

# The European Union (Withdrawal) Act and Common Frameworks

26 September to 25 December 2021

March 2022



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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

Since 2017, the UK Government, Scottish Government, Welsh Government and the Northern Ireland Executive have been working together to develop agreements covering a range of policy areas where powers which have returned from the European Union intersect with devolved competence. This has a direct bearing on the lives of citizens across the United Kingdom. The development of UK Common Frameworks is guided by principles agreed at the Joint Ministerial Committee (EU Negotiations) (JMC(EN)) in October 2017 between the Government, Scottish Government and Welsh Government, and later on 15 June 2020, endorsed by the Executive Committee of the Northern Ireland Executive.

Under Schedule 3 to the European Union (Withdrawal) Act 2018, the Government has a statutory requirement to report to the UK Parliament every three months on the progress made on the development of UK Common Frameworks. This fourteenth European Union Withdrawal and Common Frameworks report details progress from 26 September to 25 December 2021. In addition to progress made, the report details that the Government did not make use of powers under section 12 of the European Union (Withdrawal) Act 2018 to temporarily limit devolved competence in any policy areas. The Government has now taken steps to repeal section 12 powers. On 25 January 2022, it laid a draft statutory instrument before Parliament through the enabling power set out in section 12(9) of the Act.

The Frameworks programme reached a significant milestone when ministers from all four governments endorsed the resolution of a number of cross-cutting issues which intersect with Common Frameworks. This progress reflected patient work from all governments to agree an exclusions process from the UK Internal Market Act, along with agreement on the treatment of the Northern Ireland Protocol and International Relations and Trade within Common Frameworks. Ministers from all four governments are committed to building on these agreements and finalising individual Frameworks at pace.

During this reporting period, one Framework was provisionally confirmed on 14 October, taking the total number of provisionally confirmed Frameworks to 29. Following the progress made on cross-cutting issues, ten of these provisional Frameworks were published within the reporting period and are undergoing parliamentary scrutiny across the UK's legislatures. Since the end of this reporting period, a further thirteen provisional Frameworks have been published, with two Frameworks still developing towards provisional agreement.

On 9 November, the Government published its annual update to the Frameworks Analysis setting out a comprehensive breakdown of areas previously governed by EU law that intersect with devolved competence, including for the first time, rationales for policy areas where no Frameworks are required.

## Implementation of 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 Framework including use of powers in section 12 of, and schedule 3 to, the 2018 Act to temporarily maintain EU law limits on devolved competence. Reports are shared with the devolved governments to enable them to maintain a concurrent level of scrutiny. The last report was published on 9 December 2021 and covered the reporting period 26 June to 25 September 2021.<sup>1</sup>
- 1.2. The purpose of these reports is to ensure that the process of developing Common Frameworks, in collaboration with the devolved governments, is transparent and subject to robust parliamentary scrutiny.

## Principles for Common Frameworks

- 1.3. EU laws created common UK-wide approaches even where those policy areas were otherwise within devolved competence. All four governments across the UK have agreed that common approaches will continue to be required in some areas now the UK has left the EU and exited the Transition Period.
- 1.4. In October 2017, the Joint Ministerial Committee (EU Negotiations) agreed upon principles to guide the work to create Common Frameworks.<sup>2</sup> 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.*
  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 governments.*
  3. *Frameworks will ensure recognition of the economic and social linkages between Northern Ireland and Ireland and that Northern Ireland will be the only*

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<sup>1</sup><https://www.gov.uk/government/publications/the-european-union-withdrawal-act-and-common-frameworks-26-june-to-25-september-2021>

<sup>2</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/652285/Joint\\_Ministerial\\_Committee\\_communique.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/652285/Joint_Ministerial_Committee_communique.pdf)



*part of the UK which shares a land frontier with the EU. They will also adhere to the Belfast Agreement.*

- 1.5. The Northern Ireland Executive endorsed the JMC(EN) principles in June 2020. These principles continue to guide all discussions between the Government and the devolved governments on Common Frameworks. Details of how these principles have been taken into account are included in this report.

## Progress Towards Establishing Common Frameworks

- 1.6. The following section sets out the steps taken during this reporting period by the UK Government, in collaboration with the devolved governments, towards implementing long-term Common Frameworks. It also outlines how the Frameworks Principles have been taken into account.

## Frameworks Delivery

- 1.7. 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:** consists of engagement between the UK Government and devolved government officials (also referred to as multilateral deep dives) to focus on Frameworks, as well as to establish some of the key interdependencies that affect multiple Frameworks.
  - **Phase 2: Policy development:** Detailed policy development takes place, including joint work between the UK Government and devolved government officials to agree policy approaches and operational and governance arrangements for each policy area. Initial stakeholder engagement also takes place where appropriate. This results in jointly drafted and agreed outline Frameworks.
  - **Phase 3: Review and consultation:** The UK Government and devolved governments collaborate to further develop and finalise policy approaches, explore interactions with cross-cutting work-streams, and agree operational and governance arrangements. Technical engagement takes place with sector-specific stakeholders. Towards the end of Phase 3, 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 the Government, and provisional confirmation of Frameworks by each administration. This in-depth review and joint confirmation ensures that a minimally operable Framework, recognised as a 'provisional Framework', is developed.
  - **Phase 4: Preparation and implementation:** The UK Government and devolved government officials work jointly on any ongoing reappraisals of cross-cutting issues, present the Frameworks for parliamentary scrutiny and review parliamentary recommendations in order to finalise individual Frameworks. At the end of this phase, the provisional Framework receives

approval from ministers in the policy-owning department and constitutional ministers where applicable.

- **Phase 5: Post-implementation:** Post-implementation arrangements take place, including regular cycles of review and, if appropriate, amendment. These vary between Frameworks and details continue to be developed as the Common Frameworks programme progresses.

- 1.8. Frameworks are undergoing continued development according to the requirements of their particular policy areas. The delivery process detailed above takes into account the need for Frameworks to be implemented in different ways, with some activities undertaken concurrently, to ensure that all of the necessary steps have been completed. Accordingly, Frameworks will progress and be finalised at different points in time, depending on their individual requirements.

## Delivery Plan

- 1.9. During this reporting period (26 September to 25 December 2021) the Government continued to liaise with the devolved governments to coordinate the progress of the programme. Work on individual Frameworks has been ongoing, with a specific focus on taking into account the cross-cutting issues that apply to those Frameworks and preparing Frameworks for publication so that parliamentary scrutiny can begin.

## Framework Coordination

- 1.10. Frameworks are being developed through constructive discussions between the UK Government and the devolved governments. These discussions have continued during the latest reporting period.
- 1.11. A quadrilateral meeting was held between the Minister for Levelling Up, the Union and Constitution, Neil O'Brien, and ministers from the devolved governments on 10 November 2021. The meeting resulted in agreement from all governments on proposals to resolve cross-cutting issues and a renewed commitment to proceed towards publication of Frameworks by March 2022.
- 1.12. During this reporting period there were three meetings of the UK Government-devolved governments Frameworks Project Board, involving Cabinet Office senior officials and their counterparts in the devolved governments. The Project Board monitors progress and facilitates agreement on the direction of the UK Common Frameworks programme.
- 1.13. At an operational level, there have been weekly Frameworks Project Team meetings between officials in the Government and the devolved governments to support the detailed development of Frameworks by policy officials.
- 1.14. During the first half of this reporting period, the UK Government-devolved government Cross-Cutting Issues sub-group continued to meet on a fortnightly basis, reporting into the Frameworks Project Team and Project Board. As a result of the progress made on cross-cutting issues in this period, the sub-group did not need to meet from mid-November.

- 1.15. The Cabinet Office, as UK Government programme coordinator, has also engaged with UK Government departments through a fortnightly Deputy Director-level Frameworks group on strategic policy development and planning, alongside a monthly Frameworks Working Group to provide policy leads with updates and to discuss barriers and drive progress. Working group meetings have also taken place between Cabinet Office officials and officials from Framework-owning departments on individual Frameworks.

## Programme Development

### Framework Agreement

- 1.16. During this reporting period, one further Framework (Company Law) was provisionally confirmed on 14 October. The Government and the devolved governments agreed that portfolio minister clearance would represent provisional confirmation of Frameworks. This takes the total number of finalised Frameworks to one and provisionally confirmed Frameworks to 29. The provisionally confirmed Frameworks are:

1. Emissions Trading System;
2. Radioactive Substances;
3. Late Payment;
4. Specified Quantities and Packaged Goods;
5. Company Law;
6. Agricultural Support;
7. Agriculture - Fertiliser Regulations;
8. Agriculture - Organic Production;
9. Agriculture - Zootech;
10. Animal Health and Welfare;
11. Fisheries Management and Support;
12. Plant Health;
13. Plant Varieties and Seeds;
14. Air Quality;
15. Best Available Techniques;
16. Ozone Depleting Substances and F-gases;
17. Chemicals and Pesticides;
18. Resources and Waste;
19. Operator Licensing and Commercial Transport;
20. Driver Licensing;
21. Rail Technical Standards;
22. Roads - Motor Insurance;
23. Nutrition Labelling, Composition and Standards;
24. Blood Safety and Quality;
25. Organs, Tissues and Cells (apart from embryos and gametes);
26. Public Health Protection and Health Security;
27. Food Compositional Standards and Labelling;

- 28. Public Procurement; and
- 29. Food and Feed Safety and Hygiene Law.

1.17. Furthermore, significant progress was made on the development of Mutual Recognition of Professional Qualifications and Services Frameworks during this reporting period. We expect stakeholder engagement on these Frameworks to take place in early 2022.

### Phase 4 Development

- 1.18. All provisional Frameworks continued to undergo development towards their finalisation, which requires conclusion of:
- a) Any remaining Framework-specific policy development, including the resolution of cross-cutting issues;
  - b) Any further technical stakeholder engagement required; and
  - c) Parliamentary scrutiny by legislatures with an interest in the Framework.

### Transparency

- 1.19. Transparency has continued to be a priority across the UK Common Frameworks programme with the publication of several key documents, including this fourteenth European Union (Withdrawal) Act and Common Frameworks report. During the reporting period, the UK Government published two earlier editions of this report, in addition to the 2021 Frameworks Analysis. The 2021 Framework Analysis is the final annual Analysis prepared during the development of Common Frameworks, prior to the ‘mainstreaming’ of Frameworks expected to take place in 2022. Key topics highlighted in the 2021 Frameworks Analysis included: clear rationales for the categorisation of No Framework Required policy areas; an overview of where policy areas were merged; and a final classification of which active Framework areas entailed associated legislation.
- 1.20. The UK Government published an agreed process for considering UK Internal Market Act exclusions in Common Framework areas. Thanks to the significant progress made on resolving how various cross-cutting issues are expected to interact with UK Common Frameworks, ten provisional Common Frameworks were published for parliamentary scrutiny during this period. These publications can all be accessed on the UK Government’s UK Common Frameworks webpage on gov.uk.<sup>3</sup>

### Parliamentary Engagement

- 1.21. The UK Government continued to engage constructively with Parliament during this reporting period. On 13 October, Lord Greenhalgh responded for the UK Government at a House of Lords debate on the Common Frameworks Scrutiny Committee’s report “Building a cooperative union” that was published in March 2021. During this reporting period, the Government took steps to respond to many of the recommendations from

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<sup>3</sup> <https://www.gov.uk/government/collections/uk-common-frameworks>

the report, most notably through the publication of a process for considering exclusions to the UK Internal Market Act in Common Framework areas. Various Ministers and officials from the UK and devolved governments gave evidence to the Common Frameworks Scrutiny Committee during this reporting period, including evidence from: the Department for Environment, Food and Rural Affairs officials on 9 November; officials from the Office for the Internal Market and the Competition and Markets Authority on 16 November; and Angus Robertson, Cabinet Secretary for Constitution, External Affairs and Culture in the Scottish Government on 7 December.

1.22. During this reporting period, ten provisional Common Frameworks were published, and shared with UK Parliament committees to allow for scrutiny. Recommendations were received from committees for seven of these Frameworks in this reporting period, which will be considered by policy teams before final confirmation of those Frameworks. The ten provisional Common Frameworks published during this period were:

1. Radioactive Substances;
2. Late Payment;
3. Company Law;
4. Public Health Protection and Health Security;
5. Driver Licensing;
6. Rail Technical Standards;
7. Commercial Transport and Operator Licensing;
8. Motor Insurance;
9. Blood Safety and Quality; and
10. Organs, Tissues and Cells (apart from embryos and gametes)

1.23. At official level, the UK Government and Parliament continued to work closely to prepare for formal scrutiny of the remaining UK Common Frameworks.

1.24. Devolved governments continue to liaise with their respective legislatures in a similar manner.

## Stakeholder Engagement

1.25. The UK Government and devolved governments work collaboratively to conduct a programme of engagement with sector-specific experts at various points in the development of each Framework. The UK Government and devolved governments jointly agree to a list of relevant technical stakeholders, and this engagement is conducted jointly across all governments where possible. The process ensures stakeholders are updated on the development of specific Frameworks and affords stakeholders an opportunity to input their views and expertise.

1.26. As Frameworks continue to be developed, departments continue to review when additional stakeholder engagement may be required. As some Frameworks were updated to reflect the resolution of a number of cross-cutting issues, policy departments across the UK and devolved governments needed to determine which Frameworks should undergo further technical stakeholder engagement. During this reporting period, central Frameworks programme teams commissioned policy

departments to identify when and where further technical stakeholder engagement would be required.

## Cross-Cutting Issues

- 1.27. Work has continued between UK Government departments and the devolved governments to make progress on the resolution of the various cross-cutting issues which impact on individual Frameworks. The Common Frameworks Project Board-established joint UK Government - devolved governments Cross-Cutting Issues subgroup set up in March 2021 determined the intersect between the range of cross-cutting issues and Common Frameworks, and sought ways of resolving these issues. The group met three times within this reporting period, and its actions have included monitoring progress of the resolution of cross cutting issues on a Framework-by-Framework basis, and preparing standardised language on cross-cutting issues for potential inclusion in Common Frameworks, in advance of ministerial meetings. Because not every Common Framework intersects with every cross-cutting issue, or to the same extent, agreed forms of wording on cross-cutting issues ensure a common standard across the programme, recognising that the standardised text will be supplemented with Framework-specific details where necessary. At a ministerial quadrilateral on 10 November, ministers agreed standard text for international relations and trade and the Northern Ireland Protocol, and confirmed they were content with the standard language covering the Trade and Cooperation Agreement.
- 1.28. Work on the Intergovernmental Relations Review (agreed and published following this reporting period, on 13 January 2022<sup>4</sup>) continued throughout the reporting period. The completion of the review will allow for Frameworks to be updated to reflect Intergovernmental Relations review outcomes.
- 1.29. The principles for Common Frameworks agreed at JMC(EN) on 16 October 2017 state that “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 that shares a land border with the EU. They will also adhere to the Belfast Agreement”.
- 1.30. The Protocol on Ireland/Northern Ireland to the Withdrawal Agreement, including the Unilateral Declaration on Consent made by the UK Government, avoids a hard border on the island of Ireland, whilst ensuring that the UK, including Northern Ireland, could leave the EU as a whole. As long as the Protocol is in force, special provisions apply in Northern Ireland. These include (but are not exhausted by) 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. A number of pieces of EU legislation will continue to apply directly in Northern Ireland by virtue of the Protocol, in certain policy areas. These are set out in the Annexes to the Protocol.

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<sup>4</sup> <https://www.gov.uk/government/publications/the-review-of-intergovernmental-relations>

- 1.31. Common Frameworks policy teams have continued to work with the teams responsible for the Common Frameworks programme to ensure that Common Frameworks satisfactorily take account of the specific circumstances in Northern Ireland that arise as a result of the Protocol. Common Frameworks are one of several mechanisms which will allow for consideration and management of the impact of the different circumstances arising, and manage any long term impact. The Government considers that Frameworks contain the governance structures needed to contribute to managing divergence arising from the Protocol in relevant areas.
- 1.32. During the reporting period, UK Government officials and devolved government officials came to an agreement regarding a process for considering possible exclusions from the market access provisions of the UK Internal Market Act in Common Framework areas. Following official level work, a quadrilateral meeting between ministers on 10 November agreed on an approach.
- 1.33. Subsequently a written ministerial statement<sup>5</sup> was made in both Houses of Parliament on 9 December setting out this process and the UK Government's commitment to it. This was welcomed by the Common Frameworks Scrutiny Committee.

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<sup>5</sup> <https://questions-statements.parliament.uk/written-statements/detail/2021-12-09/hcws459>



## Legislation Relating to Retained EU Law Restrictions

- 1.34. Section 12 of the European Union (Withdrawal) Act 2018 removed the requirements in each of the devolution statutes that the devolved legislatures could only legislate in ways that were compatible with EU law. The Act then replaced 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. These provisions came fully into force at the end of the Transition Period.

### Regulations to 'Freeze' Devolved Competence

#### Retained EU law restrictions applied during reporting period

- 1.35. 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

- 1.36. 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

- 1.37. In addition to the 'freezing' powers inserted into the devolution statutes by the European Union (Withdrawal) Act, section 12(9) confers a power on UK Ministers to repeal, by regulations, the provisions containing those powers.

#### Powers to apply retained EU law restrictions repealed during reporting period

- 1.38. No regulations have been made under section 12(9) of the European Union (Withdrawal) Act to repeal the powers to 'freeze' devolved competence in relation to retained EU law during the reporting period. However, a draft statutory instrument was laid before Parliament after the end of the reporting period, on 25 January 2022, to repeal the powers to apply retained EU law restrictions.



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

- 1.39. The UK Government has not sought to make use of the powers to apply retained EU law restrictions, reflecting the effective collaborative basis on which both the UK Government and devolved governments have worked to develop and implement Common Frameworks. Significant progress has been made to establish Common Frameworks jointly with the devolved governments.
- 1.40. The 'freezing' powers provided a contingent mechanism, if needed, to maintain existing ways of working while UK Common Frameworks were being developed. Since 31 January 2022, the powers to apply retained EU law restrictions cannot be used. The UK Government laid a draft statutory instrument on 25 January 2022 to repeal those powers through the enabling power set out in section 12(9) of the European Union (Withdrawal) Act.