



Department for  
Business, Energy  
& Industrial Strategy

# Company Law: Provisional Common Framework

December 2021





# Company Law: Provisional Common Framework

Presented to Parliament  
by the Secretary of State for Business, Energy and Industrial Strategy  
by Command of Her Majesty

December 2021



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ISBN 978-1-5286-3101-3

E02697955 12/21

Printed on paper containing 75% recycled fibre content minimum.

Printed in the UK by HH Associates Ltd. on behalf of the Controller of Her Majesty's Stationery Office.

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# Company Law: Provisional Common Framework

This document sets out a provisional Common Framework Agreement on Company Law between the UK Government and the Northern Ireland Executive (hereafter referred to as the Parties):

- UK Government (UKG), Department for Business, Energy and Industrial Strategy (BEIS)
- Northern Ireland Executive (NIE), Department for the Economy (DfE)

## Policy area

Company Law including accounting and audit - Companies Act 2006 with all subsequent statutory instruments and related legislation governing business frameworks in the United Kingdom.

## Scope

The Companies Act 2006 and associated secondary legislation set out the framework which governs the lifecycle of a company, including formation, relations with shareholders and publication and filing requirements.

Coordination and cooperation that existed while the UK was a member of the EU continues to exist. EU law underpinned parts of the Companies Act 2006, in particular around accounting and reporting and audit.

Company law is a transferred matter in Northern Ireland. The Companies Act 2006 provides for a single company law regime applying to the whole of the UK. This ensures that the same requirements apply uniformly to all UK registered companies regardless of where in the UK they are based; as well as to overseas companies regardless of where in the UK they operate. Since the 2006 Act, legislation under the Act or amending the Act or legislation made under it has applied to the whole of the UK.

BEIS has made the following recent pieces of secondary legislation relating to the falling away of the EU regime, on behalf of the whole UK, in full consultation with DfE:

- The European Public Limited-Liability Company (Amendment etc.) Regulations 2018
- The European Economic Interest Grouping (Amendment) (EU Exit) Regulations 2018
- The Accounts and Reports (Amendment) (EU Exit) Regulations 2019
- The Statutory Auditors and Third Country Auditors (Amendment) (EU Exit) Regulations 2019

- The Companies Limited Liability Partnerships and Partnership (Amendment etc.) (EU Exit) Regulations 2019
- The International Accounting Standards and European Public Limited Liability Company (Amendment etc.) (EU Exit) Regulations 2019
- The Statutory Auditors, Third Country Auditors and International Accounting Standards (Amendment) (EU Exit) Regulations 2019
- The Companies and Statutory Auditors etc. (Consequential Amendments) (EU Exit) Regulations 2020
- The Statutory Auditors and Third Country Auditors (Amendment) (EU Exit) Regulations 2020
- The International Accounting Standards, Statutory Auditors and Third Country Auditors (Amendment) (EU Exit) Regulations 2020.

The UK Government makes secondary legislation on behalf of the whole UK, but in close consultation with DfE, and this reflects the UK-wide nature of Company Law.

This is a non-legally binding agreement that builds on existing constructive working level relationships between officials in the Department for Business Energy and Industrial Strategy (BEIS) and the Northern Ireland Department for Economy (DfE). The Common Framework formalises the relationships that already exist and puts in place an agreed, escalation route to resolve any issues between the Departments on a policy approach should they emerge.

There are no overarching international obligations within scope of this agreement.

The area of policy covered by this Common Framework does not fall directly within the provisions of the Trade and Cooperation Agreement, although both the Common Framework and that agreement will impact significantly on devolved and reserved responsibilities.

Agreed outcomes of the intergovernmental relations review will be reflected in this Common Framework.

There is no conflict in these Framework proposals with the relevant provisions of the Belfast/Good Friday agreement and there is no linkage in this Framework to the operation of the Protocol on Ireland/Northern Ireland. Any possible interaction between this Common Framework and the Protocol will be considered as part of the review process outlined in section 12.

# Proposed Breakdown of Policy Area and Framework

## Summary

Company law deals with the formation, governance, financing, regulation and the dissolution of companies. Company law is a transferred matter in Northern Ireland. The Companies Act 2006 provides for a single company law regime applying to the whole of the UK, with the same requirements applying uniformly to all UK registered companies regardless of where in the UK they are based, and to overseas companies regardless of where in the UK they operate. Since the 2006 Act, legislation under the Act or amending the Act or legislation made under it has applied to the whole of the UK. This does not affect the legislative competence of Northern Ireland.

There is no desire to change the current arrangement for legislating to fix any inoperability in the Act or legislation made under it as a result of the UK leaving the EU.

This Common Framework is a reflection of an approach which has worked satisfactorily for a considerable length of time, and from which there is no desire to depart. Those arrangements function on the basis that the BEIS has regular contact with DfE officials to keep them informed of proposals and developments in company law. BEIS officials aim to give DfE officials sufficient notice of e.g. any new legislation to give them enough time to notify their senior officials and Ministers of any new legislation and obtain any formal consent needed. There is, and always has been, a good working relationship between the two teams.

## Detailed overview: legislation (primary or secondary)

Working relationships have, to date, been satisfactory for both Parties and should continue. Both Parties commit to continue to notify the other – and in good time – of challenges, issues or opportunities relating to Company Law. The UK Department for Business, Energy and Industrial Strategy will continue to make legislation on behalf of the whole UK with the consent of the Northern Ireland Department for Economy (and with DfE seeking agreement of other Departments within the Northern Ireland Executive, and the Executive as a whole, as necessary), to maintain a coherent regulatory landscape for businesses.

## Detailed overview: non-legally binding agreement

Working relationships have, to date been satisfactory for both Parties. The Parties agree that the existing approach should continue now that the UK has left the EU. It is currently considered that an exchange of letters to formalise this approach would be the most proportionate and appropriate type of non-legally binding agreement. This will confirm and continue the current relationship between BEIS and DfE which has proven effective.

Several key principles underpin the ongoing relationship, and the established ways of working. These are consistent with what is already in place, to support BEIS and DfE work on company law and ensure a joined-up approach is maintained.



- Both Parties agree that it is key for all UK businesses to maintain a Common Framework for company law policy.
- Any updates regarding future legislative changes or policy developments should be shared with the other Party at an official level, typically through email exchange.
- Parties will consider the impact of decisions on the other Party (and therefore the UK internal market) and provide time for meaningful engagement on the issue.
- Future collaborative meetings will be conducted at official level and on a without prejudice to Ministerial views basis. Official level meetings will be scheduled regularly to foster regular engagement and ensure contact is maintained between key officials.
- Escalations, if necessary, should be initiated first at official level via a working group containing policy leads from both Parties. This working group will meet on an ad hoc basis when required, for example for information sharing, decision making or dispute resolution purposes.
- If a satisfactory resolution cannot be found, then the matter should be escalated to senior official level. If a resolution still cannot be reached, Ministers will be asked to provide their input or hold a bilateral discussion. Existing routes should be used for this process. If a resolution cannot be reached at this level, the matter may be referred to appropriate intergovernmental structures.
- Parties will attempt to resolve issues at the lowest possible level.

**An exchange of letters to formalise the current approach will take place between BEIS and NI Department for the Economy Ministers.**

# Operational Elements

## Decision Making

The main forum for official level discussion and decision-making will be between DfE and relevant BEIS business frameworks policy officials. This could include, but is not limited to, email exchanges, bilateral meetings between officials and inviting officials onto key policy development working groups (with no expectation that attendance is mandatory).

For more detailed steps see key principles in “Detailed overview: non-legally binding agreement”.

## Roles and responsibilities of each party to the Common Framework

Decisions will be made in accordance with the principles outlined in “6. Detailed overview of framework: non-legally binding agreement”, as well as the common framework principles agreed at JMC(EN). In addition:

### BEIS

- BEIS will ensure all officials working in Business Frameworks at BEIS are aware of the arrangement to legislate on behalf of Northern Ireland and need to involve Northern Ireland as policy and plans develop.
- BEIS will consult the Department for Economy and give them sufficient time to input into policy development or draft legislation.
- BEIS will update the Department for Economy regularly about work in Business Frameworks.

### Department for Economy

- Department for Economy will provide comments within an appropriate time frame in response to requests.
- Department for Economy will keep Business Frameworks updated about developments in Northern Ireland that might be of interest or affect company law.

The framework is based on excellent working relations between officials at BEIS and DfE. Where more senior engagement is needed, senior officials will be engaged as required and on an ad hoc basis. In exceptional circumstances and where the work stream has been remitted to senior officials but remains unresolved, the issue may be escalated to Ministers. Where Ministers are considering issues as part of the Common Framework’s dispute avoidance and resolution mechanism this could be via several media, including inter-ministerial meetings or by correspondence.

Where the views or consent of other Departments in the Northern Ireland Executive are required, the Department for Economy shall facilitate those views and seek that consent where

necessary, and then notify the Northern Ireland Executive of its intention to allow BEIS to legislate.

## Roles and responsibilities of existing or new bodies

The Financial Reporting Council is the UK's pre-existing independent regulator responsible for promoting transparency and integrity for accounting and audit standards. Its remit extends to the whole of the UK equally. For example, the accounting standards it issues for use by unlisted companies apply across the whole of the UK. There will be no change to this relationship.

Companies House is the UK's registrar of companies. All Northern Irish companies became registered to Companies House in 2010. All UK companies will continue to be registered by Companies House and subject to the rules and regulations of Companies House. A company can register on the England and Wales Register, Scotland Register and Northern Ireland Register, and then be added to the central register. There will be no change to this.

## Monitoring and enforcement

The effectiveness of this Common Framework will be monitored between officials on a regular basis through the normal course of engagement. For more detail see key principles in "Detailed overview: non-legally binding agreement"

As this a non-legally binding agreement, formal enforcement measures are not appropriate.

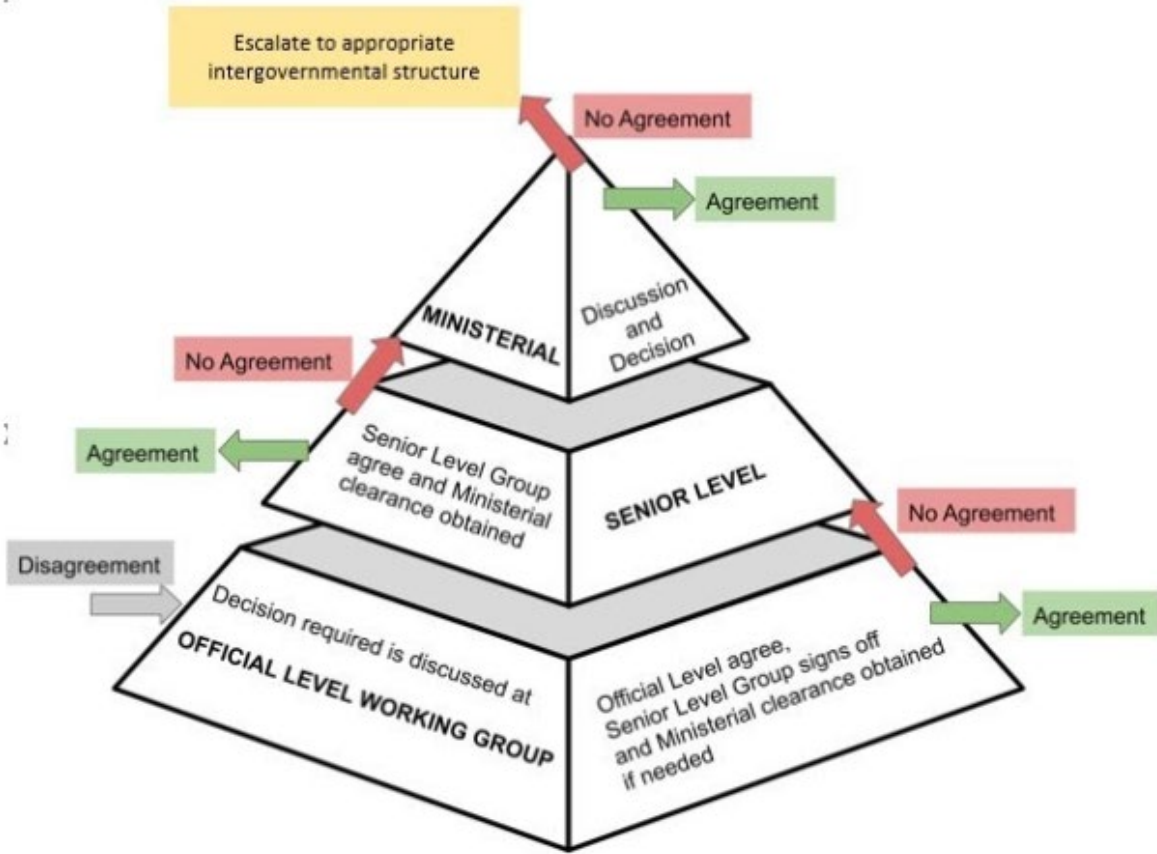
## Review and amendment

BEIS and NI DfE officials will review this Common Framework every three years to ensure it is working well for both Parties. However, either party can raise concerns and ask for a review at any time if issues arise. As part of this:

- The period of 3 years starts from the conclusion of a periodic review and any amendment stages that follow (and will be monitored by both BEIS Business Frameworks and DfE).
- During the periodic review, Parties to the framework will discuss whether the governance and operational aspects of the framework are working effectively, and whether decisions made over the previous 3 years need to be reflected in an updated non-legally binding agreement.

## Dispute resolution

Whilst enforcement measures are not deemed appropriate for this Common Framework, where any disputes do arise, they will be managed in line with the key principles set out in "Detailed overview: non-legally binding agreement" and in line with the following:



# Practical Next Steps and Related Issues

## Implementation

The Common Framework will take effect once it has been agreed by both Parties and they have provided final sign off. No further steps will be required as the relevant policy officials are already in regular working contact.

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ISBN 978-1-5286-3101-3

E02697955