



Cabinet Office

The European Union (Withdrawal) Act and Common Frameworks

26 September 2019 to 25 December 2019

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(Withdrawal) Act 2018**

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Foreword

The UK Government is committed to working collaboratively and constructively with the governments of Scotland, Wales and Northern Ireland to establish common frameworks.

Recognising the importance of accountability and transparency as common frameworks are developed, the UK Government committed in Schedule 3 of the European Union (Withdrawal) Act to report to Parliament every three months on steps that have been taken towards implementing UK-wide common frameworks. This report details the progress made in the sixth reporting period (26 September 2019 to 25 December 2019). As this is the last full reporting period of 2019, this report also highlights some of the achievements of the programme throughout the year. The report is shared with the devolved administrations upon its publication.

Common frameworks 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. As the programme progresses, the UK Government is committed to maintaining these principles.

Over the period covered by this report, policy officials in the UK Government and the devolved administrations have continued to work productively; for example, in developing detailed outline frameworks. These set out the proposed approach for each 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.

The UK Government produced six publications on common frameworks in 2019, including four European Union (Withdrawal) Act and Common Frameworks statutory reports, a Revised Frameworks Analysis, and an update on progress in Common Frameworks, including the outline framework for Hazardous Substances (Planning).

This report would also include details on the use of powers in section 12 of the EU (Withdrawal) Act to temporarily maintain the existing EU law limits on devolved competence until common frameworks are in place, if those powers had been used. As a result 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.

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 24 October 2019 and covered the reporting period 26 June 2019 to 25 September 2019.¹
- 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 Withdrawal Agreement EU law will continue to apply to, and in, the UK during the transition period. Under the 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 UK, Scottish and Welsh Governments have agreed that common approaches will continue to be required in some areas after the UK leaves the EU.
- 1.4 In October 2017, the Joint Ministerial Committee (European Negotiations) (JMC(EN)) agreed upon principles to guide the work to create common frameworks². 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;*

¹https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/841824/The_European_Union_Withdrawal_Web_Accessible.pdf

²https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/652285/Joint_Ministerial_Committee_communique.pdf

- *safeguard the security of the UK.*

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. Details of how these principles have been taken into account are included in this report, and will be included in future iterations of this publication.

Progress Towards Establishing Future Frameworks

1.6 The following section sets out the steps taken during this reporting period by the UK Government, in collaboration with the devolved administrations, towards implementing long-term common frameworks. It also outlines how the frameworks principles have been considered.

Frameworks Delivery Plan

1.7 Frameworks will be implemented depending on the requirements of the particular policy area. This may require a combination of legislative and non-legislative measures. The delivery process accounts for frameworks to be implemented in different ways, with some activity undertaken concurrently, to ensure that all of the due process has been undertaken. As a result, frameworks will be implemented at different points in time, depending on their individual requirements.

1.8 The work to establish common frameworks has five phases. The delivery plan below illustrates how a framework moves through these phases of development. Each framework moves through this process at a different pace.

- **Phase 1: Principles and proof of concept:** First phase of multilateral “deep dives” (involving UK Government and devolved administration officials) across legislative framework areas, as well as key non-legislative areas and cross-cutting issues.
- **Phase 2: Policy development:** Multilateral engagement work to develop outline frameworks in each area; development of required frameworks legislation; the beginning of bilateral stakeholder engagement; a light-touch review of outline frameworks. At the end of this phase, ministers will be sighted on the outline framework, and will agree the direction of travel.
- **Phase 3: Review and consultation:** Policy finalisation and an exploration of the interaction between frameworks and other key workstreams (for example, international obligations and trade); multilateral stakeholder engagement, including high-level programme engagement, parliamentary engagement and technical engagement; and an in-depth review and assessment process. This phase will end with collective agreement of the policy approach, and a provisional framework confirmed by JMC(EN).
- **Phase 4: Preparation and implementation:** Collaborative work to prepare and deliver the implementation of legislative and non-legislative elements of individual frameworks, alongside stakeholder (in addition to UK Government and devolved administration) engagement as appropriate; some reappraisal of framework agreements may be required 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.

1.9 Revised delivery timelines for the development and implementation of frameworks were agreed by JMC(EN) on 28 June 2019. These timelines aim for all frameworks to be provisionally confirmed and the majority implemented by the end of 2020.

Frameworks Development

- 1.10 Common frameworks continue to be developed through constructive discussions between the UK Government and devolved administrations. This has continued during the latest reporting period (26 September 2019 to 25 December 2019), though engagement was duly limited during the pre-election period ahead of the December 12 General Election (6 November 2019 to 12 December 2019).
- 1.11 During the reporting period there have been two Project Board meetings between officials from the UK Government and the devolved administrations. One of these was a joint Project Board between officials developing common frameworks and those conducting a review of intergovernmental relations (IGR). This meeting

provided an opportunity to discuss the progress made both in frameworks and on the IGR review, as well as the interdependencies between governance of common frameworks and other strands of the review, particularly dispute avoidance and resolution.

- 1.12 There have been regular Project Team meetings between officials in the UK Government and the devolved administrations, where fruitful collaborative work continues, for example in tracking the progress made in developing common frameworks.
- 1.13 Individual frameworks have continued to make progress through this reporting period. For example, the UK Government and the devolved administrations have progressed significant technical aspects of the Implementation of EU Emissions Trading Scheme (ETS) framework. The Radioactive Substances policy team are finalising proposals for a new working group structure to underpin this framework.
- 1.14 Multiple framework development sessions have taken place, including:
 - a. three sessions on Nutrition Health Claims, Composition and Labelling, with discussions focused on finalising this framework for review and assessment process, and latterly on post-election events and priorities
 - b. five Food and Feed Safety and Hygiene official-level meetings;
 - c. several ETS workshops and deep dives;
 - d. a Radioactive Substances roundtable; and
 - e. a Public Health common framework workshop with representatives from the UK Government, the devolved administrations and all four public health agencies (Public Health England, Health Protection Scotland, Public Health Wales and the Public Health Agency in Northern Ireland) on 9 Oct. This supplemented discussions between the UK Government and the devolved administrations that occur every four weeks as part of a four nations health protection EU Exit oversight group.
- 1.15 Work has intensified to develop the policy detail of those frameworks that are in the latter stages of Phase 2. This includes joint preparations between the UK Government and devolved administration officials for technical stakeholder engagement on frameworks.
- 1.16 Further to the work carried out in this reporting period, over the past year, the first frameworks have entered Phases 2 and 3 of the frameworks process. In collaboration with the devolved administrations, the UK Government has enhanced its understanding of opportunities for further constructive work to deliver frameworks, for example in developing the review and assessment process for frameworks and in exploring the opportunities offered in engagement on frameworks. The UK Government will seek to continue this productive joint work as the frameworks programme continues to progress throughout 2020.

- 1.17 In the absence of Northern Ireland Executive Ministers, officials from the Northern Ireland Civil Service continued to participate in frameworks development on a factual and analytical basis.
- 1.18 In parallel to developing common frameworks, the UK Government sought to develop a shared cross-cutting approach to the UK internal market with the Welsh Government and Scottish Government, and with factual input from the Northern Ireland Civil Service.
- 1.19 The UK Government is exploring the evidence base for the level of economic integration between different nations and across different sectors of 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.
- 1.20 Alongside individual framework areas, the Welsh Government, the Northern Ireland Civil Service and the UK Government have been 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 governments, businesses, workers and consumers are fully taken into account in decision-making in areas where frameworks are being considered.

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 stages 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 has been 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 During this reporting period, several frameworks have made good progress with policy development and with drafting an outline framework, and three frameworks have now reached the stage of Phase 2 review. These are ETS, Food and Feed Safety and Hygiene, and Statistics. This is in addition to the two frameworks that have previously completed the Phase 2 review.
- 1.25 The Hazardous Substances (Planning) framework began its Phase 3 review and assessment during the previous reporting period. During this reporting period, work has been ongoing between UK Government policy officials and their devolved administration counterparts to consider the recommendations made during the review and refinements have been made to the outline framework. This outline framework is now due to undergo a further review to ensure all requirements have been met before Ministers consider whether to confirm it as a Provisional Framework.
- 1.26 The Nutrition Health Claims, Composition and Labelling framework has also reached the point of Phase 3 review and assessment. UK Government and devolved administration officials commenced Phase 3 review and assessment at the end of October 2019 and it is anticipated that this review will be completed during the next reporting period, following which Ministers will consider whether to confirm this as a Provisional Framework.

Stakeholder Engagement

- 1.27 The UK Government and the devolved administrations recognise that engaging legislatures and wider stakeholders on common frameworks is vital. Together, the UK Government and the devolved administrations are embarking on a series of engagements across England, Wales, Scotland and Northern Ireland. This engagement concerns both the broader frameworks programme as well as technical, policy-specific engagement on individual frameworks. The timing, location and format of engagement will be arranged in the way most appropriate to the framework and group of stakeholders.
- 1.28 Progress is being made by the UK, Welsh and Scottish Governments to engage with their respective legislatures, as well as with representative organisations and sector specific stakeholders, to broaden understanding of the progress and

process of the common frameworks programme. For example, the Welsh Government organised an event with the UK Government to provide an overview of frameworks to key stakeholders in the environment sector in late September. The Northern Ireland Civil Service have been engaging on a factual basis with the technical stakeholder engagement work.

- 1.29 As part of the development of common frameworks, each framework will undergo multilateral technical stakeholder engagement with sector specific stakeholders. This aims to test provisional policy conclusions and gather stakeholder feedback in order to inform further policy development. So far, two frameworks have undergone technical stakeholder engagement, these are Hazardous Substances (Planning) and Nutrition Health Claims, Composition and Labelling. Extensive technical engagements are being planned for further frameworks in 2020.
- 1.30 In addition to this multilateral engagement at official level, the Chancellor of the Duchy of Lancaster attended the JMC(EN) on 10 October, alongside the Scottish Government Cabinet Secretary for Government Business and Constitutional Relations and the Welsh Government Counsel General and Brexit Minister, where a constructive discussion on the joint work on common frameworks took place.
- 1.31 The Chancellor of the Duchy of Lancaster also appeared before the Scottish Parliament Finance and Constitution Committee on 21 October and at the National Assembly for Wales External Affairs and Additional Legislation Committee on 24 October 2019 in order to discuss EU Exit and Devolution, including frameworks.

No Deal Interim Arrangements

- 1.32 A No Deal Exit from the EU would have meant no transition period, leading to the possibility of policy divergence across the UK sooner than under a negotiated exit. During this reporting period, UK Government officials worked closely with officials in the devolved administrations to prepare for the possibility of a No Deal Exit.
- 1.33 Alongside this, the UK Government and the devolved administrations have worked together on EU Exit Statutory Instruments to amend deficiencies in retained EU law. The UK Government has also engaged extensively with the devolved administrations on critical EU-exit legislation which engages the legislative consent processes.
- 1.34 Additional interim arrangements have been developed in some areas, laying out ways of working and forums for communication. They are not frameworks, as

they have not gone through the framework development process, including an in depth review and assessment.

- 1.35 All interim arrangements are without prejudice to agreement on the final framework and the accompanying review and assessment process. Interim arrangements do not contradict the agreed frameworks principles.
- 1.36 Wording agreed with the Northern Ireland Office and the Northern Ireland Civil Service is included in interim arrangements.

Northern Ireland

- 1.37 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.
- 1.38 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.
- 1.39 Due to the continued absence of a Northern Ireland Executive during the reporting period³, there remained significant limits on the ability of the Northern Ireland Civil Service to make decisions.

Summary of Frameworks Publications in 2019

- 1.40 The UK Government has continued to engage with legislatures on the subject of common frameworks over the course of 2019. The UK Government has responded to various committee reports, and has fulfilled its statutory commitment to provide quarterly reports to Parliament on common frameworks.
- 1.41 In this year, the UK Government has published:

³ The NI Assembly and Institutions have been restored subsequent to the period of this report

- a. the second⁴, third⁵, fourth⁶ and fifth⁷ European Union (Withdrawal) Act and Common Frameworks statutory reports;
- b. a revised Frameworks Analysis⁸; and
- c. an update on the progress of delivering Common Frameworks⁹ including an outline framework relating to Hazardous Substances (Planning), an illustration of the delivery process and an update on stakeholder engagement.

1.42 UK Government officials have also provided multiple factual briefings to Northern Ireland political parties.

Common Frameworks Analysis

1.43 The Revised Frameworks Analysis was published on 4 April 2019 and set out the progress made to develop common frameworks in collaboration with the devolved administrations since the first analysis was published in March 2018¹⁰.

1.44 The Revised Frameworks Analysis set out the 160 policy areas where EU law intersects with devolved competence, and the areas where it was anticipated that common frameworks may be required.

1.45 Since the publication of the Revised Frameworks Analysis, an extensive programme of collaborative work has continued between the UK Government and devolved administrations. Joint understanding of the areas where common frameworks may be required continues to evolve and as such, the Frameworks Analysis is in the process of being updated. The next iteration of the Frameworks Analysis will be published in due course.

⁴https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/788764/CCS207_EUWithdrawalActAndCommonFrameworks.pdf

⁵https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/804360/Third_EU_Withdrawal_Act_and_Common_Frameworks_report_.pdf

⁶https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/817382/final-edits-Fourth-s.12-report.pdf

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⁹https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/814326/Frameworks_Products_Update_.pdf

¹⁰https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/686991/20180307_FINAL_Frameworks_analysis_for_publication_on_9_March_2018.pdf

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 the first *European Union (Withdrawal) Act and Common Frameworks Report*¹¹.

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

¹¹<https://www.gov.uk/government/publications/the-european-union-withdrawal-act-and-common-frameworks-report>

- 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.

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. The UK Government 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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