

# Agenda – Legislation, Justice and Constitution Committee

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Meeting Venue:	For further information contact:
Video Conference via Zoom	P Gareth Williams
Meeting date: 22 November 2021	Committee Clerk
Meeting time: 13.30	0300 200 6565
	<a href="mailto:SeneddLJC@senedd.wales">SeneddLJC@senedd.wales</a>

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## Informal pre-meeting (13.00–13.30)

### 1 Introductions, apologies and substitutions

13.30

### 2 The Commission on Justice in Wales report: Evidence session with Lord Thomas

13.30–14.30

(Pages 1 – 20)

Lord Thomas of Cwmgiedd, former Chair of the Commission on Justice in  
Wales

[Commission on Justice in Wales report – October 2019](#) (PDF 5.9MB)

LJC(6)–14–21 – Paper 1 – Briefing

Attached Documents:

LJC(6)–14–21 – Paper 1 – Briefing

### 3 Instruments that raise no reporting issues under Standing Order 21.2 or 21.3

14.30–14.35

(Pages 21 – 27)



Attached Documents:

LJC(6)-14-21 – Paper 2 – Statutory instruments with clear reports

Draft affirmative resolution instruments

- 3.1 **SL(6)073 – The Corporate Joint Committees (Amendment of the Well-being of Future Generations (Wales) Act 2015) Regulations 2021**
  
- 3.2 **SL(6)074 – The National Parks and Access to the Countryside Act 1949 (Meaning of Public Body) (Wales) Regulations 2021**
  
- 3.3 **SL(6)075 – The Equality Act 2010 (Authorities subject to a duty regarding Socio-economic Inequalities) (No. 2) (Wales) Regulations 2021**
  
- 3.4 **SL(6)076 – The Child Poverty Strategy (Corporate Joint Committees) (Wales) Regulations 2021**
  
- 3.5 **SL(6)078 – The Environment (Wales) Act 2016 (Public Authorities subject to the Biodiversity and Resilience of Ecosystems Duty) Regulations 2021**
  
- 3.6 **SL(6)079 – The Children and Families (Wales) Measure 2010 (Amendment to the List of Welsh Authorities) Regulations 2021**
  
- 3.7 **SL(6)080 – The Corporate Joint Committees (General) (No. 2) (Wales) Regulations 2021**

**3.8 SL(6)081 – The Countryside and Rights of Way Act 2000 (Meaning of Public Body) (Wales) Regulations 2021**

**4 Instruments that raise issues to be reported to the Senedd under Standing Order 21.2 or 21.3**

14.35–14.40

Draft affirmative resolution instruments

**4.1 SL(6)077 – The Welsh Language Standards (No.1) Regulations 2015 (Amendment) Regulations 2021**

(Pages 28 – 30)

[Regulations](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-14-21 – Paper 3 – Draft report

**5 Papers to note**

14.40–14.45

**5.1 Correspondence from the First Minister: British–Irish Council Summit in Wales**

(Pages 31 – 32)

Attached Documents:

LJC(6)-14-21 – Paper 4 – Letter from the First Minister, 15 November 2021

**6 Motion under Standing Order 17.42 to resolve to exclude the public from the remainder of the meeting**

14.45

**7 Commission on Justice in Wales report – consideration of evidence**  
14.45–14.55

**8 Supplementary Legislative Consent Memorandum on the Police, Crime, Sentencing and Courts Bill – consideration of draft report**  
14.55–15.05 (Pages 33 – 40)

Attached Documents:

LJC(6)–14–21 – Paper 5 – Draft report

LJC(6)–14–21 – Paper 6 – Letter from the Minister for Social Justice, 12 November 2021

**9 Legislative Consent Memoranda on the Skills and Post–16 Education Bill – consideration of draft report**  
15.05–15.15 (Pages 41 – 54)

Attached Documents:

LJC(6)–14–21 – Paper 7 – Draft report

**10 Legislative Consent Memorandum on The Leasehold Reform (Ground Rent) Bill – consideration of draft report**  
15.15–15.30 (Pages 55 – 81)

Attached Documents:

LJC(6)–14–21 – Paper 8 – Draft report

LJC(6)–14–21 – Paper 9 – Letter from the Chair of the Local Government and Housing Committee to the Minister for Climate Change, 18 November 2021

LJC(6)–14–21 – Paper 10 – Letter from the Chair of the Local Government and Housing Committee to the Business Committee, 18 November 2021

LJC(6)–14–21 – Paper 11 – Letter from the Minister for Climate Change, 17 November 2021

LJC(6)–14–21 – Paper 12 – Letter to the Minister for Climate Change, 15 November 2021

LJC(6)-14-21 – Paper 13 – Letter to the Business Committee, 29 October 2021

## **11 Legislative Consent Memorandum on the Health and Care Bill – consideration of draft report**

15.30–15.40

(Pages 82 – 102)

Attached Documents:

LJC(6)-14-21 – Paper 14 – Draft report

## **12 Common frameworks: Public Health Protection and Health Security Framework**

15.40–15.50

(Pages 103 – 174)

LJC(6)-14-21 – Paper 17 – Research Service briefing

Attached Documents:

LJC(6)-14-21 – Paper 15 – Letter from the Minister for Health and Social Services, 28 October 2021

LJC(6)-14-21 – Paper 16 – Outline agreement

LJC(6)-14-21 – Paper 17 – Research Service briefing

## **13 Engagement proposal – Access to Justice**

15.50–16.00

(Pages 175 – 179)

Attached Documents:

LJC(6)-14-21 – Paper 18 – Engagement proposal

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## Statutory Instruments with Clear Reports 22 November 2021

### **SL(6)073 – The Corporate Joint Committees (Amendment of the Well-being of Future Generations (Wales) Act 2015) Regulations 2021**

#### **Procedure: Affirmative**

Corporate Joint Committees are corporate bodies, established via regulations made under the Local Government and Elections (Wales) Act 2021, and consist of those principal councils (and in some circumstances National Park authorities) in Wales which are specified in the establishment regulations.

These [Regulations](#) amend the Well-being of Future Generations (Wales) Act 2015 to:

- provide that Corporate Joint Committees are liable to comply with the requirements set out in that Act; and
- specify when a Corporate Joint Committee must set and review its well-being objectives.

These Regulations form a package of amendments to legislation that will underpin all Corporate Joint Committees and put in place the necessary legislative framework for the effective administration and governance of Corporate Joint Committees.

**Parent Act:** Local Government and Elections (Wales) Act 2021

**Date Made:**

**Date Laid:**

**Coming into force date:** 03 December 2021

### **SL(6)074 – The National Parks and Access to the Countryside Act 1949 (Meaning of Public Body) (Wales) Regulations 2021**

#### **Procedure: Affirmative**

Corporate Joint Committees are corporate bodies, established via regulations made under the Local Government and Elections (Wales) Act 2021, and consist of those principal councils



(and in some circumstances National Park authorities) in Wales which are specified in the establishment regulations.

These [Regulations](#) amend the National Parks and Access to the Countryside Act 1949 so that when Corporate Joint Committees exercise or perform any function in relation to, or affecting, land in a National Park they must have regard to the following purposes:

- (a) conserving and enhancing the natural beauty, wildlife and cultural heritage of the area; and
- (b) promoting opportunities for the understanding and enjoyment of the special qualities of the area by the public.

These Regulations form a package of amendments to legislation that will underpin all Corporate Joint Committees and put in place the necessary legislative framework for the effective administration and governance of Corporate Joint Committees.

**Parent Act:** Local Government and Elections (Wales) Act 2021

**Date Made:**

**Date Laid:**

**Coming into force date:** 03 December 2021

## **SL(6)075 – The Equality Act 2010 (Authorities subject to a duty regarding Socio-economic Inequalities) (No. 2) (Wales) Regulations 2021**

### **Procedure: Affirmative**

Corporate Joint Committees are corporate bodies, established via regulations made under the Local Government and Elections (Wales) Act 2021, and consist of those principal councils (and in some circumstances National Park authorities) in Wales which are specified in the establishment regulations.

These [Regulations](#) amend section 1 of Equality Act 2010 (“the Act”) in order to add Corporate Joint Committees, to the list of relevant authorities subject to the public sector socio-economic inequalities duty.

The Regulations form a package of amendments to legislation that will underpin all Corporate Joint Committees and put in place a legislative framework for the administration and governance of Corporate Joint Committees.

**Parent Act:** Equality Act 2010



Senedd Cymru  
**Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad**  
—  
Welsh Parliament  
**Legislation, Justice and Constitution Committee**

**Date Made:**

**Date Laid:**

**Coming into force date:** 03 December 2021

## **SL(6)076 – The Child Poverty Strategy (Corporate Joint Committees) (Wales) Regulations 2021**

### **Procedure: Affirmative**

Corporate Joint Committees are corporate bodies established via regulations made under the Local Government and Elections (Wales) Act 2021, and consist of those principal councils (and in some circumstances National Park authorities) in Wales which are specified in the establishment regulations.

These [Regulations](#) are a result of the inclusion of Corporate Joint Committees in the list of relevant authorities required to make and demonstrate their contribution towards the eradication of child poverty in Wales, as provided by the Children and Families (Wales) (Measure) 2010 (Amendment to the List of Welsh Authorities) Regulations 2021.

The Regulations set out the requirements in terms of the preparation, review, renewal, publication and inspection of a child poverty strategy which must be prepared by Corporate Joint Committees under section 2 of the Children and Families (Wales) Measure 2010. The Regulations set out the duration of the first and subsequent child poverty strategies to be prepared by a Corporate Joint Committee, the timing and manner of their publication and inspection, the requirements in terms of reviewing the child poverty strategy and the consultation requirements.

The Regulations also amend the Child Poverty Strategy (Wales) Regulations 2011 so as to dis-apply those regulations to Corporate Joint Committees.

These Regulations form a package of amendments to legislation that will underpin all Corporate Joint Committees and put in place the necessary legislative framework for the effective administration and governance of Corporate Joint Committees.

**Parent Act:** Children and Families (Wales) Measure 2010, Local Government and Elections (Wales) Act 2021

**Date Made:**

**Date Laid:**

**Coming into force date:** 03 December 2021



Senedd Cymru

**Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad**

—  
Welsh Parliament

**Legislation, Justice and Constitution Committee**

## **SL(6)078 – The Environment (Wales) Act 2016 (Public Authorities subject to the Biodiversity and Resilience of Ecosystems Duty) Regulations 2021**

### **Procedure: Affirmative**

Corporate Joint Committees are corporate bodies, established via regulations made under the Local Government and Elections (Wales) Act 2021, and consist of those principal councils (and in some circumstances National Park authorities) in Wales which are specified in the establishment regulations.

These [Regulations](#) amend the Environment (Wales) Act 2016 (anaw 3) to include Corporate Joint Committees within the definition of “public authority” in section 6(9) of that Act, to make them subject to the biodiversity and resilience of ecosystems duty (“the biodiversity duty”). As a result of these Regulations, Corporate Joint Committees will be required to consider the Nature Recovery Action Plan for Wales when making decisions.

**Parent Act:** Local Government and Elections (Wales) Act 2021

**Date Made:**

**Date Laid:**

**Coming into force date:** 03 December 2021

## **SL(6)079 – The Children and Families (Wales) Measure 2010 (Amendment to the List of Welsh Authorities) Regulations 2021**

### **Procedure: Affirmative**

Corporate Joint Committees are corporate bodies established via regulations made under the Local Government and Elections (Wales) Act 2021, and consist of those principal councils (and in some circumstances National Park authorities) in Wales which are specified in the establishment regulations.

These [Regulations](#) amend the Children and Families (Wales) Measure 2010 to add Corporate Joint Committees to the list of relevant authorities required to make and demonstrate their contribution towards the eradication of child poverty in Wales. The Regulations make Corporate Joint Committees subject to the same duties as principal councils in Wales in this regard. Corporate Joint Committees will be required therefore to prepare and publish a



strategy for contributing to the eradication of child poverty in Wales and set out the actions they intend to take to achieve the objectives within the strategy.

These Regulations form a package of amendments to legislation that will underpin all Corporate Joint Committees and put in place the necessary legislative framework for the effective administration and governance of Corporate Joint Committees.

**Parent Act:** Local Government and Elections (Wales) Act 2021

**Date Made:**

**Date Laid:**

**Coming into force date:** 03 December 2021

## **SL(6)080 – The Corporate Joint Committees (General) (No. 2) (Wales) Regulations 2021**

### **Procedure: Affirmative**

These [Regulations](#) make a number of provisions in relation to Corporate Joint Committees established under Part 5 of the Local Government and Elections (Wales) Act 2021.

Corporate Joint Committees are corporate bodies, established via regulations in March 2021, and consist of those principal councils in Wales which are specified in the regulations establishing each Corporate Joint Committee. In some circumstances National Park authorities in Wales are also included in a Corporate Joint Committee; where this is the case this will also be set out in the relevant establishment regulations. In addition, Corporate Joint Committees will be able to co-opt individuals to be members of the Corporate Joint Committee. There are currently four Corporate Joint Committees established in Wales: the Mid Wales Corporate Joint Committee, the North Wales Corporate Joint Committee, the South West Wales Corporate Joint Committee and the South East Wales Corporate Joint Committee.

The overall intent in establishing Corporate Joint Committees is that a Corporate Joint Committee will be treated as part of or a member of the 'local government family' and largely subject to the same or similar powers and duties as local authorities in the way that they operate and are governed. The General No.2 Regulations form a package of standalone provision and amendments to legislation that will underpin all Corporate Joint Committees and put in place the necessary legislative framework for the effective administration and governance of a Corporate Joint Committee.

The provisions within these General No. 2 Regulations:

- a. provide for the commencement of the various provisions within the Regulations;



- b. provide that Corporate Joint Committees in Wales must appoint certain executive officers, namely a Chief Executive Officer, a Chief Finance Officer and a Monitoring Officer. They also make provision about certain functions to be exercised by each office holder within the Corporate Joint Committee and extend the remit of the Independent Remuneration Panel of Wales to CJs and their members;
- c. make provision in relation to staff. For example, they extend the definition of a 'proper officer' in the Local Government Act 1972 to include Corporate Joint Committees and also apply provisions in Part 1 of the Local Government and Housing Act 1989 to Corporate Joint Committees, providing that certain posts in Corporate Joint Committees are politically restricted. Holders of such posts may not be members of a Corporate Joint Committee, a county or county borough council in Wales or a fire and rescue authority in Wales;
- d. make provision permitting Corporate Joint Committees to make arrangements for their functions to be discharged by sub-committees, staff or in conjunction with other Corporate Joint Committees or with county and county borough councils in Wales;
- e. make detailed provision about meetings and proceedings of Corporate Joint Committees, for example about the means by which meetings may take place, public access to meetings, publication of papers and access to related documentation; and
- f. make a number of miscellaneous and consequential amendments to both primary and secondary legislation (including the regulations establishing the Mid Wales, North Wales, South West Wales and South East Wales Corporate Joint Committees) as a result of the establishment of Corporate Joint Committees and the other provisions in these Regulations.

**Parent Act:** Local Government and Elections (Wales) Act 2021

**Date Made:**

**Date Laid:**

**Coming into force date:** 03 December 2021



## **SL(6)081 – The Countryside and Rights of Way Act 2000 (Meaning of Public Body) (Wales) Regulations 2021**

### **Procedure: Affirmative**

Corporate Joint Committees are corporate bodies, established via regulations made under the Local Government and Elections (Wales) Act 2021, and consist of those principal councils (and in some circumstances National Park authorities) in Wales which are specified in the establishment regulations.

These [Regulations](#) amend the Countryside and Rights of Way Act 2000 so that when Corporate Joint Committees exercise or perform any function in relation to, or affecting, land in an area of outstanding natural beauty they shall have regard to the purposes of conserving and enhancing the natural beauty of the area.

These Regulations form a package of amendments to legislation that will underpin all Corporate Joint Committees and put in place the necessary legislative framework for the effective administration and governance of Corporate Joint Committees.

**Parent Act:** Local Government and Elections (Wales) Act 2021

**Date Made:**

**Date Laid:**

**Coming into force date:** 03 December 2021



# Agenda Item 4.1

## **SL(6)077 - The Welsh Language Standards (No.1) Regulations 2015 (Amendment) Regulations 2021**

### **Background and Purpose**

[The Welsh Language Standards \(No.1\) Regulations 2015 \(Amendment\) Regulations 2021](#)

("the Regulations") are made under the powers in sections 26, 27, 39 and 150(5) of the Welsh Language (Wales) Measure 2011 ("the Measure").

Section 26 of the Measure provides Welsh Ministers with the powers to make regulations specifying the standards in relation to the Welsh language, including service delivery standards, policy making standards, operational standards, promotional standards and record keeping standards.

Section 27 of the Measure provides powers for the specification of standards in relation to the keeping of records on complaints concerning the Welsh language.

Section 39 of the Measure provides that standards specified by the Welsh Minister under Section 26 of the Measure may be specifically applicable to certain persons if the Welsh Ministers authorise the commissioner to give that person a compliance notice to comply with the standard.

Section 150 of the Measure requires that regulations made under section 26 of the Measure will be subject to the affirmative resolution procedure in the Senedd.

The Welsh Language Standards (No. 1) Regulations 2015 ("the 2015 Regulations") specified standards in relation to the conduct of the Welsh Ministers, county council and county borough councils and National Park authorities. The 2015 Regulations also authorise (subject to certain exceptions) the Welsh Language Commissioner to give a compliance notice, in relation to standards specified by the No.1 Regulations, to those bodies.

The Regulations amend the 2015 Regulations to bring Corporate Joint Committees, established under Part 5 of the Local Government and Elections (Wales) Act 2021, within the scope of those specified standards and enable the Commissioner to make a compliance notice in respect of that body.

The amendments within the Regulations:

- a. Insert Corporate Joint Committees into regulation 1(4) of the 2015 Regulations under the definition of "*body*."
- b. Insert the definition of a "Corporate Joint Committee" into the interpretation provision in regulation 1(4) of the 2015 Regulations.
- c. Inserts Corporate Joint Committees into regulation 3(1) of the 2015 Regulations.



Subject to approval by the Senedd, the Regulations will be made by the Minister for Finance and Local Government and come into force on 3 December 2021.

## Procedure

Draft Affirmative.

The Welsh Ministers have laid a draft of the Regulations before the Senedd. The Welsh Ministers cannot make the Regulations unless the Senedd approves the draft Regulations.

## Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

## Merits Scrutiny

The following point is identified for reporting under Standing Order 21.3 in respect of this instrument.

### **1. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd**

We note the following in the Explanatory Note dealing with the Regulatory Impact Assessment:

*“These Regulations are connected with Regulations which establish certain corporate joint committees under Part 5 of the Local Government and Elections (Wales) Act 2021. The Welsh Ministers’ Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to the Regulations which establish corporate joint committees and connected regulations. As a result a regulatory impact assessment has been prepared.”*

However, we note also the following from section 6 of the Explanatory Memorandum:

*“A separate regulatory impact assessment has not been prepared in respect of these regulations. However, the regulatory impact assessment to accompany The Mid Wales Corporate Joint Committee Regulations 2021, The North Wales Corporate Joint Committee Regulations 2021, The South East Wales Corporate Joint Committee Regulations 2021 and The South West Wales Corporate Joint Committee Regulations 2021 assessed the potential costs and benefits associated with establishing the Corporate Joint Committees through regulations. In assessing the potential costs and benefits the RIA considers the overarching policy intent that Corporate Joint Committees should be treated as part of the ‘local government family’ including the application of wider public body duties such as those in the Welsh Language (Wales) Measure 2011 and the Welsh Language Standards (No.1) Regulations 2015 (Amendment) Regulations 2021.*



*It was assumed for the purpose of the RIA that exercising such duties will be something which was undertaken by the corporate body function of a Corporate Joint Committees and the costs for exercising the public body duties within these Regulations are included in the range of costs provided for the overall corporate body function in the RIA."*

Whilst no direct RIA has been conducted for these Regulations, we note the consideration of their potential regulatory impact as set out above. However, the particular assertion of the Explanatory Note stating, "As a result a regulatory impact assessment has been prepared", could be confusing to the citizen if consulting the Regulations in isolation of the Explanatory Memorandum.

## **Welsh Government response**

A Welsh Government response is not required.

### **Legal Advisers**

**Legislation, Justice and Constitution Committee**

**16 November 2021**



Senedd Cymru

**Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad**

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Welsh Parliament **Pack Page 30**

**Legislation, Justice and Constitution Committee**

Huw Irranca-Davies MS  
Chair  
Legislation, Justice and Constitution Committee  
Senedd Cymru

Llywodraeth Cymru  
Welsh Government

[SeneddLJC@senedd.wales](mailto:SeneddLJC@senedd.wales)

15 November 2021

Dear Huw,

**Inter-Institutional Relations Agreement: British-Irish Council Summit in Wales**

I am writing in accordance with the inter-institutional relations agreement to notify you of the thirty sixth Summit meeting of the British-Irish Council which I will be hosting in Wales later this week.

The Summit will take place in a hybrid format, with both virtual and in person attendees. The Minister for Education and Welsh Language and I will be representing the Welsh Government.

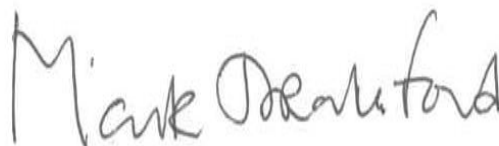
As well as the usual opportunity for a general update on issues, the Summit will focus on supporting early years education and childcare within Indigenous, Minority and Lesser-Used (IML) Language communities.

Prior to the Summit the Minister for Education and Welsh Language will host a virtual discussion for Ministers on IML Language acquisition in early years.

A communiqué will be agreed by the Council at the Summit detailing the discussions held at the Summit and at the Ministerial discussion of the IML worksector, and I will write again following the Summit to share these with you. I will also update the Senedd with a statement on the Summit next week.

I am copying this letter to the Minister for Education and Welsh Language, Chair of the Children, Young People and Education Committee and Chair of the Culture, Communications, Welsh Language, Sport and International Relations Committee.

Yours sincerely,



**MARK DRAKEFORD**

Bae Caerdydd • Cardiff Bay  
Caerdydd • Cardiff  
CF99 1SN

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:  
0300 0604400

[Gohebiaeth.Mark.Drakeford@llyw.cymru](mailto:Gohebiaeth.Mark.Drakeford@llyw.cymru)  
[Correspondence.Mark.Drakeford@gov.wales](mailto:Correspondence.Mark.Drakeford@gov.wales)

Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

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Ein cyf/Our ref MA-JH-3827/21

Huw Irranca-Davies MS  
Chair  
Legislation, Justice and Constitution Committee

12 November 2021

Dear Huw,

Thank you for the Committee report on the Legislative Consent Memorandum on the Police, Crime, Sentencing and Courts Bill, laid on 28 May.

I note the two recommendations you listed which I have responded to below:

**Recommendation 1:** The Minister should, in advance of the Senedd's debate on the relevant consent motion, provide an update to her letter of 28 September 2021 and advise whether an amendment is to be laid to the Bill requiring the Secretary of State to gain consent from the Welsh Ministers prior to exercising powers under clause 17 and 18 in relation to devolved Welsh authorities.

Response – A Supplementary Legislative Consent Memorandum (SLCM) was laid on 5 November. The Bill introduced the Serious Violence Duty clauses, which includes a power in clause 17 for the Secretary of State (SoS) to direct public bodies (including Devolved Welsh Authorities) to collaborate. As introduced, the Bill required the SoS to consult with Welsh Ministers before using the power of direction. The House of Lords agreed an amendment to clause 17 on Wednesday 27 October, which now means the SoS must obtain the consent of the Welsh Ministers prior to directing a devolved Welsh authority. As a result of that amendment, the Welsh Government is now satisfied with the level of protection and safeguards afforded in terms of the interaction with Devolved Welsh Authorities. Therefore, the SLCM recommends that the Senedd gives consent to the clauses related to the Serious Violence Duty, including clauses 9 and 18.

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:  
0300 0604400

Bae Caerdydd • Cardiff Bay  
Caerdydd • Cardiff  
CF99 1SN

[Gohebiaeth.Jane.Hutt@llyw.cymru](mailto:Gohebiaeth.Jane.Hutt@llyw.cymru)  
[Correspondence.Jane.Hutt@gov.wales](mailto:Correspondence.Jane.Hutt@gov.wales)

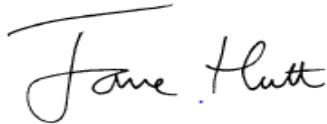
Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

**Recommendation 2:** The Minister should clarify why she believes clause 43 to be within the legislative competence of the Senedd and, if so, why the Senedd should give its consent to that clause.

Response – The inclusion of clause 43 was an administrative error. Clause 42 of the Bill should have been included instead as safeguarding issues fall within the legislative competence of the Senedd and are addressed in the Social Services and Well-being (Wales) Act 2014. It is my intention to record the correction when the relevant motion is debated in the Senedd.

Yours,

A handwritten signature in black ink that reads "Jane Hutt". The signature is written in a cursive style with a long horizontal line above the first few letters.

**Jane Hutt AS/MS**

Y Gweinidog Cyfiawnder Cymdeithasol  
Minister for Social

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Julie James MS  
Minister for Climate Change  
Welsh Government

18 November 2021

Dear Julie

**Supplementary Legislative Consent Memorandum (SLCM) on the Leasehold Reform (Ground Rent)  
Bill**

Following your letter of 11 November, we would be grateful if you could provide a further update on the SLCM on the Leasehold Reform (Ground Rent) Bill.

As the SLCM is yet to be laid, we are concerned that we will have insufficient time to consider it before reporting. The next scheduled meeting of our committee is 1 December, the day before the reporting deadline of 2 December. This timetable does not allow for meaningful scrutiny.

In order to plan the committee's approach to considering and reporting on the LCM and SLCM, we would be grateful if you could confirm the date on which you expect to lay a SLCM.

We would also be grateful if you could lay a SLCM in relation to the amendments made to the Bill on 20 July at your earliest convenience. As you know, standing order 29.2 (iii) stipulates that the Government should lay a LCM normally no later than two weeks after any relevant amendments are tabled. Nearly four months have now elapsed and the Bill is expected to receive Royal Assent shortly before Christmas. In your letter of 1 October, you stated that it would be more helpful to issue a SLCM once all amendments have been tabled. However, the decision to delay laying a SLCM has constrained our ability to scrutinise the relevant provisions in a timely manner. Given the extremely tight reporting deadline, we believe it would be more useful to Members if you were to issue a SLCM relating to the amendments tabled in July as soon as possible.

We would appreciate a response by 22 November.

I am copying this letter to Huw Irranca-Davies, Chair of the Legislation, Justice and Constitution Committee.

Yours sincerely

A handwritten signature in black ink that reads "John". The letters are cursive and connected.

John Griffiths MS

Chair

Cc. Huw Irranca-Davies, Chair of the Legislation, Justice and Constitution Committee

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.

By virtue of paragraph(s) vi of Standing Order 17.42

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Julie James AS/MS  
Y Gweinidog Newid Hinsawdd  
Minister for Climate Change



Llywodraeth Cymru  
Welsh Government

Huw Irranca-Davies MS  
Chair – Legislation, Justice and Constitutional Committee  
Senedd Cymru  
Cardiff Bay  
Cardiff  
CF99 1SN  
SeneddLJC@senedd.wales

16 November 2021

Dear Huw,

**Legislative Consent Memoranda on the UK Government's Leasehold Reform (Ground Rent) Bill and Building Safety Bill**

Thank you for your letter of 15 November seeking a written response to your questions on the legislative consent memoranda on the Leasehold Reform (Ground Rent) Bill and Building Safety Bill.

I am sorry that I was not able to attend the Committee's meeting on 15 November to provide evidence in person but trust that my responses in the attached annex will provide you with the information that you need in order to complete your reports.

I am copying this letter to John Griffiths MS, Chair of the Local Government and Housing Committee.

Yours sincerely

A handwritten signature in blue ink that reads "Julie James". The signature is written in a cursive, flowing style.

Julie James AS/MS  
Y Gweinidog Newid Hinsawdd  
Minister for Climate Change

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:  
0300 0604400

Bae Caerdydd • Cardiff Bay  
Caerdydd • Cardiff  
CF99 1SN

[Gohebiaeth.Julie.James@llyw.cymru](mailto:Gohebiaeth.Julie.James@llyw.cymru)  
[Correspondence.Julie.James@gov.Wales](mailto:Correspondence.Julie.James@gov.Wales)

Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

**Legislating in devolved areas:**

1. *Given the Welsh Government's overriding principle that legislation in devolved areas should be enacted by the Senedd can you set out your reason why this principle is not being followed in relation to all provisions in the Leasehold (Ground Rent) Bill and 35 clauses in the Building Safety Bill?*
  - i. *Can you confirm if it is your view that commonality can only be achieved via England and Wales legislation in both cases using UK Government Bills and can you clarify why Senedd legislation cannot be used to amend England and Wales legislation to achieve or retain commonality of approach if that is the Welsh Government's objective in these areas?*
  - ii. *Is the priority of your department to achieve a consistency of approach in these policy areas over and above the Welsh Government's principle that legislation in devolved areas should be made in Wales?*
  - iii. *What are your views on the cumulative constitutional implications of asking and allowing the UK Parliament to legislate in two wholly devolved areas?*

The reasons for allowing the UK Government to legislate in these two devolved areas are slightly different in the case of each. Taking the Leasehold Reform (Ground Rent) Bill ('the Ground Rent Bill') and Building Safety Bill in turn:

Leasehold Reform (Ground Rent) Bill

The UK Government's Ground Rent Bill is paving the way for the wider set of leasehold reforms set out in the Law Commission's recommendations. It can be viewed as the first piece in the creation of the very complex legislative jigsaw puzzle that is the wider leasehold reform programme. To create an entirely coherent set of legislative reforms in relation to leasehold, each element of the legislation must fit with the others. Whilst we have indicated in the Legislative Consent Memorandum (LCM) that we consider this Bill to be within the competence of the Senedd, it is entirely possible that some elements of the wider reform programme could fall outside the Senedd's competence. Therefore, it is only by working with the UK Government, and by using legislation made on a Wales and England basis, that we can ensure that all of the individual elements will fit together.

Furthermore, if we do not work collaboratively with the UK Government regarding the leasehold reform programme, when it comes to implementing some of the Law Commission's recommendations we could find that we are unable to legislate in Wales in relation to some matters due to issues of legislative competence. This would not be an acceptable situation in my view as it would potentially leave leaseholders in Wales worse off.

### Building Safety Bill

The extension of the parts of the Building Safety Bill to Wales (which we requested) presents an opportunity to respond to some of the issues raised by the Grenfell tragedy in advance of what would be possible if we waited for a Senedd Bill. Dame Judith Hackitt's independent report criticisms apply equally to Wales; for example it is the same 35 year old legislation (Building Act 1984), the same building control system that has been found wanting.

This government has made clear that whilst protecting the devolution settlement remains a critical priority and that our general principle is to legislate in the Senedd in devolved areas, we should be open to taking a pragmatic approach to using UK legislation to achieve the Welsh Government's objectives where necessary. I believe the Grenfell tragedy and the need to respond to the subsequent independent review of building regulations created circumstances where using UK legislation is appropriate. I therefore consider this Bill the most effective way for these provisions to come into force as soon as possible. While I could bring forward the same provisions in our future Wales Bill, these would almost certainly be the same provisions but at a later date.

I consider the cumulative constitutional implications to be limited. Working collaboratively with the UK Government to achieve provisions for Wales that will update and modernise outdated legislation in a devolved area, does not in any way alter or undermine the fact that the Senedd has legislative competence in this area. We have the ability to make amendments in the future if that is needed.

### **Capacity of the Welsh Government:**

2. *Does your department have the capacity it needs to deliver on the Welsh Government's legislative priorities?*
  - i. *Can you explain why both LCMs on the Bill say there is no Senedd time to bring forward the provisions contained in the two UK Bills in the Senedd?*
  - ii. *What are your other legislative priorities and why is there is no capacity to bring forward Senedd legislation in these areas?*
  - iii. *Have you sought the views of stakeholders and Senedd Members on whether they would prioritise the content of these Bill's over others and whether they would prefer Senedd legislation in these areas even if it should take longer than pursuing these provisions through UK Bills?*

Legislating in these two areas is very much a priority for this Government. However, as set out in our Legislative Programme, we have many other priorities, and to deliver them all we have to take a pragmatic and indeed an innovative approach. I consider proceeding in the way we propose is in the interests of the people of Wales. The White Paper set out our intention to use the Building Safety Bill and there was broad support for this approach.

#### Leasehold Reform (Ground Rent) Bill

In the case of the Ground Rent Bill, legislating through a UK Government Bill is not just the pragmatic approach that supports the best use of our resources, it is also the best approach for ensuring coherent and comprehensive legislative reform. If we choose not to collaborate with the UK Government on the leasehold reform programme, and choose instead to pursue our legislative reform on a Wales only basis, that reform would take longer and divert precious time and resources from areas where a securing legislation specific to Wales is essential. More importantly, it could result in a set of reforms that are incomplete, or do not properly mesh with reforms that the UK Government make in relation to Wales in respect of elements of the programme that may fall outside of the Senedd's legislative competence.

We know from our own research that the issues faced by leaseholders in Wales are the same as those in England, and the solutions proposed by the Law Commission are the same. No stakeholder in Wales has raised any specific concerns about the content of the Ground Rent Bill, and the only correspondence I have received has been supportive of the proposed leasehold reforms – and called upon us to ensure they extend to Wales.

#### Building Safety Bill

Resources have been allocated to support the passage of the Building Safety Bill and the development of subsequent secondary legislation and related guidance to introduce the more robust building control regime that our White Paper, 'Safer Buildings in Wales', proposed.

The decision to utilise what was an English Bill reflects the urgency of the issues to be addressed following Grenfell and the calls on Senedd time. We have taken a pragmatic approach to extending the scope of the Building Safety Bill to achieve the Welsh Government's objectives where appropriate. The common objectives driven by Dame Judith Hackitt's independent review report and the current common legislative base point to the Building Safety Bill as the most effective way for these provisions to come into force as soon as possible. While we could bring forward the same provisions in our future building safety bill, these would almost certainly be the same provisions but at a later date.

Our White Paper, which has been the subject of a public consultation, set out the need for urgent action and our intentions to utilise the UK Building Safety Bill. Ahead of the analysis of responses and our government response, to be published later this year, there was clear support for the White Paper proposals generally, both in terms of elements common with England e.g. Duty holders, Gateway Stages and the Golden Thread and the Wales bespoke elements e.g. Welsh Ministers' power to define higher risk buildings and local authority as the single regulator for high risk buildings.

### **Accessibility:**

3. *What assessment have you made of the impact of making these provisions in UK Bills on the Welsh Government's duties in relation to the accessibility of Welsh law particularly as regards:*
- *the lack of bi-lingual legislation in these two devolved areas in relation to these Bills;*
  - *that law in relation to leasehold reform for Wales will be contained in two separate UK Bills and a Senedd Bill;*
  - *that law in relation to Building Safety will be contained within a UK Bill which amends an existing Act and in a separate Senedd Bill?*

It is inevitable that allowing the UK Parliament to legislate in these areas will mean that the primary legislation is in English only – and that is clearly regrettable. However, in the case of leasehold reform, the competence issues mentioned above mean that a collaborative approach is likely to best meet our commitment to ensuring that the law in Wales is coherent and accessible. Any secondary legislation we make, and the guidance we produce, under the Ground Rent Bill will, of course, be fully bilingual. Furthermore, in the case of the Building Safety Bill, the crucial detail that operationalises the Bill provisions and which the outside world will tend to interface with, namely the regulations, will be bilingual.

With regard to the suggestion that leasehold reform for Wales will be contained in two separate UK Bills and a Senedd Bill, the LCM for the Ground Rent Bill does indeed note that our proposed building safety bill, to be introduced later this Senedd Term, will incorporate a measure related to leasehold reform. This is the creation of a registration and licensing system in respect of those involved in aspects of building safety. However, we intend this scheme to also include other entities who are involved in property or estate management. This will be a relatively self-contained set of arrangements that will be specific to Wales, in a similar way to the registration and licensing requirements we currently place on residential landlords. As there are some links to wider measures in the proposed building safety bill, I am content that it is appropriate for that to be taken forward as part of that bill.

With regard to the concern that building safety will be dealt with across two pieces of legislation, there are in fact two discrete elements to be addressed:

- i. design and construction and;
- ii. occupation.

Whilst the interface at construction completion and preparation for occupation is important the regulatory regimes for the two elements will be different.

**Completeness of information:**

4. *Are you satisfied with the quality and completeness of information provided to Members in the LCMs and the Building Safety Bill supplementary LCM? We draw your attention to references made in the summary of clauses in the Leasehold Reform Bill LCM to provisions relating to England only and the lack of information in the Leasehold Reform Bill LCM about what further amendments are being sought.*

I am satisfied with the LCMs we have laid in relation to both the Ground Rent Bill and the Building Safety Bill. However, I recognise the breadth and complexity of the Building Safety Bill and have offered for technical briefing sessions to be arranged for the Local Government and Housing Committee should they so wish. In the case of the Ground Rent Bill, I have indicated that a supplementary LCM will need to be laid once all the amendments have been tabled.

The Committee has suggested that references are made in the LCM for the Ground Rent Bill to provisions which relate to England only. Having asked my officials to re-examine the LCM, I believe this may include the shared ownership model that is set out in paragraph 23. This model is very similar to the one that operates in Wales, in that there are caps on levels of rent and rent increases. In Wales the respective caps are slightly different to those set out in the LCM, with initial rent being capped at 2.75% of the unsold equity and rent increases thereafter limited to RPI plus 1%. I am content with the inclusion of this paragraph but we will update the figures accordingly when the supplementary LCM is laid.

In addition, the explanation of the Bill's clauses briefly references the enforcement powers that district councils in England are being given. I am also content, for the sake of completeness and just a couple of lines of extra text, with the inclusion of this paragraph.

In relation to a suggested lack of information in the LCM regarding the amendments we have sought to this Bill, the LCM stated that amendments were being sought in relation to the Leasehold Valuation Tribunal as well as the

provision of executive powers to Welsh Ministers. Amendments have subsequently been made in relation to these issues.

**Scrutiny:**

5. *Do you have any concerns that Senedd Members have not had the opportunity to scrutinise in detail the impact and scope of the Leasehold Reform Bill and the 35 clauses currently proposed for Wales in the Building Safety Bill?*
  - i. *What engagement has the Welsh Government had with stakeholders in Wales on the development of these Bills?*
  - ii. *Can you provide examples of how the Welsh Government has responded to stakeholder concerns about any of these Bills given the issues raised during Bill scrutiny in the UK Parliament?*
  - iii. *How do you respond to concerns about the lack of scrutiny of Welsh provisions by the public bill committee on Building Safety and lack of inclusion of any Welsh MPs in that committee's work?*

The Ground Rent Bill is a short bill of 27 clauses, arguably only 19 of which are substantive, which achieves its policy objectives neatly and simply. Members have an opportunity to scrutinise it as part of the legislative consent process and I think the Bill's comparative brevity should allow them to do that with a good degree of rigour.

In the case of the Building Safety Bill, I acknowledge the concern that such a wide ranging bill will not receive the fullest Senedd scrutiny, this was a concern raised by the chair of the Local Government and Housing Committee. I have therefore offered for my officials to provide technical briefings to go clause by clause if necessary to provide the Committee with the fullest understanding of what the bill provides for Wales. I have also offered to provide details on the delegated powers in the Bill.

As regards engagement with stakeholders, as I have mentioned above the intention to use aspects of the UK Government Building Safety Bill were set out in our White Paper for which there has been broad support, the detail of which will be set out in our government response due to be published before the end of the year. In the case of the Ground Rent Bill, it addresses concerns that have been raised by stakeholders time after time, that being the issue of unfair ground rents. Therefore, whilst there has not been a specific consultation on the Ground Rent Bill itself, I think stakeholders have certainly been instrumental in its development. Furthermore, and as I have already stated above, those stakeholders in Wales who contacted me about this Bill, and the wider leasehold reform programme, have been supportive of it. Their only concern has been that these reforms should apply in Wales. I am aware that the Bill has

been criticised in Parliament on the basis it does not tackle high ground rents on current leases. This matter will, however, be addressed by implementing the Law Commission's recommendations. My officials are continuing to work with the Law Commission and the UK Government, with a view to a further Bill being introduced in the next session of Parliament.

The level of scrutiny of the Welsh provisions by the Public Bill Committee on the Building Safety Bill and no Welsh MPs sitting on the Committee are matters for Parliament.

### Leasehold Reform (Ground Rent) Bill specific issues

6. *The LCM says the Law Commission concluded there was no evidence of a need for different provision in the law in England and Wales. Did the Commission go on to recommend an England and Wales Bill and did they prepare draft clauses?*

The Law Commission found that the overwhelming majority of consultees who answered its question as to whether there should be any difference between how Wales and England should be treated under a reformed regime, thought that there should not. The Commission therefore concluded that there are no aspects of a reformed regime that should diverge between Wales and England. However, the Ground Rent Bill is not itself part of the Law Commission's recommendations but rather a Bill that paves the way for those recommendations to be implemented in future legislation. Therefore, in this instance, the Commission has played no role in drafting the Bill's clauses.

7. *The LCM on the Leasehold Reform Bill states that the Bill established an important precedent for legislation in Wales to be taken forward via UK legislation. Can you clarify why this precedent is important and what the long term implications for the Senedd are of setting this precedent in this area?*

The LCM indicates that the collaborative approach to leasehold reform embodied in the Ground Rent Bill will set a beneficial precedent for the taking forward of future legislation on leasehold reform. In particular, it is important to the implementation of the Law Commission's recommendations. As indicated above, there may be elements of the wider reforms that are not within the Senedd's legislative competence. Consenting to the UK Government legislating in respect of Wales will help to ensure that a coherent approach is adopted across all aspects of the reforms. At the same time, my department will work with the UK Government to make sure that Welsh interests are properly taken into account and properly protected. I think this is the best way of advancing the interests of leaseholders in Wales whilst ensuring proper respect is paid to the devolution settlement.

8. *In both the LCM on the Leasehold Reform Bill and in correspondence to the Senedd's Local Government and Housing Committee you have indicated your intention to take forward other areas of leasehold reform in separate UK legislation. Can you clarify why this legislation is being taking forward separately in two UK Bills rather than in a single Senedd Bill? Given that you are suggesting future action through UK legislation, how does this fit with your principle that legislation in devolved areas should be enacted by the Senedd?*

Drafting a single Senedd Bill that covers all the desired aspects of leasehold reform would be a very considerable undertaking resulting in a bill of great length and complexity. Even if it were practically possible for us to legislate in relation to every aspect of leasehold reform in the current Senedd Term, I consider it likely that it would require more than one Bill. However, as has been set out above, it is not at all clear that the Senedd will have the legislative competence to legislate in every aspect of leasehold reform.

9. *Can you clarify what further amendments to the Bill you are seeking and confirm whether or not the UK Government has agreed to these amendments?*

There is one other Wales specific amendment that we have sought and which we hope will be laid in due course. This relates to financial penalty monies not spent on enforcement in Wales being payable to the Welsh Ministers rather than the Secretary of State. Our request is the subject of on-going work with the UK Government.

10. *Can you clarify when a second supplementary LCM will be tabled and how much time will Senedd Members be afforded to scrutinise it given that some of the amendments were made in July 2021 and an LCM was not laid within the normal two week period set out in standing orders?*

I have previously written to the Chair of the Local Government and Housing Committee explaining that I intend to lay a supplementary LCM in late November or early December, once all the anticipated amendments to the Bill have been tabled. That remains my intention.

In my view, tabling a single supplementary LCM that covers all the amendments made to the Ground Rent Bill, will be much more useful to Senedd Members than multiple supplementary LCMs dealing with different amendments at different times. A single supplementary LCM will provide a complete and coherent picture while multiple supplementary LCMs will necessarily each provide an incomplete picture, and will risk introducing incoherence and confusion.

I hope that given how short this Bill is, Senedd Members will feel that they have sufficient time to scrutinise it.

11. *Given that the Bill falls within wholly devolved areas why do some of the delegated powers in the Bill only extend to the Secretary of State and what are the implications of this if they remain unamended?*

Only three regulation making powers, excluding those relating to commencement, have not been delegated. I am content they are not critical to the effective operation of the legislation in Wales.

The first non-delegated power is for the prescription of notices to be used in relation to the exemption of business leases from the legislation (clause 2(2)). I am content we do not need the power to prescribe different notices for Wales for this purpose. Not only is it a very technical matter, it is one in which it would be hard to envisage any reason for a divergence of approach between Wales and England.

The second power not delegated is for regulations to be made amending the definition of home finance plan leases, which are exempted from the Bill (clause 2(6)). The Minister in Parliament stated there are no plans to use this power, but it will be held in reserve in the event it is needed to curtail potential abuses of the exemption. I am unaware of any reason why the approach in Wales would ever need to diverge from that in England.

Thirdly, the power to make consequential amendments is not delegated (clause 21(1)). This is not an unusual situation and when legislation is made by the Senedd it will often include the power for the Welsh Ministers to make consequential changes to other, non-devolved, UK legislation.

The Bill itself already makes key consequential amendments (clauses 19 -20) to primary legislation, so this power is unlikely to be used significantly in any case.

12. *Can you clarify why commencement powers are only provided to the Secretary of State given that commencement powers in relation to Wales have been sought in the Building Safety Bill and what are the implications of this for enactment of the provisions in Wales?*

The provisions of the Ground Rent Bill will apply equally across Wales and England in a way that is not true in relation to the Building Safety Bill. Furthermore, our expectation is that the publicising of the new legislation will be a collaborative effort between ourselves and the UK Government.

Given this position, it would not be appropriate that the Bill is commenced at different times in Wales and England, so providing commencement powers to the Welsh Ministers is unnecessary.

13. *Do you have any plans to bring forward a Bill in the Sixth Senedd on further aspects of leasehold reform should the UK Government not bring a further Bill forward?*

I am not planning for that scenario as I fully expect the UK Government to legislate to implement the Law Commission's recommendations, in line with the commitments that have been given in Parliament. If they do not do so, or they do so in a way with which we disagree, we will need to consider our own legislative programme and what scope there is to legislate on a Wales only basis in order to protect the interests of Welsh leaseholders.

#### Building Safety Bill Specific Issues

14. *When will a summary of consultation responses to the Welsh Government's White Paper on building safety be published, and will this be prior to Members being asked to vote on a consent motion for the Building Safety Bill?*

I anticipate the summary and Government response will be published before the end of the year and therefore before the vote on the motion.

15. *Can you clarify how the Bill's provisions are both 'bespoke' and are necessary for consistency at the same time, and can you clarify whether Welsh drafters or UK Parliamentary drafters drafted the bespoke provisions in the Bill?*

The Bill is a response to the very specific recommendations of the independent Hackitt report, it therefore includes elements that we would equally wish to introduce in Wales as the same core legislation that the report criticises, the Building Act 1984, which the Bill amends applies to both England and Wales, e.g.:

- Duty holder responsibilities;
- Gateway scrutiny stages (planning application, before construction and before occupation) and;
- Competence requirements for industry and regulators.

But it then provides Welsh Ministers with all the necessary powers to customise the Hackitt model for Wales e.g. it is for Welsh Ministers to determine what a higher risk building is, and for local authorities to be the regulator (removing the choice of private sector options for higher risk buildings).

I am mindful of the fact that many building control professionals work in England and Wales and that there is merit in similar provisions being applicable in both nations where there is cross-border activity and they suit our respective needs. Initial drafting was undertaken by the UK Government which was scrutinised, amended as necessary and agreed by our policy and Legal Services officials.

16. *What were the views of stakeholders on taking forward issues in relation to building safety in two separate Bills, one UK Bill and one Senedd Bill?*

The Safer Buildings in Wales White Paper set out our intentions to utilise the Bill and set out its fundamental features, consultation responses were broadly very supportive. I expect the analysis and Government response to be published later this year. The White Paper reflected the different approaches needed for the design and construction stage, and the subsequent occupation stage. The former represented improvements to the existing building control system informed by work already undertaken for the original England only draft Bill, the latter required more fundamental thinking of a new approach to regulation. Development of primary legislation for the occupation stage will therefore take longer.

17. *Do you have any concerns that taking forward legislation on the life-cycle safety of buildings in two separate pieces of legislation will have any impacts on the coherence and accessibility of that legislation?*

This is not seen as an issue as the two separate pieces of legislation will mainly deal with discrete aspects in a building's life, with the UK Government Bill dealing with the design and construction phase and our Bill dealing with the occupation phase. However care is being taken to ensure clarity at the handover stage at building completion to ensure the right information is collated, in the right format and handed over to those responsible in the occupation phase. In a similar way regulations will need to address the management of future refurbishment of what will be an occupied building and how that interfaces with the building control regime.

18. *Can you clarify why the technical amendments made during the House of Commons Committee stage were not included in the Bill on introduction and do you expect any further amendments to be made to the Bill in relation to Wales?*

The timetable for introduction of the Bill meant that some outstanding issues of detail had not been completed. Those introduced at the committee stage as amendments relating to Wales related to expanding provisions for cooperation between bodies and the sharing of information together with extending a power

to ensure flexibility when defining a 'higher risk building'. Subject to my answer to Q20 below I do not expect any further amendments of substance to be made in relation to Wales.

19. *Can you confirm if the Welsh Government has any intention to publish draft regulations for the Senedd to scrutinise your intentions in relation to the delegated powers provided to the Welsh Ministers in the Bill? (The UK Government did so for England in July 2021.)*

There are no plans to publish indicative regulations during the Bill's passage through Parliament however we will in due course be considering our approach to the development and consultation arrangements for the secondary legislation we bring forward following Royal Assent. One option could be to consult on draft regulations.

20. *Can you clarify if there is any intention to extend the scope of the New Homes Building Ombudsman to Wales?*

We have been working positively with the UK Government with a view to extending the scheme as we believe the scheme could benefit home owners and businesses in Wales. A Supplementary Legislative Consent Memorandum will be required if these provisions are extended to Wales and this will be laid after a Government amendment to the Bill. The timing for this is still unclear, however we are working on the basis of December/January.

The NHO is being introduced as a result of criticism of the house building industry; in its build quality and customer service record. The intention through legislation is to introduce a single agreed code of practice, which will build on the protections in the existing codes and place stricter requirements on developers covering the sale and aftercare of new homes, particularly post occupation. It will also set out how developers will have to deal with any issues owners have with their new homes in the first two years. Owners of new homes will also have the option to go to a new independent Ombudsman to help resolve a dispute. Developers may be required to become and remain members of the scheme. It is envisaged that the housebuilding industry will meet the costs of the NHO and, once established, the NHO service will be free to complainants.

21. *Can you confirm that you will notify the Senedd of any regulations made using the powers provided under clause 40 of the Bill*

Clause 40 provides powers for building regulations to revoke provision in building regulations made using the power in section 2(2) of the European Communities Act 1972. It does this by defining regulations made using powers in both section 1 of the Building Act 1984 and section 2(2) of the European Communities Act as a 'combined instrument' and provides powers for building

regulations made under section 1 of the Building Act 1984 to revoke provision in a combined instrument. The repeal of s2(2) of the European Communities Act 1972 at the end of the implementation period has resulted in there being no power to revoke those provisions in existing building regulations which were made under section 2(2), as the section 1 Building Act 1984 power does not suffice; subsection (2) of this clause fixes this problem by conferring powers to revoke combined instruments. This is a power for the Welsh Ministers in relation to Wales and therefore any regulations made under section 1 of the Building Act 1984, in reliance on this power, would be subject to annulment by the Senedd.

Julie James MS

Minister for Climate Change

15 November 2021

Dear Julie

**Legislative Consent Memoranda on the UK Government's Leasehold Reform (Ground Rent) Bill and Building Safety Bill**

I am sorry to hear that you are unwell and are therefore unable to attend our meeting today to discuss the legislative consent memoranda on the Leasehold Reform (Ground Rent) Bill and Building Safety Bill.

In lieu of your attendance, I would be grateful if you would provide a written response to the questions in the annex by 10am on Wednesday 17 November in order for us to consider and report by the deadline we have been set by the Business Committee.

I am copying this letter to John Griffiths MS, Chair of the Local Government and Housing Committee.

Yours sincerely,

*Huw Irranca-Davies*

Huw Irranca-Davies

Chair

## Annex

### Overarching issues

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#### Legislating in devolved areas:

1. Given the Welsh Government's overriding principle that legislation in devolved areas should be enacted by the Senedd can you set out your reason why this principle is not being followed in relation to all provisions in the Leasehold (Ground Rent) Bill and 35 clauses in the Building Safety Bill?
  - i. Can you confirm if it is your view that commonality can only be achieved via England and Wales legislation in both cases using UK Government Bills and can you clarify why Senedd legislation cannot be used to amend England and Wales legislation to achieve or retain commonality of approach if that is the Welsh Government's objective in these areas?
  - ii. Is the priority of your department to achieve a consistency of approach in these policy areas over and above the Welsh Government's principle that legislation in devolved areas should be made in Wales?
  - iii. What are your views on the cumulative constitutional implications of asking and allowing the UK Parliament to legislate in two wholly devolved areas?

#### Capacity of the Welsh Government:

2. Does your department have the capacity it needs to deliver on the Welsh Government's legislative priorities?
  - i. Can you explain why both LCMs on the Bill say there is no **Senedd** time to bring forward the provisions contained in the two UK Bills in the Senedd ?
  - ii. What are your other legislative priorities and why is there is no capacity to bring forward Senedd legislation in these areas?
  - iii. Have you sought the views of stakeholders and Senedd Members on whether they would prioritise the content of these Bill's over others and whether they would prefer Senedd legislation in these areas even if it should take longer than pursuing these provisions through UK Bills?

#### Accessibility:

3. What assessment have you made of the impact of making these provisions in UK Bills on the Welsh Government's duties in relation to the accessibility of Welsh law particularly as regards:

- the lack of bi-lingual legislation in these two devolved areas in relation to these Bills;
- that law in relation to leasehold reform for Wales will be contained in two separate UK Bills and a Senedd Bill;
- that law in relation to Building Safety will be contained within a UK Bill which amends an existing Act and in a separate Senedd Bill?

### **Completeness of information:**

4. Are you satisfied with the quality and completeness of information provided to Members in the LCMs and the Building Safety Bill supplementary LCM? We draw your attention to references made in the summary of clauses in the Leasehold Reform Bill LCM to provisions relating to England only and the lack of information in the Leasehold Reform Bill LCM about what further amendments are being sought.

### **Scrutiny:**

5. Do you have any concerns that Senedd Members have not had the opportunity to scrutinise in detail the impact and scope of the Leasehold Reform Bill and the 35 clauses currently proposed for Wales in the Building Safety Bill?
  - i. What engagement has the Welsh Government had with stakeholders in Wales on the development of these Bills?
  - ii. Can you provide examples of how the Welsh Government has responded to stakeholder concerns about any of these Bills given the issues raised during Bill scrutiny in the UK Parliament?
  - iii. How do you respond to concerns about the lack of scrutiny of Welsh provisions by the public bill committee on Building Safety and lack of inclusion of any Welsh MPs in that committee's work?

### Leasehold Reform (Ground Rent) Bill specific issues

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6. The LCM says the Law Commission concluded there was no evidence of a need for different provision in the law in England and Wales. Did the Commission go on to recommend an England and Wales Bill and did they prepare draft clauses?
7. The LCM on the Leasehold Reform Bill states that the Bill established an important precedent for legislation in Wales to be taken forward via UK legislation. Can you clarify why this precedent is important and what the long term implications for the Senedd are of setting this precedent in this area?

8. In both the LCM on the Leasehold Reform Bill and in correspondence to the Senedd's Local Government and Housing Committee you have indicated your intention to take forward other areas of leasehold reform in separate UK legislation. Can you clarify why this legislation is being taking forward separately in two UK Bills rather than in a single Senedd Bill? Given that you are suggesting *future* action through UK legislation, how does this fit with your principle that legislation in devolved areas should be enacted by the Senedd?
9. Can you clarify what further amendments to the Bill you are seeking and confirm whether or not the UK Government has agreed to these amendments?
10. Can you clarify when a second supplementary LCM will be tabled and how much time will Senedd Members be afforded to scrutinise it given that some of the amendments were made in July 2021 and an LCM was not laid within the normal two week period set out in standing orders?
11. Given that the Bill falls within wholly devolved areas why do some of the delegated powers in the Bill only extend to the Secretary of State and what are the implications of this if they remain unamended?
12. Can you clarify why commencement powers are only provided to the Secretary of State given that commencement powers in relation to Wales have been sought in the Building Safety Bill and what are the implications of this for enactment of the provisions in Wales?
13. Do you have any plans to bring forward a Bill in the Sixth Senedd on further aspects of leasehold reform should the UK Government not bring a further Bill forward?

#### Building Safety Bill Specific Issues

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14. When will a summary of consultation responses to the Welsh Government's White Paper on building safety be published, and will this be prior to Members being asked to vote on a consent motion for the Building Safety Bill?
15. Can you clarify how the Bill's provisions are both 'bespoke' and are necessary for consistency at the same time, and can you clarify whether Welsh drafters or UK Parliamentary drafters drafted the bespoke provisions in the Bill?
16. What were the views of stakeholders on taking forward issues in relation to building safety in two separate Bills, one UK Bill and one Senedd Bill?
17. Do you have any concerns that taking forward legislation on the life-cycle safety of buildings in two separate pieces of legislation will have any impacts on the coherence and accessibility of that legislation?

18. Can you clarify why the technical amendments made during the House of Commons Committee stage were not included in the Bill on introduction and do you expect any further amendments to be made to the Bill in relation to Wales?
19. Can you confirm if the Welsh Government has any intention to publish draft regulations for the Senedd to scrutinise your intentions in relation to the delegated powers provided to the Welsh Ministers in the Bill? (The UK Government did so for England in July 2021.)
20. Can you clarify if there is any intention to extend the scope of the New Homes Building Ombudsman to Wales?
21. Can you confirm that you will notify the Senedd of any regulations made using the powers provided under clause 40 of the Bill?

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# Agenda Item 11

By virtue of paragraph(s) vi of Standing Order 17.42

Document is Restricted

Eluned Morgan AS/MS  
Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol  
Minister for Health and Social Services



Llywodraeth Cymru  
Welsh Government

Our ref: MA/EM/3224/21

Russell George MS  
Chair  
Health and Social Care Committee  
[SeneddHealth@senedd.wales](mailto:SeneddHealth@senedd.wales)

Cc  
Huw Irranca-Davies MS  
Chair  
Legislation, Justice and Constitutional Committee  
[SeneddLJC@senedd.wales](mailto:SeneddLJC@senedd.wales)

28 October 2021

Dear Russell and Huw

I am pleased to share with the Committee the finalised provisional Public Health Protection and Health Security Framework (the Framework), along with a related Memorandum of Understanding (MoU).

This Framework establishes common expectations around key areas of cooperation in public health protection and health security policies in the context of the UK's departure from the EU. All four UK administrations agreed to work together to establish common approaches, known as Common Frameworks, in policy areas that were previously governed by EU law, and which intersect with areas of devolved competence.

Officials in the Welsh Government, together with their counterparts across the UK, and with relevant UK Public Health Agencies, have been working jointly to develop this Framework to share with their respective scrutiny Committees for Parliamentary scrutiny.

The set of documents can be found at: [Public health protection and health security: provisional common framework - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/publications/public-health-protection-and-health-security-provisional-common-framework)

Yours sincerely

**Eluned Morgan AS/MS**  
Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol  
Minister for Health and Social Services

Bae Caerdydd • Cardiff Bay  
Caerdydd • Cardiff  
CF99 1SN

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:  
0300 0604400

[Gohebiaeth.Eluned.Morgan@llyw.cymru](mailto:Gohebiaeth.Eluned.Morgan@llyw.cymru)  
[Correspondence.Eluned.Morgan@gov.wales](mailto:Correspondence.Eluned.Morgan@gov.wales)

Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.



HM Government

# Public Health Protection and Health Security Framework Outline Agreement

October 2021

Pack Page 104





# Public Health Protection and Health Security Framework Outline Agreement

Presented to Parliament by the  
Minister of State for Health by  
Command of Her Majesty

October 2021

CP 518

Pack Page 106



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# Section 1: What we are talking about

## 1. Policy area

The policy area under consideration is the devolved competency of Public Health Protection and Health Security. This framework is intended to implement the optimum operating model and governance arrangements to strengthen strategic and operational cooperation between the UK Government (UKG), the Devolved Administrations and public health agencies of the UK.

Public Health Protection policy aims to protect populations from health threats such as communicable diseases and environmental hazards. Health Security policy aims to minimise vulnerability to acute public health events that endanger the collective health of populations living across geographical regions and international boundaries.

The framework takes an “all hazards” approach to health protection and health security, in particular it addresses the threats arising from infectious disease and non-infectious threats such as chemical and environmental hazards which cross borders. This is in line with existing national policies and the International Health Regulations (2005) (IHR).

## 2. Scope

### EU law

The elements of EU law in this area that intersect with devolved competence are:

- Decision No 1082/2013/EU of the European Parliament and of the Council of 22 October 2013 on serious cross-border threats to health and repealing Decision No 2119/98/EC (Decision 1082).
- Regulation EC No. 851/2004 of the European Parliament and of the Council of 21 April 2004 establishing a European centre for disease prevention and control
- Commission Implementing Decision (EU) 2017/253 of 13 February 2017 laying down procedures for the notification of alerts as part of the early warning response system established in relation to serious cross border threats to health and for the information exchange, consultation and coordination of responses to such threats pursuant to Decision No 1082/2013

- Commission Implementing Decision (EU) 2018/945 of 22 June 2018 on the communicable diseases and related special health issues to be covered by epidemiological surveillance as well as relevant case definitions

The EU law outlined above sets rules on epidemiological surveillance, monitoring, early warning of, and combating, serious cross-border threats to health, including preparedness and response planning related to those activities, in order to coordinate and complement national policies. It aims to support cooperation and coordination between Member States.

Decision 1082 establishes an EU Health Security Committee (HSC) which is an advisory group to reinforce the coordination and sharing of best practice and information on national preparedness activities at EU level. Member States consult each other within the HSC with a view to coordinating national responses to serious cross border threats to health, including events declared a public health emergency of international concern by World Health Organization in accordance with the IHR. The EU also has an early alerting system, called the Early Warning and Response System (EWRS), in which Member States are required to notify and share information relevant to newly identified serious cross-border threats to health. When the UK was a Member State, Public Health England<sup>1</sup> (PHE) was the competent authority for the UK and was required to share surveillance data on communicable diseases and related special health issues and notify alerts on the EWRS. The UK Department of Health and Social Care also attended meetings of the HSC, with a view to coordinating the national response to a serious cross-border threat to health and risk and crisis communication.

### **UKG:DA competence and the parties to this framework**

Public health protection is a devolved competency in the UK and, all four nations were required to comply with EU law on health security. Administrations agree on this description of devolved competence. To meet these obligations, the four UK nations coordinated and shared information on public health protection with PHE as the UK's national competent authority and national focal point. PHE was then responsible for sharing this information with the EU in order to meet our obligations under EU law. This included sharing information on serious cross-border threats to health, new and emerging threats, and surveillance, and response coordination. This system also supported the UK's compliance with the IHR.

This framework will be an agreement between the UK Government, Devolved Administrations and the UK public health agencies of England, Wales, Scotland and Northern Ireland.

The UK Government and Devolved Administrations are responsible for supporting their Ministers to shape and deliver public health protection and health security policies in their respective areas. The UK public health agencies of England, Wales, Scotland and Northern Ireland are distinct delivery organisations with operational autonomy. They remain accountable to their respective Ministers and advise and support the UK Government and the Devolved Administrations, through the provision of scientific expertise and the delivery of specialist public health services.

### **International obligations**

The IHR is an international treaty between 196 countries requiring all World Health Organization (WHO) Member States to work together for global health security. Through IHR, countries have agreed to build their capacities to detect, assess and report public health events. WHO plays the coordinating role in IHR and, together with its partners, helps countries to build their capabilities. IHR also includes specific measures at ports, airports

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<sup>1</sup> The UK Health Security Agency (UKHSA) brought together PHE, NHS Test and Trace and the Joint Biosecurity Centre into a single organisation from 1 April 2021.

and ground crossings to limit the spread of health risks to neighbouring countries, and to prevent unwarranted travel and trade restrictions so that traffic and trade disruption is kept to a minimum.

The UK has also concluded negotiations with the EU on our future health security relationship. Title 1 of Part 4 (Thematic Cooperation) of the Trade and Cooperation Agreement (TCA)<sup>2</sup> supports effective arrangements and information sharing between the UK and the EU in the event of a serious cross-border threat to health which spreads or entails a risk of spreading across the borders of at least one EU Member State and the UK. TCA also includes a mutual obligation on the UK and the EU to inform each other of such threats and enables the UK to request access to EWRS in respect of a such a threat, so that the UK, the EU institutions and EU Member States can exchange information, assess public health risks and coordinate measures that may be required to protect public health. The EU may also invite the UK to participate in a committee of the Member States for the purposes of supporting the exchange of information and of coordination in relation to the threat. Finally, TCA makes provision for cooperation on scientific and technical matters between the UK and the European Centre for Disease Prevention and Control (ECDC), including by concluding an MoU.

UKHSA has been designated to act as the UK's Focal Point under the terms of TCA.

As this policy area intersects with the EU-UK Trade and Cooperation Agreement, topics relevant to the framework may be considered from time to time by the Partnership Council<sup>3</sup>. Where a UK-EU meeting agenda includes an item concerning implementation in an area of devolved competence, such as health protection, UKG will facilitate Devolved Administration attendance of a similar level to that of the UKG representatives with final discretion as to the UK delegation a matter for the UK co-chair. UKG should engage the Devolved Administrations as fully as possible in preparation for these meetings regardless of attendance, and on all relevant implementation matters.

### ***The Protocol on Ireland/Northern Ireland***

The Protocol on Ireland/Northern Ireland sets out the arrangements agreed between the UK Government and European Union in relation to those areas where, although remaining within the UK's customs territory, Northern Ireland will remain aligned with the EU on goods (including certain laws for VAT on Goods) and applies EU Tariffs in Northern Ireland, except for movements falling within the customs regime of the United Kingdom. This framework is not impacted by the Northern Ireland Protocol.

## **3. Definitions**

Definitions for the key terms in this policy area are as follows:

- *'Public Health Protection'* means protecting individuals, groups and populations from infectious disease and non-infectious public health threats including radiation, chemical and environmental hazards.
- *'Health Security'* means the activities required, both proactive and reactive, to minimise vulnerability to acute public health events that endanger the collective health of populations living across geographical regions and international boundaries.

<sup>2</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/948119/EU-UK\\_Trade\\_and\\_Cooperation\\_Agreement\\_24.12.2020.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/948119/EU-UK_Trade_and_Cooperation_Agreement_24.12.2020.pdf)

<sup>3</sup> There is currently no Specialised Committee for Health Security, however under Article INST.1: (4)(g) of the TCA, the Partnership Council could establish one in future. In this scenario, the same principles for DA involvement in the Partnership Council should be applied to any future specialised committee on health security.

- '*Serious cross-border threat to health*' means a life-threatening or otherwise serious hazard to health of biological, chemical, environmental or unknown origin which spreads or entails a significant risk of spreading across the borders of at least one Member State and the United Kingdom, or may necessitate a coordinated response by the UK authorities in order to ensure a high level of human health protection. This definition includes events that may constitute public health emergencies of international concern under the IHR and is aligned with the definition of serious cross-border threat to health agreed between the UK and the EU for the purposes of TCA.

# Section 2: Proposed breakdown of policy area and framework

## 4. Summary of proposed approach

Following discussion between UKG, Devolved Administrations and the UK public health agencies of England, Wales, Scotland and Northern Ireland on the goal of this work, and the most appropriate vehicles for implementing it, it has been decided that both legislative and non-legislative mechanisms are necessary to underpin the framework.

### Legislation

The Health Security (EU Exit) Regulations 2021<sup>4</sup>, which came into force on 1 September 2021, use the powers conferred by section 8(1) of, and paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018 to address failures of retained EU law related to health security. The Regulations establish a standalone regime which will ensure all parts of the UK continue to coordinate on data sharing, epidemiological surveillance, and their approach to the prevention and control of serious cross-border threats to health. The Regulations also support the implementation of the UK's arrangements with the EU for cooperation on health security under TCA in exercise of the powers conferred by section 31 of the European Union (Future Relationship) Act 2020.

### Non-legislative agreement

There is also a non-legislative agreement, by way of a Memorandum of Understanding (MoU)", between administrations to strengthen cooperation on public health protection and health security. The MoU can be found at Annex A. The MoU includes:

- Communication and coordination of health protection activities, including policy development, public campaigns and messaging and expert committees
- Principles for coordinated use of mutual aid
- International engagement
- Workforce
- Education and Training
- Research
- Data and Intelligence

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<sup>4</sup> <https://www.legislation.gov.uk/ukxi/2021/877/contents/made>

The framework's operation will be underpinned by a work programme, which has been agreed by the UK Health Protection Committee.

It is aligned with, and complementary to the Health Security (EU Exit) Regulations detailed above.

### **JMC(EN) Frameworks Principles**

UKG and Devolved Administrations and the UK public health agencies of England, Wales, Scotland and Northern Ireland agree that the approach summarised above is necessary according to Section 1 of the JMC(EN) Frameworks Principles (see Annex B for the full list of principles):

- b) ensure compliance with international obligations;
- c) ensure the UK can negotiate, enter into and implement new trade agreements and international treaties;
- f) safeguard the security of the UK.

The reasons this policy area falls within these principles are (b) due to the continued obligation to comply and best operate within the IHR and TCA, (c) because UK-wide coordination on health security will be required to negotiate, enter into and implement international treaties in this area and f) to protect the UK from serious cross-border threats to health.

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

### **Scope**

It was agreed by UKG, Devolved Administrations and the UK public health agencies of England, Wales, Scotland and Northern Ireland that legislation was required in order to correct deficiencies in retained EU law related to health security in a number of areas.

EU law on health security sets rules on epidemiological surveillance, monitoring, and for the early warning and combating of serious cross-border health threats. This includes rules on preparedness and response planning related to those activities in order to coordinate and complement member States' responses to such threats. Its objective is to support cooperation and coordination between member States to improve the prevention and control of severe human disease across the borders of member States and to combat other serious cross border threats to health. In doing so it aims to contribute to a high level of public health protection in the EU. However, following the end of the Transition Period, EU law no longer operates effectively to coordinate functions or set rules for those purposes in the UK. Therefore, to ensure that these coordination functions and rules continue to support a high level of health protection across the UK, the functions previously exercised by the EU on behalf of the member States have been modified by the Health Security (EU Exit) Regulations 2021. The Regulations transfer these functions to a new UK Health Protection Committee and to the UK Health Security Agency (UKHSA), acting in cooperation with the public health agencies for the other parts of the UK. By transferring the coordination functions previously carried out by the EU to the Committee and UKHSA, the UK will maintain its ability to detect, prepare for and respond to serious cross-border health threats. The Regulations also support implementation of the health security part of the TCA by enabling effective future working and information sharing between the UK and the EU in the event of a serious cross-border health threat affecting the UK and an EU member State.

The Regulations do not prevent a Devolved Government from undertaking additional surveillance for health protection purposes in their own jurisdiction should they so wish. The legislation is intended to ensure the continued sharing of comparable and compatible information with respect to serious cross-border threats to health for the purposes of coordination and collaboration. In other areas, it will still allow for divergence in the public health measures put in place by devolved nations.

### **Legislative vehicle**

The Health Security (EU Exit) Regulations 2021.

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

The parties to this work have agreed that an MoU will be used to complement the Health Security (EU Exit) Regulations and enhance collaboration in other areas. The MoU establishes the approved approach to cooperation by the Parties and details the dispute avoidance and resolution mechanism, a review and amendment mechanism and a joint approach to international engagement.

### **Contents**

UKG, Devolved Administrations and the UK public health agencies of England, Wales, Scotland and Northern Ireland have jointly decided that the MoU should cover the following areas:

#### ***General Principles***

The Parties will:

- a) Secure a high level of public health protection at UK level through effective liaison, partnership working and communication between the Parties;
- b) Support efficient communication between the Parties by ensuring key contact points are kept up to date and any changes communicated to the Parties in a timely manner.

#### ***Communication and coordination of health protection activities, including policy development, public campaigns and messaging and expert committees***

The Parties agree to strengthen UK-level communication and coordination, working closely on individual or related issues regarding the prevention and control of serious cross-border threats, including in the following areas:

- a) Health protection activities, including:
  - i. Surveillance and early alerting;
  - ii. Risk assessment;
  - iii. Situational reporting;
  - iv. Sharing of data, information and intelligence to support emergency response.
- b) Public campaigns and messaging;
- c) Health security expertise pertinent to mitigating new, emerging or future public health threats, including cybersecurity;

- d) Secretariats for expert committees, reflecting the differing capacities and expertise of the Parties;
- e) Engagement relating to development of national public health policy and strategy.

The Parties commit to early engagement and strengthened coordination on health protection policy issues of shared strategic importance, including national policy in relation to any the above.

### ***Mutual Aid***

The Parties acknowledge the importance of mutual aid arrangements to the maintenance of resilient and high-quality public health protection functions in the UK. The accepted principles are intended to ensure a coordinated approach to mutual aid on a UK-wide basis, acknowledging the differing public health protection capabilities and thresholds of each nation. The approach will be underpinned by the framework's governance structure that will provide a timely and flexible mechanism for decision-making.

### ***International obligations and engagement***

The Parties recognise that the UK is a signatory to the IHR and to TCA. As international relations are reserved to UKG, the Department of Health and Social Care retains overall policy responsibility for the formulation of UK policy. However, as health protection is a devolved responsibility, implementation of international obligations in this area on a UK wide basis required a coordinated approach by the 4 nations and this will be reflected in the Health Security (EU Exit) Regulations, the MoU and the development of any relevant areas of the work programme.

DHSC will involve the Devolved Administrations fully in discussions about the formulation of UK-wide policy in relation to public health protection and health security and will look to agree stances.

The Parties will strengthen coordination in other areas, including:

- a) Developing UK-wide approaches to public health protection issues and that require engagement with international partners, including World Health Organisation (WHO) Euro, European Centre for Disease Prevention and Control (ECDC) and EU Member States.
- b) The identification of further opportunities for engagement with international partners, acknowledging and where appropriate, building upon any existing commitments that the Parties may have.

### ***Workforce***

The Parties will work together to undertake workforce planning and address strategic public health protection workforce challenges for the UK.

To strengthen resilience of the health protection workforce at UK level, the Parties will:

- a) Ensure a mechanism exists to identify and address shared strategic workforce planning challenges and opportunities;
- b) Ensure a shared focus on competence in relation to knowledge, skills and expertise of the public health protection workforce.

### ***Education and training***

Approaches to education and training will be underpinned by the principle of joint recognition of training programmes relating to public health protection across the UK Government, Devolved Administrations and UK public health agencies.

The Parties aim to improve their collective approach to education and training through:

- a) Facilitating access to education and training opportunities, including exchange placements, on a UK-wide basis;
- b) Where possible, removing barriers to access or participation in training and education in each nation;
- c) Working collaboratively to develop education, training and career development opportunities, including for 'enhanced practice'.

### ***Research***

The Parties recognise the respective research governance frameworks of other countries, including international frameworks.

The Parties aim to facilitate greater access to academic resources, including intellectual and technical resources, on a UK-wide basis, where the research capabilities of any Party could be enhanced through such collaboration, and where these resources are not available (or available on a limited basis) in any one nation but available in another.

The Parties aim to strengthen coordination of UK-level approaches to research and scientific collaboration, focusing on the following areas:

- a) Closer alignment of national research and scientific strategies;
- b) Research collaborations between the Parties, including joint funding applications where appropriate, in areas of shared scientific interest;
- c) Coordinating UK-level approaches to research collaborations with international partners, in areas of shared scientific interest;
- d) Ensuring a systematic approach to dissemination of research outputs and resources of potential interest to UK partners.

### ***Data and intelligence***

The Parties will:

- a) ensure that data and intelligence on public health functions continue to operate effectively for the benefit of the whole of the UK;
- b) maintain a high level of cooperation on data and intelligence sharing to support health protection activities in relation to communicable and non-communicable serious cross-border threats to health.

10 Public health protection and health security framework outline agreement

The MoU and the areas of cooperation will be kept under review.

Agreed outcomes of the ongoing intergovernmental relations review will be reflected in this framework.

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

N/A

# Section 3: Proposed operational elements of framework

## 8. Decision making

### **Key joint decisions that will be made through this framework**

Once the framework is in operation, the key joint decisions that will or could be taken by the parties to this framework are:

- Informing of Policy decisions
- Technical/Operational decisions
- Resolution of issues
- Referring issues to the overarching dispute avoidance and resolution mechanism outlined in the MoU on Devolution
- Reviewing and amending the framework

### **Decision-making fora**

The framework will be governed through a tiered system of Senior Official, Strategic and Operational fora. It shall comprise of representatives from the UK Department of Health and Social Care, the Devolved Administrations and the UK public health agencies, which constitute the eight parties to the framework. The parties shall meet in different configurations depending on the matters under discussion and shall be represented by a rotating chair.

The tiered approach has been adopted in recognition that public health protection and health security relies on technical and policy input and that despite being a devolved competency, requires four-nation coordination for the purposes of protecting UK security and ensuring that we continue to be able to meet international obligations and engagement. The governance structure respects the principles of subsidiarity whilst acknowledging the importance of shared fora and work programmes across the four nations.

The main forum for operational level discussion and decision-making will be the Four Nations Health Protection Oversight Group. This group will progress the implementation and delivery of the framework, the associated MoU and the programme of work that will be established. It will be responsible for monitoring work relevant to the framework that has been delegated for delivery, for example, to public health protection policy teams in UK Government and

the Devolved Administrations, or to the four nation's technical forums which consist of representatives from all four UK public health organisations. Terms of Reference for this group(s) are set out in Annex D.

The Operational Tier, carried out by the Four Nations Health Protection Oversight Group, will:

- a) Collate quarterly information on meetings held between the Parties relevant to this framework, including for the delivery of work programmes. The Group may request information on attendance; the nature of discussions and updates from operational or delivery groups associated with implementation of specific areas of the framework or associated work programme.
- b) Establish technical fora that are temporary and/or subject to change, reflecting the nature of work programmes.
- c) Make decisions related to technical or operational activities relevant to four nation cooperation conducted under this framework.

The main forum for strategic level discussion and decision-making will be the UK Health Protection Committee. The UK Health Protection Committee will be the senior level group responsible for monitoring the application of the framework and assuring its delivery. The Four Nations Health Protection Oversight Group will be accountable to the UK Health Protection Committee. Terms of Reference for this group(s) are set out in Annex C.

The Strategic Tier, which will be carried out by the UK Health Protection Committee, will:

- a) Collate information on meetings relevant to this framework held between the Parties, including strategic decisions, and request information on attendance; the nature of discussions and work programmes updates.
- b) Make decisions related to policy or strategic activities relevant to four nation cooperation conducted under this framework.

For the proposed governance structure to operate most effectively, it is envisaged that recommendations for the majority of proposals will be agreed at official level. It is therefore essential that an appropriate evidence base is developed at this level. The development of the evidence base could be carried out through:

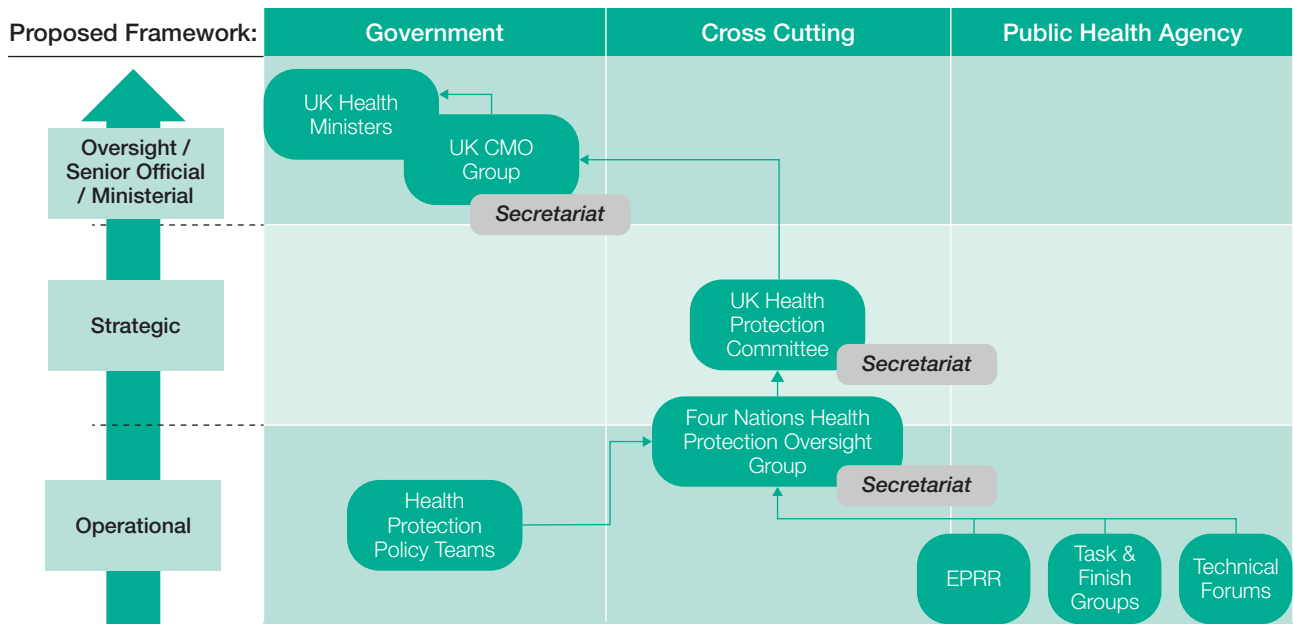
- Commissioning evidence from analysts
- Commissioning advice from legal teams
- Seeking advice from external bodies
- Engagement with industry (possibly through consultations, working groups etc)

Where evidence is being gathered this will be shared between administrations.

In addition to the UK Health Protection Committee, the UK CMO Group will act as an additional senior level body in the decision-making process. The UK Health Protection Committee will be accountable to the UK CMOs. With respect to this framework, the UK CMOs will:

- a) Collate annual information on meetings relevant to this framework held between the Parties and request supplementary information on attendance; the nature of discussions and decisions taken; and whether, and to what extent, the dispute resolution mechanism has been utilised.
- b) Adopt decisions in respect of any CMO matters which this agreement or any supplementing agreement provides
- c) Consider any matter of common interest relating to an area covered by the framework

## Governance



## Disagreements

The parties to this framework have decided that if there is a disagreement, every effort will be made to resolve the matter at the lowest possible level. The intention is to resolve the majority of issues through either the Four Nations Health Protection Oversight Group, or the UK Health Protection Committee, depending on the nature of the disagreement (policy or technical), only seeking the views of senior officials where necessary. Disagreement will only be escalated to Ministers where a decision at official level cannot be reached.

Differences may be resolved either by a decision to adopt a UK wide approach or a “decision to disagree” with a commitment to manage divergence on specific issues. If an issue can’t be resolved, parties will follow the dispute resolution process outlined in section 13 of this document.

Any issues between parties will be recorded as this may help to inform the Review and Amendment process when it is next conducted.

## 9. Roles and responsibilities of each party to the framework

The following sets out the role and responsibilities of Government and the UK public health agencies and ministers in this framework.

### UK Government and Devolved Administrations

Hold day-to-day discussions on the policy covered by the framework and inform and advise Ministers with the rationale for the approach taken within a policy area (e.g. a UK/GB-wide approach), or why divergent policies may be necessary. Officials across administrations should convene to discuss policy issues as appropriate and to keep colleagues regularly informed of any ramifications that policy will have across administrations. If a decision cannot be reached by officials at a working level, issues can be escalated to senior officials in line with the framework’s dispute avoidance and resolution mechanism.

Senior officials (e.g. Deputy Directors and Directors) provide strategic direction on the policy areas governed by the framework. Key operational decisions tend to be taken by senior officials working within the UK public health agencies as they are responsible for delivery, however on occasion such decisions may also be taken by officials working for UK

Government or the Devolved Administrations. Senior officials may review an issue as per the framework's dispute avoidance and resolution mechanism if officials are not able to decide on an approach, or if UK Health ministers have rejected advice from officials in the first instance, in another attempt to reach a decision. Senior officials should convene to discuss issues as appropriate, either in the bi-annual meetings of the UK Health Protection Committee or on an ad hoc basis.

### ***UK Public Health Agencies***

In the development of this framework, UKG and the Devolved Administrations have carried out extensive engagement and consultation with the corresponding public health organisations. (who are also Parties to the framework).

These are<sup>5</sup>:

- United Kingdom Health Security Agency
- Public Health Wales NHS Trust
- Public Health Scotland
- The Public Health Agency (Northern Ireland)

The listed public health organisations have an integral function in the operational nature of the framework due to their role in surveillance, early alerting, management, prevention and control of serious cross-border threats to health. As such, their inclusion and cooperation are essential to the functioning of the framework.

Officials working within the UK public health agencies provide technical and scientific advice to officials working in UK Government or within Devolved Administrations, who are then responsible for presenting policy recommendations to Ministers for decision. Senior officials within the UK public health agencies are responsible for taking key operational decisions and for discharging their responsibilities as delivery organisations.

### ***Chief Medical Officers***

The Chief Medical Officer (CMO) is the most senior government adviser on matters pertaining to public health in each of the four UK nations. There are four Chief Medical Officers (each with deputies) which represent and advise England (and the UK Government), Scottish Government, Welsh Government, and the Northern Ireland Executive.

### ***Ministers***

Ministers may receive advice from their officials either concurrently across administrations as issues arise or in the course of business as usual for individual administrations. Ministers may accept advice, or they may reject it. 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***

Terminology distinguishing ministerial hierarchy is not universal across administrations. 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.

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<sup>5</sup> Or such other person or body in relation to a part of the United Kingdom as the relevant Minister for that part designates.

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

As per the current MoU on Devolution each administration will aim to provide each other with as full and open as possible access to scientific, technical and policy information including statistics and research and, where appropriate, representations from third parties. Individual-level data on cases included in public health surveillance, or involved in health protection investigations, should be transferred between parties using standard methods to minimise delays and maximise completeness. Where possible existing data flow mechanisms should be used for cross-border transfers, which take into account the requirements of the General Data Protection Regulation (GDPR) as implemented in the UK by the Data Protection Act 2018 (DPA).

### Parliamentary and stakeholder communication and engagement

As this framework focusses on strengthening cooperation between the UK's four health departments and associated public health organisations, extensive engagement has taken place with the UK's four public health agencies. This has included three one-day workshops held in London, Cardiff and Belfast, as well as a series of further sessions undertaken virtually during the C-19 pandemic. The main form of engagement has been via the Four Nations Health Protection EU Transition Group, which consists of representatives from all four UK Governments and the four UK public health organisations and has been meeting regularly to discuss the framework over the last two years. Due to the extensive engagement taken to date with technical stakeholders, we do not expect anything significant to occur that might impact on the direction or the detail of the framework at this stage. The establishment of the new UKHSA has been recognised by the group and accounted for in the drafting of this outline framework and the associated MoU.

The framework does not impact on the UK's internal market and there is not the same industry consultation that is required in other frameworks.

Stakeholder engagement will continue through the frameworks process, including with professional bodies such as the Faculty of Public Health (which is UK-wide) who despite not being directly impacted by the framework will likely have an interest in its content and implementation. We do not foresee a significant response from stakeholders on the framework

## 10. Roles and responsibilities of existing or new bodies

There are a number of new and existing groups made up from representatives of the Parties to the framework that will be responsible for ensuring its effective application, including with respect to decision making and dispute resolution. These include:

**The Four Nations Health Protection Oversight Group** – This is a senior professional and official level oversight group of representatives from all parties to the framework. The Oversight Group will meet quarterly to discuss operational information exchange, mutual support, sharing of best practice and provide oversight to operational working groups to uphold the JMC(EN) framework Principles. The Oversight Group will be the main operational forum responsible for the delivery of the framework. The Oversight Group will also be responsible for the development of work plans to deliver the agreed work programmes, which may involve the oversight of time limited Technical Forums and/or Task & Finish Groups responsible for

delivery of relevant work, as well as the **UK Emergency Preparedness, Protection and Response (EPRR) Group**. The secretariat for this group is currently carried out by Public Health England.

**The UK Health Protection Committee** – This is a senior official (Director) level committee consisting of representatives from all parties to the framework. The Committee will meet twice a year to discuss health protection policy and make joint decisions that uphold the JMC(EN) frameworks Principles. The Committee will be the main senior official committee responsible for the application of the framework and will ultimately be accountable for its delivery. It is proposed that the Committee would fulfil functions under the Health Security (EU Exit) Regulations 2021, for example, reviewing and, where appropriate, making a recommendation to the Secretary of State to amend the list of communicable diseases and related special health matters that are subject to UK-wide surveillance. The Secretariat for the Committee will be carried out by the UK Health Security team at the Department of Health and Social Care.

**The UK CMOs Group** – This group consists of each of the UK’s Chief Medical Officers (CMOs). The group meets quarterly and provides a forum for the UK CMOs to discuss matters of mutual interest or areas where four nation coordination is required, including on matters relating to public health protection policy. The secretariat for this group is carried out by the UK Department of Health and Social Care. As set out in section 3.8, the framework will employ a principle of subsidiarity to decision making and dispute resolution. It is not expected that the UK CMOs group will have a prominent role in the application of the framework, this will be carried out by the Four Nations Health Protection Oversight Group with oversight from the UK Health Protection Committee. However, for issues that cannot be resolved in the UK Health Protection Committee, or lower bodies, the UK CMOs group can be drawn upon, where appropriate, to aide in resolving issues. In addition, specific policy areas or topics addressed within the framework could be tabled for discussion, consideration and advice at meetings.

## 11. Monitoring

The main group responsible for application of the framework and delivery of associated work will be the Four Nations Health Protection Oversight Group. However, the UK Health Protection Committee will meet bi-annually to monitor the framework. The purpose of monitoring is to assess:

- intergovernmental cooperation 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; and
- whether harmful divergence has taken place that impacts on the policy area covered by the framework.

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

### 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 framework.
- Third parties can be used to provide advice to the Parties at any stage in the process. These include other government departments or bodies as well as external stakeholders such as NGOs and interest groups.
- At the outset of the review stage, the Parties must agree timelines for the process, including the possible amendment stage.
- If a decision 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 process.

### ***Review Stage***

- The operation of the framework will be reviewed at six months, one year, three years from the date it comes into operation. Thereafter, a periodic review will take place every three years.
  - The period of 3 years starts from the conclusion of the last periodic review, including 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 three years need to be reflected in an updated non-legislative agreement.
- An exceptional review of the framework is triggered by a significant issue as determined by one or more of the parties.
  - 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 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 UK Health Ministers. If parties agree that no amendment is required, the relevant time period begins again for both review types (for example, it will be three years until the next periodic review and at least 6 months until the same significant issue can trigger an exceptional review.)

### ***Amendment Stage***

- Following the parties jointly deciding to enter the amendment stage, they 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 (periodic or exceptional), 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 framework 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.

## 13. Dispute resolution

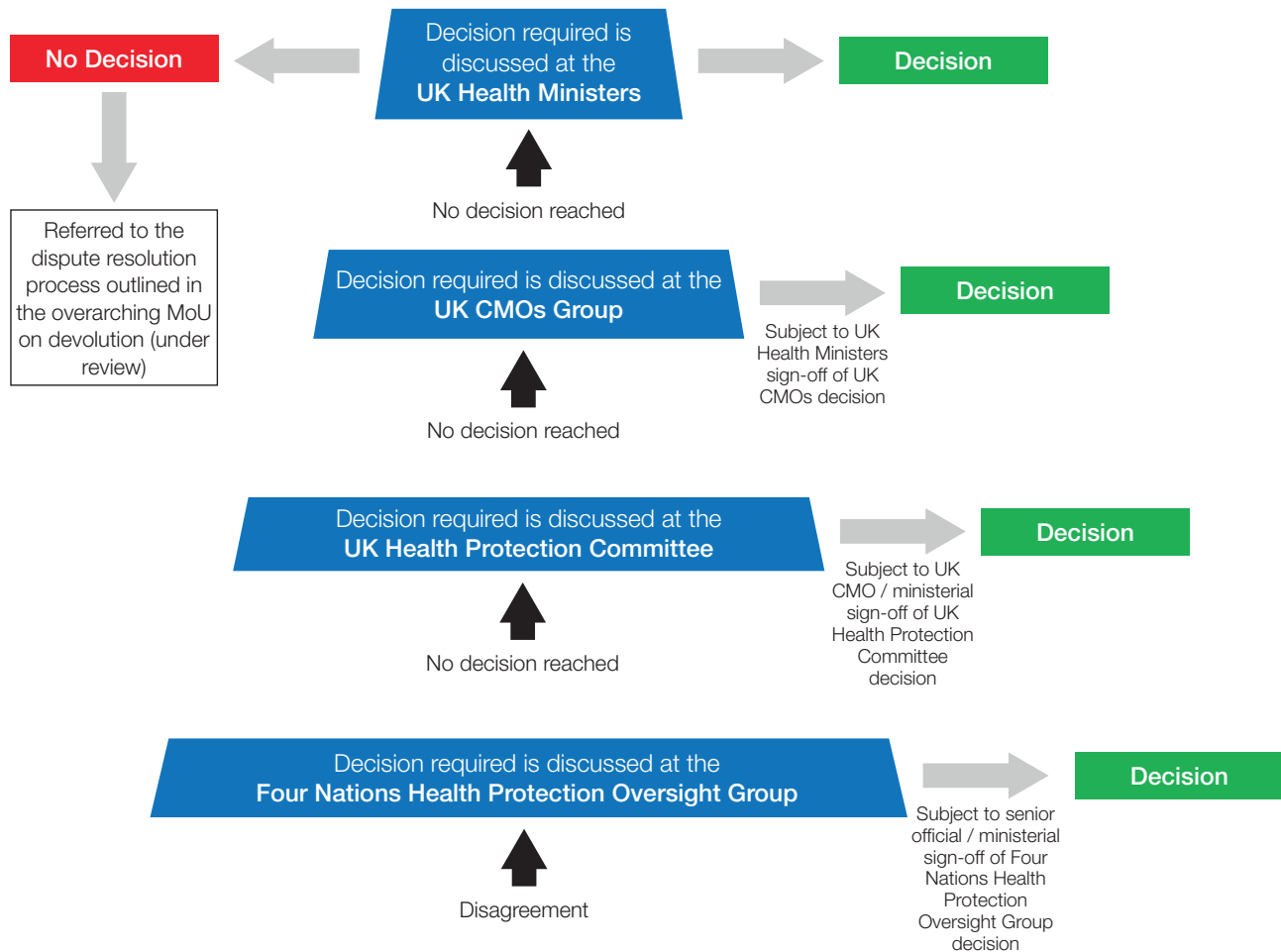
### Process

A disagreement between parties of this framework becomes a 'dispute' when it enters the formal dispute avoidance and resolution process set out in the overarching MoU on Devolution, that is currently under review.

The dispute resolution process for this framework mirrors the decision-making outlined in section 3.8. Dispute resolution is anticipated to only be required in a very small number of cases.

- The Parties have approved a principle of subsidiarity to dispute resolution, requiring a dispute to be addressed at the lowest possible level. The Parties also commit to seeking every opportunity to resolve differences in good faith and without the use of the formal dispute resolution process where possible. The Parties are represented, and will be fully involved, at all stages of the dispute resolution process.
- Should formal dispute resolution processes be needed, this would begin through discussion at the Four Nations Health Protection Oversight Group. If resolution cannot be reached in that forum, it would escalate to the UK Health Protection Committee for discussion. If resolution can still not be reached, the UK Health Protection Committee can recommend the issue is discussed at the UK CMOs Group, where appropriate, or they may choose to directly escalate to UK Health Ministers. Disputes should only be escalated to Ministers where official level agreement cannot be reached.
- This process will be utilised only when an understanding cannot be reached, and divergence would impact negatively on the ability to meet the common frameworks principles. The dispute resolution mechanism also recognises that in some areas a commonality of approach will not be needed in order to meet the JMC (EN) common frameworks principles and therefore a "decision to diverge" or a "decision to disagree" would be acceptable.
- This process was stress-tested in a range of workshops held by the Health Protection EU Working Group during 2019, with attendance from all parties to the framework.

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



### Timescales for escalation

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, notably any decision relating to incident or emergency response.

### Evidence gathering

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

## Section 4: Practical next steps and related issues

### 14. Implementation

The Framework completed joint official level UK Government and DA Review and Assessment on 4 December 2020. The Review and Assessment panel found that the framework successfully represents the relationship to JMC principles and the overarching MoU and related Intergovernmental Relations Review aspects.

Following collective agreement through the Domestic and Economy Implementation Committee, the framework was provisionally confirmed by the JMC(EN). The framework is now being laid in Parliament for scrutiny. The provisional framework may need to undergo further collective agreement before final confirmation, for example, if subsequent reappraisal of the framework leads to significant changes.

After implementation a review and amendment mechanism will ensure that the framework can adapt to subsequent policy developments. The periodic review is designed to focus on the governance structure and operational aspects and would take place every 3 years at a minimum.

Following discussion between the Parties on the most appropriate vehicles for giving effect to the framework, it was decided that both legislative and non-legislative mechanisms are necessary to underpin and implement the framework.

#### **Health Security (EU Exit) Regulations**

The Regulations use the powers conferred by section 8(1) of, and paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018 and section 31 of the European Union (Future Relationship) Act 2020. The Regulations address failures in retained EU law to ensure the law will continue to operate effectively following our withdrawal from the EU with cooperation under a robust UK-wide legislative regime on public health protection. The affirmative Health Security (EU Exit) Regulations were laid in UK Parliament on 7 June 2021, with the consent of the Scottish Government, the Welsh Government, and the Northern Ireland Executive. The Regulations passed through debates in the House of Lords on 5 July 2021 and in the House of Commons on 13 July 2021. The Regulations were made as a UK Statutory Instrument on 20 July 2021 and came into force on 1 September 2021.

## Memorandum of Understanding (MoU)

The Parties have agreed an MoU, which provides the non-legislative mechanism to underpin the public health protection and health security outline framework. The MoU establishes the approved approach to cooperation by the Parties in a number of key areas which are not covered in the Health Security (EU Exit) Regulations, for example on mutual aid or education and training. It also details the dispute avoidance and resolution mechanism, a review and amendment mechanism and a joint approach to international engagement. The MoU was drafted in parallel with the framework outline agreement and has been agreed by UK Government and Devolved Administration officials.

The MoU was developed by the Four Nations Health Protection Oversight Group and approved by the UK Health Protection Committee. It will be reviewed and amended as necessary to reflect any substantial changes made to the framework following the parliamentary scrutiny process.

# Annex A – Memorandum of Understanding between the UK Government, Welsh Government, Scottish Government, the Department of Health in Northern Ireland and the Public Health Organisations in the UK on Public Health Protection and Health Security

## 1. Introduction

- 1.1 This memorandum of understanding (MoU) is an agreement between the UK Government (UKG), Scottish Government (SG), Welsh Government (WG), the Department of Health in Northern Ireland (NI) and their respective public health organisations – henceforth referred to together as “the Parties” – in the area of public health protection and health security.
- 1.2 The MoU provides the non-legislative mechanism to underpin the Common Framework on Public Health Protection and Health Security and establishes the approved approach to cooperation by the Parties. The MoU also details a dispute avoidance and resolution mechanism, a review and amendment mechanism and a joint approach to international engagement.
- 1.3 This agreement is a political commitment and is not intended to be legally binding or enforceable. It operates in accordance with the principles outlined in the overarching intergovernmental Devolution: Memorandum of Understanding<sup>6</sup> and the Common Frameworks principles agreed at the Joint Ministerial Committee (EU negotiations) (JMC(EN)) on 16 October 2017.
- 1.4 The MoU recognises 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.

## 2. Scope

- 2.1 The policy areas in scope of this MoU are public health protection and health security. The Parties have approved the following definitions for use in the MoU:
  - 2.1.1 “public health protection” means protecting individuals, groups and populations from infectious disease and non-infectious public health threats including radiation, chemical and environmental hazards.

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<sup>6</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/316157/MoU\\_between\\_the\\_UK\\_and\\_the\\_Devolved\\_Administrations.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/316157/MoU_between_the_UK_and_the_Devolved_Administrations.pdf)

<sup>7</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/652285/Joint\\_Ministerial\\_Committee\\_communique.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/652285/Joint_Ministerial_Committee_communique.pdf)

2.1.2 “health security” means the activities required, both proactive and reactive, to minimise vulnerability to acute public health events that endanger the collective health of populations living across geographical regions and international boundaries.

2.1.3 “serious cross-border threat to health” means a life-threatening or otherwise serious hazard to health of biological, chemical, environmental or unknown origin which spreads, or entails a significant risk of spreading, across the borders of at least one Member State and the United Kingdom (UK), or may necessitate a coordinated response by the UK authorities in order to ensure a high level of human health protection. This definition includes events that may constitute public health emergencies of international concern under the International Health Regulations (2005) and is aligned with the definition of serious cross-border threat to health agreed between the UK and the EU for the purposes of the Trade and Cooperation Agreement (TCA).

2.2 The MoU does not apply to the Crown Dependencies or the British Overseas Territories.

### Goals

2.3 This MoU is intended to support achievement of the following overarching goals:

2.3.1 To improve the effectiveness of UK arrangements for, and coordination of, public health protection and health security policies, including emergency preparedness and response planning;

2.3.2 To reduce the incidence and impact of serious cross-border health threats within the UK;

2.3.3 As far as possible to anticipate, identify, prepare for and respond to new and emergent serious cross-border threats to public health within the UK.

### Aims

2.4 The Parties have approved the following aims:

2.4.1 To strengthen cooperation and coordination between the Parties on matters relating to public health protection and health security policies;

2.4.2 To establish common expectations around key areas of cooperation and how ways of working will develop in future;

2.4.3 Ensure that developments in ways of working will be orientated towards strengthening collective resilience to serious cross-border threats to health.

## 3. Principles for working together

3.1 The Parties shall inform each other at the earliest opportunity of any new policy proposals within the scope of this MoU to allow full consideration and a common approach to be reached wherever possible and appropriate;

3.2 The Parties shall ensure key contact points are kept up to date and any changes communicated to the Parties in a timely manner to support effective communication;

3.3 The Parties shall develop and implement a shared work programme that will aid the development of common approaches and the sharing of best practice in individual areas of public health protection or health security policies that are of shared interest to the

Parties. The Parties have jointly decided that the implementation of the shared work programme will be delivered within their existing resources and will not be contingent on allocation of new resources by any Party.

## 4. Communication and coordination of public health protection and health security

### 4.1 Areas for strengthening communication and coordination of national policy and strategic health protection issues

4.1.1 The Parties have jointly decided to strengthen national communication and coordination, working closely regarding prevention and control of serious cross-border threats, including in the following areas:

4.1.1.1 Public health protection activities, including surveillance and early alerting; risk assessment; situational reporting; and the sharing of data, information and intelligence to support emergency response;

4.1.1.2 Public campaigns and messaging;

4.1.1.3 Health security expertise pertinent to mitigating new, emerging or future public health threats, including cybersecurity;

4.1.1.4 Secretariats to support expert committees, reflecting the differing capacities and expertise of the Parties;

4.1.1.5 Engagement relating to the development of national public health policy and strategy.

### 4.2 Workforce

4.2.1 The Parties commit to work together on public health protection workforce planning and to address strategic challenges and opportunities for the UK.

4.2.2 The Parties commit to a shared focus on competence in relation to knowledge, skills and expertise of the public health protection workforce.

### 4.3 Education and training

4.3.1 The Parties accept that their respective approaches to education and training will be underpinned by the principle of joint recognition of training programmes relating to public health protection across the UK Government, Welsh Government, Scottish Government, the Department of Health in Northern Ireland, and their respective public health organisations.

4.3.2 The Parties shall aim to improve their collective approach to education and training through:

4.3.2.1 Facilitating access to education and training opportunities, including exchange placements, on a UK-wide basis;

4.3.2.2 Where possible, removing barriers to access or participation in training and education in each nation;

4.3.2.3 Working collaboratively to develop education, training and career development opportunities, including for 'enhanced practice'.

## 4.4 Research

- 4.4.1 The Parties recognise each other's respective research governance frameworks, including international frameworks.
- 4.4.2 The Parties shall aim to facilitate greater access to academic resources, including intellectual and technical resources, on a UK-wide basis, where the research capabilities of any party could be enhanced through such collaboration, and where these resources are not available (or only available on a limited basis) in any one nation but they are available in another.
- 4.4.3 The Parties shall aim to strengthen coordination of a UK-level approach to research and scientific collaboration, focusing on the following areas:
- 4.4.3.1 Closer alignment of the Parties' research and scientific strategies;
  - 4.4.3.2 Research collaborations by the Parties, including joint funding applications where appropriate, in areas of shared scientific interest;
  - 4.4.3.3 Coordinating the Parties' approach to research collaborations with international partners, in areas of shared scientific interest;
  - 4.4.3.4 Ensuring a systematic approach to dissemination of research outputs and resources of potential interest to UK partners.

## 4.5 Data and intelligence

- 4.5.1 The Parties commit:
- 4.5.1.1 To ensure that data and intelligence from public health functions continue to operate effectively for the benefit of the whole of the UK;
  - 4.5.1.2 To maintain a high level of cooperation on data and intelligence sharing to support health protection activities in relation to serious cross-border threats to health.

## 4.6 International obligations and engagement

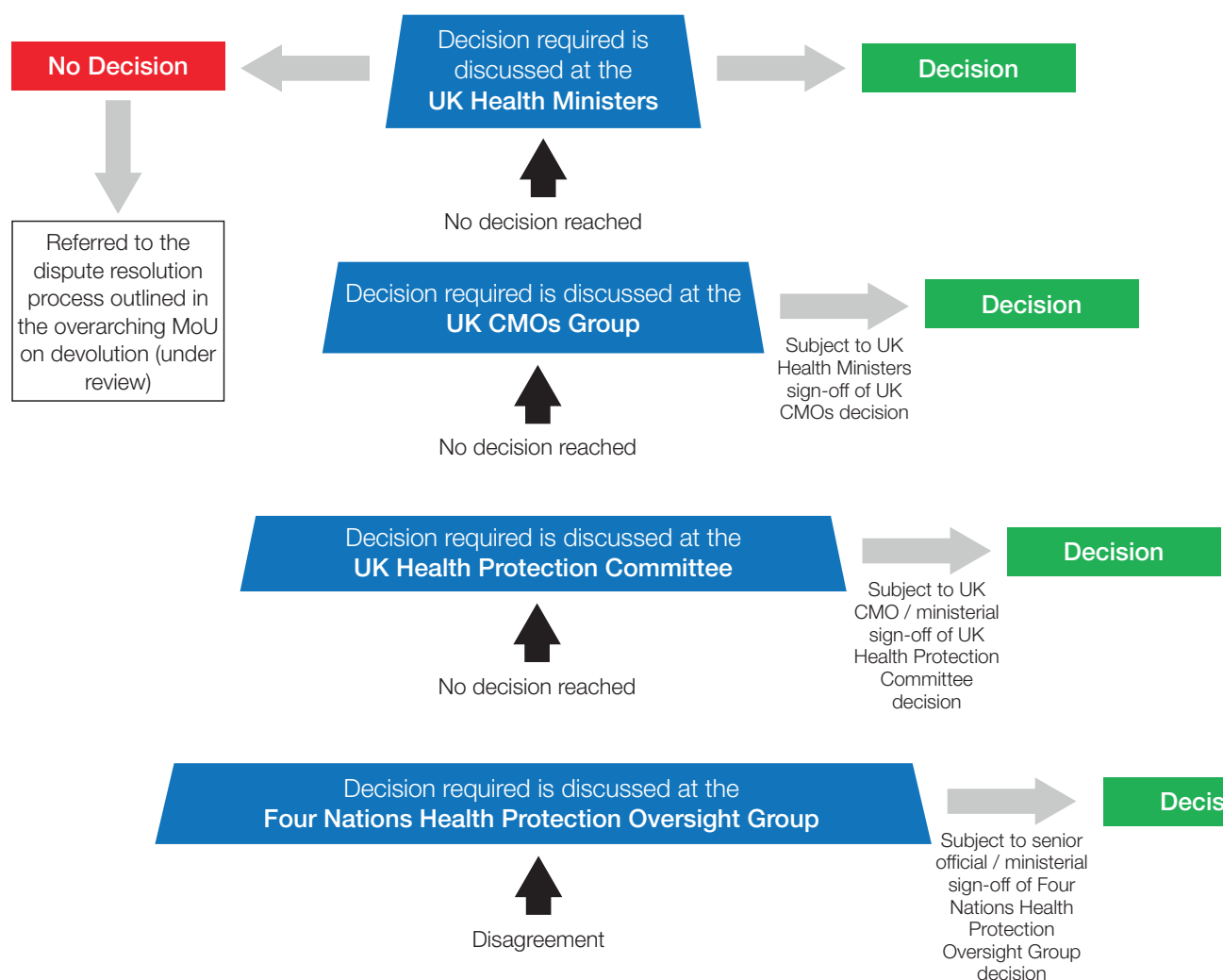
- 4.6.1 The Parties recognise that the UK will continue to meet its obligations under the International Health Regulations (2005) (IHR). In support of the UK's obligations under the IHR, the Parties shall continue to work together to build shared capacities to detect, assess and report public health events, including through the sharing of public health information in a timely manner.
- 4.6.2 The Parties also agree to work together to best meet our obligations under the TCA, recognising the Health Security (EU Exit) Regulations and associated UK Focal Point Communications Protocol.
- 4.6.3 The Parties agree to strengthen coordination in other areas of international engagement, including:
- 4.6.3.1 Developing UK-wide approaches to health protection issues that require engagement with international partners, including the World Health Organisation Regional Office for Europe (WHO/Europe), European Centre for Disease Prevention and Control (ECDC) and EU Member States.
  - 4.6.3.2 The identification of further opportunities for engagement with international partners, acknowledging, and where appropriate building upon, any existing commitments that the Parties may have.

## 4.7 Mutual Aid

- 4.7.1 The Parties acknowledge the importance of mutual aid arrangements to the maintenance of resilient and high-quality public health protection functions in the UK.
- 4.7.2 The Parties commit to establish a set of principles that are intended to ensure a coordinated approach to mutual aid on a UK-wide basis, acknowledging the differing health protection capabilities and thresholds of each nation. The approach will be underpinned by the framework's governance structure that will provide a timely and flexible mechanism for decision-making.

## 5. Dispute Avoidance and Resolution

- 5.1 A disagreement between the Parties becomes a 'dispute' when it enters the formal dispute avoidance and resolution process set out in the overarching MoU on Devolution, which is currently under review.
- 5.2 The Parties commit to seeking every opportunity to resolve differences in good faith and without the use of the formal dispute resolution process where possible. The dispute resolution process should only be used if resolution through normal working practices (including managing divergence) has not been possible.
- 5.3 The dispute resolution process, should only be utilised if:
- 5.3.1 the Parties cannot decide on a common recommendation regarding an application, request, or policy proposal; or
  - 5.3.2 one or more of the Parties considers the terms of reference/parameters in the governance framework have been breached; or
  - 5.3.3 one or more of the Parties considers that a JMC(EN) principle has been broken, or undue weight has been placed on one JMC(EN) principle (or part of a principle) at the expense of another.
- 5.4 Should the dispute resolution process be required, the Parties have approved a principle of subsidiarity to dispute resolution, requiring a dispute to be addressed at the lowest possible level.
- 5.5 The Parties are represented, and will be fully involved, at all stages of the dispute resolution process.
- 5.6 This process will be utilised only when an understanding cannot be reached, and divergence would impact negatively on the ability to meet the common frameworks principles. The dispute resolution process also recognises that in some areas a commonality of approach will not be needed in order to meet the JMC (EN) common frameworks principles and therefore a "decision to diverge" or "to disagree" would be acceptable.
- 5.7 The two key groups operating within this MoU are the Four Nations Health Protection Oversight Group and the UK Health Protection Committee. The diagram below explains the escalation of a disagreement to a dispute and the interaction between each level.



- 5.8 Should the formal dispute resolution process be needed, this would begin through discussion at the Four Nations Health Protection Oversight Group. If resolution cannot be reached in that forum, it would escalate to the UK Health Protection Committee for discussion. If resolution can still not be reached, the UK Health Protection Committee can recommend the issue is discussed at the UK CMOs Group, where appropriate, or they may choose to directly escalate to Ministers. Disputes should only be escalated to UK Health Ministers where joint decision at official level agreement cannot be reached.
- 5.9 As a last resort, where the above steps for resolving a disagreement have been unsuccessful, the issue will be escalated to the Secretariat of the Joint Ministerial Committee for resolution under the dispute resolution process set out in section A3 of the intergovernmental MoU, which is currently under review.
- 5.10 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, notably any decision relating to an incident or emergency response.
- 5.11 At each stage further evidence may be requested from the preceding forum before the disagreement is discussed.

## 6. Operation and review

### 6.1 Process

- 6.1.1 The Review and Amendment Mechanism (RAM) ensures the MoU can adapt to changing policy and governance environments in the future.
- 6.1.2 There are two types of review which are outlined below. The process for jointly deciding amendments should be identical regardless of the type of review.
- 6.1.3 The RAM relies on consensus at each stage of the process from the Ministers responsible for the policy areas covered by the MoU
- 6.1.4 Third parties can be used to provide advice to the Parties at any stage in the process. These include other government departments or bodies as well as external stakeholders such as NGOs and interest groups.
- 6.1.5 At the outset of the review stage, the Parties must agree timelines for the process, including the possible amendment stage.
- 6.1.6 If a decision is not reached in either the review or amendment stage, Parties can raise it as a dispute through the MoU's dispute avoidance and resolution process.

### 6.2 Review Stage

- 6.2.1 The operation of the MoU will be reviewed at six months, one year, and three years from the date that it comes into operation.
- 6.2.2 Thereafter, a periodic review of the MoU will take place every three years.
- 6.2.3 The period of three years starts from the conclusion of the last periodic review, including any amendment stages that follow.
- 6.2.4 During the periodic review, Parties to the MoU will discuss whether the governance and operational aspects of the MoU are working effectively, and whether decisions made over the previous three years need to be reflected in an updated MoU.
- 6.2.5 An exceptional review of the MoU is triggered by a 'significant issue' as determined by one or more of the Parties.
- 6.2.6 A significant issue must be time sensitive and fundamentally impact the operation and/or the scope of the MoU.
- 6.2.7 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.
- 6.2.8 The same significant issue cannot be discussed within six months of the closing of that issue.
- 6.2.9 The amendment stage can only be triggered through unanimous agreement by ministers. If the Parties agree that no amendment is required, the relevant time period begins again 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.)

### 6.3 Amendment Stage

- 6.3.1 Following the Parties jointly deciding to enter the amendment stage, they will enter into discussion around the exact nature of the amendment. This can either be led by one party to the MoU or all.

- 6.3.2 If an amendment is deemed necessary during either type of review (periodic or exceptional), the existing MoU will remain in place until a final amendment has been jointly decided.
- 6.3.3 Any amendments to the MoU shall be jointly decided by the Parties and a new MoU signed by the Parties.
- 6.3.4 If the Parties cannot agree whether or how the MoU should be amended, the dispute avoidance and resolution process may be activated.

# Annex B – Joint Ministerial Committee (EU Negotiations) Communique, October 2017

## 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

1. Common frameworks will be established where they are necessary in order to:
  - enable the functioning of the UK internal market, while acknowledging policy divergence;
  - ensure compliance with international obligations;
  - ensure the UK can negotiate, enter into and implement new trade agreements and international treaties;
  - enable the management of common resources;

- administer and provide access to justice in cases with a cross-border element; and
- safeguard the security of the UK.

2. Frameworks will respect the devolution settlements and the democratic accountability of the devolved legislatures, and will therefore:

- be based on established conventions and practices, including that the competence of the devolved institutions will not normally be adjusted without their consent;
- maintain, as a minimum, equivalent flexibility for tailoring policies to the specific needs of each territory as is afforded by current EU rules; and
- lead to a significant increase in decision-making powers for the Devolved Administrations.

3. 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.

# Annex C – Terms of Reference for UK Health Protection Committee

## Purpose

To bring together senior representatives from the UK's four health departments and the UK public health agencies of England, Wales, Scotland and Northern Ireland to discuss public health protection policy and make joint decisions that uphold the JMC(EN) Frameworks Principles.

## Objectives

The objectives of the UK Health Protection Committee ("the Committee") are to:

- Support and monitor the application of the Common Framework on Public Health Protection and Health Security, including by agreeing the underpinning work programme;
- Facilitate multilateral policy development on public health protection and health security and seek, where agreeable, to develop and jointly decide common policy approaches;
- Support UK-wide surveillance of communicable diseases and related special health matters, including by:
  - reviewing, and where appropriate making a recommendation to the Secretary of State to add or otherwise amend the list of communicable diseases and related special health matters that are subject to UK-wide surveillance;
  - specifying case definitions applying to the list of communicable diseases and related special health matters that are subject to UK-wide surveillance to ensure the comparability and compatibility of the data collected from across the UK;
  - establishing and reviewing procedures for the collection and sharing of such information;
- Maintain the TCA National Focal Point communications protocol for bringing the UK authorities into permanent communication with one another in order to facilitate the prevention and control of serious cross-border health threats affecting the UK and at least one EU Member State and/or those threats which may necessitate a coordinated response by the UK authorities in order to ensure a high level of human protection;
- Facilitate consultation between the UK authorities with a view to coordinating their efforts to develop, strengthen and maintain their respective capacities for the monitoring, early warning and assessment of, and response to, serious cross-border health threats;

- Manage potential divergence, and promote a collaborative approach to public health protection policy between the four UK nations in a way that respects the Devolution Settlements and the principles set out in the UK framework;
- Escalate issues relating to the application of the framework as per the dispute avoidance and resolution process;
- Review and amend the framework as per the R&A process set out in the framework.

## Membership

1. Core membership:
  - Department of Health and Social Care, UK Government;
  - Health and Social Services Group, Welsh Government;
  - Population Health Directorate, Scottish Government;
  - Department of Health, Northern Ireland;
  - UK Health Security Agency;
  - Public Health Wales NHS Trust;
  - Public Health Scotland;
  - The Public Health Agency (Northern Ireland);
  - The Chair of the Four Nations Health Protection Oversight Group.
2. Each party shall designate one representative and no more than one alternate to the Committee.
3. The notification of the designated representatives and their alternates shall be made to the secretariat of the Committee. Designated representatives, or their alternates, may resign from the Committee at any time and any changes thereof should be notified to the secretariat of the Committee.
4. The Committee shall be chaired by a representative from UK Government or the Devolved Administrations. The chair shall rotate between these members on a rolling annual basis. If any member, or their alternate, is unable to attend a meeting, they shall send their apologies in advance to the Secretariat.
5. Deputies shall be of sufficient seniority to contribute to the work of the Committee.
6. The Committee will be supported by a secretariat from the Department of Health and Social Care (England). Each nation may also designate a secretariat to support the group's progress alongside the permanent representative.

## Observers, experts and third parties

7. To allow the Committee to operate most effectively, the Committee can draw upon observers, experts and third parties to participate in the meetings of the Committee on an ad-hoc basis.
8. The participation of observers, experts and third parties can be proposed by any permanent member of the Committee, or the secretariat, and attendance is subject to approval of the meeting chair.

## Working Groups

9. The Committee may create ad-hoc or permanent working groups to discuss specific topics and or provide technical or operational advice.
10. Core members of the Committee shall designate representatives of the working groups and notify the secretariat of the Committee. The working groups shall be chaired by an individual nominated by the Committee.

## Operation of the Committee

11. The Committee will meet on a bi-annual basis. The Committee shall agree on the dates for the meetings for a period of 12 months ahead.
12. The quorum necessary at any meeting of the Committee to ensure the validity of any proceedings, shall be a minimum 75% of the core membership, with a minimum of one representative from each nation required at every meeting. Committee decisions may only be taken with the agreement of all permanent members, not including the Chair of the Four Nations Health Protection Oversight Group. The attendance of alternates shall count toward the quorum.
13. Extraordinary meetings of the Committee can be convened at the request of a permanent member of the Committee.
14. The Chair of the relevant Committee meeting, with the assistance of the secretariat, shall draw up an agenda for each meeting.
15. The secretariat will disseminate the agenda together with any products commissioned for consideration at the meeting, at least five working days prior to the meeting. Exceptionally, the Chair may shorten the deadline for circulating papers.
16. Each party will aim to provide each other with as full and open as possible access to scientific, technical and policy information including statistics and research.
17. Where the Committee decides that actions should be tasked to other working groups, or that other fora should be informed of outcomes of the Committee meetings, the secretariat will be responsible for this.
18. Minutes of the meetings shall be drawn up by the secretariat under the responsibility of the Chair for the relevant meeting. The secretariat shall send the minutes of the meetings to the permanent members of the Committee no later than two weeks after the meeting.
19. Party organisations to the Committee may pay to their designated representatives, or alternates, such remuneration (if any) they believe necessary.

# Annex D – Terms of Reference for the Four Nations Health Protection Oversight Group

## Purpose

1. The purpose of the Four Nations Health Protection Oversight Group is to provide an overview and coordination of UK-wide public health protection activities. It is a forum for information exchange, mutual support, sharing of best practice and making joint decisions that uphold the JMC(EN) Frameworks Principles. It does not replace any specific agreements made to support the relationships between member organisations or any other public health protection arrangements in place between the countries.

## Objectives

2. The objectives of the Four Nations Health Protection Oversight Group are to:
  - i. Effectively implement the Common Framework on Public Health Protection and Health Security, including by developing and monitoring the underpinning work programme;
  - ii. Support multilateral policy development on public health protection and health security and seek, where agreeable, to develop and agree upon common policy approaches;
  - iii. Deliver UK-wide surveillance of communicable diseases and special health issues, including by:
    - a) Monitoring, and where necessary recommending discussion at the UK Health Protection Committee regarding amendments to the list of communicable diseases and special health issues that are subject to UK-wide surveillance, and associated case definitions;
    - b) Establishing, where appropriate, common procedures for the collection of such information for approval by the UK Health Protection Committee;
  - iv. Support consultation between the UK authorities to coordinate their efforts to develop, strengthen and maintain their capacities for the monitoring, early warning and assessment of, and response to, serious cross-border health threats;
  - v. Facilitate discussion between the four nations on developing the UK Government's approach to public health protection issues that require engagement with international partners, including World Health Organisation (WHO) Euro, European Centre for Disease Prevention and Control (ECDC) and EU Member States.

- vi. Escalate issues as per the dispute avoidance and resolution process;

## Membership

3. The membership of the Four Nations Health Protection Oversight Group shall comprise of one nominated representative from each of:
  - i. UK Health Security Agency;
  - ii. UK Department of Health;
  - iii. Scottish Government;
  - iv. Public Health Scotland;
  - v. Welsh Government;
  - vi. Public Health Wales NHS Trust;
  - vii. Northern Ireland Government;
  - viii. Public Health Agency, Northern Ireland.
4. The Four Nations Health Protection Oversight Group shall be chaired by a representative from the public health organisations. The chair shall rotate between these members on an annual rolling basis in reverse alphabetical order (Wales, Scotland, Northern Ireland, England).
5. The notification of the designated representatives and their alternates shall be made to the secretariat of the Committee. Designated representatives, or their alternates, may resign from the Committee at any time and any changes thereof should be notified to the secretariat of the Committee. If any member is unable to attend a meeting, they shall send their apologies in advance to the Secretariat and, if they consider it necessary, arrange for one deputy to attend in their absence. Deputies shall be of sufficient seniority to contribute to the work of the Group.

## Working Groups

6. The Four Nations Health Protection Oversight Group may create ad-hoc or permanent working groups to discuss specific topics and or provide technical or operational advice.
7. Core members of the Four Nations Health Protection Oversight Group shall designate representatives of the working groups and notify the secretariat of the Group. The working groups shall be chaired by an individual nominated by the Group.

## Operation of the Four Nations Health Protection Oversight Group

8. The meetings of the Four Nations Health Protection Oversight Group shall normally be held four times a year and at other times as the Group shall require.
9. Extraordinary meetings of the Oversight Group can be convened at the request of a permanent member.
10. The quorum necessary at any meeting of the Four Nations Health Protection Oversight Group to ensure the validity of any proceedings shall be a minimum 75% of the core membership, with a minimum of one representative from each nation required at every meeting. Decisions may only be taken with the agreement of all permanent members. The attendance of alternates shall count toward the quorum.

11. The Four Nations Health Protection Oversight Group may invite individuals with particular expertise, knowledge or experience to provide input on a specific topic or agenda item with approval by the nominated Chair. The Four Nations Health Protection Oversight Group may also invite observers to attend meetings and participate in discussions with approval by the nominated Chair.
12. The UKHSA Corporate Secretariat shall provide administration for meetings of the Four Nations Health Protection Oversight Group, with the support of colleagues if meetings are held in other countries. Each nation may also designate a secretariat to support the group's progress alongside the permanent representative.
13. All members are encouraged to contribute agenda items, and support the secretariat in the coordination of the delivery and reporting of the work programme.
14. The agenda and papers for all meetings shall be reviewed by the Chair and distributed to members in advance of each Four Nations Health Protection Oversight Group meeting at least three working days before the meeting.
15. The minutes of the meeting shall be recorded at every meeting and shall be approved by the Chair before being submitted to the Four Nations Health Protection Oversight Group in advance of its next meeting for agreement, confirmation or otherwise. The minutes shall represent an accurate summary of the proceedings.
16. These terms of reference and the arrangements for the Group's meetings shall be reviewed every two years, or earlier at the request of members.







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