



HM Government

Integrated Pollution Prevention and Control – The Developing and Setting of Best Available Techniques (BAT)

Provisional Framework Outline Agreement and Concordat

February 2022

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Integrated Pollution Prevention and Control – The Developing and Setting of Best Available Techniques (BAT) Concordat and Provisional Framework Outline Agreement

Presented to Parliament
by the Secretary of State for Environment, Food and Rural Affairs
by Command of Her Majesty

February 2022



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Framework Outline Agreement

This is the Framework Outline Agreement for the Developing and Setting of ‘Best Available Techniques’ Common Framework.

This document has been developed collaboratively between officials from the UK Government, Scottish Government, Welsh Government and Northern Ireland Executive, hereafter referred to as the ‘Parties’.

Section 1: What are we talking about

1. Policy area

The policy area under consideration is the regulation, control and prevention of pollution from industry. This is a devolved matter. When the UK was a member of the EU, the Industrial Emissions Directive (IED) set the framework within which the nations of the UK set pollution control requirements. This provided a great deal of consistency of approach and standards.

The primary focus of this industrial emissions standards framework will be steering the development and operation of the process for developing Best Available Techniques (BAT), which is a core concept in the IED. Annex 1 of the IED defines the ‘Categories of activities’ for which BAT applies. Industries below the defined thresholds have been regulated outside the BAT system.

For industrial emissions controls outside the BAT system (hereafter referred to as ‘non-BAT’), the framework sets out discursive mechanisms for considering wider policy to meet our respective strategic aims through potential joint working to maximise environmental benefits.

Best Available Techniques

BAT means the economically and technically viable techniques which are the best for preventing or minimising emissions and impacts on the environment. Industrial installations undertaking specific types of activity are required to use BAT to reduce emissions to air, water and land. BAT has historically been adopted and applied across the EU by the European Commission as BAT Conclusions (BATC) under the IED (Directive 2010/75/EU). Following EU exit, this function now rests independently with the UK Government, Scottish Government, Welsh Government, and the Department for Agriculture, Environment and Rural Affairs (DAERA) (hereafter referred to as ‘the Parties’) as a new executive power to adopt BATC.

The collaborative and evidence driven BAT process provides a recognised model of best practice for reducing emissions from industrial processes that can harm health and the environment in a way that supports innovation and long-term investment.

Whilst the Parties will develop and set future BATC separately from the EU, the common origin of the legislation ensures BAT will continue to be based on the same principles. The definition of BAT in UK law remains unchanged following EU exit and it forms part of our retained EU law alongside all existing BATC that were developed at the EU level (largely on a sector-by-sector basis). The BAT regime will operate on the same basis of a transparent, collaborative, flexible, data and evidence led process that safeguards and builds on the high levels of environmental protection already in place across the UK.

Having left the EU, the Parties will develop and set future BAT, based on the same principles that have been followed since the concept was devised; a transparent, collaborative, flexible, data and evidence led process that safeguards and builds on the high levels of environmental protection already in place across the UK.

Non-BAT emissions controls

The IED introduced a number of other requirements that sit alongside BAT in the pollution control regimes of the Parties, for example maximum allowable emission limit values for large combustion plants and waste incineration plants. In many instances, regulation of these industrial activities has been partially or fully superseded by BAT Conclusions, but further work is needed to update current standards. Following the UK's exit from the EU, agreement on the industrial standards for these sectors will be determined by the Parties.

In addition, there are certain types of industrial activity that fall outside of the scope of the IED (and are therefore not subject to BAT or the IED's maximum allowable emission limit values), some of which are covered by separate regulatory requirements. For example, the Medium Combustion Plant Directive (Directive 2015/2193/EU) set limits on emissions to air from medium combustion plants when it was transposed into domestic law.

There are also some, generally smaller scale, industrial activities which are separately subject to BAT in respect of emissions to air, but not emissions to land or water¹. For those activities currently out of scope of the regulatory regimes, the framework offers the opportunity for collaborative discussions for potential joint working on emissions controls.

Across the UK, the Parties have separate regulatory regimes related to the control of emissions from industrial activities, historically below the threshold of the categories set out in the IED. Whilst there are some differences in approach, collaboration on matters of interest may enable the UK as a whole to better achieve a reduction in air pollution.

In the development and delivery of UK BAT the Parties to this framework recognise there may be interactions with the non-BAT emissions controls

¹ Part A1 installations are regulated by the Environment Agency (EA) and Natural Resources Wales (NRW) respectively. The Northern Ireland Environment Agency (NIEA) regulate Part A, B, while Part C are regulated by District Councils, unless located in the same site as a Part A or Part B facility. The Scottish Environment Protection Agency (SEPA) regulate Part A and B in Scotland. Part B (emission to air activities) are subject to what would have historically been called 'domestic BAT'. That is BAT (defined in the same way as IED BAT) but determined by UK governments rather than the EU. This takes the form of Process Guidance Notes.

described previously. This framework therefore extends informally to include the facilitation of joint working in relation to this interface as part of the broader ambition to reduce emissions from industry.

2. Scope

The scope of the Framework Outline Agreement and associated Concordat is an agreement between the Parties to set out how to work together to establish, maintain and review a process for developing and setting of BAT within the UK.

The framework will provide an opportunity to discuss a commonality of policy approach in areas of devolved competence as far as possible and, where appropriate, joint development on wider elements outside the scope of BAT as outlined (non-BAT emissions controls) in Section 1.

Retained EU Law

The elements of EU law which intersect with devolved competence are those set out in the Industrial Emissions Directive (Directive 2010/75/EU) and the Medium Combustion Plant Directive (Directive 2015/2193/EU).

- **The Industrial Emissions Directive (2010/75/EU).** This Directive is the main EU instrument regulating pollutant emissions from industrial installations. It requires member states to control and reduce the impact of industrial emissions on the environment. The Directive aims to lower emissions through an integrated approach including through the application of best available techniques and some common standards for certain sectors. The mechanism for the development of EU BAT is known as the Seville Process. This process requires wide-ranging evidence gathering and the sharing of expertise and information by Technical Working Groups (TWGs). Extensive engagement with industry and access to data from as many installations as possible is required in order to develop a robust understanding of what techniques are available as well as their feasibility and applicability. The European Commission produces BAT reference documents (BRefs) that are the basis of subsequent EU Decisions which specify BAT Conclusions (EU BAT) and the associated emission limits. Article 14(3) of the IED has made the BAT conclusions mandatory in the permitting/licensing process.
- **The Medium Combustion Plants Directive (2015/2193).** This Directive regulates pollutant emissions from the combustion of fuels in plants with a rated thermal input equal to or greater than 1 Megawatt thermal and less than 50 Megawatt thermal.

Implementation of these directives is an area of devolved competence and they were transposed by the Pollution Prevention and Control (Industrial Emissions) Regulations (Northern Ireland) 2013, the Environmental Permitting (England and Wales) Regulations 2016, and successive amendments, and the Pollution Prevention and Control (Scotland) Regulations 2012. These regulations also include provisions on industrial emissions standards which are of UK rather than

EU origin, for example the framework for regulating 'Part B activities (Wales and England)', which are generally smaller industrial activities and are not covered by the Industrial Emissions Directive.

UK Government, Scottish Government, Welsh Government and the Department for Agriculture, Environment and Rural Affairs (DAERA)

BAT

Following the UK's exit from the European Union, the Parties have committed to providing a future regime for the development of BAT within the UK. All BAT Conclusions published by the EU so far have been retained in UK law via EU Exit Statutory Instruments (SIs) which ensures they continue to have effect after the UK's departure from the EU. This is a devolved policy area and the Parties are now individually responsible for deciding what BAT/BATC to set in relation to the respective nations of the UK. However, it is recognised that a common approach to the process of development of BAT within the UK provides the desired consistency for UK industry. The Standards Council (see Section 3) will aim to reach consensus on BAT, including agreement to a common approach or differing approaches within the UK, before advising respective Ministers and it is expected that any such differing approaches are identified early on in the process.

Non-BAT emissions controls

These controls, as described above, are devolved but in many cases are common across the UK, which supports business investment and regulatory effectiveness. These controls are not subject to the Governance processes set out here but may be discussed alongside discussion of BAT issues.

This framework will be established by the Parties.

Relevant International Obligations

The Common Frameworks Principles agreed at JMC (EN) state that frameworks will be established where necessary to ensure the UK can negotiate, enter into and implement new trade agreements and international treaties, and ensure compliance with international obligations. These principles were established in the context of an ambition for close working between the Parties on reserved matters that significantly impact devolved responsibilities in Common Frameworks.

Common Frameworks will allow the parties, in a timely manner, to ascertain the impact of international trade on managing UK policy divergence. All Parties to the framework will consider any impact in a way that meets the requirements of the JMC (EN) principles. Common Frameworks will afford an opportunity to consider any implications stemming from international trade which have a direct bearing on the operation of a Common Framework. The scope of this consideration will not extend beyond Common Frameworks.

International policy formulation will be developed in line with the current Devolution MoU and its accompanying International Relations (IR) Concordat. International obligations will be implemented in line with these agreements. In this respect, the Parties will automatically use any updated IR Concordat, and the wider outcomes

of the Joint Intergovernmental Relations (IGR) Review, as the basis for such international considerations.

International obligations within scope of the framework areas include three directions on control of emissions under the UNECE Convention on Long-range Transboundary Air Pollution (CLRTAP) that require consideration of BAT regarding Persistent Organic Pollutants (POPs), Heavy Metals and abatement acidification, eutrophication and ground-level ozone. The full list is provided in annex C.

Geographic Scope of the framework

The framework is UK wide

Other frameworks

A separate common framework has been developed covering the area of air quality. Whilst the Air Quality Framework and the BAT Framework each act as separate frameworks, with no overlaps in scope, the close relationship of the working areas means reference to each may be helpful in understanding the wider context. For example, the Air Quality Framework will cover reporting, including reporting on industrial emissions. Regular updates between the framework groups will therefore be important given the links between industrial emissions reporting and industrial emissions controls.

At this time, there are no intersections between this framework and the Emissions Trading Scheme framework so explicit cross-reference is not necessary. However, there are important, and growing, interdependencies between the regulatory regimes for greenhouse gases and for pollution control which will require links to be made between the two frameworks.

Implications

Legal and non-legal implications: Exit SIs have been made (see annex B for further details). The SIs provide powers for the Parties to determine BAT within their respective nations. Devolved Governments may provide consent to the Secretary of State to exercise this function on their behalf. This framework is intended to set out how the Parties will work together in exercising their statutory power under relevant SIs.

Financial/Resource Implications: The parties will share information and collective understanding of need and budgets. Shared budgets will be planned, reviewed, monitored and reported on through appropriate governance groups to ensure they meet the requirements of all relevant Parties and are prioritised effectively.

Other Government Department and stakeholder implications: The Parties launched a joint public consultation on the future UK Best Available Techniques regime in January 2021. This sought views from stakeholders on key elements of policy design, including proposals on the governance processes that feature in this framework. This consultation closed in April 2021 and the Parties, through the Standards Council, have been considering consultation responses in the design of the new BAT regime.

Key industry stakeholders highly interested in BAT and NGOs also have an ongoing interest as sectoral BAT are developed through the new process and framework. This interest is informing the design of the new BAT regime, for example through their involvement in Technical Working Groups and through an advisory board.

Policy officials with interest in the industry sectors where BAT is being developed may wish to understand the new BAT development process and this framework, including BEIS and sector specific experts in the Devolved Governments. They will be kept informed of developments and their views sought at an official level where appropriate or where their interests or stakeholders are impacted.

UK Internal Market

The Framework, and governance processes contained within, respect the JMC(EN) Principle to enable the functioning of the UK internal market, while acknowledging the potential policy divergence.

Northern Ireland Protocol

The Agreement on the Withdrawal of the United Kingdom from the EU sets out the current arrangements where, although remaining within the UK's custom territory, Northern Ireland will remain aligned with the EU law of Single Market. The sections in relation to the IED and its interaction with the single energy market (SEM) of Annex 4 of the Northern Ireland Protocol are relevant to this framework.

The European Commission has agreed that there are currently 4 installations within scope of the Protocol. Three operators fall under the Large Combustion Plant (LCP) Bref (Kilroot, EP Ballylumford and Coolkeeragh) and one falls under the Waste Incineration (WI) BRef (Evermore Energy Lisahally).). These installations are not fixed and number may change over time as new LCP and WI operators enter the SEM.

The Environment and Wildlife (Legislative Functions) (EU Exit) Regulations 2019 SIs provide for all four governments to adopt BAT for their nations.

This Framework reflects the specific circumstances in NI that arise as a result of the Protocol and remains UK wide in its scope. As such decision making and information sharing will always respect the competence of all Parties to the Framework and in particular the provisions in Article 18 of the Protocol on democratic consent in Northern Ireland.

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

As rules evolve to meet the emerging regulatory needs of the UK, Scottish and Welsh Governments, this Framework will ensure the full participation of Northern

Ireland in discussions such that the views of the relevant Northern Ireland Executive Minister(s) are taken into account in reaching any policy or regulatory decisions by the UK, Scottish or Welsh Governments.

Where rules in Northern Ireland change in alignment with the EU, the Framework will form the basis of a mechanism to ensure consideration by the four governments of any changes and will enable them to determine any impacts and subsequent actions arising from these changes.

Where issues or concerns raised by the relevant Northern Ireland Executive Minister(s) in respect of GB-only proposals have not been satisfactorily addressed, they will have the right to trigger a review of the issue as set out in the dispute resolution process at section 13 of this document.

UK-EU Trade and Cooperation Agreement

Article 391 of the UK-EU Trade and Cooperation Agreement (TCA) sets out level playing field provisions relating to environmental protection that are relevant to industrial emissions standards. In developing BAT and other industrial emissions standards within the UK, the Parties will consider interactions with these provisions and their implications.

The policy area covered by this Common Framework intersects with the EU-UK Trade and Cooperation Agreement and therefore topics relevant to the framework may be considered from time to time by relevant TCA Specialised Committees or the Partnership Council. Where a UK-EU meeting agenda includes an item concerning implementation in an area of devolved competence, UK Government (UKG) should facilitate Scottish Government, Welsh Government and Northern Ireland Executive 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 Scottish Government, Welsh Government and Northern Ireland Executive as fully as possible in preparation for these meetings regardless of attendance, and on all relevant implementation matters.

Intergovernmental Relations (IR)

The outcomes of the Intergovernmental Relations Review (IRR) are in the process of being implemented. Once confirmation has been provided from each government, the outcomes of the review and appropriate intergovernmental structures will be reflected in this Common Framework.

3. Definitions

Further legal and technical definitions to follow as necessary as the framework develops.

“Best available techniques (BAT)” means the most effective and advanced stage in the development of activities and their methods of operation which indicates the practical suitability of particular techniques for providing the basis for emission limit values and other permit conditions designed to prevent and, where that is not practicable, to reduce emissions and the impact on the environment as a whole.

“BAT conclusions” means a document including but not limited to the conclusions on best available techniques, their description, information to assess their applicability, the emission levels associated with the best available techniques, associated monitoring, associated consumption levels and, where appropriate, relevant site remediation measures.

BAT Reference Documents are known as BRefs. BRefs are used as a reference for permit conditions for installations covered by the IED.

“Available techniques” means those developed on a scale which allows implementation in the relevant industrial sector, under economically and technically viable conditions, taking into consideration the costs and advantages, whether or not the techniques are used or produced inside the United Kingdom, as long as they are reasonably accessible to the operator.

“Techniques” include both the technology used and the way the installation is designed, built, maintained, operated and decommissioned.

“Best” means most effective in achieving a high general level of protection of the environment as a whole.

“Industrial Emissions Standards” within the scope of this agreement relates to the regulatory framework that requires industry to improve the burden of their pollution to the environment, which includes BAT and non-BAT activities (e.g. MCPD and Part B (extended to Part C in Northern Ireland))

Part A Activities relate to large industrial activities, which fall under the scope of the Industrial Emissions Directive (Annex 1) and are required to use Best Available Techniques to reduce emissions to air, water and land. In England and Wales, these activities are split into Part A1 and Part A2, which cover activities previously regulated under the Integrated Pollution Prevention and Control.

“Part B Activities” deal with emissions to air only (as opposed to air, water and land)) are generally smaller industrial activities below the threshold of the Industrial Emissions Directive (Annex 1). Operators of Part B activities require an environmental permit to undertake their activity. This category is extended to Part C in Northern Ireland.

For non-BAT areas, the framework offers opportunity for joint working in the development of policy to meet the ambitions of improving air quality across the UK non-BAT industrial emissions

Section 2: Proposed breakdown of policy area and framework

4. Summary of proposed approach

Non legislative agreement

This framework is a non-legislative agreement that sets out how the Parties will work together to establish, maintain and review a process for developing and the

setting of BAT within the UK. The framework provides a forum for discussion and, where appropriate, the joint working on other existing types of regulated facility which are not subject to BAT controls, as described in section 1.

All Parties agree on the shared value of collaboration in the area of industrial pollution control standards and recognise the importance of cooperation in this policy area. Parties shall ensure that every effort is made to develop agreement on a UK-wide approach where one is possible. Where consensus cannot be achieved, collaborative arrangements provide necessary flexibility to consider and enable different approaches in different parts of the UK.

The starting position for any sector review is to aim for as much commonality in approach as possible, where the policy frameworks/commitments of each party provide for this, in line with the Joint Ministerial Committee (European Negotiations) (JMC(EN)) principles (annex A). The parties will aim to reach consensus, including agreement to a common approach or differing approaches to the development of BAT within the UK.

The framework has been developed collaboratively between the Parties via members of the Industrial Pollution Control (IPC) Standards Council (the "Council") which is a group made up of UKG and Devolved Government policy officials. The Council also oversees the development of BATC and forms part of the governance structure within this framework, its Terms of Reference are within annex E.

The framework covers governance, dispute avoidance and resolution, stakeholder engagement, international negotiations, confidentiality, information sharing and agreement on amendment and review.

Progress

Overall process towards developing a new regime for BAT has been subject to shared policy development between officials from the Parties and the regulators with the general steps and key groups and governance arrangements identified in section 8.

JMC(EN) Frameworks Principles

The Parties agree that the approach summarised above is necessary according to Section 1 of the JMC(EN) Frameworks Principles (annex A) to ensure compliance with international obligations and enable the management of common resources.

The reason this policy area falls under these principles is that joint working will be required between the Parties and arm's length bodies to ensure the UK meets international obligations and to enable a UK wide approach to be taken to the development of BAT. Additionally, as far as practicable, this approach is intended to facilitate and manage coherence for industry and society in other industrial controls where desirable.

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

N/A- no primary legislation is deemed necessary for the implementation of this framework.

Exit SIs have been made (see annex B for further details) that provide powers to the Secretary of State to determine BATC within the UK. The legislation also retains powers for respective Ministers within the Devolved Governments to determine and set their own BATC if consensus cannot be reached.

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

The Parties have agreed that a non-legislative agreement will be used in order to implement the framework.

The Concordat sets out how the Parties will work together to establish, maintain and review a process for developing and setting BAT within the UK. It will set out that the Parties shall ensure that every effort is made to secure agreement on a UK approach to the development of BAT.

Contents

The Parties have agreed that a Concordat will cover the following:

- Introduction: context, purpose and relevant contacts
- Scope
- Principles for working together
- Dispute Avoidance and Resolution Mechanism
- Review and Amendment Mechanism
- International obligations

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

The key joint decisions that will be taken by the Parties to this framework are:

- Policy decisions of future BAT within the UK
- Resolution of issues, disagreements or disputes
- Where necessary, referring issues to the overarching dispute avoidance and resolution mechanism outlined through the appropriate intergovernmental structures, as discussed further in section 13.
- Reviewing and amending the framework

The guiding principle for decision making is that the Parties will aim to reach consensus where appropriate, including agreement to a common approach or differing approaches to the development of BAT. These arrangements will also support routine collaborative work on (defined) non-BAT policy development relating to the control and prevention of emissions from industrial facilities.

Decision-making fora

The **Standards Council** is formed of officials from the Parties. It will be the main forum for official level discussion and will provide strategic oversight of the BAT regime and the programme of industrial pollution control standards creation and agreement. The Council will communicate decisions on BAT within the UK once these have been agreed by Ministers, in particular making clear where differing approaches have been agreed.

Decisions of the Council will be made by consensus of the Parties and will be implemented in accordance with the terms of those decisions.

The Council will be the forum through which officials representing the Parties recommend BAT within the UK and advise on other industrial emissions control policy, to their Ministers. The Council will be formed of senior policy representatives of the Parties, operating in accordance with the Council's Terms of Reference (see annex E).

Recommendations of the Council will be specific, evidence-led and transparent. The Parties agree on the shared value of collaboration in the area of industrial pollution control standards and recognise the importance of cooperation in this policy area. Parties shall ensure that every effort is made to secure agreement on a UK approach to BAT where appropriate. If a single UK approach for a particular BAT sector is agreed to not be appropriate, it is still expected that a single UK SI could be published setting out differing approaches in different parts of the UK. Alternatively, each government can exercise legislative function under Regulation 9(1) of The Environment and Wildlife (Legislative Functions) (EU Exit) Regulations 2019 and specify their own BAT conclusions.

A **Regulators Group (RG)**, consisting of representatives from each of the four UK environmental regulatory bodies and local authority regulators will consider advice from Technical Working Groups. They will make recommendations to the Council on UK BAT-and by consensus, provide views on the development and review of the technical principals that underpin the agreement of BAT sectors

The **Technical Working Groups (TWG)** will be the fora through which technical experts will work collaboratively on technical development of sector specific UK BAT. The TWGs will be led by sector experts from the UK Regulators and comprise industry representatives from the relevant sector and other interested parties with technical expertise on sector BAT.

An **Advisory Board** will be composed of representatives from the Parties, their regulators and stakeholders with an interest in the BAT system (including industry, trading associations, local government, NGOs and academia). This Board will advise the Council on strategic matters relating to BAT. The detailed design of this

Board is still being developed and will be finalised as the work continues. Terms of reference will be developed and reviewed in line with the remit of the framework.

A **Small and Medium Industry sub-group** of the Council will operate as a working level forum on areas of non-BAT emissions standards, which currently fall within scope of the IED, as well as others such as medium combustion plant, specified generators, solvent emissions and Part B activities. The sub-group may discuss policy and standards in these areas and may also make recommendations to the Council. The remit of this sub-group has cross-cutting links with the Air Quality Framework and appropriate mechanisms will be put in place to report relevant information.

The UK Air Quality Governance Group (UKAQGG) (which also covers the separate Air Quality Common Framework), formed by senior officials, will provide strategic oversight of the work of the Council and delivery of the requirements under the Framework. Where it has not been possible to resolve any disagreement in approach at official level, this will initially be referred to senior officials via this Group. Any continuing disagreement, which cannot be resolved at official level in the ways set out above, will be referred to Portfolio Ministers/Inter-Ministerial Group for Environment, Food and Rural Affairs (IMG-EFRA) for resolution and as set out in the Common Framework. The making of legislation may need to be postponed until all Parties are in agreement on how to proceed. The Group will meet on a quarterly basis but may also convene meetings in-between if needed or defer if no issues have arisen for consideration.

The Terms of Reference for all of these groups are in annex E.

Further details on working arrangements and the governance arrangements can be found in annex D.

Disagreements

If there is a disagreement on policy decisions related to the development of the UK BAT regime, the Parties have agreed that all possible efforts will be made to resolve this issue at the lowest appropriate level, including seeking further technical advice as necessary. If an issue cannot be resolved, the Parties will follow the dispute resolution process outlined in section 13 of this document.

The Parties will work collaboratively in joint discussions to facilitate coherence where desirable in industrial emissions standards to facilitate business investment and regulatory effectiveness across industrial activities.

Any issues between Parties will be recorded by the secretariat to the Council 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

Policy Officials

Officials representing the Parties will have roles and responsibilities set out as per the Terms of Reference for the Council and other groups (at annex E). They will hold discussions where appropriate on the development of policy covered by the framework (on matters within their remit), and regular updates on the progress of future BAT sectors. Official meetings will convene every month (or more frequently if required) under Standards Council meetings. They will put advice to their respective 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 the Parties will convene to discuss policy issues as appropriate and to keep colleagues regularly informed of any ramifications that policy will have across the Parties. If officials do not agree when making decisions, issues discussed at a working level can be escalated to senior officials in line with the framework's dispute avoidance and resolution mechanism.

Senior Officials

Senior officials (at a higher level than those at the Council) Governance Group will review an issue as per the dispute avoidance and resolution mechanism if Council officials are not able to agree an approach. Should disputes remain unresolved, these may be escalated to the Senior Officials Programme Board (SOPB). Consisting of Defra, Scottish Government, Welsh Government and DAERA senior officials, the SOPB performs a sifting/challenge role ahead of a ministerial level discussion. If no agreement is reached, the dispute is escalated to the IMG-EFRA.

Ministers

Ministers may receive advice from their officials either concurrently across the Parties as issues arise or in the course of business as usual for individual Parties. Ministers may agree or disagree with advice. If work is remitted to the SOPB and an issue remains unresolved, the issue may be escalated to the IMG-EFRA. 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.

A diagram showing the interaction between each level has been provided in section 13, in relation to the dispute resolution process.

Information sharing

Each Party will aim to provide one another 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.

Parliamentary and stakeholder communication and engagement

The Parties of the UK launched a joint public consultation on the future UK BAT regime in January 2021. This sought views from stakeholders on key elements of policy design, including proposals on the governance processes that feature in this framework. Responses were received from a wide range of stakeholders including industry trade association bodies and environmental NGOs. Stakeholder

engagement sessions were delivered mid-consultation and further detailed responses were received.

This consultation closed in April 2021 and the governments, through the Standards Council, have been considering consultation responses while designing the new regime, with an aim of publishing a consultation response by the end of 2021.

Regulatory bodies across the UK that will be involved in setting BAT within permits have already been involved in detailed workshops on developing the new BAT regime, including Governance arrangements.

Consideration is being given to holding further stakeholder engagement sessions following the publication of the Government response to the consultation, and once policy decisions have been made on the development of an enduring national BAT regime. It is intended that such engagement covers this common framework.

Key industry stakeholders highly interested in BAT and NGOs will also have an ongoing interest in the operation of the UK BAT process as sectoral BAT are developed. This interest is informing the design of the new BAT regime, for example through their involvement in Technical Working Groups and through an Advisory Board.

10. Roles and responsibilities of existing or new bodies

The Council provides strategic oversight of the regime for BAT within the UK and for the programme of BAT development and agreement.

The four UK environmental regulators will have responsibilities within both the Regulators Group and the Technical Working Groups.

The Regulators Group will consider advice from the IPC Technical Working Groups, and by consensus, make recommendations to the Council on UK BAT, accompanied by views on the wider considerations under their remit. The Technical Working Groups, formed by representatives of industry, trade associations and NGOs, will be the fora through which the Parties' technical experts will work collaboratively on technical development of sector specific UK BAT.

An Advisory Board will also be established. This will be composed of representatives from the Parties, their regulators and stakeholders with an interest in the BAT system, including industry, trading associations, NGOs and academia. This Board will advise the Council on strategic matters relating to BAT, including prioritisation and other relevant matters. The detailed design of this Board is still being developed and will be finalised as the work continues.

There will also be a Small and Medium Industry sub-group of the Council, this will operate as a working level forum on areas of industrial emissions controls, which do not currently fall within scope of the IED or BAT, such as medium combustion plant and Part B activities.

The UK Air Quality and Industrial Emissions Governance Group will provide strategic oversight of the work of the Council and provide a dispute resolution function. It will not consider individual BAT recommendations or make policy level decisions, instead it will have a role to oversee the effective working of this framework.

11. Monitoring and enforcement

The UK Air Quality Governance Group (UKAQGG) will consider the effectiveness of the framework, having received advice and information via the Council reviews (see section 12). 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 JMC(EN) principles; and
- whether 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 (RAM)

The Council will review, and by consensus amend, the framework periodically every three years, or on an exceptional basis in the instance of a significant issue.

Process

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

Review Stage

A periodic review of the framework will take place every three years and will be undertaken by the Council

- The period of three years starts from the conclusion of a periodic review and any amendment stages that follow.
- During the periodic review, the Parties 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'.

- 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.

Amendment Stage

- Following agreement by consensus of the Council all Parties wish to enter the amendment stage, there will be discussion around the exact nature of the amendment. This can either be led by one Party or all.
- If an amendment is deemed necessary during either type of review, the existing framework will remain in place until a final amendment has been agreed
- All amendments to the framework must be agreed by the Parties and a new non-legislative agreement signed by all Ministers.

If the 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

In order to reduce to a minimum, the potential disputes, the Parties commit themselves to the principles of good communication and cooperation. This will be set out in the Concordat. Differences of opinion or disagreements are a normal stage of the decision-making process and some disagreements may not be significant to raise a dispute. Where these cannot be agreed or are significant a dispute may arise.

A disagreement between the Parties becomes a 'dispute' when it enters the formal dispute avoidance and resolution process set out through the appropriate intergovernmental structures.

The goal of this dispute avoidance and resolution mechanism is therefore to avoid escalation to this point, by resolving any disagreements at the lowest possible level.

A disagreement could be in relation to areas covered by the JMC(EN) principles, but may also be raised for wider issues, for example on the working arrangements set out in this framework. This mechanism will be utilised only when genuine agreement cannot be reached and divergence would impact negatively on the ability to meet the JMC(EN) principles. In those areas where a common approach is not needed in order to meet these principles an "agreement to disagree" could be considered an acceptable resolution.

Process

The dispute resolution mechanism may be triggered where:

- further dialogue does not result in an agreed position; and
- the resultant difference would impact negatively on the ability to implement the working arrangements within this arrangement.

The Parties will aim to resolve disputes at the earliest possible opportunity and at the lowest policy level stage in the process:

- If there is a dispute at the Technical Working Group level which the Implementation Project Team has been unable to resolve, then depending on the technical nature of the dispute, this will be considered by the Council (via the Implementation Project Team) or the Regulators Group.
- If there is a dispute at the Regulators Group, then depending on the technical nature of the dispute, this will normally be considered by the Council (via the Implementation Project Team). The Council may request a formal oversight opinion from the Regulators Group.
- If there is a dispute at the Council, this will normally be considered by the UK Air Quality Governance Group (UKAQGG) of Senior Officials first.

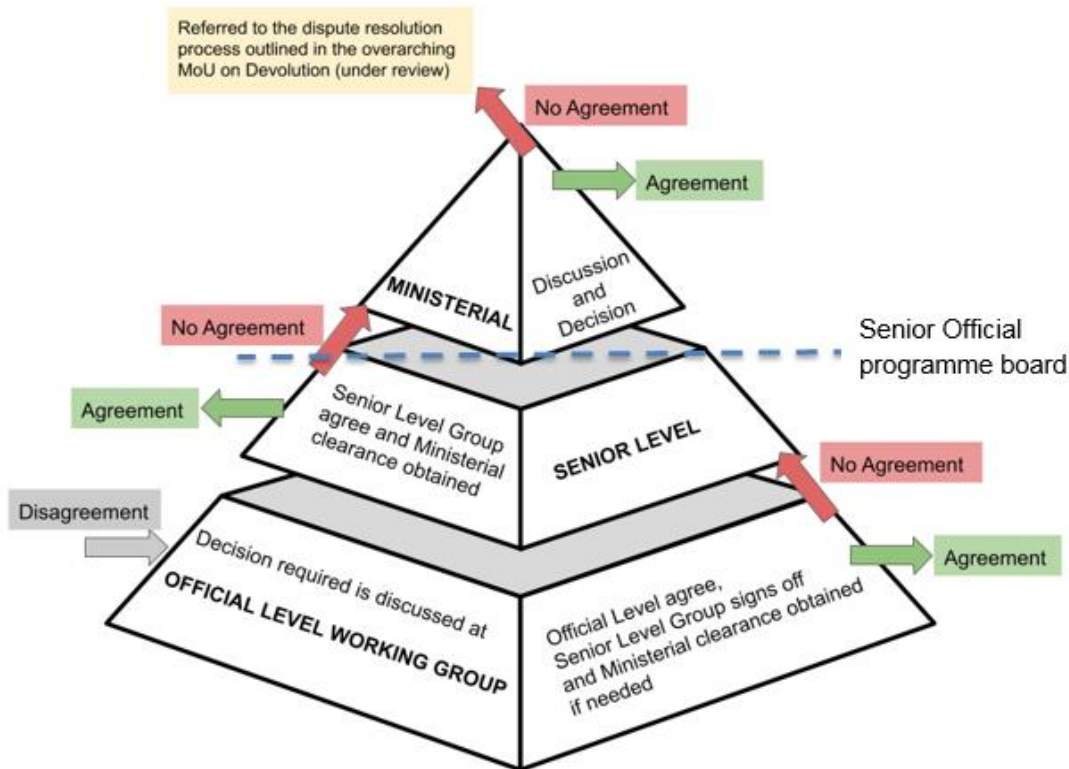
The Small and Medium Industry sub-group is essentially discursive in nature, and disagreements are not subject to the formality of the dispute resolution process as described above.

The UKAQGG is formed of policy officials from the Parties. It is composed of separate and more senior officials to those represented at the Council. The attendees shall be decided by each Party but are likely to be Deputy Director level or above. Terms of Reference are attached at annex E.

A paper shall be submitted to the UKAQGG from the objecting party setting out the details of the disagreement, the differing views of the Parties involved, technical background to the reason for disagreement and suggested resolution with rationale. If agreement is reached then this will be communicated to the Council for action, otherwise if agreement cannot be reached it will be escalated to the SOPB.

If the SOPB cannot resolve a dispute, the SOPB will advise on whether it should be escalated to Ministers, including through the IMG-EFRA. If an issue is not resolved at IMG-EFRA then it will be referred to the overarching dispute avoidance and resolution mechanism outlined through the appropriate intergovernmental structures.

The below diagram states the levels of escalation of a disagreement to a dispute and the interaction between each level, as described in section 9.



- The official level working group discuss the disagreement. If this results in the disagreement being resolved at official level, the senior level group signs off the agreement. Ministerial clearance will be obtained if needed.
- If agreement is not reached, the issue will be escalated to the senior level group. Ministerial clearance will be obtained if this group reaches agreement.
- If there is still no agreement, the issue will be referred to ministers for discussion and decision. If an agreement can still not be found, then the dispute will be referred to the dispute resolution process in the overarching MoU on Devolution, which is under review.

Timescales for escalation

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

Evidence gathering

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

This framework agreement will take effect once agreed by all Parties and approved by Ministers. The provisional framework was established at the end of the transition period and work remains ongoing to finalise the full framework. The Council and Regulator's Groups are already in place and are currently focussed on designing the BAT regime.

Standards Council have made good progress and are agreed on a wide range of policy strands that will form the future BAT regime, which will also be part of the joint response to the UK BAT Consultation.

Further work may be undertaken collaboratively in the future to look at the possibility of expanding the scope of the UK BAT.

This framework (and associated Concordat) will be kept under review and updated routinely where appropriate.

Concordat

Introduction

1. This document sets out a provisional Concordat between the four governments of the United Kingdom (hereafter referred to as the 'Parties'):
 - the Department for Environment, Food and Rural Affairs (Defra);
 - the Scottish Government;
 - the Welsh Government; and
 - in relation to Northern Ireland, the Department of Agriculture Environment and Rural Affairs (DAERA).
2. This Concordat has been produced to support the setting of Best Available Techniques (BAT) for industrial pollution control across the United Kingdom (UK) following the Transition Period.
3. This Concordat is not intended to be legally binding or enforceable.
4. This Concordat establishes an agreed approach for cooperation and engagement between the parties.
5. This Concordat is specific to the setting of Best Available Techniques for installations within scope of Annex 1 to Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on Industrial Emissions (Integrated Pollution Prevention And Control) ("the Directive" or "IED") in so far as the Directive's requirements and the direct application of EU BAT Conclusion Decisions made under it form part of retained EU law (in accordance with section 6 of the European Union (Withdrawal) Act 2018), and any other industrial activities, which the appropriate authorities (the parties) agree should be subject to control through permitting using BAT.
6. Notwithstanding the above, for industrial air emissions controls outside the BAT system, the framework sets out discursive mechanisms for considering joint working in reducing emissions.
7. The Parties acknowledge that there are stakeholders who are not Parties to this arrangement who have a key interest and role in delivering the UK regimes, including but not limited to environmental regulators and local authorities, third sector organisations and relevant trades associations and businesses, and NGOs.
8. This Concordat is subject to the Joint Ministerial Committee (EU Negotiations) (JMC (EN)) principles set out in annex A.
9. This Concordat is subject to established constitutional conventions and practices through the appropriate intergovernmental structures.

10. The EU Industrial Emissions Directive (IED), which has been transposed in UK law, aims to prevent and reduce harmful industrial emissions, while promoting the use of techniques that reduce pollutant emissions and that are energy and resource efficient. The IED was initially adopted for England and Wales into the Environmental Permitting Regulation (EPR) 2013, and successive amendments under the EPR 2016. The Environmental Authorisations (Scotland) Regulations 2018 and The Pollution Prevention and Control (Industrial Emissions) Regulations (NI) 2013 are the equivalent legislations for Scotland and Northern Ireland respectively.
11. Larger industrial facilities undertaking specific types of activity are required to use Best Available Techniques to reduce emissions to air, water and land. Techniques include both the technology used and the way the installation is designed, built, maintained, operated and decommissioned.
12. The European Commission produces BAT reference documents (BRefs) that are the basis of subsequent EU Decisions which specify BAT Conclusions (EU BATC) and the associated emission limits (AELs). These then form the basis of permitting requirements for that particular sector.
13. The European Commission's function in relation to adopting BAT Conclusions is now the responsibility of the Parties, and annex B shows the relevant legislation. The Secretary of State, Welsh Ministers, Scottish Ministers and the Department of Agriculture, Environment and Rural Affairs in Northern Ireland each hold this legislative function for their respective areas. The UK Parliament will continue to legislate in reserved areas and may also do so in devolved areas but will not normally do so without the consent of the Devolved Legislatures; such consent obtained in practice via the Devolved Governments.
14. Following the UK's exit from the European Union, the Parties have committed to providing a future regime for the development of BAT within the UK. This is a devolved policy area and different governments within the UK may set different BAT Conclusions. However, whilst some aspects of BAT may be different, it is intended that a common approach to the process of development of BAT within the UK will be taken.

The Protocol on Ireland /Northern Ireland

15. The Agreement on the Withdrawal of the United Kingdom from the EU sets out the current arrangements where, although remaining within the UK's custom territory, Northern Ireland will remain aligned with the EU. The following sections of Annex 4 of the Northern Ireland Protocol are relevant to this framework.
16. Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control), otherwise known as the Industrial Emissions Directive (IED).

17. The European Commission has agreed that there are currently 4 installations within scope of the Protocol. Three fall under the Large Combustion Plant (LCP) BRef (Kilroot, EP Ballylumford and Coolkeeragh) and one falls under the Waste Incineration (WI) BRef (Evermore Energy Lisahally).). These installations are not fixed and number may change over time as new LCP and WI operators enter the SEM.
18. The Environment and Wildlife (Legislative Functions) (EU Exit) Regulations 2019 SIs provide for all four governments to adopt BAT for their nations.
19. This Framework reflects the specific circumstances in NI that arise as a result of the Protocol and remains UK wide in its scope. As such decision making and information sharing will always respect the competence of all Parties to the Framework and in particular the provisions in Article 18 of the Protocol on democratic consent in Northern Ireland.
20. Where one or more of the UK Government, the Scottish Government or the Welsh Governments propose to change rules in a way that has policy or regulatory implications for the rest of the UK, or where rules in Northern Ireland change in alignment with the EU, the Framework is intended to provide governance structures and consensus-based processes for considering and managing the impact of these changes.
21. As rules evolve to meet the emerging regulatory needs of the UK, Scottish and Welsh Governments, this Framework will ensure the full participation of Northern Ireland in discussions such that the views of the relevant Northern Ireland Executive Minister(s) are taken into account in reaching any policy or regulatory decisions by the UK, Scottish or Welsh Governments.
22. Where rules in Northern Ireland change in alignment with the EU, the Framework will form the basis of a mechanism to ensure consideration by the four governments of any changes and will enable them to determine any impacts and subsequent actions arising from these changes.
23. Where issues or concerns raised by the relevant Northern Ireland Executive Minister(s) in respect of GB-only proposals have not been satisfactorily addressed, they will have the right to trigger a review of the issue as set out in the dispute resolution process at section 13 of the Framework Outline Agreement.

Scope

24. This Concordat relates to the arrangements and ways in which the Parties will work together to develop and set BAT within the UK.
25. This Concordat also provides a working level forum on areas of industrial emissions controls which do not currently fall within the scope of BAT

26. The legislation and international commitments within the scope of this Concordat are set out at annexes B and C.

Purpose

27. This Concordat:

- provides a non-legislative mechanism to give effect to the Developing and Setting of Best Available Techniques Common Framework
- sets out the scope of the framework and the principles of engagement which all parties will respect and work to
- presents the dispute resolution and review and amendment mechanisms in detail

28. The Common Framework Agreement for Developing and Setting of Best Available Techniques is therefore aimed at bringing together the Parties to make joint decisions on:

- Policy decisions of future BAT within the UK
- Resolution of issues, disagreements or disputes
- Where necessary, referring issues to the overarching dispute avoidance and resolution mechanism through the appropriate intergovernmental structures
- Reviewing and amending the framework

The list above is not exhaustive.

29. The Common Framework also facilitates joint working in relation to the interactions of the core policy with the non-BAT emissions controls that sits alongside BAT in the pollution control regimes of the Parties, and other industrial activities that fall outside the scope of the IED, which are covered by separate regulatory requirements.

Entry into Force

30. This arrangement has applied from the end of the Transition Period on an interim and provisional level. The provisional framework came into effect on 1 January 2021. Final agreement on the framework will be reached following scrutiny by UK legislatures.

Principal aims of this Arrangement

31. The Parties commit to maintaining the existing standards of environmental protection in the UK.
32. The Parties will aim to achieve common BAT within the UK.

Decision-making governance

33. The guiding principle for decision-making is that all Parties will aim to reach consensus, including agreement to a common approach or differing approaches on BAT within the UK, in relation to matters considered by the:
- UK Air Quality Governance Group (UKAQGG)
 - Standards Council (SC);
 - Regulators Group (RG); and
 - Technical Working Groups (TWG).
 - Advisory Board
 - The Small and Medium Industry sub-group
34. The UK Air Quality **Governance Group** (UKAQGG) is shared by both the AQ and BAT Common Framework. It is a high-level group comprised of senior officials from the Parties. The UKAQGG will provide strategic oversight and direction on the policy areas governed by both frameworks and will take key operational decisions when required. The Group will meet quarterly and ad hoc as required. The Group will not consider individual BAT recommendations or make policy level decisions, instead it will have a role to oversee the effective working of this framework.
35. The **Standards Council** (SC) provides strategic oversight of the UK BAT regime and for the programme of industrial pollution control standards creation and agreement. The Standards Council will communicate decisions on BAT within the UK, in particular, making clear where differing approaches have been agreed.
36. Decisions of the Standards Council will be made by consensus of the Parties and will be implemented by the Parties in accordance with the terms of those decisions.
37. The Standards Council will be the forum through which the Parties collectively recommend BAT within the UK and will be formed of senior policy representatives of the Parties, operating in accordance with the Council's Terms of Reference.
38. Recommendations of the Standards Council will be specific, evidence-led and transparent. All Parties agree on the shared value of collaboration in the area of Industrial Pollution Control standards and recognise the importance of co-operation in this policy area. Parties shall ensure that every effort is made to secure agreement on a UK approach.
39. The **Regulators Group** (RG) will be the forum through which the Parties' Competent Authorities (the Regulators) collaboratively form Technical Working Groups, including identifying and proposing to the Standards Council an appropriate Technical Working Group Lead and Deputy.

40. The Regulators Group will consider advice from the Technical Working Groups, and by consensus, make recommendations to the Standards Council on UK BAT, accompanied by views on the wider considerations under their remit, operating in accordance with the Group's Terms of Reference.
41. **Technical Working Groups** (TWG) will be the fora through which the Parties' technical experts will work collaboratively on technical development of sector specific UK BAT.
42. Technical Working Groups will operate in accordance with their Terms of Reference.
43. The **Advisory Board** will be composed of representatives from the Parties, their regulators and stakeholders with an interest in the BAT system (including industry, trading associations, local government, NGOs and academia). This Board will advise the Standards Council on strategic matters relating to BAT.
44. **The Small and Medium Industry Sub-Group** will provide the working level forum on areas of industrial emissions controls which do not currently fall within the scope of BAT, such as (but not limited to) medium combustion plants and other smaller industrial activities. The group, formed of representatives from the Parties, is separate to the process for the development of UK BAT, but will inform to the Standards Councils on the development and implementation of the non-BAT work streams.
45. The Terms of Reference of the groups above are detailed in the Framework Outline Agreement.

Dispute avoidance and resolution governance

46. In order to reduce to a minimum the potential for disputes to arise, Parties commit themselves to the principles of good communication and cooperation as set out in this arrangement. Differences of opinion or disagreements are a normal stage of the decision-making process, and in those areas where a common approach is not needed in order to meet these principles an "agreement to disagree" could be considered an acceptable resolution. Where these cannot be agreed a dispute may arise.
47. The dispute resolution process may be triggered where:
 - further dialogue does not result in an agreed position; and
 - the resultant difference would impact negatively on the ability to implement the working arrangements within this arrangement.
48. The Parties will aim to resolve disputes at the earliest possible policy level stage in the process:
 - If there is a dispute at the Technical Working Group level this will normally be considered by the Regulators Group first;

- If there is a dispute at the Regulators Group, this will normally be considered by the Standards Council first;
 - If there is a dispute at the Standards Council, this will normally be considered by the UK Air Quality Governance Group (UKAQGG) first.
49. A paper shall be submitted to the UKAQGG from the objecting Party setting out the details of the disagreement, the differing views of the Parties involved, technical background to the reason for disagreement and suggested resolution with rationale.

If disputes cannot be resolved at the policy level, then they can be escalated to the Senior Officials Programme Board (SOPB). If the SOPB cannot resolve a dispute, the SOPB will advise on whether it should be escalated to Ministers, including through the Inter-Ministerial Group (IMG) for Environment, Food and Rural Affairs (EFRA). If an issue is not resolved at IMG-EFRA, then it will be referred to the overarching dispute avoidance and resolution mechanism outlined in the MoU on Devolution.

50. The Small and Medium Industry sub-group is essentially discursive in nature and it is not subject to the formality of the dispute resolution process as described above.

Stakeholder engagement

51. The Parties agree that clear communication with stakeholders is important to ensure the smooth development and setting of BAT within the UK.
52. The Parties agree to deliver timely messages to stakeholders that align with decisions of the Standards Council and of Ministers.
53. The Advisory Board will serve as the mechanism to provide the fora through which the stakeholders will participate and engage with the Parties and regulators in the development of sector specific UK BAT.
54. The effectiveness of the methods for engagement with industry and other stakeholders being used in the BAT development process will be considered by the Standards Council within one year of the entry into force of this arrangement and reviewed and adapted to ensure joined up stakeholder communications.

International negotiations

55. The Common Frameworks Principles agreed at JMC(EN) state that frameworks will be established where necessary to ensure the UK can negotiate, enter into and implement new trade agreements and international treaties, and ensure compliance with international obligations. These principles were established in the context of an ambition for close working

between the Parties on reserved matters that significantly impact devolved responsibilities in Common Frameworks.

56. Common Frameworks will allow the Parties, in a timely manner, to ascertain the impact of international trade on managing UK policy divergence. All Parties to the framework will consider any impact in a way that meets the requirements of the JMC(EN) principles. Common Frameworks will afford an opportunity to consider any implications stemming from international trade which have a direct bearing on the operation of a Common Framework. The scope of this consideration will not extend beyond Common Frameworks.
57. International policy formulation will be developed in line with the current Devolution MoU and its accompanying International Relations Concordat. International obligations will be implemented in line with these agreements. In this respect, the Parties will automatically use any updated IR Concordat, and the wider outcomes of the Joint IGR Review, as the basis for such international considerations.

Confidentiality

58. All Parties to this arrangement are responsible for ensuring information that they each may provide is subject to appropriate safeguards and that the confidentiality and sensitivity of such information is respected. Therefore, without prejudice to the requirements of data protection and freedom of information, unpublished information will not be disclosed to third Parties without written permission of the Party which provided the information, subject to the requirements of the law.

Information sharing

59. The Parties to this arrangement will where possible provide each other with full, open and timely access to information and data.
60. The Parties will keep each other informed on matters of mutual interest, including opportunities for collaboration and sharing of resources, for example in research projects and developments.
61. The Parties recognise that cooperation is necessary to meet their respective policy and business objectives, including their collective responsibility to deliver official statistics and meet statutory reporting requirements.

Amendment and review

62. As set out in the Framework Outline Agreement the Standards Council will review, and by consensus amend, the framework periodically every three years, or on an exceptional basis in the instance of a significant issue. This

Concordat will also be reviewed to see if any amendments are necessary as a result of the frameworks review.

- 63. At the outset of the review stage, the Parties will agree timelines for the process, including the possible amendment stage.
- 64. If agreement is not reached in either the review or amendment stage, any of the Parties can raise it as a dispute through the framework’s dispute avoidance and resolution mechanism.
- 65. Following agreement by consensus of the Standards Council that all Parties wish to enter the amendment stage, there will be discussion around the exact nature of the amendment. This can either be led by one Party or all.
- 66. If an amendment is deemed necessary during either type of review, the existing Concordat will remain in place until a final amendment has been agreed.
- 67. All amendments to the Concordat must be agreed by all Parties and a new non-legislative agreement signed by all Ministers.
- 68. If the Parties cannot agree whether or how the Concordat should be amended this may become a disagreement and as such could be raised through the dispute avoidance and resolution mechanism.

Signatories to the arrangement

For the Department for Environment, Food and Rural Affairs (Defra):		For the Scottish Government:	
Name:		Name:	
Position:		Position:	
Signature:		Signature:	
Date:		Date:	

For the Welsh Government, Department for Environment, Energy and Rural Affairs:		For the Department of Agriculture Environment and Rural Affairs:	
Name:		Name:	
Position:		Position:	
Signature:		Signature:	
Date:		Date:	

Annex A – JMC principles on common frameworks

The principles on the establishment of common frameworks ('the principles') agreed by the Joint Ministerial Committee (EU Negotiations) (JMC(EN))² in October 2017

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.

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.

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.

² https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/702623/2018-04-24_UKG-DA_IGA_and_Memorandum.pdf

Annex B – Relevant EU Exit Statutory Instruments

Legislation	Brief description and UK's obligations under each legislation
ENV TF/01 - The Environment and Wildlife (Legislative Functions) (EU Exit) Regulations 2019.	Transfers legislative functions (power to determine future BAT) from the EU to domestic bodies.
AQ/01 - The Air Quality (Miscellaneous Amendment and Revocation of Retained Direct EU Legislation) (EU Exit) Regulations 2018.	Makes amendments to the EU BAT Decisions that will form part of retained EU law.

Annex C – International conventions and protocols within scope

Convention	Brief description and the UK's obligations under each Convention
1979 UNECE Convention ³ on Long-range Transboundary Air Pollution (CLRTAP), with the following three Protocols listed below.	The Convention provides overall direction on control of emission, measurement and modelling data and information on the effects of air pollution on ecosystems, health, crops and materials.
1998 Protocol on Persistent Organic Pollutants (POPs) and its 2009 amended version.	This protocol focuses on a list of 16 substances that have been singled out according to agreed risk criteria. The ultimate objective is to eliminate any discharges, emissions and losses of POPs.
1998 Protocol on Heavy Metals and its 2012 amended version.	Includes targets for three particularly harmful metals: cadmium, lead and mercury. Requirement to reduce emissions for these three metals below their levels in 1990 (or an alternative year between 1985 and 1995). The Protocol aims to cut emissions from industrial sources (iron and steel industry, non-ferrous metal industry), combustion processes (power generation, road transport) and waste incineration. It lays down stringent limit values for emissions from stationary sources and suggests best available techniques (BAT) for these sources.
1999 Protocol to Abate Acidification, Eutrophication and Ground-level Ozone and its 2012 amended version (Gothenburg Protocol).	Sets national emission ceilings for 2010 up to 2020 for four pollutants: sulphur (SO ₂), nitrogen oxides (NO _x), volatile organic compounds (VOCs) and ammonia (NH ₃). The Protocol also sets tight limit values for specific emission sources (e.g., combustion plant,

³ Further details can be found on the [UNECE website](#).

Convention	Brief description and the UK's obligations under each Convention
	electricity production, dry cleaning, cars and lorries) and requires best available techniques to be used to keep emissions down. Includes a requirement to report on emissions once a year and provide projections on future emissions.

Annex D – Proposed BAT Governance and Process

The BAT Governance is formed of the following groups:

- 1- Standards Council (SC):
 - a. Department for Agriculture, Environment and Rural Affairs (DAERA)
 - b. Department of
 - c. Scottish Government
 - d. Welsh Government
- 2- Regulators Group (RG):
 - a. Environment Agency (EA)
 - b. Natural Resources Wales (MRW)
 - c. Northern Ireland Environment Agency (NIEA)
 - d. Scottish Environment Protection Agency (SEPA)
 - e. Offshore Petroleum Regulator for Environment and Decommissioning (OPRED)
 - f. Local Authorities
- 3- Technical Working Groups (TWG):
 - a. Industry Representatives
 - b. Other interested parties, including NGOs, with technical expertise.

The following groups define the governance structure that encompasses both AQ and BAT common frameworks, as they share the 'UKAQGG' as a senior level group:

- 1- Portfolio Ministers and the Inter-Ministerial Group
- 2- Senior Officials Programme Board
- 3- UK Air Quality Governance Group (UKAQGG) will serve both:
 - a. Air Quality (AQ) Common Framework, with the following groups:
 - i. Common Framework Working Group (CFWG)
 - ii. AQ Policy Sub-Groups
 - b. BAT Common Framework, with the following groups:
 - i. Standards Council
 - ii. BAT Policy Sub-groups

The provisional process for establishing an enduring BAT regime showing the involvement of three of the groups referenced in this framework, will involve the following steps:

- 1- SC initiate the process, and RG provide input on the scope.
- 2- Implementation Team create an outline draft (O1).
- 3- Virtual TWG review O1 and provide comments, which will help define the scope).
- 4- Draft BATC (D1) created based on feedback (Consultation).
- 5- TWG formal meeting based on (D1).
- 6- Formal Draft (F1) created.
- 7- Virtual TWG meeting to approve (F1).
- 8- (F1) passed to SC for review and start consultation.
- 9- UK Consultation on (F1) as part of an Statutory Instrument (SI).
- 10- (F1) consultation responses reviewed and UK BATC revised.
- 11-UK BATC SI sent to Ministers via SC for final approval.
- 12-UK BATC SI published.

Annex E - Terms of Reference

Standards Council

Regulators Group

Small and Medium Industry sub-group

The UK Air Quality and Industrial Emissions Governance Group

To note that these Terms of Reference are provisional and will continue to be amended as the process for developing a UK best available techniques process is discussed and agreed between the Parties.

1. Terms of Reference: Standards Council

Background

Larger industrial facilities undertaking specific types of activity are required to use Best Available Techniques (BAT) to reduce emissions to air, water and land. BAT means the available techniques which are the best for preventing or minimising emissions and impacts on the environment. 'Techniques' include both the technology used and the way the installation is designed, built, maintained, operated and decommissioned.

Following withdrawal from the EU, the EU Withdrawal Act 2018 made provision for the transfer of current EU BAT into UK law and for the determination of future BAT within the UK. The role of the Council will be to ensure this is carried out.

Purpose

The Standards Council (hereafter 'the Council') will provide strategic oversight of the regime for BAT within the UK and for the programme of industrial pollution control standards creation and agreement. The Council will communicate decisions on BAT within the UK, in particular, making clear where differing approaches have been agreed. The Council will aim to reach consensus, including agreement to a common approach or differing approaches on BAT within the UK.

Functions

The main functions of the Council are to:

- Lead on the general development and governance principles for the creation and agreement of BAT within the UK
- Develop and agree a programme of work for the Council and for the regime of BAT within the UK

- Seek to identify and minimise risk to UK regulatory regimes, reputation and industry, from adoption of BAT within the UK
- Develop and agree the rules governing the role and conduct of the Regulators Group and Technical Working Groups (TWG)
- Form and commission a Regulators Group
- commission the Implementation Project Team to establish Technical Working Groups (TWG) to lead the technical development of sector specific BAT within the UK and consider feedback from such groups
- Promote stakeholder engagement in the development of BAT within the UK, in providing support to the Implementation Project Team and TWG in their Calls for Evidence.
- Make recommendations that are specific, evidence-led and transparent. The Council will facilitate collaboration in Industrial Pollution Control standards including activities related to assessing impacts, consulting and publishing BAT within the UK.

Membership

The Council comprises officials from Defra (the UK Government Department that currently leads policy on the IED and BAT), and the Scottish Government, Welsh Government and the Department of Agriculture, Environment and Rural Affairs (DAERA).

Council Members may invite representatives from UK Regulators to attend the Council meetings in order to provide expert advice on any technical matters that are required. (N.B. Detailed technical discussions will be the responsibility of the Regulators Group and the relevant TWG, not the Council).

Representatives from any other UK Government Departments with an interest in specific BAT sector reviews will be invited to join on an ad hoc basis as required.

Membership of the Council comprises:

- Defra (Senior Responsible Owner, Programme Manager and Secretariat)
- Welsh Government
- Scottish Government
- Department of Agriculture, Environment and Rural Affairs (DAERA) in Northern Ireland

Method of Operation

Meetings

Standards Council meetings take place on a 6 monthly basis (or more frequently according to policy work requires) and will be chaired by the relevant Defra policy lead. Council members should nominate 1x principal and 1x alternative representative from their organisation to attend meetings. Where deputies are sent, they are expected to have full authority to make decisions on behalf of their organisation. Meetings will normally be hosted by Defra. With agreement of the

Council, at least one meeting per year shall be hosted by the Scottish Government, Welsh Government or DAERA.

Written procedure between meetings

Defra will, as Council secretariat, instigate and coordinate responses through a written procedure where sign-off is required by the Council.

Determining BAT within the UK

Where the Implementation Project Team has provided draft BAT within the UK for a given sector, each member shall report to the Council on its proposed position for the implementation of BAT in their nation.

The Council will give due consideration to this report and will aim to reach consensus, including agreement to a common approach or differing approaches on BAT within the UK.

Difference in approach to BAT within the UK

These Terms of Reference acknowledge the statutory freedom of Council members to take different decisions in their nations and recognise that these differences could have regulatory and policy impacts.

Where a member considers there to be sound technical reasons for a different approach to that proposed by the Implementation Project Team, they shall:

1. Include in their report to the Council:
 - details of the factors the Party considers unique within their administration (for example local environmental factors, differences in the industry sector installations within the administration, or policy positions) that requires different BAT
 - the nature of the different approach that is being considered
 - an assessment of risks and impacts
 - views on collaborating on a joint “BAT within the UK” document and consultation
2. Members may wish to report back on the views of their respective Ministers to the Standards Council.
3. Members may seek the views from the other Parties and from the Regulator’s Group.

The Council will give due consideration to this report and will aim to achieve consensus on reaching different approaches.

2. Terms of Reference: Regulators Group

Purpose

The Regulators Group (RG) will support the Council. It will develop and regularly review the technical principles that underpin BAT within the UK, apply those principles when reviewing each sector BAT and will make recommendations to the Council. Policy matters and decisions on the adoption of BAT will be the responsibility of the Council. The Regulator's Group will be routinely updated on the progress of the sector-specific Technical Working Groups (TWG).

Functions

1. The overall functions of the Regulators Group are to:
 - Develop and regularly review the technical principles that underpin BAT within the UK.
 - Identify risk to UK regulatory regimes and industry, particularly technical and reputational risks, and recommend measures to mitigate or minimise these.
 - Taking a UK-wide view (and drawing on recommendations from the TWG), identify BAT within the UK that apply to regulated sectors to inform the development of a work programme for BAT within the UK
 - Keep a watching brief on BAT development in other countries and organisations worldwide.
 - Provide coordination and support on technical aspects of BAT within the UK: proactively engaging with UK Sector Leads/Deputy; informing them of significant developments that other TWG have arrived at and outcomes from the discussions with other regulators; providing regular feedback from the Council meetings; and informing them of developments in emerging or improving methodologies, e.g., on identifying Key Environmental Issues (KEI);
 - Maintain oversight, particularly regarding overarching interactions between BAT within the UK.
 - Receive reports from TWG and submit them to meetings of the Council, with contextual overview added, and field queries and requests as required
 - Representatives of the regulators will have the opportunity to provide written updates on matters relevant for discussion by the Standards Council member at the next available Council meeting when required.

2. Actions carried out for each sector BAT review
 - Identify the consequences of implementing each sector BAT within the UK, including, but not limited to, environmental and economic impacts;
 - Identify and propose TWG Sector Lead and Deputy for each sector BAT within the UK plus any other regulatory staff on the TWG, and any requirements for support and succession.

- Ensure the Sector Lead/Deputy set up a TWG and assist with efficient running of that TWG including guiding on membership and conduct.
- Provide guidance, oversight and support to each TWG and the Sector Lead/Deputy in their role as Principal Authors of, and initiator of, the Call for Evidence (including data collection, review and quality assurance).
- Propose BAT within the UK to the Council, with supporting technical advice to assist the Council to form an opinion.
- Consider the need for interpretational guidance for each BAT within the UK that is produced.

Membership

The Regulators Group will comprise officials from the UK regulators responsible for ensuring compliance with the environmental permitting regimes. Membership of the Regulators Group comprises:

- BEIS as regulator (including On- and Offshore policy leads)
- Northern Ireland Environment Agency
- Environment Agency (including the Local Authority Unit)
- Natural Resources Wales
- Scottish Environment Protection Agency

The Regulators Group may invite representatives from DEFRA, Scottish Government, Welsh Government, DAERA or local authorities to attend the meetings in order to provide advice on any policy matters that are required.

Method of Operation

Regulators Group meetings shall take place several weeks before the main Council meetings (which take place on a 6 monthly basis or more frequently as required). Regulators Group members should nominate 1x principal and 1x alternative representative from their organisation to attend Regulators Group meetings. Where deputies are sent, they are expected to have full authority to make decisions on behalf of their organisation.

3. Terms of Reference: Small and Medium Industry Sub-Group

Purpose and scope

The Small and Medium Industry sub-group provides working level forum on areas of industrial emissions controls which do not currently fall within scope of BAT, such as medium combustion plant and Part B Activities. The sub-group can discuss and, where appropriate, review policy in these areas. The sub-group may also make recommendations to the Council as part of the process for prioritising future BAT reviews.

The scope of this group will include the following work areas:

1. Policy discussion on areas which currently fall entirely outside scope of industrial emissions regulated under BAT. Including:
 - Industrial Emissions Directive applicable to facilities out of BAT, under different regulatory frameworks across the Parties
 - Medium Combustion Plant Directive implementation and review
 - Regulation of 'Part B' and Part C in Northern Ireland activities through environmental permitting
2. Product standards (sulphur content of liquid fuels).
3. Other specific policy strands requiring regular discussion
4. Discussions between the Parties on industrial reporting will be covered through the Industrial reporting subgroup of the separate air quality common framework, as they fit more closely to the role of that group. However, updates between the framework groups will be important given the links between industrial emissions reporting and industrial emissions policy, which will happen as those are identified.

The Small and Medium Industry sub-group will meet every 6 months, or when required. Separate additional meetings covering the above specific work-areas can be arranged on an ad-hoc basis where necessary.

This sub-group is separate to the process for the development of UK 'Best Available Techniques', which is set out in the ToRs for the Council and Regulators Group. However, the sub-group may make recommendations to the Council as part of the process for prioritising future BAT reviews, for example if some industries below the (A1 and A2 in Wales) BAT threshold currently regulated through Process Guidance Notes would be better regulated through this more robust BAT process.

The group will inform directly to the Standards Council on the development and implementation of these other non-BAT work streams.

Aim and Objective

The overarching aim of the Small and Medium Industry sub-group is to provide strategic discussion, and, where appropriate opportunities for policy and legislative join-up on areas of non-BAT industrial emissions controls which do not currently fall within scope of the IED. This includes, without prejudice, determination of any potential consequences associated with policy deviation on areas of policy within scope.

The group will advise on policy directions and wherever possible through joint working seek, to join up on matters relating to industrial emissions regulation. The group will also provide a forum for sharing ideas and prospective policies in

relation to clean air and air quality, in order to ensure strategic decision making on industrial pollution control is undertaken with knowledge of this wider context.

It will also be a forum for escalation, where needed, and agreement on whether to escalate further up the governance structure (outlined in Annex E). However, the nature of this group is essentially discursive, and disagreements will not be subject to the formality of the dispute resolution process as described previously.

Functions

The main functions of the Small and Medium Industry sub-group will be:

1. Strategic consideration of industrial emissions policy (except BAT development), with a view to identifying opportunities for joint working on IPC policy
2. A discussion forum on:
 - Establishing a common regulatory approach on industrial emissions control matters within scope, where this is desirable and achievable; and
 - Developing, where possible, agreed positions on cross cutting policy issues arising in cases where IPC objectives impact on, or are impacted by, wider government policies.
3. Develop a strategic approach to working and communicating with UK industry sectors to achieve emission reductions required by the UK's legally binding targets.
4. Engage with and invite views from the UK regulators and regulator sector experts as necessary to inform sub-group discussions
5. Provide an information sharing forum for issues and policy approaches, in particular, where these may differ or diverge across the Scottish Government, Welsh Government or DAERA.

Governance

The Small and Medium Industry sub-group is part of the governance structure outlined in section 3 of the Framework Outline Agreement.

The sub-group will communicate, share and discuss key high-level issues, which align with the scope. The sub-group meetings will bring a range of industrial work areas together and allow the opportunity for members to discuss their priorities and concerns

Membership

The Small and Medium Industry sub-group will comprise officials from the UK Government, Scottish Government, Welsh Government, and DAERA; officials from the other organisations listed below may also be invited according to agenda and interest, including:

- Other UK Government Departments, e.g., BEIS
- The Environment Agency
- EA Local Authority Unit
- Natural Resources Wales
- Scottish Environment Protection Agency
- Northern Ireland Environment Agency

Method of operation

Meetings will take place every 6 months (or more frequently according to need) and will be chaired by Defra. Defra will call for agenda items in advance of meetings. Defra will record and will circulate a brief note of the meeting with agreed actions.

4. Terms of Reference: The UK Air Quality and Industrial Emissions Governance Group (UKAQGG)

Purpose and Scope

The UKAQGG is a high-level group comprised of senior officials from UK Government and the devolved administrations. The UKAQGG shall provide strategic oversight on matters relating to the Air Quality (AQ) and Best Available Techniques (BAT) Common Frameworks. The UKAQGG will ensure the continued functioning of policies and legislation post EU Exit without prejudice to the decision-making powers of Ministers in all administrations or impeding on the ability of the regulators to make day-to-day decisions. The AQCFGG does not deal with the working & operational aspects of the Common Framework, which is covered by the Common Framework Working group (CFWG).

Objectives

- To provide strategic oversight on matters relating to the AQ and BAT Air Quality Common Frameworks and ensure its purpose of facilitating multilateral policy development is achieved.
- To reach consensus, where possible, on regulatory decisions escalated to the Group
- To reach consensus, where possible, on disputes escalated to the Group
- To take decisions regarding the escalation of issues up to Ministerial level
- To discuss issues escalated by exception from the Standards Council

To support the discussions and possible decision making, UKAQGG may consult experts as appropriate. The development of positions/papers will be informed by scientific/legal/ economic advice as necessary.

There will a process and criteria beneath this to determine whether joint decisions and or disputes should be escalated to ministerial level.

Ways of working

- Meetings will be held quarterly (frequency and set-up to be kept under review or to be agreed in advance). Ad-hoc meetings can be held in exceptional circumstances and decisions taken by correspondence when necessary.
- The agenda items for each meeting will align with the objectives of the AQCFGG, ad-hoc issues including broad matters relevant across the UK may also be discussed as appropriate.
- Meetings to be chaired in rotation.
- Secretariat will also rotate.
- Draft agenda to be circulated within two weeks by the Secretariat and circulated for joint agreement.
- Papers and final agendas for meetings to be circulated one week prior to meetings taking place.

Process for escalation of issues to the UKAQGG

The Common Framework Working Group will determine whether issues/ risks need to be escalated to the UKAQGG. Issues will first be discussed at Official level before escalation is made to the UKAQGG

Membership

Organisation	Member (s)*
Defra	Deputy Director: Air Quality and Industrial Emissions
Welsh Government	Deputy Director for Environment and Communities and the Head of Environment Quality and Regulation
DAERA	Director of Regulatory and Natural Resources Policy Division
Scottish Government	Deputy Director for Environmental Quality and Circular Economy

*Members would need to have sufficient expertise/understanding of policy area being discussed and where appropriate, authority to make decisions on behalf of Ministers.

*If necessary, members can seek advice from policy leads from within their administrations.

*Potential ad-hoc membership possible depending on agenda being discussed

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