



Northern Ireland  
Assembly

## Research and Information Service Briefing Paper

---

11 February 2022

NIAR 16-22

# The Provisional Company Law Common Framework

**Aidan Stennett, with Eileen Regan**

This paper explores issues arising from the Provisional Company Law Common Framework, to assist the Committee for the Economy in its scrutiny role.

This information is provided to Members of the Legislative Assembly (MLAs) in support of their duties, and is not intended to address the specific circumstances of any particular individual. It should not be relied upon as professional legal advice, or as a substitute for it.

## Introduction

This briefing paper is prepared at the request of the Committee for the Economy (the Committee), to assist its scrutiny of the Provisional Company Law Common Framework (PCLCF)<sup>1</sup> - a non-legislative Common Framework (CF) setting out the proposed arrangements to underpin working relationships between the United Kingdom Government (UKG) and the Northern Ireland (NI) Executive in the area of company law, following on from the UK's exit from the European Union (EU). The PCLCF has been "...provisionally approved by Ministers across the UK government and devolved administrations...". Now, it - as is the case for all proposed CFs (non-legislative and legislative) – is:

*...shared with committees across UK Parliament and devolved legislatures to enable parliamentary scrutiny before final review.<sup>2</sup>*

To contextualise detailed examination of the PCLCF, this paper first provides general background, explaining the general purpose of CFs and their related process, which effectively establish the "boundaries" in which the PCLCF arises (Section 1). Included is discussion on key issues arising for all CFs, including the PCLCF. Thereafter, the paper considers the PCLCF provisions (Section 2), identifying key issues arising for all CFs and the PCLCF in particular emerging from the research undertaken and related analysis, which potentially merit Committee consideration. Finally, key concluding remarks are offered (Section 3), drawing on findings made earlier in the paper. Throughout, potential scrutiny points are highlighted to facilitate Committee engagement with the Department for the Economy (DfE) about the PCLCF.

This paper is not offered as legal advice or opinion. Rather, it aims to assist the Committee in further expanding its knowledge and understanding of the PCLCF. That information seeks to facilitate the Committee when exercising its scrutiny role both now and in future.

## 1 Background to CFs

This section first outlines context-setting information, i.e. what are CFs generally, including the CF process in particular (sub-section 1.1). Thereafter, it addresses key issues arising for all CFs, including the PCLCF in particular (sub-section 1.2) – such as:

- How a particular CF interacts with the agreed principles underpinning all CFs?
- How a CF might interact with the Protocol on Ireland/Northern Ireland?

The analysis seeks to inform the PCLCF analysis provided in Section 2 of this paper.

---

<sup>1</sup> Department for Business, Energy and Industrial Strategy, Company Law: Provisional Common Framework (December 2021) [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1041544/Company\\_Law\\_Provisional\\_Common\\_Framework.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1041544/Company_Law_Provisional_Common_Framework.pdf)

<sup>2</sup> UK Government, Collection: UK Common Frameworks (updated 3 February 2022) <https://www.gov.uk/government/collections/uk-common-frameworks>

## 1.1 What are CFs

When the UK was a Member State of the EU (pre-31 January 2020) and during the transition period (i.e. 31 January 2020 – 31 December 2020), EU law provided the basis for minimal standards across the UK in specified policy areas, regardless of those areas having been reserved, excepted or transferred (devolved) under prevailing devolution settlements in the UK. Simply stated, that effectively provided a minimal common approach in those specified policy areas, across all four nations comprising the UK; which in turn, via the UKG or the DAs, were transposed and implemented.

However, the EU common basis in the specified policy areas changed following the UK's exit from the EU *via* the UK and the EU's signing of Withdrawal Agreement<sup>3</sup>, and Westminster's subsequent enactment of The European Union (Withdrawal Agreement) Act 2020.<sup>4</sup> At the time of writing this paper, that change remains unsettled; unresolved matters relating to the Protocol on Ireland/NI (the Protocol) continue and the outcome of the ongoing Protocol-related negotiations between the UKG and the EU is awaited.

Nonetheless, the UKG and three DAs have sought:

*...to ensure a common [CF development] approach ....where needed on policy areas where powers are returning/have returned from the EU and which intersect with devolved competence...*<sup>5</sup>

The three underpinning Principles for all CFs were proposed by the UKG and endorsed by the Scottish and Welsh Governments at the Joint Ministerial Committee (European Negotiations) (JMC(EN)) in October 2017,<sup>6</sup> and later endorsed by the NI Executive in June 2020. Those Principles are:<sup>7</sup>

- Principle 1 - CFs are to establish 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,

<sup>3</sup> UK Government Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/840655/Agreement\\_on\\_the\\_withdrawal\\_of\\_the\\_United\\_Kingdom\\_of\\_Great\\_Britain\\_and\\_Northern\\_Ireland\\_from\\_the\\_European\\_Union\\_and\\_the\\_European\\_Atomic\\_Energy\\_Community.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/840655/Agreement_on_the_withdrawal_of_the_United_Kingdom_of_Great_Britain_and_Northern_Ireland_from_the_European_Union_and_the_European_Atomic_Energy_Community.pdf)

<sup>4</sup> The European Union (Withdrawal Agreement) Act 2020 <https://www.legislation.gov.uk/ukpga/2020/1/contents/enacted>

<sup>5</sup> [UK Common Frameworks - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/840655/UK_Common_Frameworks_-_GOV.UK_(www.gov.uk).pdf)

<sup>6</sup> NI Executive did not agree principles in October 2017 due to the collapse of the Executive on 16 January 2017. The NI Executive subsequently endorsed the principles following its formation in 2020. [UK Common Frameworks - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/840655/UK_Common_Frameworks_-_GOV.UK_(www.gov.uk).pdf)

<sup>7</sup> [The European Union Withdrawal Act and Common Frameworks.pdf \(publishing.service.gov.uk\)](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/840655/The_European_Union_Withdrawal_Act_and_Common_Frameworks.pdf)

- safeguard the security of the UK.
- Principle 2 - CFs are to respect the existing devolution settlements and the democratic accountability of the devolved legislatures, and therefore are to:
  - 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 DAs.
- Principle 3 - CFs are to ensure: recognition of the social linkages between NI and the Republic of Ireland (RoI); acknowledgement that NI is to be the only part of the UK sharing a land frontier with the EU; and, adherence to the Belfast/Good Friday Agreement.

In addition to the above Principles, the UKG and the DAs agreed that a CF's design is to be informed by the specific policy area it is to address, as that is to determine whether the CF requires a legislative and non-legislative approach.

Worth noting here is the UKG's most recent Framework Analysis (dated 9 November 2021)<sup>8</sup>, which identified 152 areas of EU law impacting one or more DAs' competences as a result of the UK's exit. In its Analysis, the UKG categorised as follows:

- 120 areas as requiring **no further action**. That represented an increase from the UKG's published position in September 2020, wherein 115 areas requiring no further action had been identified.
- 29 areas as requiring **non-legislative CFs**. That represented an increase from the UKG's published position in September 2020, wherein 22 non-legislative CFs had been identified. In November 2021, the UKG attributed that noted increase to:

*...collaborative work between the UK Government and devolved administrations leading to a shared understanding that several do not require a Framework, and greater clarity on the implementing arrangements for a number of policy areas that do require a Framework.*<sup>9</sup>

- 3 areas as requiring **legislative CFs**. The UKG's published position in September was that 18 areas required legislative CF. The UKG attributed decrease in the number of anticipated legislative CFs between September 2020 and November 2021 to:

<sup>8</sup> The Cabinet Office, Framework Analysis 2021 (9 Nov 2021)

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1031808/UK\\_Common\\_Frameworks\\_Analysis\\_2021.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1031808/UK_Common_Frameworks_Analysis_2021.pdf)

<sup>9</sup> *Ibid*

*...a result of clarity of arrangements for several Frameworks that were originally identified as possibly required a legislative approach through primary legislation.<sup>10</sup>*

Additionally, the UKG noted in its November 2021 update, its agreement with the DAs that both the UKG and the DAs:

*... aim to complete delivery of the programme in March 2022 ahead of the pre-election period for the 2022 Northern Ireland Assembly elections.<sup>11</sup>*

Finally, of particular note to the Committee here is the Cabinet Office document “The European Withdrawal Act and Common Frameworks” (December 2020). Therein, the UKG outlined the CF development process, with five Phases, which the DAs later endorsed. Those Phases comprise:

- Phase One - Engagement between officials in the UKG and the DAs on: where potential common frameworks are needed; and, the initial grouping of these CFs into legislative and non-legislative categories;
- Phase Two - Detailed policy development, including joint work between the UKG and the DAs, which is to result in a jointly drafted and agreed Outline Framework;
- Phase Three - Technical stakeholder engagement with sector-specific stakeholders;
- Phase Four - Scrutiny stage, in which the CF is to undergo simultaneous scrutiny by the UK Parliament and the devolved legislatures (at the time of writing, this is the current stage of the PCLCF); and,
- Phase Five - Development of post-implementation arrangements, which are anticipated to vary between CFs.<sup>12</sup>

It should be noted that once the scrutiny process is completed and frameworks are implemented, they may continue to be jointly updated by UKG and devolved administration (DA) Ministers.<sup>13</sup>

## 1.2 Key issues arising for all CFs

A range of issues arise for all CFs. Below seeks to address six of them – i.e.- whether a CF:

- Adheres to the three agreed principles that are to underpin all CFs?
- Interacts with the Protocol on Ireland/Northern Ireland?

<sup>10</sup> *Ibid*

<sup>11</sup> UK Government, The European Union (Withdrawal) Act and Common Frameworks: 26 June to 25 September 2021 (9 December 2021) <https://www.gov.uk/government/publications/the-european-union-withdrawal-act-and-common-frameworks-26-june-to-25-september-2021/the-european-union-withdrawal-act-and-common-frameworks-26-june-to-25-september-2021>

<sup>12</sup> Department for Business, Energy and Industrial Strategy, Company Law: Provisional Common Framework (December 2021) [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1041544/Company\\_Law\\_Provisional\\_Common\\_Framework.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1041544/Company_Law_Provisional_Common_Framework.pdf)

<sup>13</sup> *Ibid*

- Interact with the Internal Market Act?
- Facilitates ongoing NI Assembly Scrutiny of its future operation and amendment?
- Facilitates transparent stakeholder consultation?
- Incurs reasonably identifiable financial implications?

Depending on the content of particular CF and availability of other information, it may not be possible to fully address all the noted six issues. Nonetheless, the analysis that follows in this paper seeks to identify instances where this particular CF - the PCLCF and its related information – enables some discussion, to inform engagement on the PCLCF.

Where there is insufficient information, raising more questions, a range of scrutiny points are provided below in blue boxes, which the Committee may wish to direct to the relevant Executive Department(s).

### 1.2.1 Underlying CF principles

As noted above in sub-section 1.1, three principles – as agreed by the UKG and the DAs - underpin all the CFs. As such, each CF should be assessed using that framework of principles, to determine whether it fully adheres to those principles.

Taking the principles in turn, this sub-section considers the PCLCF. Starting with Principle 1, which states CF frameworks are to be developed only where needed. The Principle also outlines six different reasons explaining why a CF could be required (see the reasons outlined at sub-section 1.1 of this paper):<sup>14</sup>

#### Potential scrutiny points:

- 1) Is the Department for the Economy (DfE) satisfied that the development of the PCLCF meets at least one of the six stated reasons for CF development under Principle 1, as agreed by the DAs? Please detail to fully explain response.

Principle 2 maintains that all CFs are to “respect the devolution settlements” and are to be “based on established conventions and practices”. Moreover, it states that the CF should deliver “a significant increase in decision-making powers for the devolved administrations”:<sup>15</sup>

#### Potential scrutiny point:

- 2) Is the DfE satisfied that the PCLCF meets Principle 2, as agreed by the DAs, including the Executive, in that it:
  - respects NI’s prevailing devolution settlement;
  - is based on established conventions and practices; and,

<sup>14</sup> [The European Union Withdrawal Act and Common Frameworks.pdf \(publishing.service.gov.uk\)](#)

<sup>15</sup> *Ibid*

- delivers “a significant increase in decision making powers” for the Executive?

Please detail to fully explain response.

Principle 3 has a specific NI focus. It states that: CFs are to recognise the “social linkages” between NI and the RoI; NI is the only part of the UK sharing a land frontier with the EU; and, CFs are to adhere to the Belfast/Good Friday Agreement:<sup>16</sup>

Potential scrutiny point:

3) Is the DfE satisfied that the PCLCF:

- recognises the social linkages between: NI and the RoI;

-recognises that NI is the only part of the UK sharing a land frontier with the EU; and,

- adheres to the Belfast/Good Friday agreement?

Please detail to fully explain response.

### 1.2.2 The Protocol on Ireland/Northern Ireland

In addition to those broader principles discussed above, NI is in a unique position within the UK. Article 12 of the Protocol<sup>17</sup> - a part of the Withdrawal Agreement between the UK and the EU – states that the Protocol provides for the continued application of a specified range of EU law in NI, following the UK’s exit from the EU and subsequent NI post-transition period. At the Protocol’s Article 12, the following EU law continues to apply in NI post-transition:

- EU Customs Code;<sup>18</sup>
- EU product standards and regulations;<sup>19</sup>
- EU rules on Value Added Tax (VAT) and excise;<sup>20</sup>
- EU rules on State Aid – with respect to trade in goods and wholesale electricity;<sup>21</sup> and,
- A range of EU law with respect to wholesale electricity.<sup>22</sup>

As noted in subsection 1.1, a key driver of the CF process is to ensure that a “*common approach*” to policy is maintained across the UK – i.e. maintain common approach in the specified policy areas where EU law created common approaches across UK

<sup>16</sup> *Ibid*

<sup>17</sup> HM Government, New Protocol on Ireland/Northern Ireland (18 October 2019)

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/840230/Revised\\_Protocol\\_to\\_the\\_Withdrawal\\_Agreement.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/840230/Revised_Protocol_to_the_Withdrawal_Agreement.pdf)

<sup>18</sup> *Ibid* Article 5

<sup>19</sup> *Ibid*

<sup>20</sup> *Ibid* Article 8

<sup>21</sup> *Ibid* Article 10

<sup>22</sup> *Ibid* Article 9

nations – England, Scotland, Wales and NI. The Protocol is to ensure the continued application of EU law in NI in specified areas, but not in Great Britain – namely England, Scotland and Wales. That means if any CFs impact on Protocol-related matters, those CFs are to comply with the Protocol.

It, however, needs to be highlighted that ongoing Protocol- related negotiations continue at the time of writing this paper. The outcome of those negotiations – i.e. the implications arising from them - remains to be seen, including implementation of that outcome when formulating “common” CF approaches in the UK.

As such, important considerations arise for NI when considering CFs – i.e.:

1. Whether, and how, a particular CF interacts with the Protocol? and,
2. Whether a CF impacts on the application of the Protocol – either directly or indirectly?

**The Committee may wish to note that the Whitehall Department of Business Energy and Industrial Strategy (BEIS) stated no Protocol issues arise for the CLCF.** In December 2021, it stated:

*...there is **no** linkage in this Framework to the operation of the Protocol on Ireland/Northern Ireland. [emphasis added]<sup>23</sup>*

Going forward, however, if any potential impacts was to arise, they are to be considered during the review process outlined in PCLCF itself. (That process is explained in greater detail in Section 2 of this paper.) That includes:

- A regular periodic review of the agreed CLCF is to be undertaken every three years; and,
- Ad hoc reviews are to be undertaken when one party to the agreed CLCF raises an issue.<sup>24</sup>

#### Potential scrutiny points:

#### 4) Is the DfE satisfied with the assessment that:

- there is “no linkage” between the CLCF and the Protocol?
- there are no indirect interactions between company law and the Protocol?
- the CLCF’s proposed review mechanisms are sufficient to address any future possible interactions between the CF and the Protocol?

Please detail to fully explain response.

<sup>23</sup> Department for Business, Energy and Industrial Strategy, Company Law: Provisional Common Framework (December 2021) [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1041544/Company\\_Law\\_Provisional\\_Common\\_Framework.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1041544/Company_Law_Provisional_Common_Framework.pdf)

<sup>24</sup> *Ibid*



### 1.2.3 Interactions with the Internal Market Act

While the UKG and the DAs have been developing the CFs, the UKG has introduced and enacted the UK Internal Market Act 2020 (the Act).<sup>25</sup> In the UKG's December 2020 update on the CF process (prior to enactment of that Act), the UKG noted that:

*... the UK Internal Market legislation will intersect with frameworks that have a 'market' component (i.e. policy areas that include regulation of services or goods production or sale), many of the components of each framework, or in many cases entire frameworks, will fall out of scope of the legislation.*<sup>26</sup>

Its December 2020 update also noted that:

*Whilst the devolved administrations have been clear that they disagree with the UK Government's approach to the internal market, discussions between the UK Government and the devolved administrations on the interaction between the UK Internal Market Bill and Common Frameworks continue.*<sup>27</sup>

In regard to the above, devolved legislatures had disagreed with the proposed market access principles when the Internal Market Bill - which ultimately became the Act - went through the UK Parliament.<sup>28</sup> The devolved legislatures had argued such provisions would constrain their ability to utilise the new powers gained from the EU at the end of the transition period – i.e. 31 December 2020. In particular, the Scottish Government had argued that the Bill also undermined “the agreed process of negotiating and agreeing common UK frameworks where these are required to replace existing EU structures”.<sup>29</sup>

The enacted Act – entitled Internal Market Act 2020 - included provisions empowering the UK Secretary of State to make regulations that exclude CF areas from the Act's market access principles.<sup>30</sup> In that regard, the Scottish Parliament's Finance and Constitution Legacy Expert Panel Report recommended the Scottish Parliament should clearly define its scrutiny role in response to Brexit. That included consideration of the “appropriate and proportionate level of scrutiny” of “common frameworks and the market access principles and how these interact”.<sup>31</sup> In this context, the following issues merit the Committee's consideration:

<sup>25</sup> [United Kingdom Internal Market Act 2020 \(legislation.gov.uk\)](https://legislation.gov.uk)

<sup>26</sup> [The European Union Withdrawal Act and Common Frameworks.pdf \(publishing.service.gov.uk\)](#)

<sup>27</sup> [The European Union Withdrawal Act and Common Frameworks.pdf \(publishing.service.gov.uk\)](#)

<sup>28</sup> The principles of mutual recognition and the principle on discrimination with respect to the flow of goods and services across the UK

<sup>29</sup> [The UK Internal Market Bill – The Devolved Administrations Responses – SPICe Spotlight | Solas air SPICe \(spice-spotlight.scot\)](#)

<sup>30</sup> [United Kingdom Internal Market Act 2020 \(legislation.gov.uk\)](https://legislation.gov.uk)

<sup>31</sup> [Legacy\\_Final.pdf \(parliament.scot\)](#)

**Potential scrutiny points:**

- 5) What is the DfE's assessment of the potential interactions between the PCLCF and the Internal Market Act?
- 6) If any such interactions have been identified by the DfE, what are they? Please detail to fully explain response.
- 7) If so, what is the DfE's assessment as to whether any regulation is required to exclude the CLCF from the market access principles specified in the Internal Market Act? Please detail to fully explain response.

**1.2.4 Ongoing NI Assembly Scrutiny**

As noted in subsection 1.1 of this paper, the CLCF is currently at Phase 4 of its development. Phase 4 provides legislatures across the UK with an opportunity to scrutinise CFs. All CFs are "living documents" in two senses. First, they set in place practices and procedures that will govern how the UKG and the DAs interact in specific areas going forward. Second, they will be open to future revision and refinement. The PCLCF, for example, includes an explicit provision for its future review and amendment.<sup>32</sup>

Both these points suggest the need for ongoing scrutiny of CFs by legislatures across the UK. Such scrutiny could enable continued assessment of how the CFs are functioning and of any proposed CF changes. It is unclear, however, as to how that ongoing scrutiny will take place; what will be the process? The House of Lords Common Frameworks Scrutiny Committee (CFSC) has taken up that point.

In its March 2021 report entitled "Common Frameworks: building a cooperative Union",<sup>33</sup> the CFSC concluded:

*Parliamentary scrutiny of common frameworks will need to continue even after they have been finalised to ensure that important policy decisions are made transparently. Parliamentary committees will need to have information on how the individual frameworks are operating in their respective policy areas, as well as on the common frameworks programme as a whole. We recommend that, to facilitate this, the four administrations should provide regular updates to their legislatures and publish reports as part of their planned reviews of the frameworks.*<sup>34</sup>

The House of Lords CFSC added that:

<sup>32</sup> Department for Business, Energy and Industrial Strategy, Company Law: Provisional Common Framework (December 2021) [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1041544/Company\\_Law\\_Provisional\\_Common\\_Framework.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1041544/Company_Law_Provisional_Common_Framework.pdf)

<sup>33</sup> The House of Lords Common Frameworks Scrutiny Committee: Common Frameworks: Building a cooperative Union (31 March 2021) [https://publications.parliament.uk/pa/ld5801/ldselect/ldcomfrm/259/25910.htm#\\_idTextAnchor051](https://publications.parliament.uk/pa/ld5801/ldselect/ldcomfrm/259/25910.htm#_idTextAnchor051)

<sup>34</sup> *Ibid*

*As joint agreements between the four administrations of the UK, common frameworks provide a clear opportunity for closer cooperation between the four legislatures of the UK. This could facilitate the sharing of information and ideas, and enable legislatures to hold their governments to account more effectively. As part of this, the House of Lords and its committees could play a valuable role in providing a neutral forum for receiving the views of devolved legislatures and facilitating closer interparliamentary cooperation.<sup>35</sup>*

Commenting on this topic in its response to that CFSC report, the UKG stated:

*The Government agrees with the Committee's recommendation that regular updates should be provided to legislatures, but notes the specifics of this are a matter for the individual UK Government and devolved administration departments which are parties to Common Frameworks to agree with the relevant Committees. The Government further notes that work is underway to develop guidance on the format for future routine reviews of Common Frameworks. Once complete, departments and their counterparts in the devolved administrations will be in a position to communicate the format for future reviews and updates to committees.<sup>36</sup>*

It appears that the PCLCF does not include any provisions – explicit or implicit – in relation to its scrutiny.

#### Potential Scrutiny Points:

- 8) How does the DfE plan to ensure that the Assembly, including the Committee for the Economy, will be informed of both the functioning and the amendment of the CLCF on an ongoing basis?
- 9) Has the DfE received any direction from the UKG in that regard – either via the Executive or other? Please detail to fully explain response.

### 1.2.5 Stakeholder consultation

Phase 3 of the CF process provides an opportunity to consult sector stakeholders on the development of specific CFs. With regard to the PCLCF, it is unclear, as to what stakeholders have been consulted, why and when. In its March 2021 report, the House of Lords CFSC (Common Framework Scrutiny Committee) noted that:

*Common frameworks are weakened by the lack of inclusion of external stakeholders and should have been transparent from their inception. We were told that this process has been less transparent than the EU system it*

<sup>35</sup> *Ibid*

<sup>36</sup> UK Government, Government Response to the House of Lords Common Frameworks Scrutiny Committee report: 'Common Frameworks: building a cooperative Union' (May 2021)  
<https://committees.parliament.uk/publications/6175/documents/68906/default/>

*has replaced. Greater transparency could have been achieved through the publication of framework summaries during the initial development of each common framework and having an open stakeholder consultation process that reached out beyond the 'usual suspects'.*

*...We recommend that the UK Government should make up for the lack of involvement of stakeholders in the initial development of common frameworks by revising them based on stakeholders' feedback. Future reviews of the frameworks should include an open and well-publicised stakeholder consultation process that reaches beyond the small number of stakeholders previously consulted, so as to ensure that all those directly affected have a meaningful opportunity to contribute.<sup>37</sup>*

Responding to that CFSC report, the UKG responded:

*The Government notes that a wide range of stakeholders have been involved in both the initial design of the policy approach covered by the individual Frameworks, and also the specific ways of working envisaged in the Common Frameworks. The Government nevertheless agrees with the Committee's recommendation that Common Frameworks should be revised based on stakeholders' feedback, and notes that there is already a jointly agreed, intergovernmental process allowing for Common Frameworks to be revised subject to industry experts' views. This takes place during Phase 3 of Framework delivery as part of technical stakeholder engagement. For instance, the Parliamentary Secretary to the Cabinet Office noted in her letter to the Public Administration and Constitutional Affairs Committee of 12 April 2021, that the Public Procurement Framework had been revised following views of stakeholders gathered through consultation in late 2020.*

*...Looking ahead, additional technical stakeholder engagement can take place as any Framework continues its development, or is subsequently reviewed, as required on a Framework by Framework basis. Any longer term engagement will form part of departmental business as usual policy review work.<sup>38</sup>*

The UKG also stated that:

*... stakeholders should continue to be meaningfully engaged throughout the development of a UK Common Framework, including through periodic reviews where appropriate. However, since Common Frameworks are primarily about establishing and maintaining intergovernmental ways of working, rather than developing the policy itself, a full stakeholder*

<sup>37</sup> The House of Lords Common Frameworks Scrutiny Committee: Common Frameworks: Building a cooperative Union (31 March 2021) [https://publications.parliament.uk/pa/ld5801/ldselect/ldcomfrm/259/25910.htm#\\_idTextAnchor051](https://publications.parliament.uk/pa/ld5801/ldselect/ldcomfrm/259/25910.htm#_idTextAnchor051)

<sup>38</sup> <sup>38</sup> UK Government, Government Response to the House of Lords Common Frameworks Scrutiny Committee report: 'Common Frameworks: building a cooperative Union' (May 2021) <https://committees.parliament.uk/publications/6175/documents/68906/default/>

*consultation may not always be required. Stakeholder consultation on a 'ways of working' document is a different task to a more general consultation on policy development. As Common Frameworks are not themselves policy documents, external stakeholder consultation has been undertaken jointly by the relevant departments in the UK Government and the devolved administrations in a targeted and specific way, to meet the unique needs of each Framework. To date, this targeted approach has enabled the most relevant and appropriate expertise to be brought to bear on each Framework, in preparation for the Framework to be published once it has been provisionally confirmed and sufficiently developed.<sup>39</sup>*

#### Potential Scrutiny Points:

- 10) Does the DfE know what stakeholders were consulted at Phase 3 of the development of the CLCF, and when?
- 11) What was the underpinning rationale for their inclusion in the consultation process?
- 12) What role did the DfE play in shortlisting those stakeholders, including, but not limited to, developing the underpinning shortlisting criteria, undertaking the shortlisting and other? Please detail to fully explain response.
- 13) Does the DfE believe there were gaps in that consultation process, including the planning and implementing of that process? Please detail to fully explain response.

### 1.2.6 Financial implications

As noted in subsections 1.1 and 1.2.1 of this paper, according to the underlying principles for CFs, those principles are to deliver “a significant increase in decision-making powers for the devolved administrations”. It seems reasonably foreseeable that a “significant increase” in powers could necessitate an increase in DAs’ public expenditure.<sup>40</sup>

It therefore appears important to examine the contents of a particular provisional CF and their potential financial implications for the “public purse”, i.e. those that could be incurred to implement the CF, including both “one-off” and recurrent identifiable costs potentially incurring to the public purse. The PCLCF does not include any detailed analysis of such potential financial implications:

<sup>39</sup> *Ibid*

<sup>40</sup> [The European Union Withdrawal Act and Common Frameworks.pdf \(publishing.service.gov.uk\)](#)

**Potential Scrutiny Points:**

- 14) What is the DfE’s assessment of potential financial implications arising for the public purse to implement the CLCF, including those that could be one-off and recurrent? Please detail to fully explain response.
- 15) What consideration has the DfE given to the matter of potential CLCF financial implications for the public purse?
- 16) If any such consideration given, has that consideration involved engagement/discussion with the DoF and/or the Executive; and if so, when did that occur; and what did it entail? Please detail to fully explain response.

## 2 The Provisional Company Law Common Framework

The PCLCF is a non-legislative CF. It seeks to establish agreed working practices between the Whitehall Department BEIS and the Executive’s DfE. The purpose of a non-legislative CF such as the PCLCF is to set out common rules or ways of working in specific policy areas. In some of these areas, secondary legislation has also been used to provide “consistent fixes to retained EU law”, in order to “create a unified body of law” that will sit alongside the non-legislative CF.<sup>41</sup>

### 2.1 The PCLCF – legislative and international context

This section focuses on the PCLCF itself. First, it examines the legislative context in which the PCLCF was drafted, including amendments to the retained EU company law that have been introduced to create “unified body of law” within the policy area. Thereafter, the section outlines the international context for it. This provides context to subsection 2.2, which details the PCLCF’s provisions.<sup>42</sup> Scrutiny points are raised throughout, to assist the Committee’s consideration of the PCLCF.

#### 2.1.1 Legislative context

Although company law is transferred (devolved) to NI, a single company law regime exists within the UK by way of the Companies Act 2006. That 2006 Act:

*...ensures the same requirements apply uniformly to all UK registered companies regardless of where they are based; as well as to overseas companies regardless of where in the UK they operate.*<sup>43</sup>

<sup>41</sup> The UK Government, Framework analysis 2021 (November 2021)

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1031808/UK\\_Common\\_Frameworks\\_Analysis\\_2021.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1031808/UK_Common_Frameworks_Analysis_2021.pdf)

<sup>42</sup> Department for Business, Energy and Industrial Strategy, Company Law: Provisional Common Framework (December 2021)

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1041544/Company\\_Law\\_Provisional\\_Common\\_Framework.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1041544/Company_Law_Provisional_Common_Framework.pdf)

<sup>43</sup> *Ibid*

The Whitehall Department BEIS explains that:

*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.<sup>44</sup>*

Subsequently, since 2018, a range of legislation has been introduced in the UK to amend retained EU law, in order to account for the “falling away of the EU regime”.<sup>45</sup> Table 1 below summarises that legislation.

**Table 1: Summary of secondary legislation relating to Companies Act 2006 –introduced by the UKG to amend retained EU company Law after UK’s withdrawal from the EU<sup>46</sup>**

Post Brexit UK Companies Act 2006 secondary legislation	Relevant EU Instrument(s)
<a href="#">The European Public Limited-Liability Company (Amendment etc.) Regulations 2018</a>	- <a href="#">Regulation (EC) No 2157/2001</a> ‘on the Statute for a European company’ - <a href="#">Directive No 2001/86/EC</a> on the involvement of employees in companies.
<a href="#">The European Economic Interest Grouping (Amendment) (EU Exit) Regulations 2018</a>	- <a href="#">Regulation (EEC) No. 2137/85</a> on European Economic Interest Grouping
<a href="#">The Accounts and Reports (Amendment) (EU Exit) Regulations 2019</a>	- The Accounting Directive ( <a href="#">Directive 2013/34/EU</a> )
<a href="#">The Statutory Auditors and Third Country Auditors (Amendment) (EU Exit) Regulations 2019</a>	- The Audit Directive ( <a href="#">Directive 2006/43/EC</a> , as amended by <a href="#">Directive 2014/56/EU</a> ) - <a href="#">Regulation (EU) No. 537/2014</a> on specific requirements regarding statutory audit of public-interest entities
<a href="#">The Companies Limited Liability Partnerships and Partnership (Amendment etc.) (EU Exit) Regulations 2019</a>	- Chapter II of Title II of <a href="#">Directive 2017/1132</a> on company law
<a href="#">The International Accounting Standards and European Public Limited Liability Company (Amendment etc.) (EU Exit) Regulations 2019</a>	- The International Accounting Standards ( <a href="#">IAS Regulation EC No. 1606/2002</a> ) - <a href="#">Regulation (EC) No.1126/2008</a> adopting IAS Regulation

<sup>44</sup> *Ibid*

<sup>45</sup> *Ibid*

<sup>46</sup> Table 1 compiled by RaISe February 2022, relying on BEIS’s Company Law: Provisional Common Framework (December 2021). Links are provided to source the individually listed legal instruments.

Post Brexit UK Companies Act 2006 secondary legislation	Relevant EU Instrument(s)
<a href="#">The Statutory Auditors, Third Country Auditors and International Accounting Standards (Amendment) (EU Exit) Regulations 2019</a>	<ul style="list-style-type: none"> <li>- <a href="#">The IAS Regulation</a></li> <li>- <a href="#">Regulation (EC) No.1126/2008</a></li> </ul>
<a href="#">The Companies and Statutory Auditors etc. (Consequential Amendments) (EU Exit) Regulations 2020</a>	N/A
<a href="#">The Statutory Auditors and Third Country Auditors (Amendment) (EU Exit) Regulations 2020</a>	<ul style="list-style-type: none"> <li>- Implemented the Commission Implement <a href="#">Decision on China (2019/1874)</a>;</li> <li>- Gave effect to aspects of the <a href="#">Commission Decision (2016/1010)</a> on the adequacy of the competent authorities of certain third countries and territories;</li> <li>- Amended the implementation of aspects of the <a href="#">Audit Directive</a> and the <a href="#">Accounting Directive</a></li> </ul>
<a href="#">The International Accounting Standards, Statutory Auditors and Third Country Auditors (Amendment) (EU Exit) Regulations 2020</a>	<ul style="list-style-type: none"> <li>- <a href="#">The IAS Regulation</a>.</li> </ul>

Compiled by RaiSe (February 2021), relying on BEIS' PCLCF Document (December 2021)

### 2.1.2 International context

From an international perspective, BEIS stated there are “no overarching international obligations” within the scope of the PCLCF. It has also noted that the policy areas covered by the agreement:

- Do not fall within the scope of the Trade and Cooperation Agreement between the UK and EU,
- Do not “conflict” with the “relevant provisions of the Belfast/Good Friday Agreement, and,
- There are no linkages between the PCLCF and the Protocol.<sup>47</sup>

## 2.2 What is the PCLCF?

As noted earlier, the PLCF is non-legislative. It takes the form a “non-legally binding agreement”, providing a basis for BEIS to “make [company law] legislation on the behalf of the whole of the UK”, with the DfE’s consent and with the DfE seeking the agreement of the Executive and other departments within the Executive as necessary.<sup>48</sup>

The CF is intended to “maintain a coherent regulatory landscape for business” and is premised on existing working relations that have been “satisfactory for both parties”. In this sense, the PCLCF represents a continuation of the “existing approach”, which is

<sup>47</sup> Department for Business, Energy and Industrial Strategy, Company Law: Provisional Common Framework (December 2021) [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1041544/Company\\_Law\\_Provisional\\_Common\\_Framework.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1041544/Company_Law_Provisional_Common_Framework.pdf)

<sup>48</sup> *Ibid*



formalised through an exchange of letters between the Minister for BEIS and the DfE Minister.<sup>49</sup> BEIS refers to that exchange as:

*...the most proportionate and appropriate type of non-legally binding agreement.*<sup>50</sup>

#### Potential Scrutiny Point

**17) What is the DfE's assessment of the level of formality attached to the CLCF and the appropriateness of a "non-legally binding agreement" as a means of underpinning intergovernmental relations in the area of company law? Please detail to fully explain response.**

Seven principles are to underpin the non-legally binding agreement, as stated in PCLCF – i.e.:<sup>51</sup>

1. That both parties agree that it is key for all business to maintain a CF in the area of company law.
2. Future updates on legislative or policy developments share with the other party, typically through email.
3. Parties consider the impact of decisions on the other party, and facilitate meaningful engagement on issues.
4. Future collaborative meetings are held official level.
5. Escalations are first initiated at official levels via a working group that will meet on an ad hoc basis.
6. Further escalation is initiated at senior official level. Where resolution cannot be reached, Ministers ask for input or hold bilateral discussions.
7. Parties seek to resolve issues at the lowest possible levels.

#### Potential Scrutiny Points:

**18) What is the DfE's assessment of the seven principles that are to underpin the CLCF and DfE's future working relations with the Whitehall Department of BEIS in the area of company law? Please detail to fully explain response.**

The following operational elements are proposed in the PCLCF:

- **Decision making** is to be based on the above seven principles **and** the three underlying CF principles outlined in subsection 1.2.1 of this paper.
- **Whitehall Department for BEIS** is to ensure that all officials working in the Business Frameworks section at BEIS are aware of the arrangements that are to

<sup>49</sup> *Ibid*

<sup>50</sup> *Ibid*

<sup>51</sup> *Ibid*

made to legislate on behalf of NI and to involve NI in policy development. BEIS is to consult the DfE in a timely manner that enable DfE to input into policy development and draft legislation. BEIS is to regularly update the DfE on work taken forward in the area of Business Frameworks.

- The **DfE** is to provide comments within an “appropriate time frame” and in response to BEIS’ requests. The DfE is to update BEIS about NI developments in company law. In addition, as necessary, it is to facilitate the provision of views and consent from other Executive departments regarding company law developments.
- The **Financial Report Council’s** regulatory responsibilities relating to accounting and audit standards are unaffected by the CLCF. Similarly, the role of **Companies House**, as the UK’s registrar of companies, is unaffected by the CLCF.
- **Monitoring and enforcement** of the CLCF is to take place during the “normal course of engagement” and is to be based on the seven principles outlined earlier in this sub-section.
- **Review and amendment** of the CLCF’s implementation is to be undertaken every three years by the Whitehall Department for BEIS and the DfE. Such periodic review is to inform decisions relating to any potential future amendment of the CLCF, which is to be made in the form of an updated non-legally binding agreement. During such review, parties representing the CF signatories at to:

*...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-legally binding agreement.<sup>52</sup>*

Outside the stated periodic reviews, either party may request ad hoc reviews at any time issues arise.

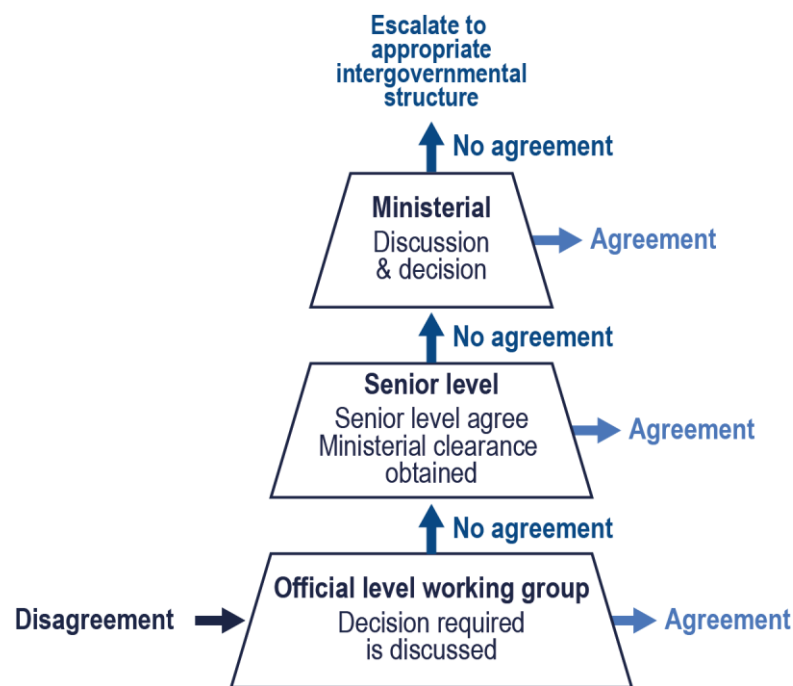
#### Potential Scrutiny Point:

**19) What is the DfE’s assessment of the PCLCF provisions specifying review and amendment of CLCF implementation? Please detail to fully explain response.**

- On **Dispute resolution** the PCLCF states that while “enforcement measures are not deemed appropriate for this Common Framework”, if disputes do arise about enforcement measures, they are to be managed using the escalation provisions set out in the seven principles outlined earlier in this sub-section. Figure 1 below provides an illustration of the PCLCF’s escalation procedures.<sup>53</sup>

<sup>52</sup> *Ibid*

<sup>53</sup> *Ibid*

Figure 1: CLCF escalation procedures<sup>54</sup>

Source: BEIS (December 2021)

**Potential Scrutiny Point:****20) What is the DfE's assessment of:**

- the UKG's conclusion that "enforcement measures are not deemed necessary" in relation to the CLCF?
- the PCLCF's provisions specifying escalation procedures relating to CLCF implementation? Please detail to fully explain response.

The PCLCF does not clearly specify the "appropriate intergovernmental structure" to address unresolved disagreements beyond Ministerial level. In that regard, it is relevant to note the UKG published findings of its "Review of intergovernmental relations"<sup>55</sup> dated 13 January 2022. Therein, on the issue of dispute resolutions, the Review stated:

*All governments are committed to promoting collaboration and the avoidance of disagreements, facilitated by the new intergovernmental machinery in which engagement will normally take place at the lowest appropriate level possible. Any government may refer a disagreement to the IGR [intergovernmental relations] Secretariat as a dispute. Escalation of a disagreement between governments as a dispute will only be considered after due and full consideration has been given at portfolio-level*

<sup>54</sup> *Ibid*<sup>55</sup> UK Government, Review of Intergovernmental relations (13 January 2022) <https://www.gov.uk/government/publications/the-review-of-intergovernmental-relations/review-of-intergovernmental-relations-html#annex-d-dispute-avoidance-and-resolution-process>

*(including FIMSC [the Finance Interministerial Standing Committee] regular engagement), where a disagreement cannot be resolved at portfolio level, and has significant implications for the relationship between two or more governments. This will include circumstances where governments disagree about the interpretation of, or actions taken in relation to, matters governed by intergovernmental agreements, rules or procedures (including Common Framework Agreements). This is without prejudice to the legal provisions within the devolution settlements which govern matters relating to legislative competence. The resolution process (set out in Annex D) should be seen as part of a much wider system of active IGR, and as a process of last resort.<sup>56</sup>*

Annex D referenced above sets out three dispute stages, which are to trigger if a disagreement is referred to the IGR (inter-governmental relations) Secretariat. Those stages are:

- **Stage 1** - The IGR Secretariat are to consider the disagreement, assessing whether it should be escalated to the level of a “dispute”. It does so considering whether:
  - the disagreement was discussed “extensively” at senior civil servant level;
  - an unsatisfactory solution was proposed at the senior civil servants’ discussion;
  - the disagreement was discussed extensively by the relevant portfolio Ministers or Her Majesty’s Treasury (HMT) and the DAs’ Finance Ministers; and,
  - the disagreement has implications beyond its policy area; impacting the wider relationships between the parties involved.

If the above criteria are met, the disagreement is to be escalated as a “dispute”, to either the Interministerial Standing Committee (IMSC) or the Finance Interministerial Standing Committee (FIMSC) – see Box 1 for explanation of these and other bodies used in the following bullet points.

- **Stage 2** - The “dispute” is to be considered by either the IMSC or the FIMSC, which is to seek to agree to resolve the issue. Should a they fail to find a resolution, the dispute is to be escalated to the Council (see Box 1). At that point, all parties may agree not to escalate; and instead may report the outcome to their respective legislatures. During Stage 2, third-party mediation may be sought ahead of escalation to the Council, if that would be appropriate in the given circumstances – i.e. the dispute does not involve commercially sensitive information or national secrets.
- **Stage 3** - The Council is to consider the dispute. If the governments cannot find a resolution, they “must make a statement to their respective legislatures setting out the circumstances for the failure to reach a solution”.<sup>57</sup>

---

<sup>56</sup> *Ibid*

<sup>57</sup> *Ibid*

### Box 1: IGR dispute bodies

Bodies related to the IGR dispute process are:

- The **Council** - the “top tier of engagement” consisting of the Prime Minister of the UKG and the Heads of the DAs.
- The **IMSC** - One of two middle tiers of engagement. It is to be established to “consider issues which cannot be considered at the portfolio-level within the relevant IMG [Interministerial Groups]”. It is to consist of relevant IGR ministers from all governments, and is to be staffed by its own secretariat.
- The **FIMSC** – It concerns the second of the two middle tiers of agreement and is to be focussed on finance- related issues. It is to sit alongside the IMSC, comprising the representative of HMT and the DA’s Finance Ministers.
- The **IGR Secretariat** - A standing secretariat is to be established to provide “administrative support and promote the efficient and effective maintenance of relations at each tier and for the handling and resolution of disputes”. It is to consist of officials from all governments, who are to be accountable to the Council, rather than their individual sponsoring governments.<sup>1</sup>

#### Potential Scrutiny Points:

21) What is the DfE’s assessment of the PCLCF’s provisions specifying the escalation of CLCF-related issues in this area? For example, does the DfE believe those provisions will fully and properly comply with the process outlined in the UKG’s “Review of intergovernmental relations”, when implementing the CLCF?

22) What is the DfE’s assessment of the process outlined in the UKG’s “Review of intergovernmental relations”, in the context of CLCF implementation? Please detail to fully explain response.

## 3 Concluding remarks

As noted in section 2 above, the PCLCF – which is to become the agreed CLCF - will not introduce new legislation, processes or ways of working into the how the UKG and the NI Executive will work together in the area of company law. Instead, it seeks to add an increased level of formality to the existing working relationship between the UKG and the Executive, specifically the DfE and the Whitehall Department for BEIS. In many respects, it represents “business as usual”; albeit formalising current arrangements through an “exchange of letters” and establishing seven underpinning principles to inform its implementation.

Based on the available information at the time of writing this paper (including ongoing Protocol-related negotiations), a number of potential considerations arise. Some of arise out of the general CF process and others are specific to the CLCF.

With regard to the CF process in general, those considerations include:

- The extent to which the PCLCF meets the three underlying CF principles endorsed by the DAs.
- How future Assembly scrutiny of the operation and amendment of the CLCF, and other CFs, could be facilitated.
- Whether there is sufficient transparency on the stakeholder consultation processes forming Phase 3 of any CF development.

With regard to the PCLCF's provisions, the Committee may wish to consider:

- The proportionality of the proposed level of formality that will be attached to ongoing BEIS and the DfE in the area of company law as set out in the PCLCF;
- The adequacy of the proposed system of review and amendment set out in the PCLCF; and
- The appropriateness of the proposed system of enforcement and dispute resolution that is to apply to the working relations between BEIS and DfE if the process set out in the PCLCF are agreed and adopted.