	The Public Procurement Common Framework Liaison Group (“the Liaison Group”) provides for full proper consultation and cooperation between the Parties, to facilitate decision-making, monitoring, enforcement, and review and amendment of the Common Framework.
Timing	Monthly	Biannually, or by exception
Role of Group	<p><u>General</u> The Working Group will provide a monthly forum for:</p> <ul style="list-style-type: none"> • Discussion on the development of policies and legislation. • Consultation and exchange of information on public procurement where there may be an impact with other Parties. • Procurement-related proceedings. <p><u>Decision making</u> Parties will discuss any planned approaches that are likely to impact on other parties and track any decisions in Working Group minutes, in line with the decision making processes outlined in the Common Framework.</p> <p>Not in scope of this Group are-</p> <p><u>Review and amendment</u> After the first year of operation, a periodic review of the Common Framework will take place every three years by the</p>	<p><u>Monitoring and enforcement</u> The Liaison Group will provide a biannual forum to assess:</p> <ul style="list-style-type: none"> • intergovernmental cooperation and collaboration as a result of the Common Framework. • whether Parties are implementing and complying with the Common Framework. • whether divergence has taken place in contravention of the Common Framework principles. • the impact of divergence across the UK. • if a change is required to the Common Framework as a result of any dispute. <p><u>Decision making</u> The outcome of this meeting will be used to inform joint decision-making going forward and the next review. If there is an unresolved disagreement, the dispute avoidance and resolution mechanism should be used. Any substantial changes to the Common Framework will be subject to ministerial clearance and scrutiny by the relevant legislature committees.</p>

	<p>Common Framework Liaison Group, in line with official or ministerial level meetings.</p> <p><u>Dispute avoidance and resolution</u> If the Common Framework Working Group recognises that a change is required to the Common Framework as a result of any dispute, it will be referred to the twice-yearly Common Framework Liaison Group meeting, or if necessary an extraordinary Common Framework Liaison Group meeting will be called.</p>	<p><u>Review and amendment</u> After the initial review following the first year of operation, a periodic review of the Common Framework will take place every three years, in line with official or ministerial level meetings.. Any substantial changes to the Common Framework will be subject to ministerial clearance and scrutiny of the relevant administrations legislative committees.</p>
Membership	<p>Officials from public procurement policy teams in Northern Ireland, Welsh Government, Scottish Government and UK Government. Officials attending may vary depending on the topics being discussed.</p> <p>Parties may invite other relevant colleagues and legal teams if needed. Prior notice should be given to other parties when responding to the Chair's invitation.</p>	<p>Officials from public procurement policy teams in Northern Ireland, Welsh Government, Scottish Government and UK Government and other relevant colleagues as appropriate.</p> <p>Parties may invite other relevant colleagues and legal teams if needed. Prior notice should be given to other parties when responding to the Chair's invitation.</p>
Roles and Responsibilities of Parties	<p>The membership of the Working Group will commit to:</p> <ul style="list-style-type: none"> ● undertaking the role of chair (on a rotating basis). ● representatives attending all scheduled meetings. ● disseminating the role of the Working Group within their administrations. ● sharing topics of discussion and where necessary accompanying papers in advance of meetings to allow subject matter experts to attend and enable an informed discussion. ● sharing all communications and information across all the Working Group members. 	<p>The membership of the Liaison Group will commit to:</p> <ul style="list-style-type: none"> ● undertaking the role of chair (on a rotating basis). ● representatives attending all scheduled meetings. ● disseminating the role of the Liaison Group within their administrations. ● sharing all communications and information, including any accompanying papers, across all the Liaison Group members in advance of the meeting to allow subject matter experts to attend and to enable an informed discussion. ● where possible, making decisions and taking action in a

	<ul style="list-style-type: none"> • where possible making timely decisions and taking action to enable policy development to move forward. • provide members with reasonable notification and input into any communications regarding procurement policies and the Common Framework. • notifying members of the Working Group, as soon as practical, if any matter arises which may be deemed to affect the Common Framework. <p>Members of the Working Group will expect:</p> <ul style="list-style-type: none"> • that each member will be provided with complete, accurate and meaningful information in a timely manner. • to be given reasonable time to make key decisions to allow policy development to move forward. • to be alerted to potential risks and issues that could impact the Common Framework, as they arise. • open and honest discussions in the spirit of transparency. 	<p>timely manner so as to not hold up policy development.</p> <ul style="list-style-type: none"> • notifying members of the Liaison Group, as soon as practical, if any matter arises which may be deemed to affect the Common Framework. <p>Members of the Liaison Group will expect:</p> <ul style="list-style-type: none"> • that each member will be provided with complete, accurate and meaningful information in a timely manner. • to be given reasonable time to make key decisions and to allow proper discussion and consideration. • to be alerted to potential risks and issues that could impact the Common Framework, as they arise. • open and honest discussions in the spirit of transparency. • outcomes from the ongoing 'health checks' of the overall status and 'health' of the Common Framework to be discussed and properly addressed.
<p>Meetings</p>	<ul style="list-style-type: none"> • All meetings will be chaired on a rotating basis between the Parties of the Common Framework. • A meeting quorum will be at least one member from each of the Parties to the Common Framework. • Meeting venue and times will be organised by the Party responsible for chairing the meeting. • Meeting agendas will be provided by the Party responsible for Chairing at least one week in advance of the meeting. • Meeting minutes will be provided within one week of the 	<ul style="list-style-type: none"> • All meetings will be chaired on a rotating basis between the Parties of the Common Framework. • A meeting quorum will be at least one member from each of the Parties to the Common Framework. • Meeting venue and times will be organised by the Party responsible for chairing the meeting. • Meeting agendas will be provided by the Party responsible for Chairing at least one week in advance of the meeting. • Meeting minutes will be provided, within one week of the

	<p>subject meeting by the Party that chaired the meeting and focus on collective decisions and action points, not contributions.</p> <ul style="list-style-type: none"> • Meetings will be held monthly. • If required, subgroup meetings will be convened outside of these times at a time convenient to subgroup members. 	<p>meeting, by the Party that chaired the meeting, and focus on collective discussions and action points, not contributions.</p> <ul style="list-style-type: none"> • Meetings will be held twice a year, or by exception. • If required, subgroup meetings will be convened outside of these times at a time convenient to subgroup members.
Amendment, Modification or Variation	These Terms of Reference may be amended, varied or modified in writing after consultation and agreement by ministers of the Parties to the Common Framework.	These Terms of Reference may be amended, varied or modified in writing after consultation and agreement by ministers of the Parties to the Common Framework.
Term	These Terms of Reference are effective from [date of final confirmation] and will be ongoing until terminated by agreement between the Parties.	These Terms of Reference are effective from [date of final confirmation] and will be ongoing until terminated by agreement between the Parties.

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