



Cabinet Office

# The European Union (Withdrawal) Act and Common Frameworks

26 December 2018 to 25 March 2019



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**Presented to Parliament pursuant to paragraph 4 of Schedule 3 to the European Union  
(Withdrawal) Act 2018**

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## Foreword

In the context of the UK's departure from the European Union, the Government remains committed to ensuring a smooth and orderly exit. Officials from the UK, Scottish, and Welsh Governments and Northern Ireland Civil Service have continued to work closely over the period covered by this report (26 December 2018 to 25 March 2019) to prepare the UK for EU Exit.

This Government recognises the importance of accountability and transparency and has therefore committed in legislation to report to Parliament every three months and to share this report with the devolved administrations (DAs). The report includes the steps we are taking, with those administrations, to establish common frameworks and any use of the powers in section 12 of the European Union (Withdrawal) Act 2018 to temporarily freeze devolved competence. The first report was laid before Parliament on 13 November 2018 covering the period from 26 June to 25 September 2018. Subsequent to this the second report was published on 7 February 2019 covering the period from 26 September to 25 December 2018.

It is important that the process of developing common frameworks is not just carried out between governments. We welcome the input and scrutiny from businesses and stakeholders as well as Parliament and the devolved legislatures as we move closer to implementation. With the DAs, we are developing a wider programme of stakeholder engagement, to ensure that proposals for future frameworks meet the needs of those who will be impacted by them. The Northern Ireland Civil Service will continue to participate in this area of work.

In addition, 199 Statutory Instruments (SIs) relating to devolved matters were laid in the UK Parliament before 29 March with the agreement of the devolved administrations. This contributes to meeting the UK Government's commitment to have a functioning statute book on exit day. The DAs and UK government departments have noted the positive working relations that joint work to deliver EU Exit secondary legislation has fostered.

Following the reporting period covered by this report, the revised frameworks analysis was published. We intend to update the analysis using future publications of this report.

This report details the progress made in the third reporting period (26 December 2018 to 25 March 2019) as required under schedule 3 to the European Union (Withdrawal) Act 2018. On the basis of this continuing joint progress and collaboration on future frameworks which ensures the statute book is ready for exit day, the UK Government has again concluded that it does not need to bring forward any section 12 regulations at this juncture. In addition, the Scottish and Welsh

Governments have reaffirmed their commitment not to create divergent policy in ways that 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 first and second reports were published on 13 November 2018 and 7 February 2019 respectively. These reports covered consecutive three month periods after the Act was granted Royal Assent (26 June to 25 September and 26 September to 25 December).

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 work to create common UK-wide approaches - or 'frameworks' - even where those policy areas otherwise fall within devolved competence. The Scottish and Welsh Governments agree that common frameworks will continue to be required in some areas after we leave the EU.

1.4 In October 2017, the Joint Ministerial Committee (EU Negotiations) (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; and*
  - *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; and*
  - *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.

## **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 future, long-term common frameworks, and explains how the frameworks principles have been taken into account.

1.7 This work to establish common frameworks has five phases. The first phase took place between October 2017 and March 2018 and focused on establishing the principles and proof of concept for this programme of joint work between the UK Government and the devolved administrations. During this phase, the UK Government published an initial common frameworks analysis.

1.8 The second phase of this work, running from April 2018 onwards, has focused on more detailed policy development, including iterative multilateral engagement on the 24 priority framework areas. Alongside this, work continues on cross-cutting issues, notably future free trade agreements, the UK internal market and the review of intergovernmental relations that was commissioned by the Joint Ministerial Committee in March 2018.

1.9 The third phase of work will provide a review of progress to date, wider engagement and consultation with interested stakeholders, and more detailed policy development up to and beyond March 2019. This will lead, in due course, to preparation for the implementation of final frameworks.

1.10 Progress has continued in the latest reporting period (26 December 2018 to 25 March 2019) to deepen the policy development of future common frameworks. This work is underpinned by joint guidance produced collaboratively by the UK Government and the devolved administrations, and supported by the joint structures that have been developed under JMC(EN) and the political commitment made by the Scottish and Welsh Governments in the first and second reports not to pursue policy divergence in areas where frameworks discussions are ongoing and no section 12 'freezing' regulations have been made.

1.11 Common frameworks continue to be developed through constructive discussions between the UK Government and the devolved administrations. Policy teams have also been working on preparing for a no deal scenario. During the latest reporting period (26 December 2018 to 25 March 2019), detailed multilateral engagement has continued to take place at official level, including standalone sessions on:

- Chemicals and Pesticides (22 January 2019)
- Food and Feed Safety and Hygiene (22 January 2019)
- Nutritional Health Claims, Composition and Labelling (30 January 2019)
- Public Health (7 February 2019)
- Plant Health (12 February 2019)
- Agriculture - Fertiliser Regulations (21 February 2019)
- Public Procurement (11 March 2019)
- Nutritional Health Claims, Composition and Labelling (20 March 2019)

1.12 In the absence of Northern Ireland Executive Ministers, officials from the Northern Ireland Civil Service continue to participate in this work on a factual and analytical basis.

1.13 Within the latest reporting period (26 December 2018 to 25 March 2019), where possible policy teams have continued to develop "outline agreements" in the 24 priority areas where frameworks are likely to require legislative elements, in whole or in part, at this time. In addition "outline agreements" have been developed in a few areas where frameworks are likely to be primarily non-legislative.

1.14 Among the policy and operational issues being considered are: the scope of the frameworks and where, if any, legislation may be required; decision making processes and the potential use of third parties; mechanisms for monitoring, reviewing and amending frameworks; the roles and responsibilities of each administration; and the detail of future governance structures, including arrangements for resolving disputes and information sharing.

1.15 The Fisheries, Management and Support framework for example is intended to be implemented through a limited set of legislative provisions, partially established in

the Fisheries Bill, supplemented by a concordat that includes ways of working, dispute resolution and enforcement processes.

1.16 Policy teams are also now considering the development of the 78 non-legislative policy areas where common rules or ways of working are likely to be needed. Where such agreements are necessary, we expect them to be implemented through non-legislative common framework agreements (e.g. concordats). In some of these areas, consistent fixes to retained EU law (made using secondary legislation) may create a unified body of UK law alongside the non-legislative framework agreement.

1.17 The UK Government will work with the Scottish and Welsh Governments and the Northern Ireland Civil Service, to seek to develop a shared approach to the internal market, including exploring a range of evidence and ideas, and together will continue to support policy teams in considering how to manage internal market-related issues in individual framework areas. The UK Government has led work to explore the evidence base for the level of economic integration between different nations and across different sectors in the UK; look at relevant international examples; and considered the case for principles and governance structures which could be applied to the UK internal market, including how these could be put into practice. The UK, Scottish and Welsh Governments and Northern Ireland Civil Service recognise that mutual cooperation is vital to ensure that the interests of other governments, businesses and consumers, are fully taken into account in decision making in areas where frameworks are being considered.

1.18 A programme of informal multilateral engagements with stakeholders has begun. On 19 March 2019, the 'Hazardous Substances Planning' policy teams from the UK, Welsh and Scottish Governments, and the Northern Ireland Civil Service consulted with interested stakeholders to test provisional conclusions made within the framework outline.

1.19 The UK, Scottish and Welsh Governments and Northern Ireland Civil Service recognise the importance of engaging Parliament, the devolved legislatures and wider stakeholders in the work on common frameworks, as activity moves into the third phase of work described above. The Northern Ireland Civil Service will continue to participate in this area of work.

## Northern Ireland

1.20 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 Agreement.

1.21 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 (EFEF) - legislation which enables senior officers of NI departments to continue to take a limited range of decisions, where they are satisfied that it is in the public interest to do so - provides departments with increased clarity and certainty about when they can make decisions in the absence of Ministers. The Secretary of State for Northern Ireland issued guidance under the Act on 5 November 2018. This guidance has, and will continue to inform our ongoing collective processes regarding changes to primary and secondary legislation, as well as non-legislative mechanisms. The Secretary of State extended the Act for a period of 5 further months on the 21st March. Pending the agreement of Parliament the Act will expire at the end of August.

1.22 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.

## **Common Frameworks Analysis**

1.23 We published a revised copy of the common frameworks analysis on 4th April 2019, which sets out the progress we have made to develop common frameworks in collaboration with the devolved administrations since the first analysis was published in March 2018. The analysis has been published during the reporting period of the next statutory common frameworks report and will be covered in that report.

1.24 Updates on the progression of work in the policy areas set out in the frameworks analysis will be provided in future publications of this report. This will enable us to show progress in these areas on a more regular basis.

## 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<sup>1</sup>.

### 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.

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<sup>1</sup><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 the policy areas where it is envisaged that legislative frameworks will be needed, and where there is outstanding disagreement on the boundaries of devolved competence. Our priority is to continue working with the devolved administrations to establish a shared understanding of where common approaches will need to be given effect through shared legislation, so that we can jointly design and implement those approaches.

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 those future 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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