



Cabinet Office

The European Union (Withdrawal) Act and Common Frameworks

26 June 2019 to 25 September 2019



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(Withdrawal) Act 2018**

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Foreword

The UK Government remains committed to ensuring a smooth and orderly exit from the European Union. Officials from the UK, Scottish and Welsh Governments and Northern Ireland Civil Service (NICS) have continued to work closely together to prepare the UK for EU Exit.

Over the period covered by this report, officials in the UK Government and devolved administrations have been developing detailed outlines for frameworks, which set out the proposed approach for each part of a policy area, along with the operational elements of the framework, such as how decisions will be made, and the roles and responsibilities of each administration. These are being developed under the principles agreed between the UK Government and Scottish and Welsh Governments at the Joint Ministerial Committee (European Negotiations) (JMC(EN)) in October 2017.

The UK Government published a 'Common Frameworks Update'¹ on 3 July that included an outline framework for Hazardous Substances (Planning). This was the first outline framework published and is an important illustration of the kinds of elements that a framework will cover, noting that all frameworks will be specific to the needs of individual policy areas.

The UK Government and devolved administrations are now developing detailed policy content for frameworks. A number of issues are being considered, including the linkages between frameworks and key areas such as the functioning of the UK internal market and the future partnership with the EU. Multilateral discussions on the policy areas where non-legislative agreements are expected will take place in due course, where they are not already underway. This progress will be overseen by JMC(EN). The UK Government is also undertaking further engagement activity across the UK, including working with devolved administration counterparts to ensure the progress on this programme of work is being communicated effectively and informed by stakeholder views.

This report details the progress made in the fifth reporting period (26 June 2019 to 25 September 2019), as required under Schedule 3 to the European Union (Withdrawal) Act 2018. On the basis of the continuing joint progress and collaboration on common frameworks, the UK Government has not sought to bring forward any section 12 regulations to date. On the basis of this, the Scottish and Welsh Governments have committed to not create divergent policy in ways that

¹ <https://www.gov.uk/government/publications/common-frameworks-update>

would cut across future frameworks, where it has been agreed they are necessary or where discussion continues.

Implementation of Future Common Frameworks

- 1.1 Part 2 of Schedule 3 to the European Union (Withdrawal) Act 2018 requires that a Minister of the Crown report to Parliament at three month intervals on various matters pertaining to common frameworks, and the use of the powers in section 12 of, and Schedule 3 to, the 2018 Act to temporarily maintain the existing EU law limits on devolved competence. Reports are shared with the devolved administrations to enable them to maintain a concurrent level of scrutiny. The last report was published on 17 July 2019 covering the reporting period 26 March to 25 June 2019.²
- 1.2 The purpose of these reports is to ensure that the process of developing common frameworks, in collaboration with the devolved administrations, is transparent and subject to robust parliamentary scrutiny.

Principles for Common Frameworks

- 1.3 Under the current devolution settlements, the devolved legislatures and administrations cannot act incompatibly with EU law. The EU laws that are in place create common UK-wide approaches even where those policy areas otherwise fall within devolved competence. The Scottish and Welsh Governments agree that common approaches will continue to be required in some areas after the UK leaves the EU.
- 1.4 In October 2017, JMC(EN) agreed principles to guide the work to create common frameworks. These principles are set out below:
 1. *Common frameworks will be established where they are necessary in order to:*
 - *enable the functioning of the UK internal market, while acknowledging policy divergence;*
 - *ensure compliance with international obligations;*
 - *ensure the UK can negotiate, enter into and implement new trade agreements and international treaties;*
 - *enable the management of common resources;*
 - *administer and provide access to justice in cases with a cross-border element;*
 - *safeguard the security of the UK.*

²https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/818155/final-edits-Fourth-s.12-report.pdf

2. *Frameworks will respect the devolution settlements and the democratic accountability of the devolved legislatures, and will therefore:*
 - *be based on established conventions and practices, including that the competence of the devolved institutions will not normally be adjusted without their consent;*
 - *maintain, as a minimum, equivalent flexibility for tailoring policies to the specific needs of each territory, as is afforded by current EU rules;*
 - *lead to a significant increase in decision-making powers for the devolved administrations.*

3. *Frameworks will ensure recognition of the economic and social linkages between Northern Ireland and Ireland and that Northern Ireland will be the only part of the UK which shares a land frontier with the EU. They will also adhere to the Belfast Agreement.*

1.5 These principles continue to guide all discussions between the UK Government and the devolved administrations on common frameworks and we will continue to detail how these have been taken into account in future iterations of this publication.

Progress Towards Establishing Future Frameworks

1.6 The following section sets out the steps taken by the UK Government, during the reporting period, toward implementing our long-term common frameworks, and explains how the frameworks principles have been taken into account.

Frameworks Publications

1.7 The ‘Common Frameworks Update’³ was published on 3 July 2019 to ensure transparency and accountability on the joint development of the UK Government and devolved administrations’ policy regarding the establishment of common frameworks.

1.8 The update included three documents:

- A ‘Progress Update on Common Frameworks’ that highlighted the UK Government and devolved administrations’ collaboration, cross-cutting issues and the future work programme;

³ <https://www.gov.uk/government/publications/common-frameworks-update>

- An illustration of the frameworks delivery process outlining how frameworks will be developed and implemented;
- A sample outline framework (Hazardous Substances (Planning)) that covers the key elements of a framework (including policy, governance and operational detail).

1.9 The three documents were also laid before Parliament showing the Government's commitment to ensuring a transparent and inclusive process.

1.10 This update detailed how the UK Government is working together with the Welsh Government and Scottish Government, with the input of NICS, to put frameworks in place and how we plan to share this work with stakeholders, legislatures and other interested parties. The publication of an 'outline framework' provided an example of what a framework will look like and all of the elements that will be included. This is an important illustration of the kinds of things that a framework will cover, noting that all frameworks will be different and answer the unique questions of their own policy area.

Frameworks Development

1.11 Common frameworks continue to be developed through constructive discussions between the UK Government and the devolved administrations. This has continued during the latest reporting period (26 June 2019 to 25 September 2019), where detailed multilateral engagement has taken place at official level, including two joint UK Government/devolved administration Project Board meetings, and standalone sessions on:

- Waste (17 July 2019) - The discussion centred on the frameworks interaction with international obligations and trade.
- Nutrition health claims, composition and labelling (30 July 2019) - Officials made final preparations on stakeholder engagement, finalising processes and next steps towards final sign-off.
- Implementation of EU Emissions Trading System (ETS) (14 August 2019 and 3-4 September 2019) - Workshops with officials from the UK Government and devolved administrations to develop the policy, operational structure and governance of the ETS framework.
- Food and Feed Safety and Hygiene (29 August 2019) - Officials continued detailed discussions on the framework.
- Nutrition health claims, composition and labelling (5 September 2019) - The UK Government and devolved administrations conducted an informal stakeholder engagement session to test provisional conclusions made within the frameworks outline.

- Procurement (9 September 2019) - Continued detailed discussions on the draft concordat, with a focus on the interaction with international obligations.
 - Internal market (10 September 2019) - The UK government and devolved administrations held a workshop to discuss revised guidance on the internal market.
 - Nutrition health claims, composition and labelling (10 September 2019) - The UK Government and devolved administrations conducted a follow up to the informal stakeholder engagement session.
- 1.12 In the absence of Northern Ireland Executive Ministers, officials from NICS continue to participate in frameworks development on a factual and analytical basis.
- 1.13 In parallel to developing common frameworks, the UK Government is seeking to develop a shared cross-cutting approach to the internal market with the Welsh Government, Scottish Government and the Northern Ireland Civil Service.
- 1.14 The UK Government is exploring the evidence base for the level of economic integration between different nations and across different sectors in the UK; considering relevant international examples; and exploring the case for principles and governance structures which could be applied to the UK internal market, including how these could be put into practice.
- 1.15 Alongside individual framework areas, the Welsh Government, Northern Ireland Civil Service and UK Government are currently working together to explore a range of evidence and ideas, including reflecting on the experience of other countries that have formal structures to manage their internal market. This work aims to ensure that the interests of other governments, businesses, workers and consumers are fully taken into account in decision making in areas where frameworks are being considered.

Common Frameworks Analysis

- 1.16 The revised 'Frameworks Analysis' was published on 4 April 2019.⁴ This set out the progress made to develop common frameworks in collaboration with

⁴https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/792738/20190404-FrameworksAnalysis.pdf

the devolved administrations, since the initial analysis was published in March 2018.⁵

- 1.17 Updates on the common frameworks analysis will continue to be provided in future iterations of this report.

Frameworks Delivery Plan

- 1.18 Frameworks will be implemented depending on the needs of the particular policy area. This may require a combination of legislative and non-legislative measures. The process accounts for frameworks to be implemented in different ways, with some activity undertaken concurrently, to ensure that all due process has been undertaken as the framework is put in place. As a result, frameworks will be implemented at different points in time, depending on the requirements of that framework.
- 1.19 The work to establish common frameworks has five phases. The delivery plan below illustrates how a framework moves through these five phases of development. Each framework moves through at a different pace.
- **Phase 1: Principles and proof of concept:** First phase of multilateral “deep dives” (consisting of UK Government and devolved administration officials) across the 24 initial priority framework areas, as well as key cross-cutting issues.
 - **Phase 2: Policy development:** Multilateral engagement work to develop framework outlines in each area; development of required frameworks legislation; the beginning of bilateral stakeholder engagement; review and scrutiny of framework outlines. At the end of this phase there will be an outline framework.
 - **Phase 3: Review and consultation:** Policy finalisation and an exploration of the interaction between frameworks and other key workstreams (for example, Internal Market, international obligations etc); informal multilateral stakeholder engagement; development of required frameworks legislation; and an in-depth review and assessment process. This phase will end with collective confirmation of the policy approach, and a Provisional Framework endorsed by JMC(EN).
 - **Phase 4: Preparation and implementation:** Collaborative work to prepare and deliver the implementation of legislative and

⁵https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/686991/20180307_FINAL_Frameworks_analysis_for_publication_on_9_March_2018.pdf

non-legislative elements of individual frameworks, alongside stakeholder (in addition to UK Government and devolved administrations) consultation as appropriate; required reappraisal of frameworks agreements based on the outcomes of cross-cutting issues.

- **Phase 5: Post-implementation:** Post-implementation arrangements alongside continued required reappraisal of frameworks agreements based on the outcomes of cross-cutting issues.

1.20 The revised delivery timelines for the development and implementation of frameworks were agreed by JMC(EN) on 28 June 2019. These timelines enable all frameworks to be agreed and the majority implemented by the end of 2020.

Review and Consultation

1.21 The UK Government, Scottish Government and Welsh Government have agreed that a 'Review and Assessment' process for frameworks is required before they are confirmed by JMC(EN). All frameworks will have to complete two tiers of joint UK Government/devolved administration review, alongside ministerial clearance, before implementation can begin in Phase 4. In the absence of a Northern Ireland Executive, factual and analytical input will be provided by the Northern Ireland Civil Service.

1.22 Scrutiny of frameworks will be provided at official level in two stages, firstly a light touch review at the end of Phase 2 and then a further, more in-depth review at the end of Phase 3. The Phase 2 review will begin a phased appraisal of the key cross-cutting themes and issues, including the constitutional implications of proposals and compatibility with the overarching principles underpinning common frameworks. It is not intended to consider policy conclusions specific to each area. The results of this review will be used by policy teams as a steer for further iterative changes that take place across Phase 3.

1.23 Review and Assessment at the end of Phase 3 will adopt a peer review approach, involving desk based assessment, evidence gathering and interviews, and drawing on expertise from both policy-specific and central teams. This process will address in particular the constitutional and cross-cutting impacts of each framework, in order to ensure that there is a consistent approach taken on these across the frameworks programme in line with the principles for common frameworks agreed by JMC(EN).

- 1.24 The Hazardous Substances (Planning) framework has progressed the furthest through the common frameworks programme, having completed Phase 2 (policy development). It was also the first framework to complete technical stakeholder engagement.
- 1.25 Following stakeholder feedback and further policy development as part of Phase 3, the Hazardous Substances (Planning) outline framework was published in July 2019 as part of the UK Government's Update on Common Frameworks publication.⁶ This publication has been well received and the outline framework was also independently published by the Scottish Government.
- 1.26 Hazardous Substances (Planning) is now undergoing the Phase 3 Review and Assessment, piloting the agreed review process. An initial Review and Assessment panel meeting took place on 1 August 2019 to scrutinise the framework and suggest refinements. Once it has completed Review and Assessment, it will be confirmed as a Provisional Framework and will proceed to Phase 4 to begin preparations for implementation.
- 1.27 The Emissions Trading System (ETS) framework is also progressing through the common frameworks programme and is approaching completion of Phase 2 (policy development). A joint consultation with the devolved administrations on the Future of UK Carbon Pricing⁷ set out overall governance for a UK ETS, with workshops in Belfast, Llandudno Junction, Swansea, Glasgow and London.
- 1.28 Whilst governance for a linked system is subject to negotiation, the intention is that the framework currently in place for the EU ETS would broadly be replicated with UK bodies fulfilling functions in a UK ETS. The role of the European Commission or "Authority" would be undertaken by the UK Government and the devolved administrations in line with their respective powers and responsibilities.
- 1.29 The ETS Framework is undertaking further policy development with the devolved administrations and technical stakeholder engagement.

⁶https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/814326/Frameworks_Products_Update.pdf

⁷ <https://www.gov.uk/government/consultations/the-future-of-uk-carbon-pricing>

Stakeholder Engagement

- 1.30 The UK Government recognises that engaging Parliament, the devolved administrations and wider stakeholders on common frameworks is vital and we are embarking on a series of engagements (both on the broader frameworks programme and technical, policy-specific engagement) across England, Wales, Scotland and Northern Ireland.
- 1.31 We are progressing a plan across UK Government, Welsh and Scottish governments and Northern Ireland Civil Service to engage with umbrella organisations, sector specific stakeholders and parliaments, to broaden understanding on the progress and process of the common frameworks programme.
- 1.32 Further programme engagement has taken place in this reporting period. UK Government officials participated in events for small/medium enterprises (SMEs) and related organisations in Norwich, Durham, Boston and Taunton. This engagement was part of the department for Business, Energy and Industrial Strategy (BEIS)'s SME roadshow which brings together government departments responsible for policies affecting small businesses in EU Exit. This cycle of events included HMRC, Home Office and BEIS to present on a range of issues, from exporter licencing, to immigration rules, to the UK internal market.
- 1.33 Further technical engagement also took place within the reporting period. The Nutrition, Health Claims Composition and Labelling technical stakeholder engagement event was held on 5th September 2019, with representation from the Cabinet Office Frameworks Team, devolved administrations and the Department for Health and Social Care (DHSC). Representatives from NICS were also present to engage on a factual basis.
- 1.34 This forum provided an opportunity for stakeholders with a direct interest in the policy area and operational aspects of the framework to provide feedback and ask questions of policy leads. This feedback is sought during Phase 3 in order to inform further development and implementation of the framework.
- 1.35 Alongside technical engagements, frameworks can utilise government consultations in order to gain further insight into stakeholders' interests in the policy area. An example of this is the EU Emissions Trading System framework (ETS) which released a consultation in May 2019.

- 1.36 We intend to update parliamentary committees at key moments in the process, and consult them on the arrangements that will need to be put in place to enable the formal scrutiny of frameworks.

No Deal Interim Arrangements

- 1.37 The existing political agreement states that the devolved administrations will not create divergent policy in ways that would cut across future frameworks, where it has been agreed they are necessary or where discussion continues, provided that the UK Government does not bring forward section 12 regulations.
- 1.38 Alongside this, the UK Government and the devolved administrations are working together on EU Exit Statutory Instruments to amend deficiencies in retained EU law and essential primary legislation and non-legislative operational readiness arrangements.
- 1.39 Additional interim arrangements have been developed in some areas, laying out ways of working and forums for communication. They are not frameworks, as they will not have gone through all stages of the framework development process, including an in depth review and assessment.
- 1.40 All interim arrangements are without prejudice to agreement on the final framework and the accompanying review and assessment process. Interim arrangements must also not contradict the agreed frameworks principles.
- 1.41 Wording agreed with the Northern Ireland Office and NICS is to be included in any interim arrangements.

Northern Ireland

- 1.42 Frameworks need to ensure recognition of the economic and social linkages between Northern Ireland and Ireland and that Northern Ireland will be the only part of the UK that shares a land frontier with the EU. As set out in the agreed principles, frameworks will also adhere to the Belfast ('Good Friday') Agreement.
- 1.43 Officials from the Northern Ireland Civil Service have engaged in the common frameworks process where the policy area intersects with the devolved competence of the Northern Ireland Assembly. However, in the absence of the Northern Ireland Executive, officials' input has been limited to analytical and factual responses only. Where framework arrangements have been

developed, they are without prejudice to the views of future Northern Ireland Executive Ministers.

- 1.44 Due to the absence of a Northern Ireland Executive, there remain significant limits to the decision-making capacity of the Northern Ireland Civil Service. Guidance issued by the Secretary of State under the Northern Ireland (Executive Formation and Exercise of Functions) Act 2018 (EFEF),⁸ and extended alongside the Northern Ireland (Executive Formation etc) Act 2019,⁹ enables senior officers of Northern Ireland departments to continue to take a limited range of decisions where they are satisfied that it is in the public interest to do so. Guidance under the Act will inform ongoing collective processes regarding changes to primary and secondary legislation, as well as non legislative mechanisms. Restoring the Northern Ireland Executive remains a priority for the Government.

⁸ <http://www.legislation.gov.uk/ukpga/2018/28/enacted>

⁹ <http://www.legislation.gov.uk/ukpga/2019/22/contents/enacted>

Legislation Relating to Retained EU Law Restrictions

- 2.1 Section 12 of the EU (Withdrawal) Act removes the current requirements in each of the devolution statutes that the devolved legislatures can only legislate in ways that are compatible with EU law. The Act then replaces those requirements with powers for the UK Government to apply, by regulations, a temporary ‘freeze’ on devolved competence in specified areas, subject to the approval of the UK Parliament, via the draft affirmative scrutiny procedure.
- 2.2 The process for making, agreeing and revoking these regulations can be found in our first report: *The European Union (Withdrawal) Act and Common Frameworks - 26 June 2018 to 25 September 2018*¹⁰.

Regulations to ‘Freeze’ Devolved Competence

Retained EU law restrictions applied during reporting period

- 2.3 No regulations have been made to apply retained EU law restrictions under these powers during the reporting period.

Progress towards removal of retained EU law restrictions

- 2.4 No retained EU law restrictions made under the powers in sections 30A and 57(4) of the Scotland Act 1998, sections 80(8) and 109A of the Government of Wales Act 2006, or sections 6A and 24(3) of the Northern Ireland Act 1998 had effect at the end the reporting period.

Regulations to Repeal the ‘Freezing’ Powers

- 2.5 In addition to the ‘freezing’ powers inserted into the devolution statutes by the EU (Withdrawal) Act, section 12(9) confers a power on UK Ministers to repeal, by regulations, the new provisions containing those powers.

Powers to apply retained EU law restrictions repealed during reporting period

- 2.6 No regulations have been made under section 12(9) of the EU (Withdrawal) Act to repeal the powers to apply retained EU law restrictions during the reporting period.

¹⁰<https://www.gov.uk/government/publications/the-european-union-withdrawal-act-and-common-frameworks-report>

Progress required in order to repeal the powers to apply retained EU law restrictions

- 2.7 The UK Government has not sought to make use of the powers to apply retained EU law restrictions at this juncture. As outlined earlier in this report, significant progress is being made across policy areas to establish common frameworks in collaboration with the devolved administrations.

- 2.8 The ‘freezing’ powers provide a mechanism to give certainty across those areas where common rules do need to be maintained, by ensuring that there will not be substantive policy change in different parts of the UK until those future arrangements are in place. In order to remove those powers from the statute book, further progress towards the implementation of common frameworks would be needed. We will keep this position under review, in line with the statutory duty in section 12(10) of the EU (Withdrawal) Act.

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