

Provisional common framework: Public health protection and health security

July 2022



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Provisional common framework:

Public health protection and health security

July 2022

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The UK and devolved governments published the **provisional common framework on public health protection and health security** in October 2021.

Common frameworks are agreements between the governments on how to work together and manage divergence in areas previously governed at EU level.

The governments are publishing common frameworks in provisional form for scrutiny. In early 2022, the Senedd's **Health and Social Care Committee** scrutinised the provisional common framework and made recommendations about it to the Welsh Government.

Once all parliaments have completed scrutiny, the four governments intend to respond to recommendations and agree a final version of the common framework.

This briefing provides an overview of the provisional framework.

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Summary

In the EU, the European Commission, Member States and the European Centre for Disease Prevention and Control work together to coordinate responses to serious cross-border threats to health. Now that the Brexit transition period is over, some of these functions have been transferred to governments and public health agencies in the UK. The UK also no longer has automatic access to the EU's early warning and response system and the EU Health Security Committee – although in practice access to both continued during the coronavirus pandemic.

This framework sets out how the governments and public health agencies will work together on public health in this new context. It commits them to develop a shared work programme, including working together to tackle threats to public health and to develop national public health policy and strategy.

The framework sets up a new governance structure for the governments and public health agencies to make decisions, including when they should take the same approaches to public health law and policy and when they should diverge. However, it offers limited guidance on how the parties will decide when divergence is acceptable.

The framework also takes into account the UK's international commitments, including new UK-EU arrangements agreed in the Trade and Cooperation Agreement (TCA). It establishes new UK arrangements for collaboration with international partners. This could shape how the Welsh Government and Public Health Wales interact with international partners on public health and health security, potentially providing more opportunities for international engagement.

The framework doesn't require the parties to publish their shared work programme, to update parliaments and stakeholders on the operation of the framework, or to involve parliaments and stakeholders in reviewing or revising the framework. The four governments have agreed in principle to report regularly to parliaments on common frameworks. The Welsh Government has also agreed unilaterally to report to the Senedd on common frameworks and to consult the Senedd and stakeholders during review and amendment.

1. Background

What is public health protection and health security?

This framework focuses on public health protection and health security law. It offers definitions of these terms.

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

These policy areas are linked to other areas where common frameworks are planned. For example, at EU level alerts for threats to public health are aligned with alert systems for food and feed safety and animal health. The framework does not say how it links to the planned frameworks for food and feed safety and hygiene, animal health and welfare or plant health.

Legislation in scope

EU-derived legislation

EU law on public health protection and health security aims to support cooperation between Member States to protect against serious cross-border threats to health.

Public health is devolved. While the UK was a member of the EU, Public Health England (PHE) acted as the UK's national competent authority for coordinating and sharing information on public health protection. Public health agencies in each part of the UK shared information with PHE, and PHE then shared that information at EU level. The UK Department of Health and Social Care also participated in meetings of the EU Health Security Committee.

The principal piece of EU legislation on public health protection and health security is **European Parliament and Council Decision No 1082/2013/EU**. This aims to support Member States to work together to combat serious cross-border threats to health, by:

- setting up an **EU Health Security Committee** to coordinate between Member States and the European Commission on monitoring and

responding to such threats;

- setting up a network for epidemiological surveillance, bringing together the **European Centre for Disease Prevention and Control (ECDC)** (established by **Regulation (EC) No 851/2004**), the European Commission and national competent authorities;

- requiring the Commission to set up processes for epidemiological surveillance and to establish and update a list of communicable diseases and related special health issues for surveillance (see **Commission Implementing Decision (EU) 2018/945**);

- establishing the **EU's Early Warning and Response System (EWRS)** for notification of threats (see **Commission Implementing Decision (EU) 2017/253**); and

- providing for the Commission and Member States to coordinate national responses to threats.

Transfer of functions to domestic authorities

Now that the Brexit transition period is over:

- the UK no longer has automatic access to the EU's Early Warning and Response System or the EU Health Security Committee (but in practice retained access to both during the COVID-19 pandemic); and
- the UK has agreed new arrangements for public health protection with the EU in the Trade and Cooperation Agreement.

To ensure that public health protection law would work in this new context, the UK Government made the **Health Security (EU Exit) Regulations 2021**. The regulations transfer functions from EU institutions to authorities in the UK. They set new processes for public health protection by:

- establishing a UK Health Protection Committee to replace the EU Health Security Committee, made up of one person representing the relevant minister for each part of the UK and one person representing each public health agency;
- enabling this Committee to set procedures for epidemiological surveillance;
- requiring each UK public health agency to carry out epidemiological surveillance and share information with the other agencies;

- establishing UK lists of new communicable diseases and special health issues for epidemiological surveillance;
- enabling the Secretary of State (rather than the European Commission) to amend these lists, on the advice of the Committee and with the consent of the devolved governments; and
- requiring authorities in each part of the UK to consult each other about preparedness and response planning for serious cross-border health threats.

The regulations also set new processes for responding to the emergence of serious cross-border health threats, by:

- setting up a system for the four UK public health agencies to notify the UK focal point (currently the **UK Health Security Agency (UKHSA)**) of serious cross-border health threats;
- requiring the UK focal point to notify such health threats to the EU;
- requiring UK authorities to consult with each other, with a view to coordinating responses to such threats across the UK and with the EU and the World Health Organisation; and
- enabling the Secretary of State to request cooperation with the EU on the response to such threats, under the terms of the TCA.

The Welsh Government consented to the UK Government making these regulations, on the grounds that it is appropriate for there to be a UK-wide system for dealing with health threats. The **Legislation, Justice and Constitution Committee considered** a written statement under Standing Order 30C on the regulations in July 2021.

Taking on new responsibilities

As a result of this transfer of functions, governments and public health agencies in the UK have taken on new responsibilities.

For example, Public Health Wales and the Welsh Government will be responsible for representing Wales at the UK Health Protection Committee, to advise on updates to the UK's lists of new communicable diseases and special health issues for epidemiological surveillance. UKHSA will carry out some coordinating functions previously exercised at EU level, including maintaining databases on epidemiological surveillance and providing quality assurance.

Some responsibilities exercised at EU level have not directly been transferred to authorities in the UK. For example, the ECDC is responsible for providing scientific and technical expertise to the Member States, the Commission and other EU agencies in the development, regular review and updating of preparedness plans. The Regulations require the UK authorities to consult each other about preparedness and response planning for serious cross-border health threats, with a view to strengthening their capacity.

Public Health Wales has previously raised concerns about the impact of leaving EU institutions for public health protection and health security, including:

- reduced coordination in identifying and managing infectious diseases;
- loss of membership of key coordinating bodies e.g. ECDC, EEA role of risk assessment, data analysis, surveillance and coordinating public health systems; and
- loss of information / data and knowledge sharing on emerging health threats, outbreaks and coordination on managing incidents.

New UK-EU arrangements: Trade and Cooperation Agreement

The UK and EU have in place new health security cooperation measures since the UK withdrew from the EU. These are significantly different to arrangements when the UK was a Member State.

The **Trade and Cooperation Agreement** (TCA) places a duty on the UK and EU to inform each other in a timely manner of health security threats, which it defines as a “life-threatening or otherwise serious hazard to health of biological, chemical, environmental or unknown origin which spreads, or entails a significant risk of spreading, across the borders of at least one Member State and the UK.”

UK access to EU systems

In the event of a serious cross-border threat to health, provision is made for the UK:

- to be granted access to the **EU’s Early Warning and Response System** on written request. EWRS monitors public health threats in the EU; and
- to be invited to participate in an EU committee attended by Member States so that the UK and EU can coordinate and exchange information. This is likely to be the **EU’s Health Security Committee**, although the UK is not yet on its website’s list of members.

Conditions for both are provided, as follows:

- the UK must observe conditions for the use of EWRS;
- the EU may terminate UK access; and
- the UK can withdraw its participation.

Both arrangements shall be temporary and for no longer than is necessary. The **UK has continued its access** to both during the COVID-19 pandemic. Had the pandemic not occurred, the UK would have had its access removed when it withdrew from the EU and granted on this basis. This will apply to future post-pandemic scenarios.

UK-EU ‘focal points’

Regarding the exchange of information, the UK and EU must each designate a ‘focal point’. The focal points are tasked with determining whether or not a threat is a serious cross-border threat to health and seek mutually agreed solutions to any technical issues that arise. .

The UK’s current focal point is the **UK Health Security Agency (UKHSA)** (formerly Public Health England). It will play a leading role in future UK intergovernmental arrangements for public health alerts, alongside the new **Health Protection Committee**.

In addition to being responsible for informing the EU of serious cross-border threats, **UKHSA will** also be responsible for receiving alerts from the devolved nations, working with them to carry out rapid risk assessments and coordinating a response.

Public Health England issued a **UK Focal Point communications protocol** in light of the TCA to “bring the UK’s public health agencies into permanent communication with one another in order to facilitate the prevention and control of serious cross-border threats to health.”

UK-EU Agency Memorandum of Understanding

The TCA provides an option to conclude a Memorandum of Understanding (MoU) between the **European Centre for Disease Prevention and Control** (ECDC) and a relevant UK body to cooperate on technical and scientific matters of mutual interest. In December 2021, the UKHSA **signed an MoU** with the ECDC.

Collaboration with the EU in international fora

Where it is in their mutual interest, the TCA provides that the UK and EU shall cooperate in international fora on the prevention and detection of, preparation for, and response to emerging threats to health security. The UK Government has **historically collaborated** with the EU in international fora, including at the World Health Organisation (WHO) and the **Global Health Security Initiative**.

UK-EU disputes

For UK-EU disputes, the TCA's health security provisions are unusual. They are one of two parts of the TCA which has the most limited recourse to dispute settlement. This is because the multiple dispute settlement options in the TCA do not apply to them, while at the same time, an exclusivity clause does apply. This prevents the UK and EU from seeking another form of dispute settlement outside the TCA, except in limited circumstances.

2. The common framework

The public health protection and health security framework sets out how the UK Government, devolved governments and public health agencies in each part of the UK will work together on public health protection and health security previously governed by EU law and policy.

Public health agencies are responsible for providing technical advice on public health, while governments are responsible for making policy decisions.

The framework is underpinned by:

- the **Health Security (EU Exit) Regulations 2021**; and
- a non-legislative Memorandum of Understanding (MoU) (Annex A to the framework document).

In 2017, the **Joint Ministerial Committee (European Negotiations) agreed six criteria** for when common frameworks would be needed (see section 1 above). The framework says that it will be needed to meet three of these criteria:

- ensuring compliance with international obligations;
- ensuring the UK can negotiate, enter into and implement new trade agreements and international treaties; and
- safeguarding the security of the UK.

The MoU to the framework sets out three aims for itself:

- to strengthen cooperation and coordination between the Parties on matters relating to public health protection and health security policies;
- to establish common expectations around key areas of cooperation and how ways of working will develop in future; and
- to ensure that developments in ways of working will be orientated towards strengthening collective resilience to serious cross-border threats to health.

3. Roles and responsibilities

The framework sets up a tiered system of bodies for the parties to work together, from joint working at the operational level to oversight by chief medical officers and ministers.

The parties to the framework will make joint decisions by consensus and try to resolve disagreements at the lowest possible level. If this is not achievable, disagreements can be referred to the framework's dispute resolution process. Chairs of meetings will be rotated. Secretariat support will be provided by the UK Government or UKHSA.

Operational level: Four Nations Health Protection Oversight Group

A **Four Nations Health Protection Oversight Group** will provide 'coordination of UK-wide public health protection activities'. This will be made up of one representative each from the UK Government, devolved governments and public health agencies in each part of the UK.

This group will be responsible for implementing the framework and making decisions on operational matters, including:

- coordinating the shared work programme;
- monitoring work between government health policy teams and public health agencies of relevance to the framework; and
- feeding into the work of the UK Health Protection Committee.

The group will meet four times a year, or more as needed. It may also create working groups on specific topics. It will be accountable to the UK Health Protection Committee.

Strategic level: UK Health Protection Committee

The **UK Health Protection Committee** (established by the Health Security (EU Exit) Regulations 2021) will be responsible for bringing together representatives of the parties to make joint decisions on policy and strategy, including:

- carrying out the functions set out in the Regulations;
- agreeing the shared work programme for the framework;
- supporting multilateral policy development, including seeking to develop common approaches across the UK where agreeable, and managing potential divergence;
- supporting the coordination of efforts to improve capacity for monitoring, early warning and assessment of serious cross-border health threats;
- monitoring the application of the framework, including collating information on meetings held between the parties;
- reviewing and amending the framework.

It will be responsible for monitoring the application of the framework (including collating information on meetings held between the parties) and making joint decisions on relevant policy and strategy.

The Committee will meet twice a year, or more as needed. It will be made up of officials at Director level, and be accountable to the UK Chief Medical Officers' Group. The Committee does not currently appear to have an online presence.

Oversight: Chief Medical Officers and ministers

The UK Chief Medical Officers' Group will collate annual information on meetings relevant to the framework and adopt decisions in respect of any CMO matters. The framework notes that this group is not expected to play a prominent role, but could be 'drawn upon' to help resolve issues.

Health ministers in each part of the UK will provide senior oversight of the framework at the political level.

4. Purpose and operation of the framework

A shared work programme

The MoU commits the parties to the framework to working together on a shared work programme based on existing resources, including:

- **public health protection** activities: surveillance and early alerting, risk assessment, situational reporting and emergency data sharing;
- sharing health security expertise;
- public messaging;
- developing national public health policies and strategies;
- sharing data and intelligence;
- establishing principles for providing **mutual aid** across the UK;
- working together on **workforce planning**, to develop the knowledge, skills and expertise of the public health workforce;
- jointly recognising training programmes on public health protection in and facilitating access to **training and education** across the UK;
- strengthening coordination of **research and scientific collaboration**, including by aligning research and science strategies and collaboration with international partners. The international elements of this is subject to the UK's post-Brexit arrangements, including the provisions of the TCA.

It is not clear if the parties to the framework intend to publish the shared work programme.

Managing divergence

The framework states that part of the purpose of the Health Security Committee will be to manage potential divergence between different parts of the UK:

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

However, it also says that:

[The] Regulations do not prevent a Devolved Government from undertaking additional surveillance for health protection purposes in their own jurisdiction should they so wish. The legislation is intended

to ensure the continued sharing of comparable and compatible information with respect to serious crossborder threats to health for the purposes of coordination and collaboration. In other areas, it will still allow for divergence in the public health measures put in place by devolved nations.

There is limited detail on how the parties will determine when decisions should be taken jointly through the framework or on what grounds divergence will be accepted.

The framework might act as a practical constraint on the ways that the Senedd and Welsh Government can exercise their competence. For example, if a Member of the Senedd were to propose new legislation on public health in scope of the framework, the Welsh Government and Public Health Wales would need to consult the other parties to the framework and consider whether a common approach should be reached.

The **Senedd's Health and Social Care Committee has raised concerns** about the impact of this on the role of the Welsh Government, the Senedd and stakeholders in making laws for Wales. The **Welsh Government has said** that the framework will not affect devolved powers.

UK Government's review of retained EU law

The **UK Government has set out plans** to introduce a Retained EU Law Bill to make it easier to change or repeal retained EU law (REUL) and to remove the special status it has in UK law. This could lead to existing standards being removed or changed in domestic law.

The **UK Government has said** that it will not seek to make changes to retained EU law within Common Frameworks "without following the ministerially-agreed processes in each framework".

Managing international arrangements

The framework commits the parties to working together on international obligations and international relations.

International obligations

The purpose of the framework is to:

address the threats arising from infectious disease and noninfectious threats such as chemical and environmental hazards which cross

borders. This is in line with existing national policies and the International Health Regulations (2005) (IHR).

The framework references only the IHR, but does not reference other instruments of international law, including those that specifically address cross-border risks posed to human health by chemical and/or environmental hazards. One example is the **Rotterdam Convention** which promotes cooperation between states in the international trade of dangerous chemicals with the specific aim of protecting human health.

This section summarises references made in the framework to the IHR.

International Health Regulations (2005) (IHR)

According to the **World Health Organisation** (WHO):

The International Health Regulations (2005) (IHR) provide an overarching legal framework that defines countries' rights and obligations in handling public health events and emergencies that have the potential to cross borders.

The IHR are an instrument of international law that is legally-binding on 196 countries, including the 194 WHO Member States.

The IHR also:

- requires countries to designate a National IHR Focal Point for communications with WHO, to establish and maintain core capacities for surveillance and response, including at designated points of entry.
- addresses areas of international travel and transport, such as the health documents required for international traffic.
- introduces important safeguards to protect the rights of travellers and other persons in relation to the treatment of personal data, informed consent and non-discrimination in the application of health measures under the Regulations.

The framework explains that:

Through IHR, countries have agreed to build their capacities to detect, assess and report public health events. WHO plays the coordinating role in IHR and, together with its partners, helps countries to build their capabilities.

IHR also includes specific measures at ports, airports and ground crossings to limit the spread of health risks to neighbouring countries, and to prevent unwarranted travel and trade restrictions so that traffic and trade disruption is kept to a minimum.

In 2013, Public Health England issued a **UK National Focal Point communications protocol** to deal with communications in relation to the IHR or between relevant bodies, such as between the UK Government and the devolved administrations. This sets out relevant communication details and procedures for the UK in the event of any incident that occurs in any part of UK territory that might have implications for international public health or trade or traffic. It also details the procedure to follow for sending/receiving information to/from the WHO. This protocol is not mentioned in the framework, although a UK-EU specific protocol is mentioned, established in light of the TCA and described above in section 3.

According to the framework, intra-UK arrangements for representation at the EU while the UK was a Member State “supported compliance with the IHR”. No further information is provided, including whether this arrangement continues post UK exit.

New international obligations

The framework does not make specific reference, nor establish a specific mechanism, to update the framework to reflect new international obligations. This is different to other common frameworks, such as the **Hazardous Substances (Planning) framework**. However, it does establish a review and amendment mechanism. Whether international obligations will be incorporated via this mechanism is uncertain.

On 1 December 2021, world leaders agreed to draft and negotiate a new international **treaty to strengthen pandemic prevention, preparedness and response** at a special session of the World Health Assembly. A **draft outline** is available and meetings of its **Intergovernmental Negotiating Body** have taken place throughout 2022, most recently in July 2022. The extent to which the UK is involved is unclear. Such new international obligations may need to be incorporated into the framework in future.

International relations

Devolution settlement

The framework explains that international relations policy is a reserved matter, and that the UK Government’s Department of Health and Social Care retains overall policy responsibility for the formulation of UK international health policy.

However, it recognises health protection as a devolved matter and that the implementation of international obligations requires a coordinated approach by the

four nations. The implementation of international obligations in devolved areas is the responsibility of the Welsh Government.

The framework explains that this arrangement will be reflected in future intergovernmental working arrangements.

Future arrangements

The four nations agree to strengthen coordination in other international areas by:

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

New UK-EU governance arrangements

The TCA's provisions on health security form Title I of Part Four on Thematic Cooperation.

While the TCA establishes 24 new UK-EU committees to oversee its implementation and application, there is no health security joint forum. The framework recognises this and calls for devolved involvement in any future Specialised Committee, if one is established.

The framework recognises the **UK Government's commitment**, made in May 2021, to facilitate devolved attendance at UK-EU meetings where items of devolved competence are on the agenda and in preparations for such meetings.

5. Resolving disputes

The framework sets out that disagreements are to be resolved at the lowest possible level. It also sets out a process for avoiding and resolving disputes, saying this should only be used if:

- the parties cannot agree a common approach or a decision to diverge; or
- one or more of the parties considers the terms of the framework or JMC(EN) principles have been breached.

Disagreements will be escalated through the governance tiers of the framework:

- if a disagreement cannot be resolved at working level it can be referred to the Four Nations Health Protection Oversight Group;
- if that group cannot reach a decision, the disagreement can be referred to the Health Protection Committee; and
- if there is still no agreement, the disagreement can be referred to be discussed by Chief Medical Officers or directly to ministers.

If the dispute cannot be resolved by portfolio ministers, it may be escalated to the inter-ministerial dispute resolution process outlined in the MoU on Devolution. In January 2022, the **governments agreed** a new inter-ministerial dispute resolution process as part of the Intergovernmental Relations Review. The **Counsel General said** this was a “groundbreaking step”.

The framework does not provide for disputes to be notified to parliaments or stakeholders. However, the **Welsh Government has committed** to notify the Senedd of disputes.

6. Monitoring, review and amendment

The UK Health Protection Committee will meet biannually to monitor the framework and assess how well it is working.

The MoU sets up a review and amendment mechanism to enable changes to it to be made in future. Reviews will happen:

- at six months, one year, and three years after the MoU comes into operation, and every three years after that; and
- if any one or more of the parties considers that there is a ‘significant issue’ (but the same significant issue cannot be discussed within six months of the closing of that issue.)

If all parties agree, they may embark on the amendment stage for the framework. Any amendment must be agreed by all parties. If parties do not agree to a proposed amendment, the dispute resolution process may be triggered.

The terms of reference for the Four Nations Health Protection Oversight Group will be reviewed every two years, or earlier on request.

7. Transparency and accountability

The framework states that there has been ‘extensive engagement’ between governments and public health agencies. It states that ‘there [has not been] the same industry consultation that is required in other frameworks.’ There was no formal consultation on the Health Security (EU Exit) Regulations 2021.

However, the framework acknowledges that there will be a need for some external engagement, referring in particular to the Faculty of Public Health (a UK-wide body representing public health professionals).

The terms of reference for the UK Health Protection Committee and the Four Nations Health Protection Oversight Group state that experts may be invited to meetings to provide input on agenda items. Observers may also be invited to attend.

The framework also states that it is important for officials to develop an evidence base for agreeing policy recommendations. This could include commissioning external advice or evidence, or engaging with industry.

There is no commitment for reports on the operation of the framework to be produced or published. The **Welsh Government has committed** unilaterally to reporting annually on frameworks. In November, the **Counsel General said** that the governments had all agreed to future reporting to parliaments on common frameworks.

There are no commitments to give parliaments a role in monitoring the operation of the framework or scrutinising amendments. The framework says that the governments may use third parties to advise on review and amendment to the framework. This could include government bodies or external stakeholders. In March, **the Counsel General committed** to notify the Senedd and stakeholders when a common framework is reviewed, and consider their recommendations before the review process concludes.