10 November 2020

Dear James

COMMON FRAMEWORKS: HAZARDOUS SUBSTANCES PLANNING

I wrote to you in July 2019 and February 2020 updating you on the progress made on the above framework. I am now writing to share the text of the provisional framework with your Committee, in accordance with the arrangements for scrutiny of common frameworks agreed between the Scottish Government and the Parliament.

My officials, together with their counterparts in the UK Government, Welsh Government and the Northern Ireland Executive have been working jointly to develop the framework. The provisional framework (set out in the annex to this letter) consists of a framework outline agreement and concordat and was confirmed by the Joint Ministerial Committee (European Negotiations) (JMC(EN)) on 3 September 2020. I am sharing this provisional framework for your Committee to scrutinise. I also provide a link to the summary of framework.

I look forward to hearing from you, if possible, within 28 days after the date of this letter with any comments your Committee may have on the provisional framework. My officials in the Planning and Architecture Division stand ready to give evidence if that would be helpful.

I am copying this letter and all attachments to Bruce Crawford MSP, Chair of the Finance and Constitution Committee due to the Committee's interest in the overall UK Common Framework programme.

I trust this is helpful.
Kind regards

KEVIN STEWART

Annex

COMMON FRAMEWORKS: OUTLINE FRAMEWORK

This outline framework for Hazardous Substances should be read as an example of how common frameworks are being developed. The outline framework template has been designed to allow for a variety of approaches to suit the needs of particular policy areas. This example is therefore without prejudice to how other frameworks may be developed in the future.

Purpose

This document provides a suggested outline for an initial UK-wide, or GB, framework agreement in a particular policy area. It is intended to facilitate multilateral policy development and set out proposed high level commitments for the four UK Administrations; it should be viewed as a tool that helps policy development, rather than a rigid template to be followed. The document may be developed iteratively and amended and added to by policy teams as discussions progress. It should be read alongside the accompanying guidance (UK Government and Devolved Administrations Guidance Note for Phase 2 Engagement).

Population of the agreement skeleton should be based on the existing work undertaken and should remain consistent with the underlying Framework Principles agreed by the UK, Scottish and Welsh Governments. The content should inform the drafting of any legislative and non-legislative mechanisms required to implement UK-wide frameworks.

Until it is formally agreed this document should not be considered as Government policy for any of the participating administrations and should be treated as confidential. The process for developing and finalising this document will be mutually agreed by all administrations.

The document is made up of four sections:

Outline

1. **Section 1:** What We Are Talking About. This section will set out the area of European Union (EU) law under consideration, current arrangements, and any elements from the policy that will not be considered. It will also include any relevant legal or technical definitions.

2. **Section 2:** Proposed Breakdown of Policy Area and Framework. This section will break the policy area down into its component parts, explaining where common rules will and will not be required and the rationale for this approach. It will also set out any areas of disagreement.

Operational Detail

3. **Section 3:** Proposed Operational Elements of Framework. This section will explain how the framework will operate in practice by setting out: how decisions will be made; the planned roles and responsibilities for each administration, or a third party; how implementation of the framework will be monitored and, if appropriate enforced; arrangements for reviewing and amending the framework; and proposed arrangements for resolution of a dispute.

4. **Section 4:** Practical Next Steps and Related Issues. This section will set out the next steps that would be required to implement the framework (subject to Ministerial agreement) and key timings.

Draft Framework Agreement

OUTLINE

SECTION 1: WHAT WE ARE TALKING ABOUT

1. Policy area

Hazardous Substances Planning. Encompasses the elements of the Seveso III Directive (2012/18/EU) which relate to land-use planning, including: planning controls on the presence of hazardous substances and handling development proposals both for hazardous establishments and in the vicinity of such establishments.

The Seveso III Directive ('the Directive') has the objective of preventing on-shore major accidents involving hazardous substances, as well as limiting the consequences to people and/or the environment of any accidents that do take place. 'Hazardous substances' in the legislation include individual substances (such as ammonium nitrate), or whole categories of substances (such as flammable gases). The Ministry of Housing, Communities and Local Government (MHCLG) and devolved administrations (DAs) are responsible for the land-use planning (LUP) requirements of the Directive. In accordance with the retained Seveso III Directive, the UK is obliged to ensure that the objectives of preventing major accidents and limiting the consequences of such accidents are taken into account in land-use policies. This requires controls on the siting of new establishments and modifications to establishments which fall within scope of the Directive, and on new developments and public areas in the vicinity of such establishments. It also requires these considerations to form the development of relevant policy and has requirements on public involvement in decision making, including relevant plans and programmes.

When implementing the original EU Directive in this regard, a distinction was made between those elements relating to on-site controls for establishments to minimise the risk of a major accident (those now covered by the Control of Major Accident Hazards (COMAH) Regulations 2015 (GB) and their Northern Ireland equivalent)

and the residual off-site risk. The latter is primarily the risk of a major accident arising due to the proximity of hazardous substances to other development or sensitive environments (i.e. if there were an accident due to on-site failures, what the risks would be where certain developments or habitats are or would be close by). This latter issue was considered to be a spatial planning matter to be addressed through planning controls. Subsequently, LUP matters generally in the UK were devolved to the new administrations. To summarise; the significant majority of the Directive relates to COMAH which focuses on ensuring businesses take all necessary measures to prevent and mitigate accidents within their establishments. What is referred to here as the hazardous substances regime focuses solely on *where* these establishments are sited, and what is sited around them (a much smaller aspect of the Directive).

Very broadly the hazardous substances regime;

a) sets limits on the amount of dangerous substances that can be stored/used in an establishment before that establishment must apply for consent to do so from their local planning authority (usually the local authority);
b) requires the preparation of planning policies to take into account the aims and objectives of the Directive; and
c) requires local planning authorities to comply with various consultation requirements and consider any major accident hazard issues before they can grant planning permission in relation to establishments, to certain types of development near such establishments, and hazardous substances consent.

<u>To note the hazardous substances regime does NOT ban any substance, or any development around establishments containing hazardous substances. All decisions rest with local planning authorities, or in some cases, called-in applications or appeals, the Minister(s) in England, Wales, Northern Ireland or Scotland.</u>

It should also be noted that LUP controls on hazardous substances existed in Great Britain for around a decade before becoming an EU requirement. This is an issue on which the UK has led the way.

2. Scope

- The scope of this Common Framework is any legislation which applies the LUP elements of the retained Seveso III Directive in the United Kingdom. At the time of writing the following regulations constitute the main body of legislation that applies these elements of the Directive, future regulations applying regulations in this area are also expected to be in scope once established:

<u>In England</u>

- The Planning (Hazardous Substances) Act 1990
- The Planning (Hazardous Substances) Regulations 2015

- The Town and Country Planning (Development Management Procedure) (England) Order 2015

In Scotland

- Planning (Hazardous Substances) (Scotland) Act 1997
- The Town and Country Planning (Hazardous Substances) (Scotland) Regulations 2015
- The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013

In Wales

- The Planning (Hazardous Substances) Act 1990
- The Planning (Hazardous Substances) (Wales) Regulations 2015
- The Town and Country Planning (Development Management Procedure) (Wales) Order 2012

In Northern Ireland

- The Planning (Hazardous Substances) (No.2) Regulations (Northern Ireland) 2015

- The Directive's minimum requirements are common across England, Scotland, Wales and Northern Ireland. Whilst the different administrations are currently free to use their devolved planning powers to increase controls beyond the minimum requirements of the Directive, this has not happened in any substantive way.

Now the UK has left the EU this set of common minimum requirements may cease to be in effect and the different administrations will have wider scope to use their planning powers to make changes. This is subject to the terms of the Future Relationship with the EU and any other relevant future agreements, including the upcoming inter-governmental relations (IGR) review.

There is an existing MOU between DAs and the various bodies that make up the COMAH Competent Authority (see box 10), which applies to the COMAH aspects of the Seveso III Directive. In place of a full framework this MOU is being updated to reflect the situation post-Exit. Despite the policy links between COMAH and hazardous substances, it is not felt that there is any significant overlap between this framework and the updated COMAH MOU, which explicitly states that land use planning requirements are separately implemented. This is also the case with the hazardous substances regime and the rest of the planning system. The hazardous substances consent process sits outside of the development consent process, and the current requirement for planning authorities to consult HSE if their development is in a consultation zone does not overlap with other requirements (i.e. if this were altered in any way there would be no significant knock-on effects further along the planning system).

- The primary focus of this agreement is to maintain the principles and objectives of retained EU legislation across the hazardous substances regime, that is, primarily, to prevent on-shore major accidents involving

hazardous substances and limit the consequences to people and/or the environment of any accidents that do take place. It also seeks to, wherever possible, facilitate the sharing of information on a multilateral basis.

- Post Exit, the UK will still be party to the following relevant international agreements;
    - The Convention on the Transboundary Effects of Industrial Accidents is a UNECE convention designed to protect people and the environment from the consequences of industrial accidents. Parties are required to, amongst other things, take appropriate measures and cooperate within the framework of this Convention, to protect human beings and the environment against industrial accidents…shall ensure that the operator is obliged to take all measures necessary for the safe performance of the hazardous activity and for the prevention of industrial accidents…take measures, as appropriate, to identify hazardous activities within its jurisdiction and to ensure that affected Parties are notified of any such proposed or existing activity. The Convention also sets out detailed requirements when it comes to siting of/around hazardous establishments as well as setting out the types and quantities of substances that should be considered hazardous.
    - The UNECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (‘the Aarhus Convention') establishes a number of rights of the public (individuals and their associations) with regard to the environment. The Parties to the Convention are required to make the provisions necessary so that public authorities (at national, regional or local level) will contribute to these rights to become effective.

3. Definitions

All technical definitions used in this agreement will reflect those set out in legislation implementing the retained Seveso III Directive.

In this framework the following definitions are also used:

- *JMC(EN).* The JMC (EN) Joint Ministerial Committee (Europe Negotiations) is a subcommittee of the JMC that was established in 2016 to facilitate discussion between Westminster and the devolved governments over the UK’s EU Exit strategy. The JMC comprises Ministers from the UK and devolved governments, providing central co-ordination of the overall relationship between the UK and the devolved nations.
- *HSE & HSE NI.* The Health and Safety Executive and Health and Safety Executive Northern Ireland are government agencies responsible for the encouragement, regulation and enforcement of health and safety.

- MoU – Memorandum of Understanding. This is a multilateral agreement which indicates a common line of action. It is often used where a legal commitment would not be required or appropriate.

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SECTION 2: PROPOSED BREAKDOWN OF POLICY AREA AND FRAMEWORK

4. Summary of proposed approach

It is important to first note the context in which the proposed approach has been developed. Divergence is already entirely possible across the devolved administrations, however there are currently a number of restrictions on what the United Kingdom Government (UKG) and DAs can amend based on what has been set at EU level. The key restrictions are that the UKG and DAs;

i) are unable to change the definition of what an establishment is (in short, a location where dangerous substances are present in significant quantities);
ii) must not lower standards on what constitutes a dangerous substance (i.e. by removing categories of substances or individual substances from the list, or raising the threshold at which the quantity becomes significant and the establishment falls into scope of the regime);
iii) must ensure that the objectives of preventing major accidents and limiting the consequences of such accidents for human health and the environment are taken into account in their land-use policies, through controls on the siting of new establishments and new developments close to establishments;
iv) must set up appropriate consultation procedures to ensure that operators provide sufficient information on the risks arising from the establishment and that technical advice on those risks is available when decisions are taken; and
v) facilitate public involvement at various stages of decision-making on relevant applications for consent or plans and programmes.

In simplified terms, what may become possible post-Exit that is <u>not possible now</u> is that the UKG and devolved administrations will have the powers within a domestic

context to relax requirements on the level of substances that can be held before triggering the regime and relax the process around what is required once the regime is triggered.

It is considered that whilst a framework is appropriate for the hazardous substances regime, it should be non-legislative. This will be in the form of a Concordat, setting out the principles of engagement between the UK government, DAs and HSE where changes to legislation are concerned (see box 6 for more details). This view is guided by the overarching principle established by JMC(EN); that any framework should secure the proper functioning of the regime whilst at the same time respecting the devolution rights of the devolved administrations. It is also guided with reference to the priorities that JMC(EN) list as key, that any framework should be established where they are necessary to:

- *enable the functioning of the UK internal market, while acknowledging policy divergence*

Hazardous substances planning is not significantly different from devolved planning controls generally – it is about consenting the locations of substances with major accident hazard potential and development around those locations. As stated in box 1, establishments which store certain amounts of certain substances or developers looking to build near such establishments will be required to seek consent from a local authority. The regime is not focused on banning activities or making a substance illegal in a general sense. As a result, (and in a scenario in which the non-regression principle did not apply) the biggest potential discrepancy would be where, for example in one administration, controls were removed for a certain substance completely, where across the border, operators would need to go through the hazardous substances consenting process with their local authority to hold the substances at a site in the same quantities. Whilst any such scenario could result in a potentially damaging 'race to the bottom', due to the nature of the regime this would bring very limited economic benefits – relaxed hazardous substances standards would not bring a significant enough benefit to operators to influence which administration they set up business in to the point where this would distort the internal market. Obtaining hazardous substances consent is a relatively quick and inexpensive process for operators/developers; the fee in England for making an application is £200-250, in Wales it is £200-400, in Scotland it is £500-1000, and in Northern Ireland it is free of charge. In addition, a hazardous substances authority must inform an applicant of a decision within 8 weeks in England, Wales and Northern Ireland. In Scotland it is 2 months. This period can be extended by an agreement in writing between the applicant and the planning authority. In communication with industry stakeholders there have been consistent messages that the current processes play an important role in enshrining vital safeguards against major accidents.

As such reducing standards in this way is not something that industry has been pushing for or is likely to pursue and the proposed approach is considered appropriate. However, as with all workstreams further arrangements will need to be considered at a higher level to manage any such impacts on the internal market within this – or related – policy areas.

- *ensure compliance with international obligations*

The UK is a signatory to two international agreements relevant to the hazardous substances regime (as mentioned in box 2), the Aarhus Convention and the Convention on the Transboundary Effects of Industrial Accidents. The latter in particular cements many of the requirements of the current regime in international law, therefore any significant stripping back of the hazardous substances regime could result in a breach of international obligations. This presents limits on what the UKG can do as the party to the treaties, but also constrains the administrations. In very extreme cases the Secretary of State has step-in powers already built into Devolution settlements where there is a potential breach of international law, although we do not envisage these forming any part of the framework. A non-legislative framework would provide the appropriate forum for any policy changes to be addressed, where anything of concern can be flagged and any necessary dispute resolution measures (see box 13) can be put into place.

In the event that either of the two relevant international agreements are amended UKG will decide whether the amendments should be ratified. Before ratifying any international agreement, the DAs must be consulted. If the legislation of one or more administrations needs to be brought into line with the requirements of any new amendments then this must be finalised before any amendment can be ratified. Where necessary any disagreements should be resolved through the dispute resolution mechanism as set out in this framework.

This framework does not impact on the Belfast Agreement.

- *ensure the UK can negotiate, enter into and implement new trade agreements and international treaties*

Not applicable. Through discussions we have not identified any differences between administrations on hazardous substances that would have an impact on the UK's ability to negotiate (etc.) trade agreements and treaties. Negotiation of any new trade agreements or treaties would in any event need to take account of where devolved competence means there are or could be divergence across the UK in matters pertinent to that particular treaty or agreement. The terms on which the UK leaves the European Union, and any future UK arrangements with the EU, may incorporate certain commitments which could cover the hazardous substances regime (e.g. on environmental standards). In this scenario the ability of administrations to diverge will be reduced, although it is considered that the best practice ways of working as set out in this framework will still prove a positive basis for sharing of information etc. and as such the framework will remain unchanged.

- *enable the management of common resources*

HSE/HSE NI – as indicated, they operate across the different planning jurisdictions (HSE NI covering Northern Ireland), and so any divergence could affect them, and so any framework encouraging and providing a forum for discussion would be beneficial. However, potential changes to the regime with significant impacts on HSE are already a potential feature of the existing regime *within the EU framework* and are not triggered by EU exit. There is not a new significant issue being created on this point that would need to be addressed by legislative means.

- *administer and provide access to justice in cases with a cross-border element*

Not applicable. Any differences between administrations on hazardous substances will not have an impact on the UK's ability to administer or provide access to justice.

- *safeguard the security of the UK*

Differing hazardous substances planning controls in parts of the UK are already a possibility, i.e. not affected by EU Exit, and these differences do not pose a threat to UK security.

Reducing protections below current levels could become possible after Exit, which could increase the risk to safety *within an area (acknowledging the limited risk of cross-border impacts)* e.g. by allowing hazardous substances near a sensitive development (to note, safety measures within establishments would still be regulated through non-planning requirements under the Control of Major Accidents Hazards Regulations 2015 or their equivalent). As stated previously, hazardous substances powers are broadly analogous to other devolved planning powers in this regard and as such should be seen as a matter for individual administrations – divergence in and of itself does not pose a risk to the security of the UK as a whole.

According to the JMC(EN) principles a legislative framework should be considered only where absolutely necessary. As set out above a potential legislative framework for hazardous substances would not meet these criteria. According to the principles set out by JMC(EN) and the objective of securing the proper functioning of the hazardous substances regime whilst at the same time respecting the devolution rights of the devolved administrations, this Common Framework will not be a legislative vehicle but rather a reflection of the discussions that have taken place and agreements reached on ways of working going forward, post the UK's departure from the European Union.

Other considerations

- the devolved regimes predate the current version of the Directive, and in certain cases go further than its minimum requirements; this demonstrates the lack of appetite to legislate below its minimum standards.
- the HSE have a cross-cutting role which provides a common evidence base which all DAs look to; with policy development across all administrations in Great Britain informed by HSE advice, differing approaches would be unlikely. Current potential for divergence – decision making is devolved, so as long as the aims of the Directive are taken into account, it should be emphasised that despite the scope for such divergence, very little of it has occurred. It should also be noted that planning authorities and Ministers in the various home nations are free to make decisions on applications as they see fit, provided the major accident hazard potential forms part of the consideration.

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

Whilst no legislation is considered to be necessary to put this framework in place, the following 'operability' regulations have been laid to ensure that the regime continues to function as it does currently following Exit:

- The Planning (Hazardous Substances and Miscellaneous Amendments) (EU Exit) Regulations 2018. *For England*
- The Planning (Environmental Assessments and Miscellaneous Amendments) (EU Exit) (Northern Ireland) Regulations 2018
- The Town and Country Planning (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019
- The Town and Country Planning and Electricity Works (EU Exit) (Scotland) (Miscellaneous Amendments) Regulations 2019

These regulations are fully independent of this framework.

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

The UKG and the DAs have agreed a set of nine principles for future ways of working that would make up the agreement:

i. In the absence of EU requirements applying to the UK, the nations of the UK will consider appropriate evidence and expert advice (for example that of the Control of Major Accidents Hazards (COMAH) competent authority and industry bodies), as appropriate, as regards the substances and quantities to which hazardous substances consent should apply.
ii. Administrations will respect the ability of other administrations to make decisions (i.e. allowing for policy divergence).
iii. Administrations will consider the impact of decisions on other administrations, including any impacts on cross-cutting issues such as the UK Internal Market.
iv. Wherever it is considered reasonably possible, administrations agree to seek to inform other administrations of prospective changes in policy one month, or as close to one month as is practical, before making them public.
v. Administrations will ensure an appropriate level of public transparency in decision making that leads to policy changes.
vi. Parties will create the right conditions for collaboration, by for example ensuring policy leads attend future meetings.
vii. Future collaborative meetings will be conducted at official level and on a without prejudice basis.
viii. In order to broaden the debate at future collaborative meetings, parties will ensure that different perspectives are present.

ix. Those attending future collaborative meetings recognise the importance of h*ow* collaboration is approached.

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

N/A

OPERATIONAL DETAIL

SECTION 3: PROPOSED OPERATIONAL ELEMENTS OF FRAMEWORK

8. Decision making

Following exit day all decision making under the relevant devolved competences (within the scope of the framework) will fall to the UKG and the DAs within their respective territories, following usual procedures but taking into account the principles set out in box 6. An exception will be where there is a desire for any proposed policy changes to be applied across more than one territory. In such a scenario administrations will work together to determine the best way to coordinate these changes. The procedure will be similar to that taken forward in previous coordinated work on transposing regulations following updated Directives, or the preparing of operability regulations in advance of EU Exit. Any scenario will require a slightly different approach and timeframe, so this framework does not seek to be prescriptive in how work should be carried out; current arrangements for coordinating work on the implementation of the Seveso III Directive are also ad hoc.

Usually, HSE acts as the coordinator for implementing new requirements from revision of, or amendments to the Directive and engages with planning representatives from the various administrations to coordinate implementation. They may play a similar role in future but will have no explicit responsibility to do so. As other issues arise, contact is made, again on an ad hoc basis, to seek to resolve these. Ministers responsible for planning individually sign off implementing legislation or changes to procedures. The framework will also link into any future arrangements for the functioning of the UK Internal Market.

To facilitate the sharing of information where appropriate, and as a forum to discuss wider policy issues, it is envisaged that a working group of the policy leads in each administration will hold a six-monthly telephone conference to discuss any issues and share learning. This would not rule out issues being raised for consideration by the working group between meetings if necessary. The initial meeting will be arranged and chaired by UKG, with arrangements for further meetings discussed as an agenda item. Whilst not expected to be required at the initial 6 month mark, subsequent meetings will discuss any post-Exit policies that have been implemented at either the UK or devolved level, how successful they have been for example, and whether there had been any unexpected impacts. It is expected that the results of these reviews will be fed into the more formal post-implementation review that is required by the Planning (Hazardous Substances) Regulations 2015 at five-year intervals.

9. Roles and responsibilities of each party to the framework

See key principles (box 6).

10. Roles and responsibilities of existing or new bodies

In Great Britain the COMAH competent authority (CA) is made up of the relevant safety body (HSE – or the Office for Nuclear Regulation (ONR) at nuclear establishments), acting jointly with the appropriate environment agency for the locality; i.e. the Environment Agency in England, the Scottish Environment Protection Agency in Scotland and Natural Resources Wales in Wales. In Northern Ireland the CA is HSE NI and the Environment and Heritage Service of the Department of the Environment, acting jointly. The CA determines the nature and severity of the risks to the environment and people in the surrounding area from the hazardous substances in the application and advises the Hazardous Substances Authority on whether they should grant consent. They also have responsibility for advising on any changes to the lists of controlled substances and other policy updates that may impact the hazardous substances regime. In relation to Planning Applications, HSENI is a statutory consultee and provides advice to Planning Authorities in Northern Ireland.

HSE have the lead on the Seveso III Directive in Great Britain, and post-Exit will be taking up several of the functions that currently sit with the European Commission in relation to COMAH, this will include the responsibility for advising on any changes to the lists of controlled substances or other policy updates that may impact the hazardous substances regime. Changes in their policy, e.g. on risk or the way they engage in the planning system ultimately rest with the UK Secretary of State for Work and Pensions. Beyond this proximity to the regime, and as a potential source of advice, neither HSE/HSE NI or the CA have any official role within the structure of this framework.

They will continue in their current role and with their current responsibilities after Exit and have been kept informed throughout the process of developing this framework.

11. Monitoring and enforcement

As no legislative arrangements are considered necessary then enforcement measures are not appropriate. In place of formal monitoring measures there will be regular meetings to review the framework (see boxes 8 and 12.) Policy officials acknowledge that there are likely to be ongoing reporting requirements associated with being part of the frameworks work programme and will cooperate with all relevant requests and commissions that come from the centre.

12. Review and amendment

We propose having a review meeting between UKG and DAs, arranged by UKG, two years after the day the framework comes into effect. This will be to consider the ongoing application of transposing domestic legislation across the different

administrations. The meeting would focus in particular on any issues encountered and allow parties to provide a forward look of any changes that they are considering. The involvement of other stakeholders would be considered at the time. This would not rule out an earlier review if required.

If any party to this framework feels an early review is necessary, then a request can be made at official level. It is expected that such requests also be resolved at official level, and that such requests be accommodated unless there is a valid reason for refusal. Timeframes can be discussed on a case-by-case basis, but unnecessary delay should be avoided. If an agreement cannot be reached, then the dispute resolution procedure set out in box 13 will apply.

After an initial review a more permanent arrangement for recurring meetings on this framework will be decided based around a timeframe that is considered appropriate.

13. Dispute resolution

The intention under this framework is that there will be a regular group at working level to discuss and work through any issues at an early stage.

It should be noted that there have not previously been disagreements in this area that have warranted engagement between senior officials or portfolio Ministers of the different administrations. There is no particular reason to suppose that EU Exit will make the need for that level of engagement any more likely, however it is appropriate to have a procedure in place in the event it is needed.

The intention is for this process to remain flexible and adaptable to individual situations, and this precludes us from affixing timescales to each stage. However, resolving issues as quickly as possible will be a key priority and escalation will always be seen as a last resort.

This process would be as follows:

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

Director level/Chiefs of planning. Where disagreements cannot be resolved amongst policy leads the next stage will usually be to escalate the issue to director level. At this stage directors can decide whether it would be appropriate to arrange a meeting with counterparts across administrations. Alternatively, or after such a meeting, directors may determine that the issue cannot be resolved at this stage at which point the involvement of Ministers will be required.

Portfolio Ministers. This is expected to be a last resort for only the most serious issues and where all alternatives have been exhausted. In very extreme cases the Secretary of State has step-in powers, already built into Devolution settlements, although we do not envisage these forming any part of the framework.

HSE/HSE NI. They may be included at multiple stages of the process, potentially flagging issues, or providing advice on possible solutions.

Agree to disagree. It does not always follow that where disagreements emerge these will need to be escalated or a 'solution' need to be established. This framework will not prejudice the right of administrations to 'agree to disagree' in certain circumstances.

SECTION 4: PRACTICAL NEXT STEPS AND RELATED ISSUES

14. Implementation

This framework will take effect once agreed by all parties and approved by Ministers. It is intended that the Concordat be in effect when the transition period ends.

On 3 July 2019 Cabinet Office published a draft of this framework to serve as a pilot alongside a wider update on the progress of the frameworks workstream in general.

Summary

1. Framework ownership

- Common Framework for Hazardous Substances Planning
- Minister for Local Government, Housing and Planning
- Lyndsey Murray (Lyndsey.Murray@gov.scot)
- Local Government and Communities Committee

2. Points for the Parliamentary Committees to note

a. Procedural

- The JMC(EN) sign-off of the provisional framework on 3rd September 2020.

b. Content

- Purpose of the framework is as set out in the summary of framework

To note:

The Framework Outline Agreement and Concordat is attached to the letter and link to summary above.