



Cabinet Office

The European Union (Withdrawal) Act and Common Frameworks

26 December 2019 to 25 March 2020

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Contents

Contents 4

Foreword 6

Implementation of Future Common Frameworks 8

Principles for Common Frameworks 8

Progress Towards Establishing Future Frameworks 9

Legislation Relating to Retained EU Law Restrictions 17

Regulations to 'Freeze' Devolved Competence 17

Regulations to Repeal the 'Freezing' Powers 17



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Foreword

Following the UK's exit from the European Union, the UK Government is ensuring that, after the end of the transition period, appropriate measures are put in place to provide stability and security across the UK. Officials from the UK Government and the devolved administrations continue to work closely together on UK-wide common frameworks. These frameworks will help facilitate the flow of trade between different parts of the UK whilst allowing the UK to fulfil its international obligations; they will help the UK to safeguard our common resources and enable the functioning of the UK's internal market.

Schedule 3 of the European Union (Withdrawal) Act required the UK Government to report to Parliament every three months on progress that has been made in the development of these common frameworks. This report details the steps that have been taken during the seventh reporting period, from 26 December 2019 to 25 March 2020. As a demonstration of our continued cooperation, these reports are routinely shared with ministers and officials in the devolved administrations upon their 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. The UK Government welcomes the restoration of the Northern Ireland Executive, and looks forward to their consideration of these principles.

Over the most recent reporting period, the UK Government and devolved administrations have continued fruitful collaborative work, and several frameworks have completed formal review processes at official-level. These frameworks are approaching "provisional confirmation", and will be brought before JMC(EN) ministers in due course. Officials in the UK Government and devolved administrations have held monthly Project Board meetings, as well as weekly calls. The continued success and value of these meetings affirms the collaborative nature of the delivery of common frameworks. In light of the COVID-19 outbreak, the UK Government and the devolved administrations have put significant effort into the re-prioritisation of resources to deal with this unprecedented challenge. Nonetheless, all remain supportive of continued progress in the development of common frameworks. The next report will provide a further update and set out next steps.

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 19 March 2020 and covered the reporting period 26 September 2019 to 25 December 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. The UK Government welcomes the restoration of the Northern Ireland Executive, and looks forward to their consideration of this approach.
- 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;*

¹https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/872831/Sixth-European-Union-Withdrawal-Act-and-Common-Frameworks-Report1.pdf

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

- *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.*

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, toward implementing long-term common frameworks. It also outlines how the frameworks principles have been taken into account.

1.7 Towards the end of this reporting period, the COVID-19 outbreak escalated significantly, leading to the redeployment of a large number of policy officials in both the UK Government and the devolved administrations. The UK Government and devolved administrations remain committed to the development of frameworks, and are re-evaluating delivery plans and timelines to take account of the COVID-19 outbreak and its impact.

Frameworks Delivery Plan

- 1.8 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 completed. As a result, frameworks will be implemented at different points in time, depending on their individual requirements.
- 1.9 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 this process at a different pace.
- **Phase 1: Principles and proof of concept:** Took place between October 2017 to March 2018 and consisted of engagement between UKG and DA officials (also referred to as multilateral deep dives) focussing on legislative and key non-legislative frameworks, as well as establishing some of the key interdependencies that affect multiple frameworks.
 - **Phase 2: Policy development:** Detailed policy development takes place, including joint work between UKG/DA officials to agree policy approaches and operational and governance arrangements for each policy area. Initial stakeholder engagement may also take place. This results in a jointly drafted and agreed outline framework. At the end of this phase there is a light-touch, official-level review of the outline framework. UKG and DA portfolio ministers are sighted to agree the policy direction.
 - **Phase 3: Review and consultation:** Ongoing UKG/DA collaboration takes place to further develop and finalise policy approaches, explore interactions with cross-cutting workstreams, and agree operational and governance arrangements. Technical engagement takes place with sector specific stakeholders. Towards the end of phase 3 an in-depth review and assessment takes place, conducted jointly at official level. This phase results in cross-departmental collective agreement on the policy approach within UKG, and provisional confirmation of the framework by members of (JMC(EN)).
 - **Phase 4: Preparation and implementation:** Collaborative work takes place to prepare and deliver the implementation of legislative and non-legislative elements of individual frameworks. Phase 4 will end with a framework agreement confirmed by JMC(EN).
 - **Phase 5: Post-implementation:** Post-implementation arrangements will take place. These will vary between frameworks and details continue to be developed as the frameworks programme progresses.

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 December 2019 to 25 March 2019).
- 1.11 During this reporting period there were two meetings of the Frameworks Project Board, involving Cabinet Office officials and their counterparts in the devolved administrations. These meetings continue to facilitate constructive discussions regarding the management and governance of the frameworks programme.
- 1.12 There have also been fruitful monthly Project Team meetings between officials in the UK Government and the devolved administrations. This included a frameworks “stocktake” meeting on 9 January, which focused on common frameworks delivery over the course of 2020. Furthermore, the Project Team have held weekly conference calls.
- 1.13 Individual frameworks have continued to make progress through this reporting period. The Hazardous Substances (Planning) framework completed the Phase 3 Review and Assessment process. It was then approved by officials in the UK Government and the devolved administrations at the Frameworks Project Board in Belfast on 30 January 2020.
- 1.14 The Nutrition Health Claims, Composition and Labelling framework was brought before the Food Standards Agency board on 21 January 2020, and received their endorsement. It was also approved by officials in the UK Government and devolved administrations at the Frameworks Board in Belfast on 30 January 2020.
- 1.15 The Emissions Trading Systems (ETS) framework has completed a number of workshops to continue to develop the operational aspects of the framework and ETS has also now completed its Phase 2 Review.
- 1.16 Multiple meetings between policy teams in the UK Government and devolved administrations have taken place, including:
 - a. A workshop in Edinburgh on 18 February to discuss the interaction between frameworks, the UK internal market, international trade, the Protocol on Ireland/Northern Ireland, and the evolving context in which frameworks will operate.
 - b. A meeting between Reciprocal Healthcare policy teams from the UK Government and the devolved administrations to discuss the common framework and accompanying Memorandum of Understanding.

- c. A peer review and 'deep dive' meeting were held on 8 January, looking at the Nutrition Health Claims, Composition and Labelling framework. This was followed by risk analysis meetings on 19 February and 18 March.
 - d. A cross-government meeting on food frameworks was held on 11 February, ensuring coordination between different frameworks in this area (Nutrition Health Claims, Composition and Labelling, and Food and Feed Safety and Hygiene) and providing guidance to departments.
 - e. Multiple meetings have taken place between Department for Environment, Food and Rural Affairs (DEFRA) officials and their counterparts in the devolved administrations on common frameworks within the Environment, Food and Rural Affairs portfolio. These include working group meetings, taking place at least monthly, on Animal Health and Welfare, Waste, Air Quality, Fluorinated Greenhouse Gases and Ozone Depleting Substances, Chemicals and Pesticides, and Fisheries as well as a 'deep dive' session on Waste on 26 February.
 - f. The ETS framework team held a joint UKG/DA workshop on the 4 - 5 February and on the 10 March to progress the operational and governance aspects of the ETS framework.
- 1.17 In parallel to developing common frameworks, the UK Government has sought to develop a shared cross-cutting approach to the UK internal market with the Welsh Government, Scottish Government and with factual input from the Northern Ireland Civil Service.
- 1.18 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.
- 1.19 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 businesses, workers and consumers across the UK are fully taken into account in decision making, in areas where frameworks are being considered.
- 1.20 Work is also underway to establish how frameworks will interact with the negotiation of Free Trade Agreements. Discussions have taken place between the UK Government and the devolved administrations and we continue to develop this.

Review and Consultation

- 1.21 The UK Government and the devolved administrations have previously agreed a 'Review and Assessment' process for frameworks.
- 1.22 The first, light-touch review takes place once the Phase 2 (policy development) of the frameworks process has been completed. This is not intended to be a barrier for frameworks moving to Phase 3, but to assess which areas will need further refinement during the next stage.
- 1.23 Towards the end of Phase 3, a further, more rigorous review will be provided jointly at official level by the UK Government and devolved administrations. Each outline framework, and any associated draft documents such as concordats, will form the basis for a Phase 3 'Review and Assessment' gateway process. This process will address in particular the constitutional and cross-cutting impacts of each framework in order to ensure that the approach taken on these is consistent across the frameworks programme and in line with the principles for common frameworks agreed by JMC(EN).
- 1.24 Review and Assessment combines a peer review approach, desk based assessment, evidence gathering and interviews, and draws on expertise from both policy and devolution teams.
- 1.25 The Phase 2 reviews for the ETS and Statistics frameworks have been concluded in this reporting cycle. The Public Procurement framework is currently undergoing the Phase 2 review.
- 1.26 The Hazardous Substances (Planning) framework and the Nutrition Health Claims, Composition and Labelling framework both completed their Phase 3 'Review and Assessment' process in January. It was confirmed that previous recommendations from UK Government policy officials and their devolved administration counterparts had been addressed.
- 1.27 These two frameworks are now being prepared to undergo collective agreement before being submitted to JMC(EN) for provisional confirmation. Once they have been provisionally confirmed by JMC(EN) they will become provisional frameworks entering Phase 4.

Stakeholder Engagement

- 1.28 As part of the commitment to transparency of the common frameworks programme, the UK Government has designed an extensive programme of engagements with legislatures and wider stakeholders. Where appropriate, this engagement is undertaken in collaboration with the devolved administrations. This entails both broad frameworks programme engagement as well as

technical, sector-specific engagement during the development of individual frameworks. The COVID-19 outbreak towards the end of this reporting period, while not impacting on engagements occurring during this period, has led to a reassessment of future engagement plans and has put any substantive stakeholder engagement on hold in the short-term.

- 1.29 As part of the aforementioned programme of engagements, officials from the UK Government attended an Institute of Directors event with key stakeholders in the Basildon and South Essex region on 12 February. These stakeholders included Essex County and Basildon Borough Council, Santander Bank, technology startups and small and medium enterprises based in the South Essex Region (Basildon, Brentwood, Billericay, Chelmsford), and the Centre for Economics and Business Research (CEBR). Attendees were provided with an overview of the frameworks programme and were updated on work currently being undertaken to develop individual frameworks. Further engagements of this nature continue to be scoped.
- 1.30 Each framework will undergo multilateral technical stakeholder engagement with sector specific stakeholders as part of their development. Technical stakeholder engagement is completed jointly by the UK Government and the devolved administrations. It aims to test provisional policy conclusions and to collect stakeholder feedback to inform further policy development. To date, three frameworks have undergone technical stakeholder engagement; these are Hazardous Substances (Planning), Nutrition Health Claims, Composition and Labelling, and ETS.
- 1.31 Further technical engagement for frameworks is being planned to ensure the progression of the programme. The timing, location and format of engagement will be arranged in the way most appropriate to the framework and group of stakeholders. However, the COVID-19 outbreak will impact on the manner in which stakeholder engagement can be undertaken, as in-person engagement sessions cannot be conducted at this time. Officials are working to adjust the format of engagements so that progress can still continue in a safe manner. This will be agreed by all four administrations.
- 1.32 Progress is being made by the UK, Welsh and Scottish Governments to engage with their respective legislatures on pre-implementation scrutiny of provisional frameworks. Officials from each government have developed a joint approach for formal Parliamentary scrutiny of frameworks and are working together to coordinate timelines.
- 1.33 In addition to cross-UK engagement at official level, the Chancellor of the Duchy of Lancaster attended the Joint Ministerial Committee (EU Negotiations) on 9 and 28 January alongside the Scottish Government Cabinet Secretary for

Government Business and Constitutional Relations and the Welsh Government Counsel General and Minister for European Transition. The 28 January meeting was also attended by the Welsh Government First Minister and the Northern Ireland First and deputy First Minister. During the meetings, ministers discussed issues which affected the frameworks agenda, such as the future EU relationship and IGR review.

- 1.34 The Secretary of State for Wales appeared before the National Assembly for Wales Legislation, Justice and Constitution Committee (LJCC) on 9 March 2020, where framework issues were raised.

Northern Ireland

- 1.35 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.
- 1.36 Prior to the restoration of the Northern Ireland Executive, officials from the Northern Ireland Civil Service have engaged in the development of common frameworks where the policy area intersects with the devolved competence of the Northern Ireland Assembly. This input has been limited to analytical and factual responses only, however it is hoped that the continuing development of the framework arrangements will reflect the position of Northern Ireland Executive Ministers.
- 1.37 The Protocol on Ireland/Northern Ireland sets out new arrangements agreed between the UK Government and European Union. These include Northern Ireland remaining within the UK's customs territory but aligning with the EU on goods (including certain laws for VAT on goods), and EU tariffs applying in Northern Ireland except for movements within the single customs territory of the UK.
- 1.38 Analysis is being carried out by both the UK Government and the Northern Ireland Executive to determine the impact of the Protocol on both individual frameworks and the programme as a whole.

Common Frameworks Analysis

- 1.39 The Revised Frameworks Analysis³ 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 2018.⁴
- 1.40 The 2019 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.
- 1.41 Since the publication of the 2019 Revised Frameworks Analysis, constructive, collaborative work between the UK Government and devolved administrations has progressed our understanding of areas where common frameworks will be required. Accordingly, the third iteration of the common frameworks analysis will provide a snapshot of how the categorisation of policy areas is evolving in light of this programme of work. It remains part of an ongoing dialogue that will continue to change and develop as work continues. The third iteration of the Revised Frameworks Analysis will be published in due course.

3

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

⁴https://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*⁵.

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.

⁵<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. The UK Government will keep this position under review, in line with the statutory duty in section 12(10) of the EU (Withdrawal) Act.

