Agenda – External Affairs and Additional Legislation Committee

Meeting Venue:

Video conference via Zoom

Meeting date: 11 January 2021

Meeting time: 14.00

For further information contact:

Alun Davidson

Committee Clerk

0300 200 6565

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In accordance with Standing Order 34.19, the Chair has determined that the public are excluded from the Committee's meeting in order to protect public health.

This meeting will be broadcast live on senedd.tv.

Registration period

(13.30–14.00)

1 Introductions, apologies, substitutions and declarations of interest

(14.00)

2 Scrutiny session with the Counsel General and Minister for European Transition

(14.00–15.00) (Pages 1 – 68)

Jeremy Miles MS, Counsel General and Minister for European Transition

Ed Sherriff – Welsh Government

Sophie Brighouse – Welsh Government

3 Papers to note

(15.00–15.05)

3.1 Paper to note 1: Correspondence from the Chairperson of the Committee for the Executive Office to the First Minister and deputy First Minister of Northern Ireland regarding committee scrutiny of common frameworks - 16 December 2020

(Pages 69 - 71)

3.2 Paper to note 2: Correspondence from the Minister for Housing and Local Government to the Chair of the Climate Change, Environment and Rural Affairs Committee regarding the Hazardous Substances draft framework - 18 December 2020

(Pages 72 - 73)

3.3 Paper to note 3: Correspondence from the Convener of the Health and Sport Committee to the Chair regarding Provisional UK Common Framework on Nutrition labelling, Composition and Standards - 22 December 2020

(Pages 74 - 79)

3.4 Paper to note 4: Correspondence from the Counsel General and Minister for European Transition to the Chair of the Legislation, Justice and Constitution Committee regarding the Joint Ministerial Committee (EU Negotiations) - 6 January 2021

(Page 80)

3.5 Paper to note 5: Correspondence from the Counsel General and Minister for European Transition to the Chair and the Chair of the Legislation, Justice and Constitution Committee regarding the Ministerial forum for Trade - 7 January 2021

(Page 81)

3.6 Paper to note 6: International Agreements, Common Frameworks and Devolution - a paper from Professor Michael Keating and Lindsey Garner-Knapp

(Pages 82 - 102)

4 Motion under Standing Order 17.42(vi) and (ix) to resolve to exclude the public from the remainder of the meeting

(15.05)

5 Scrutiny session with the Counsel General and Minister for European Transition - consideration of evidence

(15.05-15.20)

6 Consideration of Common Frameworks summary documents received

(15.20-15.50) (Pages 103 - 182)

7 Changes to freedom of movement after Brexit – the implications for Wales: proposal for follow-up work

(15.50-16.05) (Pages 183 - 185)

Agenda Item 2

Document is Restricted

Document is Restricted

Northern Ireland Assembly

Committee for the Executive Office

Arlene Foster MLA and Michelle O'Neill MLA
First Minister and deputy First Minister
The Executive Office
Stormont Castle
Ballymiscaw
Belfast
BT4 3TT

16 December 2020

Dear Arlene and Michelle

COMMITTEE SCRUTINY OF COMMON FRAMEWORKS

In recent months Assembly Committees have been engaging in the scrutiny process for common frameworks. As you are aware, this scrutiny is crucial for the development of the frameworks system, and the sharing of framework summaries and provisional frameworks with committees is key to the transparency of the system.

You will also be aware that Chloe Smith MP, Minister of State in the Cabinet Office, has responsibility for the common framework programme. In correspondence to the House of Lords Liaison Committee on 1 June 2020, the Minister shared the process developed by officials across the UK Government and devolved administrations to enable parliamentary scrutiny of common frameworks to happen in parallel across legislatures. A copy of the Minister's correspondence is attached for information.

Key points from the scrutiny process outlined by the Minister include:

- Throughout the scrutiny process the administrations will be sharing the same information at the same time with their own legislatures;
- At the same time as it is sent to stakeholders, the summary of the framework will be sent by the department responsible for the framework in each administration to their respective legislature for their information. This will be accompanied by an offer of a technical briefing by the policy team to answer any questions committee members might have at this stage. This will help inform preparation for future parliamentary scrutiny when the policy content of the agreement is more comprehensively developed. At this point the policy team responsible for the framework will consult with their respective committee clerks and discuss timings for the scrutiny process;

- After Joint Ministerial Committee (European Negotiations) (JMC(EN)) Ministers agree the provisional framework via correspondence, the policy teams responsible for the framework in each of the administrations will lay the provisional framework, together with any related implementation products such as any concordat associated with the framework, in its respective legislature.

While the expectations of this process are clear, Assembly committees have encountered difficulties as the process has not been followed by Executive departments. These difficulties have presented challenges to the scrutiny process and the ability of committees to scrutinise the frameworks in accordance with the agreed phases.

Examples of the issues experienced include:

- The Committee for Health received the Food and Feed Safety and Hygiene provisional framework documents almost two weeks after they were published on the UK Government website. This was also the case for the Nutrition Labelling, Composition and Standards provisional framework. We understand the Joint Ministerial Committee gave provisional confirmation to the latter framework more than a month prior to its publication.
- Regarding two further common frameworks for the Committee for Health (Blood Safety and Quality; and Organs, Tissues and Cells), we understand these were received by the Lords Common Frameworks Scrutiny Committee on 30 November but have yet to be received by the Committee for Health.
- The Committee for Finance received the Public Procurement provisional framework on 2 December. However, at this stage the Committee still had not received the summary framework document, despite this summary being issued to stakeholders in October.
- The Chemicals and Pesticides framework falls under the scope of two Committees; the Committee for Agriculture, Environment and Rural Affairs (CAERA) is the lead Committee, while the Committee for Economy is also engaged in the scrutiny process. The Committee for Economy received the provisional framework documents ahead of CAERA, which has still not received the documents, although it has already scrutinised the summary.
- Multiple frameworks will be considered by the Committee for Agriculture, Environment and Rural Affairs. The Committee is also scrutinising a high volume of secondary legislation relating to EU Exit. Much of the legislation the Committee has already considered relates to specific common frameworks, and often the Committee has undertaken this scrutiny without knowing that a piece of legislation is part of a common framework, which framework it corresponds to, and without having seen the framework.
- CAERA has also noted that stakeholders have published summaries e.g. for the Ozone depleting substances and F-gases framework, while the Committee has been instructed that it should not share or publish the framework documents it receives.
- The Committee for Infrastructure will scrutinise the Hazardous Substances Planning framework. This was published by the UK Government and sent to the Lords Common Framework Scrutiny Committee on 23 November. We

understand the corresponding Senedd Committee received the provisional frameworks document on 15 October, yet this was only received by the Committee for Infrastructure on 9 December.

- The Committee for Infrastructure received provisional framework documents for five transport-related common frameworks on 9 December. The summaries relating to these frameworks had been received by the Commons Transport Committee on 15 October, and the Lords Common Frameworks Scrutiny Committee on 27 October. However, to date, the Committee for Infrastructure has not received any of these summary documents.

It is important that the process for scrutiny of common frameworks is facilitated by departmental officials following the outlined process, including in relation to timely sharing of information across all institutions; in provision of summary documents and timely provision of provisional frameworks. It is also important that Assembly committees should be notified where any legislation brought forward to the committee relates to a common framework.

The Committee for the Executive Office would be grateful if you could clarify how the common frameworks scrutiny system should be working; why these issues have arisen; and the steps the Executive Office will take to ensure that all departments are following the Cabinet Office guidance issued in June 2020.

In relation to the third principle for the development of common frameworks, the Committee would also be grateful for details of how the Executive Office will monitor whether common frameworks recognise the economic and social linkages between Northern Ireland and Ireland; and adherence to the Belfast/Good Friday Agreement.

A copy of this correspondence will be sent to the House of Commons Public Administration and Constitutional Affairs Committee; the House of Lords Common Frameworks Scrutiny Committee; the Scottish Parliament Finance and Constitution Committee; and the Senedd European Affairs and Additional Legislation Committee.

Yours sincerely

Colin McGrath MLA
Chairperson, Committee for the Executive Office

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Julie James AS/MS
Y Gweinidog Tai a Llywodraeth Leol
Minister for Housing and Local Government

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Welsh Government

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Chair
Climate Change, Environment and Rural Affairs Committee
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18 December 2020

Dear Mike

Further to my letter of 13 November, I am now in a position to update you on a number of points in relation to the Hazardous Substances Draft Framework. The following information updates the responses I previously gave:

Scrutiny process and timelines

9. Can you confirm that the framework will comprise the provisional FOA, the Concordat and the updated MOU referred to in the draft FOA?

The MoU referred to in the provisional FOA relates to the COMAH Regulations which is not part of this framework. Since I previously replied, it has been agreed we will no longer pursue a concordat. The framework will therefore solely consist of the text set out in the provisional FOA, with the operative parts to note being sections 6, 8, 11, 12 and 13.

10. Can you clarify whether the Concordat and the updated MOU will be available for Senedd scrutiny?

A concordat is no longer proposed.

11. Can you clarify the timeline for Senedd scrutiny of the provisional FOA and associated documents?

As with the other frameworks, the Senedd will have time to consider this fully in 2021.

Monitoring and review arrangements for the framework

13. Can you clarify whether a report of the review meeting between the UK administrations will be made publicly available?

The review of the framework will involve stakeholders so it is anticipated a report of the review meeting will be made publically available.

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14. Can you explain in what circumstances would it not be appropriate to involve stakeholders in the review process for the framework?

We intend to involve stakeholders in the review but as with all engagement work the process should be proportionate to the issues being considered. If very few issues have been raised in relation to hazardous substances planning in the period before the review, this would suggest a less formal approach to review would be appropriate.

15. Can you confirm whether and how the Senedd will be able to contribute to the review process for the framework?

It is not anticipated that the Committee will be formally invited to participate in the review process. Members of the Senedd however would be able to engage in the same way as other stakeholders.

I hope the above responses provide you with additional information to assist in the scrutiny of the Draft Framework. Please be assured that when we have reached a decision collaboratively with the other administrations regarding the framework review process and the final format of the Framework, the Committee will be updated.

Yours sincerely

Julie James AS/MS
Y Gweinidog Tai a Llywodraeth Leol
Minister for Housing and Local Government

Cc: Counsel General

Agenda Item 3.3

The Scottish Parliament
Pàrlamaid na h-Alba

David Rees MS
Chair
External Affairs and Additional Legislation Committee
Senedd Cymru

c/o Alun Davidson
Clerk

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22 December 2020

Dear David

UK Common Frameworks – Provisional UK Common Framework on Nutrition labelling, Composition and Standards

I am writing to bring to your attention some recent work which has been undertaken by the Health and Sport Committee of the Scottish Parliament on the provisional UK Common Framework on Nutrition labelling, Composition and Standards.

I understand your committee has also recently considered the provisional framework.

Attached is correspondence we have issued to Mairi Gougeon MSP, Minister for Public Health, Sport and Wellbeing setting out our commentary on our consideration of the provisional framework to date.

Yours sincerely

Lewis Macdonald

Lewis Macdonald
Convener, Health and Sport Committee

The Scottish Parliament
Pàrlamaid na h-Alba

Mairi Gougeon MSP
Minister for Public Health, Sport and Wellbeing

cc. Bruce Crawford MSP
Convener Finance and Constitution Committee

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22 December 2020

Dear Minister

UK Common Frameworks – Provisional UK Common Framework on Nutrition labelling, Composition and Standards

This letter sets out the Health and Sport Committee's commentary on the Provisional UK Common Framework on Nutrition labelling, Composition and Standards.

To inform the Committee's consideration of the NLCS Provisional Framework we wrote to your predecessor with a series of questions on 17 November. He responded to this letter on 30 November.

The Committee also held two oral evidence sessions, the first with stakeholders on the 1 December and the second with Mr FitzPatrick on 8 December.

You may also wish to note that the Committee recently responded to the Finance Committee's request for our views on the impact of Brexit on Devolution. In our response we detail the role we envisage the Parliament and Committees should play in consideration of common frameworks. We have sought to adopt our proposed approach in consideration of this our first provisional framework.

We understand the NLCS provisional framework is one of the first to be considered by the Scottish Parliament. It is therefore important to recognise that the approach adopted to scrutinise this framework may act as a guide to future scrutiny for others.

Parliament as conduit between stakeholders and Scottish Government

We held an evidence session with stakeholders as it is important to hear whether their views have been taken account in the NLCS provisional framework.

Stakeholders referred to frameworks as having been "invisible" and "under the radar". Those stakeholders who had been consulted on the provisional framework suggested this had been at an introductory stage and wasn't extensive.

We are concerned consultation on this framework has not been widespread. Our consideration has therefore brought the framework to the attention of a wider audience and raised its profile amongst stakeholders.

At our evidence session with Mr FitzPatrick he referred to the committee's role being crucial to this process.

- **We consider it is important that going forward framework development is more timely and participative. What steps will the Scottish Government take to ensure this is the case given the constraints within which you are required to operate?**

- **On bringing forward future provisional frameworks to the Parliament it would assist our scrutiny if you could confirm:**

    - **Information on the consultation – a copy of the document that was consulted on and/or the questions that were asked**
    - **Who was consulted and at what points in the process this occurred**
    - **The responses received**
    - **The outcome of the consultation including whether changes were made to the final framework as a result and it not the reasons why no change was made**
    - **Are there any Scotland specific policies that the framework protects, if so what are they?**

- **The Scottish Government acknowledge the Committee has a role to play in highlighting stakeholders issues and concerns. However, we have only been invited to become engaged with this framework as it approaches its final drafting. What steps can the Scottish Government take to ensure our role in highlighting stakeholders concerns or issues can happen timely ensuring their comments inform decision taking?**

- **Going forward as this Framework is finalised and implemented what further consultation and engagement will stakeholders have in it?**

Looking at frameworks in silo

We understand that the NLCS framework is one of a number being developed across food and nutrition policy.

On the 30 November we received the Food and Feed Safety and Hygiene (FFSH) provisional Common Framework. We understand other relevant frameworks in this

policy area include one on Food Compositional Standards and Labelling Framework. We are yet to have sight of that, or any detail regarding its contents.

It is challenging for the Committee and stakeholders to determine if the provisional frameworks are encapsulating all the relevant food and nutrition policy issues until we see the complete picture of all relevant frameworks. This point was illustrated in evidence from one stakeholder expressing concern that novel foods had been omitted from the NLCS Framework. The position only became clear when Mr FitzPatrick confirmed in evidence that novel foods was being addressed in the FFSH provisional framework.

It is difficult for the Committee to reach a view on only the part of the jigsaw that is the food and feed safety common frameworks.

Recent developments in EU Exit negotiations and UK legislation

When you gave evidence to the Committee on the 8 December negotiations on Britain exiting the transition period with a trade and security deal were ongoing. The UK Internal Market Bill was also being considered by the UK Parliament.

We explored with him the issue of the interoperability of this framework and the Ireland/Northern Ireland Protocol. When we asked about food and drink business planning to halt exports to Northern Ireland for the months following 31 December we were told no reassurances was available at this point.

Mr FitzPatrick also expressed concern the UK Internal Market Bill could remove the primacy of common frameworks.

- **Are you able to provide an update on the Scottish Government's position on the primacy of frameworks and the interoperability of this framework and the Ireland/Northern Ireland Protocol following recent developments at a UK and EU level? If not, then please advise when you anticipate a degree of certainty will be available allowing our work on this aspect of the framework to be concluded?**

Monitoring of framework implementation and ensuring protection of public health

At the evidence session on 8 December Mr FitzPatrick spoke of common frameworks acting as both a driver for providing a consistent approach across the four nations and acknowledgment of policy divergence. He stated the Scottish Government view was the law in Scotland should be aligned with EU law only when such alignment would be appropriate and in Scotland's best interests. He also told the Committee the success of the framework could be measured by whether public health in Scotland remains protected. We consider going forward that the Parliament will have a role to play to assess common frameworks deliver against these Scottish Government aims.

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It is important the Parliament ensures the voice of relevant Scottish stakeholders, including industry and regulators has been heard. Also, that the decisions reached within the framework will enable the delivery of the best outcomes for Scotland.

The Committee has a role to assess whether this framework and those with which is to align will afford the opportunity to protect and improve public health in Scotland.

It is also important consideration is given to what level of engagement and how frequently the Parliament and Committee is kept abreast of the framework's operation.

We observe the House of Lords Committee Common Frameworks Scrutiny Committee in its letter to the UK Government stated—

> "We note that there is no mention of Parliament being part of the review process. However, an annual report on the activities of the NLCS Policy Group, including on the levels of divergence and the extent to which the dispute resolution process has been utilised, will be submitted to Ministers and may be used to inform any reviews. Is there is a reason why this report could not be simultaneously provided to the UK Parliament and devolved legislatures? Do you envisage any other opportunities for parliamentary involvement in the review of this common framework?"

We support the suggestion that the annual report on the activities of the NLCS Policy Group be notified to the Committee. It would assist if this annual report could contain a summary of the changes made under the framework over the year and a forward look indicating expected changes in the coming year. It would also be helpful to have an indication of when the first NLCS Policy Group report would expect to be produced.

In addition to the annual report we consider that for the Committee's monitoring of developments to be proportionate and timely the Committee should also be provided with updates by the Scottish Government when material changes in Scottish procedures under this framework are proposed. The Committee should not have to await receipt of the annual report to learn of developments that have already taken place. The Committee should be provided an opportunity to input in good time to comment on and influence proposed approaches. It would assist the Committee if the Scottish Government could set out how such a request could be facilitated given both our scrutiny role and the Scottish Government's monitoring and role in the framework's implementation and ongoing development.

Timing of scrutiny

The Committee were originally to respond to the provisional framework within 28 days of receipt. No summary of the provisional framework was provided in advance. We replied indicating it would not be possible to adequately consider and finalise our consideration within the timescales requested.

Detailed scrutiny of a provisional framework requires sufficient time to be provided to enable us to seek written and oral views from stakeholders, and an opportunity to

engage with the Scottish Government. A more realistic timescale for consideration of this specific framework would have been ten weeks.

The specific period to consider a provisional framework will require to be variable depending upon the complexity and size of the proposed policy. We consider there must be a flexibility of approach here.

We suggest the need for an agreed minimum period for consideration of provisional frameworks which we hope is not then translated into the deadline for the Parliament being involved.

We note that other legislators are also requiring time to ensure they can scrutinise the provisional framework appropriately.

- **Can you provide an assurance that the Scottish Government will build sufficient time into its timetable for the development and completion of provisional frameworks to enable the Scottish Parliament to conduct its scrutiny function effectively?**

As discussed above we consider there to be a role for the Committee to be kept abreast of updates by the Scottish Government when material changes in Scottish procedures under this framework are proposed. We seek assurances that the Scottish Government will in updating proposed changes allow appropriate time for our scrutiny.

To help inform the Committee's continued scrutiny of the other provisional frameworks it would be helpful if a response could be received by **Wednesday 13 January.**

A copy of this letter will be sent to the other legislators currently considering this provisional framework.

Yours sincerely

Lewis Macdonald
Convener, Health and Sport Committee

Jeremy Miles AS/MS
Cwnsler Cyffredinol a'r Gweinidog Pontio Ewropeaidd Counsel General and Minister for European Transition

Llywodraeth Cymru
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Mick Antoniw MS
Chair, Legislation, Justice and Constitution Committee
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06 January 2021

Dear Mick,

I am writing to inform you, as per the inter-institutional relations agreement, that the Joint Ministerial Committee (EU Negotiations) met for an extraordinary meeting following the deal reached between the UK Government and the EU on the Trade and Cooperation Agreement on Tuesday 29 December. My apologies that this letter is retrospective, but due to the urgent nature of the meeting and taking place of the holiday period, it was not possible to notify the Committee in advance.

The meeting discussed the Trade and Cooperation Agreement, readiness and deal implementation, including the Future Relationship Bill. My full Written Statement on the meeting is available here:

https://gov.wales/written-statement-joint-ministerial-committee-eu-negotiations-12

I am copying this letter to the Chair of the External Affairs and Additional Legislation Committee.

Yours sincerely,

Jeremy Miles AS/MS
Cwnsler Cyffredinol a'r Gweinidog Pontio Ewropeaidd Counsel General and Minister for European Transition

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Mr Mick Antoniw MS
Chair of Legislation, Justice and Constitution
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07 January 2021

Dear Chairs,

I attended my first Ministerial forum for Trade meeting chaired by Greg Hands, Minister for International Trade on the 9 December, updates were provided on the ongoing free trade agreement negotiations as well as the continuity negotiations.

I raised a number of specific issues about which the Welsh Government is concerned, including the formalisation of the concordat and the involvement of Devolved Governments in any working groups that are established as part of FTA agreements (particularly where they relate to devolved matters). The Minister for International Trade was open to further discussions on both these matters. It was agreed in relation to our role in working groups that officials will develop proposals.

I will write to you again to inform you of the date of the next meeting.

Yours sincerely,

Jeremy Miles AS/MS
Cwnsler Cyffredinol a'r Gweinidog Pontio Ewropeaidd
Counsel General and Minister for European Transition

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Michael Keating, Professor of Politics, University of Aberdeen
Lindsey Garner-Knapp, PhD candidate, University of Edinburgh

International Agreements, Common Frameworks and Devolution
November 2020

1. The Issue

The devolution settlement in the United Kingdom is based on the 'reserved competences' model; only powers reserved to Westminster are specified. In addition, devolved governments and legislatures are prohibited from acting against the European Convention on Human Rights.

Except in the Northern Ireland Act, there is no provision in the devolution statutes to safeguard the UK internal market. As long as the UK was an EU member, that was largely secured by the EU internal market provisions.

There have been discussions among the UK and devolved governments over common frameworks in order to avoid harmful divergences in regulations after the end of the Brexit transition period. Common frameworks may also be necessary so that the UK meets obligations under future international agreements, where these cover devolved matters.

This poses the question of how far common frameworks will be needed and how they will be agreed and applied.

It has also raised the issue of how the devolved governments might have an input into international agreements covering devolved fields.

Negotiations on frameworks have been proceeding but they have not been concluded or published. At the same time, the UK Government has introduced and Internal Market Bill, intended to secure the internal market. This has not been agreed with the devolved governments.

We do not at the time of writing have details either of new international trade deals or of the proposed policy framework. The paper therefore uses existing international trade agreements to indicate the implications of three scenarios: a trade agreement with the EU; trading without agreements on World Trade Organization terms; and trade agreements with other countries.

2. Devolution and International Agreements

International agreements can nowadays be quite far-reaching. Trade agreements may include flanking measures covering product standards, the environment or labour standards. Other international agreements include those on the environment and climate change.
The negotiation and ratification of international agreements are a reserved competence under the UK devolution settlement. They may cover devolved matters and in that case, implementation will be the responsibility of devolved governments.

While the UK was a member of the European Union, negotiation of trade agreements was mostly the responsibility of the EU. Mixed agreements, covering matters which are national competences, require the consent of member states. While the UK was in the EU, EU law was binding on UK and devolved institutions.[1]

After Brexit, the UK Government is responsible for agreements with the EU and with other countries. Implementation of commitments across the UK is necessary to ensure compliance.

Negotiations are underway on common frameworks among the UK and devolved governments. A UK Internal Market Act has been passed by the UK Parliament but is the subject of a legal challenge by the Welsh Government.

The UK Government has promised that the devolved governments will be consulted on trade agreements but not that they will be involved in the negotiations.

Input from the devolved administrations into international agreements is governed by the 2014 Memorandum of Understanding. This is rather vague. It commits the devolved governments to implement international obligations. In the case of disputes, matters are resolved through the JMC and then in bilateral discussions with the Secretary of State for Foreign and Commonwealth Affairs.

Mechanisms for parliamentary input into, and scrutiny of, international agreements at Westminster are weak. There is no provision for devolved input.

If an international agreement requires legislation to apply its provisions, the relevant laws may be introduced at Westminster (with legislative consent) or by the devolved legislatures in relation to areas of devolved competence.

UK ministers can direct Welsh Ministers to give effect to any international obligation by executive action, statutory instrument or by introducing a Bill into the Senedd and to refrain from action that would be incompatible with such obligations. They cannot direct devolved legislatures to give statutory effect to the agreements. Westminster, however, can legislate in such devolved fields, subject only to the Sewel Convention, which, as the Supreme Court has reminded us, lacks binding effect.

3. Policymaking and implementation

Upstream

There is a case for input on the part of the devolved governments to negotiations in two circumstances: where devolved competences are at stake; and where sectors of particular importance in the devolved territories are concerned. The UK Government has promised 'consultation'. There is no formal provision in the Trade Bill for devolved input; amendments to this effect were rejected in the iteration of the Bill introduced during the 2017-19 Parliament. There may be a case for something stronger than this, giving the devolved territories a formal role. It is important that information be freely available not only to devolved governments but also to the legislatures, stakeholders and the public. If the

[1] Mixed agreements, covering areas of shared competence between the EU and Member States, are discussed below.

devolved institutions are to contribute to international trade deals, this requires that they have the capacity, including information, staff and time.

Downstream
The UK Government has a number of ways to apply provisions of international agreements in devolved territories. UK Ministers can instruct devolved Ministers, as noted above. The EU (Withdrawal) Act 2018 (to which the then National Assembly for Wales, but not the Scottish Parliament gave consent), allows UK Ministers temporarily to make regulations to freeze devolved legislatures powers related to EU retained law in devolved fields. Westminster may over-ride devolved legislatures and legislate itself. The UK Government can work in partnership with the devolved governments to transpose the provisions of agreements in devolved areas. If international agreements were to impose additional financial burdens on devolved governments, they might reasonably request additional funding. It will also be up to regulatory agencies to ensure implementation of obligations. We do not yet know exactly how new UK regulatory agencies (replacing EU agencies) will work across reserved and devolved matters.

Compliance and Arbitration
The UK Government is responsible for any non-compliance both in EU law and of international trade agreements. In the case of the EU, it is UK Government policy that any penalties incurred by non-compliance on the part of a devolved government will result in the adjustment of that government's block funding allocation. To our knowledge, this has not happened to date. A similar arrangement might be applied to international trade. In international law, the UK Government would similarly be responsible for any failure to comply with agreements. Experience elsewhere suggests that partners in international trade deals might require guarantees that they would apply in the devolved territories to be written into the agreements. Trade agreements will include dispute resolution mechanisms. These have included arbitration panels drawn from both sides and sometimes from business as well as neutral international members.

For the future agreement with the EU, the Political Declaration proposes a Joint Committee and a dispute resolution mechanism, leading, if need be, to binding arbitration. If the dispute arises from a devolve issue, there needs to be a mechanism for the devolved government to be involved in the resolution, although formally the UK Government will have the responsibility. If countries fail to respect the terms of trade agreements, there may be legal action; the relevant part of the agreement may be suspended; or there may retaliatory sanctions. It would be for the UK Government to decide what the impact of these would be in the devolved territories.

Discretion
In matters of EU competence within their own competences, the devolved UK bodies generally have the same degree of discretion in the application of policy as do Member States. This has allowed significant variation in, for example, the application of agricultural and rural development policy. This might be an important issue in the negotiation and application of future trade agreements.

4. The Scope of International Trade Agreements

Any international trade regime implies restrictions on what signatory states might do in areas that affect trade.

Membership of the EU entailed a high degree of integration. Within the Internal Market[2] there is free trade in goods (including agricultural products), free trade in services (which is not yet complete) and a high degree of regulatory harmonization as well as free movement of labour. Member States must comply with new regulations in a process of 'dynamic harmonization'.

At the other end of the spectrum are obligations arising from membership of the World Trade Organization ("WTO"), which covers goods (GATT – General Agreement on Tariffs and Trade), services (GATS - General Agreement on Trade in Services) and intellectual property (TRIPS - Trade-Related Aspects of Intellectual Property Rights).[3] Without free trade agreements, member states are subject to WTO rules and trade on 'WTO terms', which means their own commitments within WTO. WTO membership entails 'most favoured nation' treatment under which all WTO members must be treated equally. There are some rules about regulation and subsidies. The WTO has no enforcement provisions but where members who are found by WTO panel and Appellate Body to be violating its rules, the complainant state may take retaliatory action.

In between EU and WTO terms lie free trade agreements. Recently negotiated trade agreements include obligations that go beyond WTO membership (WTO+). A general principle is that of the 'level playing field, so that partners cannot lower standards to boost trade or encourage investment, a phenomenon known as the 'race to the bottom'. For example, a country cannot reduce the minimum wage or lower environmental standards to encourage foreign direct investment or increase goods for export. Another key principle is 'non-regression', so that countries cannot lower existing standards. This does not require dynamic harmonization, to keep up with others' new commitments. Agreements increasingly include services and agriculture.

To illustrate the last category, we use examples from the Comprehensive Economic and Trade Agreement (CETA) (EU-Canada); the US-Mexico-Canada Agreement (USMCA, replacing NAFTA); the EU-Japan Economic Partnership (EUJEP) and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP).

These include a number of general principles allowing states to maintain standards across a range of issues.

CETA has as one of its objectives 'to uphold Europe's high standards in areas like food safety, workers' rights and the environment.'

The CPTPP 'provides recognition of inclusive values, including the importance of corporate social responsibility, environmental protection and enforcement, sustainable development, labour rights, cultural identity and diversity, and the elimination of bribery and corruption.'

CETA also includes a section on The Right to Regulate, which 'preserves the ability of the European Union and its Member States and Canada to adopt and apply their own laws and regulations that 'regulate economic activity in the public interest, to achieve legitimate

[3] The UK in a Changing Europe, *What would 'trading on WTO terms' mean for the UK?,* https://ukandeu.ac.uk/wp-content/uploads/2018/12/What-would-trading-on-WTO-terms-mean-Long-Guide.pdf

public policy objectives such as the protection and promotion of public health, social services, public education, safety, the environment, public morals, social or consumer protection, privacy and data protection and the promotion and protection of cultural diversity.'

These regulatory commitments are made more enforceable when tied to trade agreements because signatory partners can be held liable either through dispute settlement or retaliatory action if measures are relaxed.

5. Machinery for Managing Common Issues

These issues will be addressed in various ways: through UK-wide frameworks; in sectoral bills in matters like environment, agriculture and fisheries; and by internal market provisions. Under the EU Withdrawal Act, the UK Government has power temporarily to take control of returning EU competences in devolved areas by statutory instrument. This power has not so far been used. Until the future relationship with the EU and trade agreements with third countries are clear, it is difficult to link these areas directly to trade requirements.

Frameworks
On the basis of principles agreed between the UK and the Scottish and Welsh Governments in October 2017, the UK and devolved governments have been engaged in negotiations about UK-wide framework for specific policy fields. One aim of these is to secure international trade deals.

Under Schedule 3 of the European Union (Withdrawal) Act, the UK Government provides reports to the UK Parliament every three months. These reports indicate progress made on common frameworks. Twenty-seven policy areas have been identified where no further action to create a common framework is required, twenty-two policy areas where non-legislative framework agreements might be needed, and twenty-one policy areas within the competence of the Welsh Parliament where legislation might be needed. Reading the last two reports shows that progress has been made in sixteen policy areas and most significantly on the Hazardous Substances (Planning) framework and Nutrition Health Claims, Composition and Labeling framework (see Appendix 1 for further details). The greatest progress has been made in policy areas where non-legislative framework agreements might be needed.

There is significant overlap with recently signed free trade agreements including the USMCA and CETA and the proposed framework policy areas (see Appendix 1 for further details). As a result, the decisions made during the framework negotiations could have the potential to affect trade negotiations and vice versa. Key areas include environment, government procurement, and agriculture, all of which feature in the USMCA and CETA. Furthermore, when comparing the progress made towards creating framework to the USMCA and CETA, it is evident that there is a lack of progress towards the policy areas of environment, government/public procurement, and agriculture.

Some areas where no further action to create a common framework is required do nevertheless correspond to the USMCA's Environment chapter (24) and CETA's Trade and Environment (24) including policies related to energy, forestry, and maritime industries as well as other policy matters related to labour and cooperation chapters.

In policy areas where legislative frameworks might be needed, there has been progress in several environmental and agricultural policy areas predominantly related to foodstuffs and animal husbandry. These correspond to the USMCA's chapters on Agriculture (3), Rules of Origin (4), and Technical Barriers to Trade (11), and CETA's chapters on Intellectual Property (20) and Sanitary and Phytosanitary Measures (5). Framework policy issues including agriculture, labour, and environmental policy cover issues which are also included in the USMCA and CETA have not been finalized.

Sectoral Bills
The Fisheries Act 20202 creates a Common UK Framework requiring the four UK Fisheries Administrations to develop a 'Joint Fisheries Statement' detailing policies for contributing to the achievement of the fisheries objectives. The UK Government regards fishing opportunities as a reserved matter but agrees that detailed policy and administration is devolved. The Act received consent from the devolved parliaments in Scotland and Wales. . A Fisheries Bill for Wales is promised.

The UK Environment Bill contains a mixture of measures with different territorial applications. According to the UK Government: 'Most of the Bill extends to England and Wales and applies in England…'this has enabled us to bring forward a number of measures that we expect to see adopted outside of England. These joined up measures will help us manage the environmental challenges we are facing together across the UK.[4] Provisions on waste including producer responsibility, resource efficiency and exporting waste extend and apply to the whole of the UK, as do the provisions on environmental recall of motor vehicles, and the provisions on the regulation of chemicals. The Welsh Government supports the principle of a UK Bill but differs with the UK Government on the extent of legislative consent required.

The Internal Market
Alongside the discussions on sectoral frameworks, there have been discussions between the UK and Welsh Governments on the concept of a UK Internal Market. The Scottish Government was not party to these discussions and after the General Election of 2019, the UK Government proceed to elaborate the proposals on its own. It appears that one motive for bringing forward these provisions was to ensure that the terms of any trade agreement would be applicable across the UK.

It is not clear what the concept of an UK internal market includes. There is no reference to it in the devolution legislation except for the Northern Ireland Act and it has not yet been tested in law. The EU Internal Market is a transversal principle, applying potentially across any policy field, and providing for free movement of goods, services, capital and people. It includes measures brought forward by the European Commission and approved by the Council of the EU and Parliament; decisions of the Commission and Court of Justice; and the principle of mutual recognition whereby if a good satisfies standards in any Member State, it can be sold in all the others, unless there is a good reason for national restrictive measures.

[4] (https://www.gov.uk/government/publications/environment-bill-2020/30-january-2020-environment-bill-2020-policy-statement#environmental-governance).

EU Internal Market provisions are subject to the tests of proportionality (the measure should be no more detailed than necessary) and subsidiarity (action should be taken at the lowest level possible). The UK devolution settlements have no such safeguards.

The UK Internal Market White Paper focuses on the key principles of non-discrimination and mutual recognition.

Mutual recognition would provide that goods approved in one part of the UK could be sold in the other parts even though it did not meet the standards of that part. This means that, in the event of a free trade agreement with another state, imported goods meeting standards set by the UK Government for England could be sold in the other parts of the UK even though they did not meet local regulatory standards.

The White Paper on the Internal Market indicates that 'key decisions will be put to the UK Parliament for approval, rather than resting exclusively with the UK Government'. There are no similar guarantees for the devolved institutions. This contrasts with international experience.

Internal market provisions exist in several federal and devolved countries. Typically, these are agreed in intergovernmental negotiations. There is no case where a central government can unilaterally determine what constitutes an internal market and how it should be interpreted.

In 2017 a Canada Free Trade Agreement was negotiated between the federal government and the provinces. It provides for provinces to agree on mutual recognition of standards but allows exceptions and specifies that provinces can legislate to protect legitimate public policy objectives including public health, social services, safety, consumer protection, cultural diversity, the environment and workers' rights. This agreement includes a dispute resolution procedure, including arbitration.

Switzerland adopted an Internal Market Act to allow compliance with the EU Internal Market. It is based on non-discrimination and mutual recognition but in practice is developed in intergovernmental negotiations. It is monitored by the Competition Commission and can, in the last instance, be enforced by the courts. Measures are subject to a subsidiarity test.

The United States does not have an internal market act but relies on the Interstate Commerce clause in the Constitution, as interpreted by the courts.

Spain's Law on the Unity of the Market act was introduced in 2013 but the Catalan Government took it to the Constitutional Court, which ruled that a mutual recognition clause was unconstitutional as it allowed autonomous communities to legislate for things happening in other regions. It establishes a Council for the Internal Market, nominated by the central and regional governments, with an independent secretariat. Matters of dispute may be referred to the intergovernmental Sectoral Conferences and, only in the last resort, to the courts.

6. Devolution implications

Some of these matters are devolved or impinge on devolved responsibilities. The principal ones are discussed in the next sections (6a-h). In each case, we consider the implications of an agreement with the EU; WTO terms; a trade agreement; and the devolution aspect.

Generally speaking, the wider the scope of the agreements with the EU and with third countries and the more binding the rules, the more they will affect devolved competences.

6a. State aid and subsidies

EU Future relationship
A key element in the level playing field discussion is state aids and subsidies. In principle, this refers to providing state subsidies to economic activities that would give domestic producers a competitive advantage. In practice, it can be interpreted broadly or narrowly. A narrow definition might be limited to direct grants. A broad definition might encompass other government activities including research support, training or land management policies favouring domestic producers. This has become a significant point of difference between the EU and the UK, with the UK resisting pressure to agree on limits in the interest of the level playing field (Financial Times, 27-07-20).

'State aid' is defined by the UK Government as follows:
'Using taxpayer-funded resources to provide assistance to one or more organisations in a way that gives an advantage over others may be state aid'[5]

The UK Government's Internal Market White Paper of July 2020[6] uses the term 'subsidy', which it defines in a similar manner:
A subsidy is, broadly speaking, support in any form (financial or in kind) from any level of government – central, regional or local – which gives advantage to a business which it could not obtain otherwise. This advantage could be in any form, including a grant, a tax break, a loan or guarantee on favourable terms or facilities below market cost.

WTO
The WTO Agreement on Subsidies and Countervailing Measures defines a subsidy as *(i) a financial contribution (ii) by a government or any public body within the territory of a Member (iii) which confers a benefit* [7]
It includes financial contributions from the state and includes grants, loans, financial incentives, tax credits, although some countries favoured a broader definition.
The Agreement outlines disciplinary measures for WTO member countries using subsidies as well as a dispute-settlement procedure and countervailing measures (such as charging extra duties).

Agricultural subsidies are regulated under WTO rules, which categorize them in three boxes. Measures in the green box are freely permitted. Those in the amber box are to be reduced. Those in the blue box are restricted.

Free Trade Agreements
Modern free trade agreements make reference to the WTO agreements either in specific 'Subsidy' chapters or in articles woven throughout the document. However, within negotiations, countries have the opportunity to include exceptions to the rule. In the EU-Japan agreement, articles from Chapter 8 (services and investment) are exempt, while the

[5] https://www.gov.uk/guidance/state-aid
[6] (https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/901225/uk-internal-market-white-paper.pdf)
[7] (https://www.wto.org/english/tratop_e/scm_e/subs_e.htm)

USMCA has some exceptions on culture. In the CETA the parties are obliged to consult each other about subsidies and seek to eliminate them.

Some trade agreements allow special measures to support Small and Medium-sized Enterprises (SMEs).

In the CETA and the USMCA, subsidies on agricultural exports are prohibited.

Devolution implications
There has been disagreement between the UK and devolved governments as to whether state aid (subsidies) is devolved (but hitherto regulated by the EU) or reserved. There is an intergovernmental Concordat on Financial Assistance to Industry.[8]

The Internal Market Act, legislatesa to expressly reserve subsidy control.

Depending on how tightly they are defined, state aid provisions could affect the economic development policies of the Welsh Parliament and Government. Were the Welsh Government to take stakes in private enterprises, this might also come under subsidy and state aid rules.

Agricultural support is devolved but hitherto governed by EU rules. These allow a certain margin of variation, which in the UK is exercised separately for England, Wales, Scotland and Northern Ireland. Under the Agriculture Act 2020 the UK Government has asserted that it will determine what will go in each of the WTO's boxes. The Welsh Government has indicated that it will remove direct support payments along with England, which would reduce the scope of conflict over that issue. There may, however, be questions about whether and how measures support rural communities might be considered subsidies.

6b. Government Procurement

Public procurement is currently regulated by EU rules.

EU Agreement
The UK Government did not include procurement in its mandate for negotiating a future relationship, apparently preferring to rely on WTO rules. The EU is seeking to go beyond this.

WTO
Within the WTO there is a plurilateral Agreement on Government Procurement (GPA), to which 48 members subscribe. There is a general agreement and schedules for individual members. The UK Trade Bill gives UK and devolved ministers concurrent powers to implement the GPA.

Devolution
Rules on procurement will affect all public bodies in Wales.

[8] https://gov.wales/sites/default/files/publications/2018-09/memorandum-of-understanding-and-supplementary-agreements.pdf).

6c. Investor Protection

Investor protection provides guarantees for foreign investors. Such measures prohibit expropriation; ban prioritising local companies; establish minimum standards of treatment and transparency practices to avoid, for example undervaluing investments; and regulate banking practices that facilitate ease of transferring funds between countries.

EU Agreement
The UK has investor protection agreements with many countries, including EU Member States although since 2010 this has been an EU competence. It is likely that investor protection will form part of any new agreement with the EU, although, according to the law firm FIETTA, this may be less than in existing agreements.[9]

WTO
Investor protection is not guaranteed by WTO rules.

Trade agreements
Provisions in modern agreements often have investor protection. CPTPP provides investment regulation and protections for the eleven signatory countries and the USMCA has maintained provisions from its predecessor NAFTA.
Investment protections could restrict governments from regulatory action that might be seen to adversely affect these assets. Investor-State Dispute Settlement (ISDS) mechanisms in trade deals allow foreign companies to sue governments for actions that distort the investment market or discriminate. This has been one of the most controversial aspects of recent trade agreements. During the Trans-Pacific Partnership (TPP) negotiations, the prequel to CPTPP, the USA argued successfully for ISDS to be included in the agreement. US firms have a track record of suing foreign governments under these provisions.

Devolution
Investor protection mechanisms could potentially affect Welsh Government actions to favour local producers, to regulate activities and to acquire private assets for public purposes related to devolved matters. Much will depend on exactly how investor protection mechanisms are defined and applied.

6d. Climate Change and the Environment

EU Agreement
The EU's negotiating mandate uses EU standards as the reference point for agreement on environmental standards. It requires measures to ensure 'that the common level of environmental protection provided by laws, regulations and practices is not reduced below the level provided by the common standards applicable at the end of the transition period in, at least access to environmental information; public participation and access to justice in environmental matters; environmental impact assessment and strategic environmental assessment; industrial emissions; air emissions and air quality targets and ceilings; nature and biodiversity conservation; waste management; the protection and preservation of the aquatic environment; the protection and preservation of the marine environment; health and product

[9] (https://www.fiettalaw.com/brexit/brexit-insight-the-protection-of-eu-uk-investment-in-the-future-partnership-agreement/).

sanitary quality in the agricultural and food sector; the prevention, reduction and elimination of risks to human and animal health or the environment arising from the production, use, release and disposal of chemical substances; and climate change.
The UK's position is to give assurances that it does not intend to lower standards but will not give up its regulatory independence.

WTO
The WTO recognises the importance of the environment and supports members in developing commitments to its protection. The WTO does not regulate the environment but offers a supportive framework for environmental provisions.

There are, moreover, international environmental agreements like the UN Framework Convention on Climate Change and the Paris climate agreement, sustainable development goals, and environmental cooperation provisions.

Trade Agreements
Modern trade agreements include provisions committing the parties to these international agreements. Within the USMCA, all parties agree to recognise each state's authority to regulate and uphold legislation, protect human, flora (plants) and fauna (animals) lives, and promote environmental cooperation and develop sustainable policies. Environmental commitments are woven throughout a number of commitments in the EU-Japan agreement.

Devolution
Environmental policy in Wales is devolved. Wales has its own climate change strategy and targets and there would be concern if international agreements seemed to permit lower standards. The UK Government has stated that this would not be the case.

6e. Food and Agriculture Standards

EU Agreement
In the EU-UK negotiations, food and agricultural standards have been an issue. Again, the EU has proposed binding commitments to high standards while the UK has merely promised that is has no intention of lowering standards.

WTO
The WTO's Agreement on the Application of Sanitary and Phytosanitary Measures stipulates that no Member should be prevented from adopting or enforcing measures necessary to protect human, animal or plant life or health, subject to the requirement that these measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between Members where the same conditions prevail or a disguised restriction on international trade. Regulations must be based on science. They should be applied only to the extent necessary to protect human, animal or plant life or health. They should not arbitrarily or unjustifiably discriminate between countries where identical or similar conditions prevail.'

Trade Agreements
As WTO agreements, agreements like CETA, CPTPP, EU-Japan, and the USMCA incorporate the SPS measures. Agricultural exports must meet the standards of importing countries; there is no harmonization or mutual recognition of standards. The US-Canada-

Mexico Agreement specifically allows the parties the right to regulate products of biotechnology, with a mechanism for consultation and cooperation.

Devolution.
Agriculture and food standards are devolved to Wales. These have hitherto been regulated largely by EU standards and principles of mutual recognition.

Fears have been raised that international trade deals could mean a lowering of standards, with chlorine-washed chicken, hormone-treated meat and genetically-modified foods being cited. This could happen if UK negotiators accept these lower standards in return for market access for other items. The Internal Market Act 2020 establishes a a system of mutual recognition of standards. This could mean that imported agricultural products approved for sale in England could qualify for sale in Wales, Scotland and Northern Ireland even if they did not meet higher standards in force in those territories.

6f. Fisheries

EU Agreement
This has become a major issue in the Brexit negotiations. The UK is pressing for a stand-alone agreement on access and quotas. The EU wants to make this part of the overall agreement, including trade in fish.

WTO
Negotiations at WTO to reduce fisheries subsidies have been continuing for several years now but there are no binding rules.

Trade Agreements
Access to fisheries do not usually feature in trade agreements, but as stand-alone agreements, within regional organizations for managing fisheries or bilateral treaties.

Devolution
During the UK's membership of the EU, fisheries management was devolved but within policy parameters set by the EU, which was also responsible for international fisheries negotiations.

6g. Culture

EU Agreement
Cultural products have not been an issue in the Brexit negotiations.

WTO
The question of whether cultural products should be exempt from trade rules has been one of the most contentious issues at the WTO.

Trade Agreements
Some modern trade agreements include provisions to protect and promote cultural identity. In the CETA, cultural products and services are exempted from restrictions on government procurement, state aid, and investment. In the CPTPP agreement, cultural protections are supplementary annexes to the agreement. The USMCA includes cultural protections for indigenous people.

Devolution
Culture is devolved in Wales. The protection of the Welsh language and of economic as well as cultural activity in Welsh has been a priority for successive governments. There are no proposals for frameworks on this field.

6h. Public Services

EU Agreement
Public services do not feature in negotiations with the EU or in the framework negotiation. They could, potentially, arise in trade agreements. Public services are often caught up in broader aspects of trade agreements, depending on how far they are actually traded.

WTO
Governments are free to choose those services on which they will make commitments guaranteeing access to foreign suppliers. Each Member must have a national schedule of commitments, but there is no rule as to how extensive it should be. Some Members have made commitments only on tourism, and there is great variation in the coverage of schedules, reflecting national policy objectives and levels of economic development. There is agreement among all Governments that in the new round of negotiations the freedom to decide whether to liberalize any given service and the principle of progressive liberalization will be maintained.[10]

Trade Agreement
The possibility of US suppliers gaining access to public services in EU countries was one of the main controversies in the failed Transatlantic Trade and Investment Partnership (TTIP). It was also raised during discussions about the US-Canada Trade Agreement in the late 1980s.

CETA discusses public services under the chapter on Domestic Regulation and in relation to ensuring that these services do not hinder or create a barrier to trade (such as licences and bureaucratic processes). CPTPP and EU-Japan includes public services under a State-Owned Enterprise and Designated Monopolies chapter and Trade in Services chapters respectively, which recognises essential public services and their role outside of the market.

Devolution
Health is devolved to Wales, Scotland and Northern Ireland, but does not feature directly in international trade agreements. Two possible effects, however, have been suggested.
Where provision of health services has been contracted out, trade agreements might stipulate that providers from the other state should be allowed to tender for contracts. Suggestions have been made the providers from the USA could come into the NHS. It is up to governments, however, to decide whether to open up their health services in this way.
It has further been suggested that other countries, notably the USA, might insist on extended Intellectual Property Rights for medicines. This could push up prices in the NHS.
A similar issue arises in relation to education.

7. Comparative Experience

[10] https://www.wto.org/english/tratop_e/serv_e/gats_factfictionfalse_e.htm

The role of sub-state governments in international treaty making arises in a number of federal states. The internal division of competences frequently cuts across responsibilities arising from treaties. No country has found a complete institutional answer to this question but they have arrived at various forms of compromise.

Germany
As an EU Member State, Germany does not negotiate international trade agreements deals and is limited to the role of its representatives at the EU's institutions. However, it can be required to ratify agreements between the EU and third states which include areas of shared EU-Member State competence. Yet it does have to ratify mixed agreements, where national competences are concerned. Germany has a well-developed system of cooperative federalism, in which legislation is mostly done at the federal level, while implementation is the responsibility of the Länder. There are two interpretations of the treaty-making power: that the federation can make binding treaties using its foreign polity powers; and that treaties in matters of Land competence can only be achieved by the Länder themselves. The issue has never been resolved but procedures were agreed under the Lindau Agreement of 1957. The Länder agreed that the federal government could negotiate treaties within their field of competence. The federal government, in return, agreed that treaties in matters of Land competence would only be reached with their consent. This includes matters administered by the Länder, so the scope is wide. If there is a matter of exclusive Land competence involved, the agreement of all the Länder governments must be obtained. If it is a matter that touches on shared Land competences or is a shared competence, then they must be consulted but do not have a veto. Treaties must be ratified by the lower chamber of Parliament, the Bundestag and, where matters of Land competence are involved by the Bundesrat, which represents the Länder governments. There is a Permanent Treaty Commission of the Länder. The process is governed by the principle of *Bundestreue*, or federal good faith. The German Constitutional Court enforces both the strict law of the constitution and the principle of *Bundestreue*. This institutional underpinning ensures that the Länder are fully informed of, and involved in, negotiations. The particular culture of German cooperative federalism makes it difficult to transfer this experience directly to other countries.

United States of America
The USA gives few opportunities for the states to engage and influence foreign policy. The federal government has been able to use the supremacy and pre-emption doctrines to sign trade agreements covering matters within the competence of the states. This has caused a lot of concern among state governors and legislators and in the US Senate. The 2002 Trade Promotion Authority Act requires communication between Congress and the executive branches before legislation on trade agreements is passed. Congress is assisted by the Intergovernmental Policy Advisory Committee on Trade (IGPAC). The IGPAC was created to liaise with state governments and report to the President, the US Trade Representative (USTR), and Congress on trade agreement negotiations. It is argued that IGPAC has been underfunded and struggles to obtain expert-level staff. US states can influence international trade policy through the Single Point of Contact (SPOC), which communicates between State governors and the USTR. These meeting are opportunities for the SPOC to identify priorities and voice concerns and for the USTR to share information on trade negotiations. However, because of the limited role of the States in trade agreements, most states provide little resources to these roles.

Canada

Canada's federal Constitution affords the provinces significant leverage in international trade agreements. The courts have ruled that where the provinces have jurisdictional authority, the federal government cannot legislate and provincial governments can refuse to implement the agreement. On the other hand, the Canadian government is liable for any provincial noncompliance with international trade obligations. To deal with this, in the 1990s the federal and provincial governments developed two non-binding, cooperative mechanisms: the joint Federal/Provincial/Territorial Committee on Trade (CTrade) with meetings held quarterly; and ad-hoc subject specific meetings held as needed. These cooperation mechanisms have developed 'trust ties' as well as underpinned Canada's competence to implement trade obligations, between the two levels of government as well as with international partners.

Canada has large regional differences in population, geographic, and economic size as well as variation in economic composition. As a result, provinces have invested resources into developing intergovernmental ministries and departments to consult, coordinate, and communicate with other provinces and to develop trade and negotiation expertise. These subnational networks often have regular subject-specific meetings (for example on labour, agriculture, oil and gas policy) which support discussions during CTrade and ad-hoc meetings with the federal government. Some provinces have invested more resources and have become leaders in particular industries. Ontario and Quebec are experts in dairy, financial services, and advanced education; Alberta and Saskatchewan are experts in oil and gas, agriculture, beef and pork; British Columbia leads with Alberta on softwood lumber; and New Brunswick and Nova Scotia lead on fisheries. When there are overlaps in sector interests, provinces consult one another yet this does not always result in agreement.

CETA offers a useful case study on the importance of having sub-state actors' direct involvement in the negotiation processes and implementation of a free trade agreement. The precursor to CETA, the Canada-EU Trade and Investment Enhancement Agreement (TIEA) collapsed in 2006, and some European countries blamed a lack of provincial involvement in negotiations. The EU had an interest in creating an agreement with deep integration including access to municipal and provincial government procurement, dairy exports, and non-tariff measures. The EU recognized that they required provincial consent on these matters. Because of the previously failed negotiation process, which took several years and significant resources from all negotiating parties, the EU insisted on the provinces and territories having a seat at the table during the CETA negotiations. Several provincial level trade negotiators described the CETA experience as novel and unlikely to become standard, even though the experience was successful in creating provincial level buy-in to the final agreement.

Belgium

As an EU Member State, Belgium's role in international trade agreements is limited to the role of its representatives at the EU's institutions. However, it can be required to ratify agreements between the EU and third states which include areas of shared EU-Member State competence. Belgium does have to ratify mixed trade agreements, where Member State competences are involved. It has a complex system of federalism in which power is shared between the federal government and three regions (Flanders, Wallonia and Brussels) and three language communities (Flemish, French and German). Because international trade is a regional competence and items within trade agreements also impinge upon the competences of both regions and the language communities, these agreements need approval from the legislatures of Belgium, Flanders (as a region and language community), Brussels, the French Community, Wallonia and the German Community.

8. Conclusion

There are substantial overlaps between devolved competences and the scope of potential trade agreements. The extent will depend on the depth and breadth of those agreements.

Trading on WTO terms would require adherence to some rather general principles.

WTO+ trade agreements would entail more commitments, although these vary across other cases.

Until the shape of trade agreements is known, it is not possible to make definitive judgements on how far they will affect devolved competences.

The UK Government has recently shown great reluctance to accept binding rules in a future agreement with the EU. The EU, for its part, has pressed for more binding commitments.

There is broad agreement between the UK and devolved governments about the need for some UK frameworks and some progress on agreeing those. Part of this need arises from trade agreements with the EU and third countries and even trading under WTO terms.

There is less agreement on what these agreements should cover and how far they should be legislative.

The frameworks process has proceeded in line with discussions about sectoral bills, including those on agriculture, fisheries and environment.

The Internal Market process has followed a rather different track and, since the General Election of December 2019, has not been conducted in cooperation with the devolved administrations. The Internal Market Act 2020 raises new questions, which have not yet been resolved.

This means that issues outside of the existing frameworks process could arise in relation to international agreements covering devolved competences.

There is, as yet, no formal process to engage devolved governments in the negotiation of international agreements.

International experience shows that in federal or quasi-federal countries they have developed intergovernmental mechanisms to deal with the issues raised in this paper.

Mechanisms for involving the UK devolved administrations and legislatures in international agreements are very weak when compared with comparable countries.

Appendix 1: Connections between Devolved Matters, Common Framework progress, and Free Trade Agreement Obligations

Annex A: NAW, Aug 2019, Frameworks re Wales		Cabinet Office, April 2019, Revised Frameworks Analysis	Cabinet Office, May 2020, The EU (Withdrawal) Act and Common Frameworks: 26 Dec 2019- 25 Mar 2020	USMCA	CETA
Policy area with:	Additional Information - what the EU law does		Progress made towards frameworks	Chapter/Side Agreement/Letter	Chapter/Annex
No further action to create a common framework is required					
1	Carbon capture and storage	Directive 2009/31/EC on the geological storage of CO2 establishes a legal framework for the environmentally safe geological storage of CO2 to contribute to combating climate change.		Ch. 24: Environment	Ch. 24: Trade and Environment
2	Environmental law concerning energy industries	EU legislation contains rules and environmental standards relevant to offshore oil and gas exploration and production, offshore gas unloading and storage, and offshore carbon dioxide storage activities.		Side Letter from the US/Letter from Canada (Energy) & Ch. 24: Environment	
3	Onshore hydrocarbons licensing	Directive 94/22/EEC sets the conditions for tendering and determining applications for hydrocarbon licenses and imposes restrictions on the terms which may be included in licences and their extension.			Ch. 12: Domestic Regulation & Ch. 24: Trade and
4	Renewable energy directive	The Renewable Energy Directive (2009/28/EC) places a 15% renewable energy target, and a 10% renewable energy sub target for the transport sector on the UK. The Directive sets out a number of other measures and frameworks to support the production and promotion of energy from renewable sources.		Agreement on Environmental Cooperation	Ch. 24: Trade and Environment
5	Environmental law concerning energy planning consents	Directives set out provisions for Environmental Impact Assessments for generating stations and overhead lines (85/337/EEC, 97/11/EC, 2003/35/EC, 2009/31/EC, 2011/92/EU and 2014/52/EU).		Ch. 24: Environment	Ch. 24: Trade and Environment
6	GEO-Blocking	Regulation prohibits blocking or redirecting users away from versions of websites available to other EU nationals. It therefore prohibits discriminatory terms of access on the basis of location in EU when purchasing distance goods, wholly online services, and services tied to a specific location (some exceptions apply), as well as discrimination based on place of issue of payment method.		Ch. 19: Digital Trade	
7	Voting rights and candidacy rules for EU citizense in local government elections	Article 20(2)(b) TFEU, Article 22 TFEU sets out that all parts of the UK must allow EU citizens the right to vote and stand in local government elections. In England and Wales local elections also include Police and Crime Commissioner elections, mayoral elections and combined authority mayoral elections. This is set out in detail in UK legislation, specifically in Section 4 of the Representation of the People Act 1983.			
8	Flood risk management	These policies and regulations (primarily the EU Floods Directive) aim to reduce the risks to people, properties and infrastructure from flooding and coastal erosion.			
9	Management of waste from extractive industries	The Directive is concerned with the management of waste from extractive (mining) industries. Specific EU Directives 2006/21/EC and the three Seveso-Directives Directives (82/501/EEC, 96/82/EC, 2012/18/EU) relating to the disposal of waste and overlapping safety of operations. Interaction with UNECE workshops in providing best practice guidance and Eurasian standards. Further interactions based on industry specific circumstances e.g. Water Framework Directive 2000/60/EC. Directive 2011/92/EU outlines future operational planning under Environmental Impact Assessments		Agreement on Environmental Cooperation & Ch. 24: Environment	Ch. 24: Trade and Environment
10	Water quality	These policies and regulations (primarily the EU Water Framework Directive and the EU Drinking Water Directive) aim to improve the ecological and chemical status of the UK's rivers, lakes, estuaries, coastal waters and groundwater, and provide safe, quality drinking water.		Ch. 24: Environment	Ch. 24: Trade and Environment
11	Water resources	These policies and regulations cover the provision of sustainable, safe and affordable water supplies for households, businesses, energy production and agriculture.			
12	Forestry (domestic)	These policies and regulations cover timber production and woodland management, including EU Environmental Impact Assessment.		Agreement on Environmental Cooperation & Ch. 24: Environment	Ch. 24: Trade and Environment & Ch. 25: Bilateral Dialogues and
13	Land use	Elements of Environmental Impact Assessment Directive and Strategic Environmental Assessment Directive cover rural land use.		Agreement on Environmental Cooperation & Ch. 25: Small and Medium-Sized Enterprises	Ch. 22: Trade and Sustainable Development
14	Noise directives	The Directive is concerned with noise mapping and action planning and does not address trade or cross-border issues.			
15	Aviation - compensating PSO air routes	Relating to regulation (EC) 1008/2008 on the Operation of Air Services (Articles 16-18).			
16	Bus franchising rules	Regulation (EC) 1370/2007 as amended by 2016/2338 relating to the way in which competent authorities are able to award public passenger services contracts.			
17	Electronic road toll systems	Directive 2004/52/EC on interoperability of electronic road toll systems and EU Regulation 219/2009.			
18	Elements of harbours (marine environment issues)	Directive 2011/92 amended by Directive 2014/52/EU on the assessment of the effects of certain public and private projects on the environment.		Agreement on Environmental Cooperation & Ch. 24: Environment	Ch. 24: Trade and Environment
19	Maritime - public service contracts/obligations, and financial assistance for shipping services which both state and finish within Scotland/to, from and winthin Wales	Regulation 3577/92 that applies the principle of freedom to services to provide cabotage maritime transport.			Ch. 14: International Maritime Transport Services
20	Maritime - ports services and port reception facilities, including for ship-generated waste	Regulation 2017/352 that establishes a framework for the provision of port services and common rules on the financial transparency of ports. Directive 2000/59 contains a mix of competence and is relevant here insofar as it relates to harbours only.		Agreement on Environmental Cooperation & Ch. 24: Environment	Ch. 6: Customs and Trade Facilitation & Ch. 14: International Maritime Transport Services

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Policy area with:		Additional Information - what the EU law does	Progress made towards frameworks	Chapter/Side Agreement/Letter	Chapter/Annex
No further action to create a common framework is required					
21	Road infrastructure safety management	Directive 2008/96/EC on that supports road infrastructure safety management.			
22	Charging of HGVs	Directive 1999/62/EC on the charging of heavy goods vehicles for the use of certain infrastructures.			
23	Trans European Transport Network	The EU Regulation establishes the trans European transport network, it includes maps of the core and comprehensive networks and sets specific standards to be implemented by 2030 and 2050 respectively. It is the geographic focus for EU transport regulation referencing individual pieces of legislation in different transport modes.			
24	Implemention of cross-border healthcare rights to treatment and reimbursement	Directive 2011/24/EU codified a series of case law. It sets out the conditions under which a patient may travel to another EU country to receive medical care and reimbursement. The requirements under the Directive have been transposed by England and Wales,Scotland, Northern Ireland and Gibraltar.			
25	Equal treatment of legislation	It bans discrimination and harassment in employment on the following grounds: sex, race, age, disability, sexual orientation and religion or belief. It also bans discrimination in the provision of services on grounds of sex and race. It also requires the existence of an equalities monitoring body, such as EHRC.		Ch. 23: Labour	Ch. 23: Trade and Labour
26	EIA Directive	The Environmental Impact Assessment Directive (85/337/EEC) integrates environmental considerations into the preparation of proposals for development to reduce their impact on the environment.		Agreement on Environmental Cooperation & Ch. 24: Environment	Ch. 24: Trade and Environment
27	Energy performance of buildings Directive	The Energy Performance of Buildings Directive (2010/31/EU) aims to improve and make transparent the energy performance of buildings.		Agreement on Environmental Cooperation	
Policy areas where non-lgeislative framework agreements might be needed					
1	Efficiency in energy use	The Energy Efficiency Directive (2012/27/EU) sets energy efficiency targets and other requirements to encourage and improve energy efficiency.			
2	Radioactive substances	Directive establishes a framework for responsible and safe management of spent fuel and radioactive waste, both for current workers and the general public, and to avoid imposing burdens on future generations.	From previous report dated March 2020: "1.14.d. a Radioactive Substances roundtable"	Agreement on Environmental Cooperation & Ch. 24: Environment	
3	Public procurement	The regime provided by the EU procurement Directives, covering public procurement contracts for supplies, services, works and concessions above certain financial thresholds awarded by the public sector and by utilities operating in the energy, water, transport and postal services sectors (Directives 2014/24/EU, 2014/25/EU and 2014/23/EU).		Ch. 13: Government Procurement	Ch. 19: Government Procurement
4	Statistics	Provision of prescribed datasets to the EU on a wide variety of topics (statistics is cross-cutting).	From previous report dated March 2020: 1.24 - reached stage of Phase 2		
5	Air quality	Policies, directives and regulations that aim to reduce harmful emissions and concentrations of air pollutants that can damage human health and the environment, including in relation to national emission ceilings, ambient air quality, industrial emissions and relevant product standards (Directives 2008/50/EC, 2004/107/EC). This includes regulations that implement international commitments under the UNECE Convention on Long-range Transboundary Air Pollution and Kiev Protocol to the UNECE Aarhus Convention.	Meetings between DEFRA and counterparts in the devolved administrations (p.12).	Ch. 24: Environment	Ch. 24: Trade and Environment
6	Biodiversity - access and benefit sharing of genetic resources (ABS)	Rules set up under the Nagoya Protocol to help preserve biodiversity. The rules regulate access to the genetic resources of other countries and how the benefits from research and development using these resources are shared with the provider country. Implemented into EU Law under Regulation (EU) No 511/2014 with Regulation (EU) 2015/1866 providing implementation for register of collections, monitoring user compliance and best practices.		Ch. 24: Environment	Ch. 24: Trade and Environment
7	Marine environment	Rules relating to management and protection of, but not limited to, marine pollution, litter, biodiversity, food webs and seafloor integrity. Implemented under Directives 2008/56/EC, 2017/845/EU with reference to the OSPAR Convention between the governments of North-East Atlantic.		Ch. 24: Environment	Ch. 24: Trade and Environment
8	Spatial data infrastructure standards	EU INSPIRE system under Directive 2007/2/EC that ensures a harmonised approach to spatial data publishing to improve environmental reporting.			
9	Natural environment and biodiversity	Policies and common standards covering the conservation of the UK's terrestrial, freshwater and marine species and habitats in compliance with international obligations such as the Convention on Biological Diversity. This is joined by EU Regulations (EU) No 1143/2014, (EU) No 1143/2014, and (EEC) No 3254/91 and Directives 2009/147/EC, 92/43/EEC, 1999/22/EC, and 83/129/EEC. This particularly concerns the network of sites which currently form part of the EU's Natura 2000 (N2K) network.		Agreement on Environmental Cooperation	Ch. 24: Trade and Environment
10	Waste management	Policies and regulations covering waste and its recovery/recycling (Landfill Directive, Waste Framework Directive) including producer responsibility (reuse/recovery/recycling targets under the Waste Electrical and Electronic Equipment Directive, Batteries Directive, End of Life Vehicles Directive and Packaging Directive). Also covering the shipment of waste.	Meetings between DEFRA and counterparts in the devolved administrations including a 'deep dive' on 26 February (p.12)	Agreement on Environmental Cooperation	Ch. 24: Trade and Environment
11	Intelligent transport systems	Policies and common standards relating to national electronic registers and data for intelligent transport systems. This includes Regulations made under Directive 2010/40.			
12	Elements of the regulation of tobacco and related products	Provision made for print and press advertising and promotion of electronic cigarettes in Directive 2014/40/EU on the approximation of the laws, regulations and administrative provisions of the member states concerning the manufacture, presentation and sale of tobacco and related products. Provision made for print and press advertising, display and promotions in Directive 2003/33/EC on the approximation of the laws, regulations and administrative provisions of the Member States relating to the advertising and sponsorship of tobacco products.			
13	Good laboratory practice	Directives relating to the inspection and verification of good laboratory practice and harmonising laws, regulations and administrative provisions on good laboratory practice (Directives 2004/9/EC and 2004/10/EC).			

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Policy area with:		Additional Information - what the EU law does	Progress made towards frameworks	Chapter/Side Agreement/Letter	Chapter/Annex
Policy areas where non-lgeislative framework agreements might be needed					
14	Nutrition health claims, composition and labelling	Regulations and Directives on the nutrition and health claims made on food; food for special medical purposes and weight control; food intended for infants; the addition of vitamins and other substances to food; and food supplements.	"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" (p.11) "1.16.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" (p.12). "1.16.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" (p.12). 1.26 Phase 3 Review and Assessment completed with UKG officials confirming that the DA's recommendations were addressed (p.13). 1.30 Technical stakeholder engagement has been completed (p.14).	Ch. 11: Technical Barriers to Trade	Chapter 5: Technical Barriers to Trade; Ch. 20: Intellectual Property and Ch. 20-Annex 20 & Ch. 21: Regulatory Cooperation - Annex 1
15	Blood safety and quality	Defines the quality and safety standards for blood and its components as set out in Directive 2002/98/EC. It covers all steps in the transfusion process from donation, collection, testing, processing, and storage to distribution. It's implementation is supported by Commission Directive 2004/33/EC, Commission Directive 2005/61/EC and Commission Directive 2005/62/EC. There are also some specific technical requirements in the following commissioning directives 2009/135/EC, 2011/38/EU, 2014/110/EU, 2016/1214.			
16	Organs	Directives setting out standards on the quality and safety of human organs intended for transplantation and laying down the information procedures for exchange between Member States (Directives 2010/53/EU and 2012/25/EU).			
17	Public health (serious cross-border threats to health) (notification system for pandemic flu, Zika, etc.)	Decision No 1082/2013/EU on serious cross-border threats to health. This sets rules on epidemiological surveillance, monitoring, early warning of, and combating serious cross-border threats to health, including preparedness and response planning related to those activities, in order to coordinate and complement national policies. It aims to support cooperation and coordination between Member States.	From previous report dated March 2020: "1.14.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 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"		
18	Tissues and cells (apart from embryos and gametes)	Directives setting out standards on the quality and safety of human tissues and cells intended for human application as part of medical treatment (Directives 2004/23/EC, 2006/17/EC, 2006/86/EC, 2012/39/EU, 2015/656, 2015/566).			
19	Control of major accident hazards	Seveso III Directive on the control of major accident hazards involving dangerous substances (2012/18/EU). This place duties on businesses using dangerous substances to take measures to prevent major accidents to people and the environment. This mainly applies to the chemical manufacture sector but covers any business that uses, produces or stores dangerous substances at or above determined thresholds.		Ch. 24: Environment	Ch. 23: Trade and Labour & Ch. 24: Trade and Environment
20	Genetically modified micro-organisms contained use (i.e. rules on protection of human health and the environment during the development)	Directive 2009/41/EC on the contained use of genetically modified microorganisms (GMMs) to protect humans and the environment. This relates to work with GMMs in contained facilities, e.g. a research laboratory or biotechnology production facility, to ensure barriers (containment measures) are in place.		Ch. 9: Cross Border Trade in Services	Ch. 25: Bilateral Dialogues and Cooperation
21	Hazardous substances planning	Ensures that the objectives of preventing major accidents and limiting the consequences of such accidents are taken into account in land-use policies. This includes controls on the siting of new establishments and modifications to establishments which fall within the scope of the Directive (i.e. storing or using significant amounts of hazardous substances), and on new developments and public areas in the vicinity of such establishments.	[redacted] 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" (p.11) 1.26 Phase 3 Review and Assessment completed with UKG officials confirming that the DA's recommendations were addressed (p.13). 1.30 Technical stakeholder engagement has	Agreement on Environmental Cooperation & Ch. 24: Environment	Ch. 23: Trade and Labour & Ch. 24: Trade and Environment
22	Strategic Environmental Assessment (SEA) Directive	The Strategic Environmental Assessment (SEA) Directive on the assessment of the effects of certain plans and programmes on the environment.		Ch. 24: Environment	Ch. 24: Trade and Environment

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Policy area with:		Additional Information - what the EU law does	Progress made towards frameworks	Chapter/Side Agreement/Letter	Chapter/Annex
Poicy areas where future legislation might be needed					
1	Implementation of EU Emissions Trading System (EU ETS)	Directive 2003/87/EC establishes the European Union Emissions Trading System for greenhouse gases. The Scheme sets a maximum volume of gas that can be emitted by all participating installations and aircrafts. These operators then monitor, verify and report their emissions, and must surrender allowances equivalent to their emissions annually. Allowances are issued either by being sold at auction or allocated for free to some operators, and can be traded, with the price determined by the market.	"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" (p.11). A joint UK Government and devolved administration workshop was held on 4-5 February followed up with a meeting on 10 March (p.12) 1.30 Technical stakeholder engagement has been completed (p.14).		Ch. 24: Trade and Environment
2	Mutual recognition of professional qualifications (MRPQ)	The Directive creates systems for EU citizens to have their professional qualifications recognised in order to establish or provide services on a temporary and occasional basis in another EU state		Ch. 16: Temprary Entry for Business Persons	Ch. 11: Mutual Recognition of Professional Qualifications
3	Services Directive	The Directive seeks to realise the full potential of services markets in Europe by removing legal and administrative barriers to trade, by increasing transparency and by making it easier for businesses and consumers to provide or use services in the EU Single Market. The Directive is implemented by the Provision of Services Regulations in the UK. The Regulations set out rules for how competent authorities can design authorisation schemes for service providers in the UK. The Regulations prevent regulators imposing new regulatory or administrative requirements that act as discriminatory barriers to the provision of services, ensuring authorisation schemes are proportionate and justified by the public interest.		Ch 15: Cross-Border Trade in Services	Chapter 9: Cross Border Trade in Services & Chapter 21: Regulatory Cooperation
4	Agricultural support	Policies and Regulations under the EU Common Agricultural Policy covering Pillar 1 (income and market support); Pillar 2 (rural growth, agri-environment, agricultural productivity grants or services and organic conversion and maintenance grants); and cross-cutting issues, including cross compliance, finance & controls.		Ch. 3: Agriculture	Ch. 3: Trade Remidies, Ch. 7: Subsidies & Ch. 28: Exceptions
5	Agriculture - GMO marketing and cultivation	Directive 2001/18 – decisions on authorising GMO trials (delegated to Member States) and on marketing GMOs (decisions taken at EU level). Regulation 1830/2003 – requires the traceability and labelling of GMOs approved for marketing. Regulation 1946/2003 – requires notification to third countries of proposed GMO exports. Enforcement powers for these directly applicable Regulations are set out in parallel SIs in all four nations.		Ch. 4: Rules of Origin & Ch. 11: Technical Barriers to Trade	Ch 20: Intellectual Property and Ch.20 - Annex 20 A-C
6	Agriculture - Zootech	EU Regulation 2016/1012 replaces a host of current zootech regulations by species from 1 November 2018. For the purpose of this exercise we treat the EU position as it will be at 1 November 2018 as the relevant framework. The EU rules support trade of pedigree breeding animals and germinal products by e.g. defining what constitutes “purebred”. They provide for individual breed societies to be officially recognised and breeding programmes to be approved by competent authorities. The rules impose rights and obligations on societies and proscribe rules when breeding animals and germinal products are traded between recognised breed societies across the EU.			
7	Fisheries management & support	Policies and Regulations relating to rules relating to the sustainability of fisheries (quotas), access to waters, conservation measures, enforcement and financial support.	Meetings between DEFRA and counterparts in the devolved administrations (p.12).	Ch. 24: Environment	
8	Ozone depleting substances and F-gases	The UK has international obligations under the Montreal Protocol to phase out the use of ODS, phase down hydrofluorocarbons by 85% by 2036, licence imports and exports and report on usage to the UN. EU Regulations and institutions currently deliver these obligations through quota restrictions, licencing and reporting requirements. The EU Regulations also go further with product bans, leakage controls measures and certification requirements for technicians.	Meetings between DEFRA and counterparts in the devolved administrations (p.12).	Multilateral Environmental Agreements & Ch. 24: Environment	
9	Animal health and traceability	EU rules and standards that aim to maintain animal health and allow their movement, including policies covering: prevention of disease (entering UK), control of disease (endemic and exotic), surveillance (for exotic disease) movement of livestock, pet passports and veterinary medicines.	Meetings between DEFRA and counterparts in the devolved administrations	Ch. 4: Rules of Origin & Ch. 5: Origin Procedures	Ch. 5: Sanitary and Phytosanitary Measures & Ch. 5 Annex 5 A-G
10	Animal welfare	EU rules relating to aspects of animal welfare including on-farm issues, movement of livestock and slaughter.			
11	Chemicals	Regulation of the manufacture, authorisation and sale and use of chemical products primarily through the REACH regulation but also including: Persistent Organic Pollutants (POPs), Polychlorinated Biphenyls (PCBs) and Minamata.			
12	Waste packaging and product regulations	Policies and Regulations that aim to meet certain essential product requirements and set product standards including for packaging (e.g. ROHS in Electrical and Electronic Equipment, Batteries and Vehicles) in order to manage waste.			
13	Pesticides	Regulations governing the authorisation and use of pesticide products and the maximum residue levels in food, and a framework for action on sustainable use of pesticides.	Meetings between DEFRA and counterparts in the devolved administrations (p.12).		

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Policy area with:		Additional Information - what the EU law does	Progress made towards frameworks	Chapter/Side Agreement/Letter	Chapter/Annex
Poicy areas where future legislation might be needed					
14	Plant health, seeds and propagating materials	Requirements in relation to the import and internal EU movement of plants and plant products, risk assessment of new plant pests and outbreak management. Assurance and auditing of policies across the UK to protect plant biosecurity. Requirements for plant variety rights, registration of plant varieties and quality assurance of marketed seed and propagating material.		Ch. 3: Agriculture	
15	Food compositional standards	Minimum standards for a range of specific food commodities such as sugar, coffee, honey, caseins, condensed milk, chocolate, jams, fruit juices and bottled water.	"1.16 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" (p.12). "1.16.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" (p.12).	Chapter 3: Agriculture	Ch. 20 Intellectual Property & Ch. 20 Annex 20-A-C
16	Food labelling	Regulations setting out requirements on provision of information to consumers on food labels.	"1.16.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" (p.12).	Ch. 4: Rules of Origin & Ch. 11: Technical Barriers to Trade	Ch. 20 Intellectual Property & Ch. 20 Annex 20-A-C
17	Chemicals Regulation (including pesticides)	There are directly acting EU Regulations on the classification, labelling and packaging of substances and mixtures (CLP); the placing on the market and use of biocidal products ; the export and import of hazardous chemicals (PIC); the registration, evaluation, authorisation and restriction of chemicals (REACH); and plant protection products (e.g. pesticides).		Ch. 4: Rules of Origin & Ch. 11: Technical Barriers to Trade	Chapter 24: Trade and the Environment
18	Agriculture - organic farming	Regulation 834/2007 sets out the principles and overarching standards for organic production certification. Specific Regulations also apply such as 889/2008 on labeling of organic produce and 710/2009 on organic aquaculture.		Ch. 4: Rules of Origin & Ch. 11: Technical Barriers to Trade	
19	Agriculture - fertiliser regulation	Regulations providing common standards for compositional ingredients, labelling, packaging, sampling and analysis of fertilisers. The UK is also signed up to a number of international agreements (e.g. the Gothenburg Protocol) and EU agreements (the National Ceilings Directive) related to fertiliser regulation.		Ch. 4: Rules of Origin & Ch. 11: Technical Barriers to Trade	
20	Reciprocal Healthcare	Regulations 1408/71 and 883/2004 are the main pieces of EU legislation providing for reciprocal healthcare.	"1.16 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" (p.11).		
21	Food and feed safety and hygiene law	EU Regulations laying down the general principles and requirements of food and feed safety and hygiene; food and feed law enforcement (official controls); food safety labelling; risk analysis; and incident handling. The regulations set out an overarching and coherent framework for the development of food and feed legislation and lay down general principles, requirements and procedures that underpin decision making in matters of food and feed safety, covering all stages of food and feed production and distribution.	From previous report dated March 2020: "1.14.b five Food and Feed Safety and Hygiene official-level meetings" 1.24 - reached the stage of Phase 2 review	Chapter 9: Sanitary and Phytosanitary Measures & Chapter 11 Technical Barriers to Trade	Chapter 5: Sanitary and Phytosanitary Measures

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Agenda Item 7

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