



Cabinet Office

The European Union (Withdrawal) Act and Common Frameworks

26 March to 25 June 2020

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Foreword

Following the UK's exit from the European Union, the UK Government is working jointly with the Scottish Government, the Welsh Government and the Northern Ireland Executive to ensure a common approach is taken where needed on policy areas which intersect with devolved competence by developing UK Common Frameworks. Frameworks are being developed guided by the principles for common frameworks agreed at the Joint Ministerial Committee (EU Negotiations) (JMC(EN)) in October 2017 between the UK Government and Scottish and Welsh Governments. Following the formation of the Northern Ireland Executive, its Executive Committee endorsed the JMC(EN) Common Frameworks principles on 15 June 2020.

The UK Government is required to report to the UK Parliament every three months on the progress made to develop UK Common Frameworks, in line with Schedule 3 to the European Union (Withdrawal) Act 2018. This report details the steps that have been taken during the eighth reporting period, from 26 March 2020 to 25 June 2020. During this period, the UK Government and devolved administrations have continued to work jointly to develop UK Common Frameworks, to protect the UK economy and give maximum certainty to businesses, consumers and our international partners. UK Common Frameworks will ensure regulatory coherence across the UK by flexibly managing any potential policy divergence across the four nations.

This eighth report has been published alongside the publication of the Frameworks Analysis 2020. Together, the publications provide a detailed update on the UK Common Frameworks programme. This report focuses on the progress made by the UK Common Frameworks programme and the path that lies ahead, while the analysis provides a detailed breakdown of areas of EU law that intersect with devolved competence and an explanation on the shape that these frameworks are likely to take.

During this reporting period, the COVID-19 outbreak has placed significant capacity pressures on departments involved in the development of UK Common Frameworks. Each individual framework is developed jointly by policy departments in each administration and different departments have been impacted to varying degrees by the COVID-19 outbreak and the scale of the response required. This has resulted in the development of individual frameworks progressing at varying speeds. This report will detail some of the impacts of the COVID-19 outbreak on the frameworks programme.

The UK Government and devolved administrations have remained committed to progressing the UK Common Frameworks programme, albeit with reduced capacity. The recent pressures mean that it will no longer be possible to deliver the frameworks programme fully by the end of the transition period, and the programme of work will continue into 2021. Officials across the UK Government and the devolved administrations have been working to establish which frameworks can be fully developed by the end of the transition period and which frameworks can be delivered in 2021. The conclusion is that a minority of frameworks should be fully developed by the end of the transition period. The remainder of frameworks should, as a minimum, be confirmed as provisional frameworks by the end of 2020, having been provisionally confirmed by JMC(EN) Ministers, allowing them to be minimally operable

ahead of the remaining development stages being completed in 2021. A detailed account of this work is set out in this report.

During this reporting period, considerable steps have been taken to ensure the transparency of the UK Common Frameworks programme. In addition to the existing plans for stakeholder engagement, the Minister for the Constitution and Devolution has engaged with Parliament on a process to enable parliamentary scrutiny of UK Common Frameworks.

Separate to this reporting period, the UK Government published a White Paper on 16th July, which set out a proposal for how the UK Internal Market should operate following the end of the Transition Period, and launched a public consultation on key aspects of the proposed approach which ran for four weeks. The UK Internal Market Bill was then introduced to the UK Parliament on 9th September. The key focus of the proposal is to enshrine in legislation the principles of mutual recognition and non-discrimination to ensure the status quo of frictionless trade between the four nations. There is ongoing discussion between the UK Government and the devolved administrations as to the interactions between the UK Internal Market and common frameworks, and this will be considered in more detail in a future report.

Implementation of Common Frameworks

- 1.1. Part 2 of Schedule 3 to the European Union (Withdrawal) Act 2018 requires that a Minister of the Crown report to Parliament at three month intervals on various matters pertaining to common frameworks, and the use of the powers in section 12 of, and Schedule 3 to, the 2018 Act to temporarily maintain the existing EU law limits on devolved competence. Reports are shared with the devolved administrations to enable them to maintain a concurrent level of scrutiny. The last report was published on 20 May 2020 and covered the reporting period 26 December 2019 to 25 March 2019.¹
- 1.2. The purpose of these reports is to ensure that the process of developing common frameworks, in collaboration with the devolved administrations, is transparent and subject to robust parliamentary scrutiny.

Principles for common frameworks

- 1.3. Under the Withdrawal Agreement, EU law will continue to apply to and in the UK during the transition period. Under the devolution settlements, the devolved legislatures and administrations cannot act incompatibly with EU law. The EU laws that are in place create common UK-wide approaches even where those policy areas otherwise fall within devolved competence. The Northern Ireland Executive endorsed the JMC(EN) principles in June 2020, meaning all four administrations across the UK have now agreed that common approaches will continue to be required in some areas now the UK has left the EU.
- 1.4. In October 2017, the Joint Ministerial Committee (EU Negotiations) (JMC(EN)) agreed upon principles to guide the work to create common frameworks.² These principles are set out below:
 1. *Common frameworks will be established where they are necessary in order to:*
 - *enable the functioning of the UK internal market, while acknowledging policy divergence;*
 - *ensure compliance with international obligations;*
 - *ensure the UK can negotiate, enter into and implement new trade agreements and international treaties;*
 - *enable the management of common resources;*
 - *administer and provide access to justice in cases with a cross-border element;*
 - *safeguard the security of the UK.*
 2. *Frameworks will respect the devolution settlements and the democratic accountability of the devolved legislatures, and will therefore:*

¹https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/886372/TheEuropeanUnion-Withdrawal-ActAndCommonFrameworks.pdf

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

- *be based on established conventions and practices, including that the competence of the devolved institutions will not normally be adjusted without their consent;*
- *maintain, as a minimum, equivalent flexibility for tailoring policies to the specific needs of each territory, as is afforded by current EU rules;*
- *lead to a significant increase in decision-making powers for the devolved administrations.*

3. *Frameworks will ensure recognition of the economic and social linkages between Northern Ireland and Ireland and that Northern Ireland will be the only part of the UK which shares a land frontier with the EU. They will also adhere to the Belfast Agreement.*

1.5. These principles continue to guide all discussions between the UK Government and the devolved administrations on common frameworks. Details of how these principles have been taken into account are included in this report, and will be included in future iterations of this publication.

Progress Towards Establishing Future Frameworks

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

1.7. During this reporting period, the COVID-19 outbreak placed significant capacity pressures on officials working across the UK Common Frameworks programme, in both the UK Government and the devolved administrations. While both the UK Government and the devolved administrations remain committed to the programme, it will no longer be possible to deliver all frameworks fully by the end of the transition period, and as a result the programme will be extended into 2021. The UK Government and devolved administrations have conducted significant analysis to determine the priorities and timelines which have been set out in this report.

Frameworks Delivery

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

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

- **Phase 1: Principles and proof of concept:** Took place between October 2017 and March 2018 and consisted of engagement between UK Government and devolved administration officials (also referred to as multilateral deep dives) focussing on legislative and key non-legislative frameworks, as well as establishing some of the key interdependencies that affect multiple frameworks.
- **Phase 2: Policy development:** Detailed policy development takes place, including joint work between UK Government and devolved administration officials to agree policy approaches and operational and governance arrangements for each policy area. Initial stakeholder engagement may also take place. This results in a jointly drafted and agreed outline framework. At the end of this phase there is a light-touch, official-level review of the outline framework which has now been streamlined to run in parallel to other steps in Phases 2 and 3.
- **Phase 3: Review and consultation:** Ongoing UK Government and devolved administration collaboration takes place to further develop and finalise policy approaches, explore interactions with cross-cutting workstreams, and agree operational and governance arrangements. Technical engagement takes place with sector-specific stakeholders. Towards the end of Phase 3 an in-depth review and assessment takes place, conducted jointly at official level. This phase results in cross-departmental collective agreement on the policy approach within the UK Government, and provisional confirmation of the framework by members of (JMC(EN)). This in-depth review and joint confirmation ensures that a minimally operable framework, recognised as a 'provisional framework', has been developed.
- **Phase 4: Preparation and implementation:** Upon JMC(EN) ministerial confirmation of a provisional framework, the framework will be shared with all legislatures to enable parliaments to scrutinise should they wish to do so. The provisional framework will be laid before Parliament at this stage of development. UK Government and devolved administration officials will work jointly on any ongoing reappraisals of cross-cutting issues, and review parliamentary recommendations in order to finalise individual frameworks. At the end of this phase, the provisional framework will receive JMC(EN) ministerial approval prior to implementation.
- **Phase 5: Post-implementation:** Post-implementation arrangements will take place. These will vary between frameworks and details continue to be developed as the frameworks programme progresses.

Commitment to transparency

- 1.10. The UK Government is fully committed to transparency in the UK Common Frameworks programme. The European Union (Withdrawal) Act and Common Frameworks report, detailing programme delivery and individual framework development, will continue to be laid quarterly, as per statutory requirements.
- 1.11. This eighth report is being published jointly alongside a revised Frameworks Analysis. This third edition of the Analysis provides specific details on the intended

implementation arrangements for each individual framework area, illustrating the ongoing collaborative work between the UK Government and devolved administrations to deliver common frameworks.

- 1.12. During this reporting period, the Minister for the Constitution and Devolution wrote to senior UK Government Ministers responsible for the delivery of one or more frameworks, and to the Chairs of the UK parliamentary committees, to confirm the arrangements being put in place to allow the UK Parliament to scrutinise provisional frameworks during their development.

Revised delivery plan

- 1.13. During this reporting period, the COVID-19 outbreak has had an impact on the capacity of the UK Government and devolved administrations to achieve previously anticipated levels of progress within the frameworks programme. Both the UK Government and the devolved administrations remain committed to the development of common frameworks and work has continued where possible, albeit on the basis of reduced capacity overall. These capacity constraints mean that it will no longer be possible to deliver all frameworks fully by the end of the transition period. Recognising these capacity constraints, the process for developing frameworks has been streamlined where appropriate in order to assist with delivery.
- 1.14. Together with the devolved administrations, the UK Government now expects to deliver, at a minimum, provisional frameworks by the end of the Transition Period. Work will continue during 2020 and into 2021 to further develop frameworks, including undergoing parliamentary scrutiny. A provisional framework is an outline framework and accompanying concordat which has undergone collaborative policy development, testing of policy conclusions, peer review and, where appropriate, external sector-specific engagement. This process will allow frameworks to be provisionally confirmed by JMC(EN) Ministers by the end of December 2020 and therefore ensure they are operational on an interim basis by the end of the transition period.
- 1.15. Additionally, the UK Government and devolved administrations have jointly assessed the portfolio of frameworks to identify those frameworks which are the highest priority. Particular attention will be given to ensuring the arrangements required for the end of the transition period are established for these priority areas in order to address immediate real world impacts.

Common Frameworks Revised Analysis

- 1.16. Following on from the publication of the Revised Frameworks Analysis on 4 April 2019, an updated edition of the Frameworks Analysis has been published alongside this report. The Frameworks Analysis 2020 provides an update on the expected implementation arrangements for frameworks, detailing changes that have taken place since the previous analysis. The Frameworks Analysis 2020 publication outlines a reclassification process which has been undertaken by the UK

Government and devolved administrations to reassess implementation arrangements, and details rationales for certain frameworks having moved from non-legislative arrangements to no further action, or from legislative to non-legislative arrangements.

- 1.17. The publication of the analysis is part of an ongoing dialogue, not a final position. Its conclusions are provisional and discussions with the devolved administrations continue.
- 1.18. The Frameworks Analysis 2020 can be found online at the following address:
<https://www.gov.uk/government/publications/frameworks-analysis>

Framework Coordination

- 1.19. Common frameworks are being developed through constructive discussions between the UK Government and devolved administrations. This has continued during the latest reporting period (26 March 2020 to 25 June 2020).
- 1.20. During this reporting period there were five meetings of the UK Government-Devolved Administrations Frameworks Project Board, involving Cabinet Office senior officials and their counterparts in the devolved administrations. The Project Board provides a forum for monitoring the progress and agreement on the direction of the Frameworks Programme.
- 1.21. There have been regular Frameworks Project Team meetings between officials in the UK Government and the devolved administrations, where productive collaborative work continues, for example in adapting the frameworks delivery plan for the end of the transition period in response to COVID-19, including establishing minimum requirements for frameworks delivery, streamlining processes for frameworks development; and communications to officials on the delivery plan.
- 1.22. Multiple meetings have taken place between officials in the Department for Environment, Food and Rural Affairs (DEFRA) and their counterparts in the devolved administrations. These include working group meetings on Animal Health and Welfare, Plant Health, Waste, Chemicals and Pesticides, and Fisheries.
- 1.23. During this reporting period, Cabinet Office, as programme coordinator, has continued to engage with departments across the UK Government via the monthly Wider Working Group to provide policy leads with updates, discuss barriers and drive progress. The Frameworks Policy Group (FPG) has also met each month to discuss cross cutting issues and barriers. FPG comprises representatives from intergovernmental and devolution teams within Cabinet Office, and also other UK Government departments that handle cross-cutting workstreams such as trade, the UK internal market and the Northern Ireland Protocol.
- 1.24. In parallel to developing common frameworks, the UK Government has sought to develop a cross-cutting approach to the UK internal market to support the free flow of

goods and services throughout England, Wales, Scotland and Northern Ireland after the end of the Transition Period.

- 1.25. The UK Government continued during this reporting period to explore the evidence base for the level of economic integration between different nations and across different sectors in the UK, considering relevant international examples.
- 1.26. Work to establish how frameworks will interact with the negotiation of Free Trade Agreements has also progressed. Discussions have taken place between the UK Government and the devolved administrations and we intend to provide guidance for policy teams so that they can incorporate trade considerations when developing their frameworks.

Framework Development

- 1.27. The Hazardous Substances (Planning) framework received SG and UKG Ministerial approval for provisional confirmation on 9 and 16 June 2020 respectively, and is proceeding to UKG collective agreement. The Nutrition Labelling, Composition and Standards framework sought UK Government collective agreement and is due to undergo simultaneous agreement by the devolved administrations. Once given JMC(EN) provisional confirmation, these frameworks will proceed to parliamentary scrutiny, for which planning has already begun.
- 1.28. The Emissions Trading System (ETS) framework continues to make good progress, based on effective UK Government and devolved administration joint working. The ETS framework completed a number of successful joint UK Government and devolved administration workshops during this reporting period to continue to develop the operational and governance aspects of the framework. ETS completed its Phase 3 Review and Assessment panel meeting on 20 May, and UK Government and devolved administration officials are working to ensure that the recommendations following that review are incorporated into the latest version of the ETS outline framework.
- 1.29. The Radioactive Substances framework has made good progress in recent months, including engaging with sector-specific stakeholders as part of the technical engagement process. Work has begun to prepare for the framework undergoing the review process.
- 1.30. The Food and Feed Safety and Hygiene (FFSH) framework began preparations for technical stakeholder engagement during this reporting period, taking COVID-19 restrictions into consideration, and supported closely by the Frameworks Project Team. Once stakeholder feedback has been integrated into the outline framework, its Phase 3 Review and Assessment will start.

Programme Development

Review and Consultation

- 1.31. The UK Government and the devolved administrations had previously agreed a 'Review and Assessment' process for frameworks. This process has been further developed and streamlined to facilitate swift framework progression whilst applying the same amount of rigour and scrutiny.
- 1.32. The first, streamlined review takes place during Phase 2 and can run in parallel to ongoing policy development. This review is not intended to be a barrier to frameworks moving to Phase 3, but to assess which areas will need further refinement during the next stage.
- 1.33. Towards the end of Phase 3, a further, more rigorous review will be provided jointly at official level by the UK Government and devolved administrations. Each outline framework, and any associated draft documents such as concordats, will form the basis for a Phase 3 'Review and Assessment' gateway process. This process will address in particular the constitutional and cross-cutting impacts of each framework in order to ensure that the approach taken on these is consistent across the frameworks programme and in line with the principles for common frameworks agreed by JMC(EN).
- 1.34. Phase 3 Review and Assessment combines a peer review approach, desk based assessment, evidence gathering and interviews, and draws on expertise from both policy and devolution teams.
- 1.35. The Hazardous Substances (Planning) framework and the Nutrition Labelling, Composition and Standards framework both completed their Phase 3 Review and Assessment process during the previous reporting period. The ETS framework completed its Phase 3 Review and Assessment in May 2020.

Stakeholder engagement

- 1.36. As part of the commitment to transparency of the common frameworks programme, the UK Government has designed an extensive programme of engagements with legislatures and wider stakeholders. Where appropriate, this engagement is undertaken in collaboration with the devolved administrations. This entails broad engagement on the overall common frameworks programme, as well as technical, sector-specific engagement during the development of each individual framework. The COVID-19 outbreak has impacted heavily on engagement work during this reporting period. Careful consideration of the impact of restrictions on planned engagement took place during this reporting period, and as a result, significantly less engagement took place.
- 1.37. Further technical engagement for frameworks is being planned to ensure the programme advances. The timing, location and format of engagement will be

arranged in the way most appropriate to the individual framework and group of stakeholders. Engagement opportunities on the overarching programme continue to be scoped.

- 1.38. In light of restrictions relating to the COVID-19 outbreak, framework policy teams are now encouraged to offer more flexibility in their stakeholder consultations. This is likely to result in reduced in-person consultations, with preference given to both written engagement and/or video conferences. Adjustments to stakeholder engagement should allow for more flexibility in line with current COVID-19 restrictions and guidance, whilst continuing to maintain high quality stakeholder engagement, ensuring transparency of framework development.
- 1.39. To date, the Hazardous Substances (Planning), Nutrition Health Claims, Emissions Trading System and Radioactive Substances frameworks have completed their technical engagement. Further technical engagement for frameworks is planned and several frameworks are expected to undergo their engagement shortly, in line with the COVID-19 guidance, to ensure the progression of the programme.

Parliamentary engagement

- 1.40. The UK Government remains committed to transparency of the UK Common Frameworks programme, and keeping the public and Parliament updated. Officials from the UK Government and devolved administrations have previously jointly agreed to a process which enables all legislatures to scrutinise frameworks during their development.
- 1.41. During this reporting period, the Minister for the Constitution and Devolution (MCD) wrote to UKG senior Ministers responsible for the delivery of one or more frameworks, and to the Chairs of the UK parliamentary committees, to set out details of the process for UK Parliamentary scrutiny of frameworks. Alongside the role of scrutiny in aiding the development of frameworks, the Minister also highlighted that sharing provisional frameworks with parliament is key to the transparency of the frameworks programme. Similar steps have been taken in Scotland and Wales.
- 1.42. Parliamentary scrutiny will take place after early policy development stages are completed, and JMC(EN) Ministers have approved the provisional framework. The provisional framework will then be shared with legislatures, and formally laid in the UK Parliament. Many frameworks will be shared with committees early next year as the programme continues into 2021. It is likely that the Scottish Parliament and Senedd Cymru elections in 2021 will impact on the overall programme delivery with their committees unable to conduct scrutiny during the pre-election period.
- 1.43. On 15th June, the Northern Ireland Executive Committee endorsed the UK Common Frameworks principles; as such the Northern Ireland Assembly will scrutinise UK Common Frameworks in line with the UK Parliament, Scottish Parliament and Senedd Cymru.

- 1.44. Cabinet Office officials attended an official-level meeting of the Interparliamentary Forum on Brexit on 15 June, where parliamentary officials from across the four UK legislatures received updates on the progress of UK Common Frameworks.

Northern Ireland and I/NI Protocol

- 1.45. The JMC (EN) 16 October 2017 principles for common frameworks state that frameworks will ensure recognition of the economic and social linkages between Northern Ireland and Ireland and that Northern Ireland will be the only part of the UK that shares a land frontier with the EU. They will also adhere to the Belfast Agreement.
- 1.46. The Protocol on Ireland/Northern Ireland ('the Protocol') to the Withdrawal Agreement, including the Unilateral Declaration on Consent made by the UK Government, avoids a hard border on the island of Ireland, whilst ensuring that the UK, including Northern Ireland, could leave the EU as a whole. As long as the Protocol is in force, special provisions apply in Northern Ireland. These include (but are not exhausted by) Northern Ireland remaining within the UK's customs territory but aligning with the EU on goods (including certain laws for VAT on goods), and EU tariffs applying in Northern Ireland except for movements within the single customs territory of the UK.
- 1.47. In the absence of the Northern Ireland Executive up to 11 January 2020, the Northern Ireland Civil Service contributed to the common frameworks programme on a strictly analytical and factual basis and without prejudice to the views of future Northern Ireland Executive Ministers.
- 1.48. The Northern Ireland Executive endorsed the JMC(EN) principles on 15 June 2020, enabling the development of common frameworks where they intersect with the devolved competence of the Northern Ireland Assembly and the Northern Ireland Executive.

Legislation Relating to Retained EU Law Restrictions

- 2.1. Section 12 of the European Union (Withdrawal) Act 2018 removes the current requirements in each of the devolution statutes that the devolved legislatures can only legislate in ways that are compatible with EU law. The Act then replaces those requirements with powers for the UK Government to apply, by regulations, a temporary 'freeze' on devolved competence in specified areas, subject to the approval of the UK Parliament, via the draft affirmative scrutiny procedure.
- 2.2. The process for making, agreeing and revoking these regulations can be found in the first European Union (Withdrawal) Act and Common Frameworks report.

Regulations to ‘Freeze’ Devolved Competence

Retained EU law restrictions applied during reporting period

- 2.3. No regulations have been made to apply retained EU law restrictions under these powers during the reporting period.

Progress towards removal of retained EU law restrictions

- 2.4. No retained EU law restrictions made under the powers in sections 30A and 57(4) of the Scotland Act 1998, sections 80(8) and 109A of the Government of Wales Act 2006, or sections 6A and 24(3) of the Northern Ireland Act 1998 had effect at the end of the reporting period.

Regulations to Repeal the ‘Freezing’ Powers

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

Powers to apply retained EU law restrictions repealed during reporting period

- 2.6. No regulations have been made under section 12(9) of the European Union (Withdrawal) Act to repeal the powers to apply retained EU law restrictions during the reporting period.

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

- 2.7. The UK Government has not sought to make use of the powers to apply retained EU law restrictions at this juncture. As outlined earlier in this report, significant progress is being made across policy areas to establish common frameworks in collaboration with the devolved administrations.
- 2.8. The ‘freezing’ powers provide a mechanism to give certainty across those areas where common rules do need to be maintained, by ensuring that there will not be substantive policy change in different parts of the UK until those future arrangements are in place. In order to remove those powers from the statute book, further progress towards the implementation of common frameworks would be needed. The UK Government will keep this position under review, in line with the statutory duty in section 12(10) of the European Union (Withdrawal) Act.