



Cabinet Office

The European Union (Withdrawal) Act and Common Frameworks

26 March 2019 to 25 June 2019



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

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Foreword

The UK Government remains committed to ensuring a smooth and orderly exit from the European Union. Officials from the UK, Scottish, and Welsh Governments and Northern Ireland Civil Service (NICS) have continued to work closely together to prepare the UK for EU Exit.

The UK Government recognises the importance of accountability and transparency in the development of common frameworks and has therefore committed in legislation to report to Parliament every three months and to share this report with the devolved administrations (DAs). This report includes the steps we are taking, in partnership with those administrations, to establish common frameworks and any use of the powers in section 12 of the European Union (Withdrawal) Act 2018 to temporarily freeze devolved competence. The last report was published on 16 May 2019 covering the reporting period 26 December 2018 to 25 March 2019.

This commitment to transparency is demonstrated by the fact that this report is the fourth publication on common frameworks this year (three statutory reports and the revised frameworks analysis) and that there have been two frameworks publications developed in this reporting period alone, detailing progress made. This commitment to transparency will continue and further updates will be published in the future. The increased level of interest and engagement from legislatures and stakeholders in this work is welcomed.

The revised frameworks analysis was published on 4 April 2019. This set out the progress made to develop common frameworks since the initial analysis was published in March 2018. The revised analysis demonstrates the progress that had been made by proceeding collaboratively and the commitment by the Scottish and Welsh Governments to cooperative working.

The UK Government, Welsh Government and Scottish Government, together with the Northern Ireland Civil Service, have jointly developed a plan of engagement to increase awareness of the Common Frameworks programme across the United Kingdom.

This report details the progress made in the fourth reporting period (26 March 2019 to 25 June 2019) as required under Schedule 3 to the European Union (Withdrawal) Act 2018. On the basis of the continuing joint progress and collaboration on common frameworks, the UK Government has not sought to bring forward any section 12 regulations to date. On the basis of this, the Scottish and Welsh Governments have committed to not create divergent policy in ways that would cut across future frameworks, where it has been agreed they are necessary or where discussion continues.

Implementation of Future Common Frameworks

- 1.1 Part 2 of Schedule 3 to the European Union (Withdrawal) Act 2018 requires that a Minister of the Crown report to Parliament at three month intervals on various matters pertaining to common frameworks, and the use of the powers in section 12 of, and Schedule 3 to, the 2018 Act to temporarily maintain the existing EU law limits on devolved competence. Reports are shared with the devolved administrations to enable them to maintain a concurrent level of scrutiny. The last report was published on 16 May 2019 covering the reporting period 26 December to 25 March 2019.
- 1.2 The purpose of these reports is to ensure that the process of developing common frameworks, in collaboration with the devolved administrations, is transparent and subject to robust parliamentary scrutiny.

Principles for Common Frameworks

- 1.3 Under the current devolution settlements, the devolved legislatures and administrations cannot act incompatibly with EU law. The EU laws that are in place create common UK-wide approaches even where those policy areas otherwise fall within devolved competence. The Scottish and Welsh Governments agree that common approaches will continue to be required in some areas after the UK leaves the EU.
- 1.4 In October 2017, the Joint Ministerial Committee (EU Negotiations) (JMC(EN)) agreed principles to guide the work to create common frameworks. These principles are set out below:

1. *Common frameworks will be established where they are necessary in order to:*

- *enable the functioning of the UK internal market, while acknowledging policy divergence;*
- *ensure compliance with international obligations;*
- *ensure the UK can negotiate, enter into and implement new trade agreements and international treaties;*
- *enable the management of common resources;*
- *administer and provide access to justice in cases with a cross-border element;*
- *safeguard the security of the UK.*

2. *Frameworks will respect the devolution settlements and the democratic accountability of the devolved legislatures, and will therefore:*

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

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

1.5 These principles continue to guide all discussions between the UK Government and the devolved administrations on common frameworks.

Progress Towards Establishing Future Frameworks

1.6 The following section sets out the steps taken by the UK Government, during the reporting period, toward implementing our long-term common frameworks, and explains how the frameworks principles have been taken into account.

1.7 Common frameworks continue to be developed through constructive discussions between the UK Government and the devolved administrations. This fact was recognised in the conclusion to the Scottish Parliament's Finance and Constitution Committee's report on common frameworks. In this report, the committee welcomed *'the progress being made with common frameworks on the basis of negotiation and agreement between Governments'*.¹ This has been continued during the latest reporting period (26 March 2019 to 25 June 2019) where detailed multilateral engagement has taken place at official level, including two joint UKG-DA Project Board meetings, with a rotating chair and location between London, Cardiff, Belfast and Edinburgh, and standalone sessions on:

- Implementation of EU Emissions Trading System (2 May 2019) - publication of joint consultation on the approach to UK carbon pricing following EU Exit
- Agricultural Support (29 May 2019) - discussion on Crisis Measures, Public Intervention and Private Storage Aid
- Fertiliser Regulations (4 June 2019) - meeting of the Fertiliser Regulatory Committee to continue to develop proposals for framework

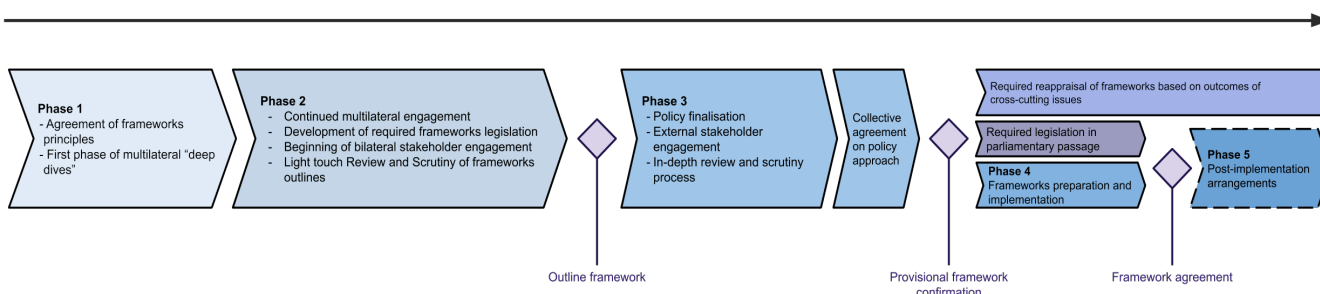
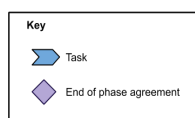
¹ <https://sp-bpr-en-prod-cdnep.azureedge.net/published/FCC/2019/3/25/Report-on-Common-Frameworks/FCC-S5-19-04.pdf>

- Animal Health and Welfare (17 June 2019) - deep dive on establishment of future UK Biosecurity Office to complement wider framework development
- Fisheries Management and Support (29 May 2019) - Science Working Group convened to develop content of non-legislative MoU

- 1.8 In the absence of Northern Ireland Executive Ministers, officials from the Northern Ireland Civil Service continue to participate in frameworks development on a factual and analytical basis.
- 1.9 In addition to this multilateral engagement the Chancellor of the Duchy of Lancaster has also appeared before the Public Administration and Constitutional Affairs Committee (PACAC)² to talk about common frameworks amongst other things; and before the House of Lords EU Select Committee³ to give evidence on how the UK Government has worked with the devolved administrations to develop common frameworks. This shows the UK Government's continued commitment over the reporting period to transparency and engagement with Parliament.
- 1.10 During the reporting period officials have revisited the planning assumptions for frameworks delivery in light of a more in depth understanding of related interdependencies. As a result, officials have amended the delivery pathway to reflect the process of agreement, and the impact of the key interdependencies. This new approach can be seen below:

² <https://www.parliament.uk/business/committees/committees-a-z/commons-select/public-administration-and-constitutional-affairs-committee/news-parliament-2017/military-force-fourth-session-evidence-17-19/>

³ <https://www.parliament.uk/business/committees/committees-a-z/lords-select/eu-select-committee/news-parliament-2017/david-lidington-evidence-session/>



- 1.11 UK Government officials in collaboration with devolved administration officials have revised the frameworks delivery programme. Frameworks will be implemented depending on the needs of the particular policy area and may require a combination of legislative and non-legislative measures. The delivery process accounts for frameworks to be implemented in different ways, with some activity undertaken concurrently, to ensure that all of the due process has been undertaken as the framework is put in place. As a result, frameworks will be implemented at different points in time, depending on the requirements of that framework.
- 1.12 During the reporting period officials have also developed three documents for publication. Firstly a progress update on common frameworks which will include a summary of technical stakeholder engagement, UK Government and DA cooperation, the interdependencies of the programme with cross cutting issues and the future work programme. Secondly, an illustration of the frameworks delivery process including a high level visual snapshot of implementation proposals, included above. Thirdly, a sample frameworks outline covering all the key elements of a framework.
- 1.13 The UK Government has begun to assess the potential interaction between common frameworks and the Future Partnership with the EU. This has included considering how framework areas might be affected by future negotiations with the EU.
- 1.14 The UK Government will work with the Scottish and Welsh Governments and the Northern Ireland Civil Service, to seek to develop a shared approach to the internal market, including exploring a range of evidence and ideas, and together will continue to support policy teams in considering how to manage internal market-related issues in individual framework areas.

- 1.15 As frameworks outlines are developed, work is ongoing to consider what level of consistency is desirable in the governance structures across all frameworks. Officials from the UK Government and the devolved administrations continue to work together to ensure that governance proposals for individual frameworks take account of the potential outputs of the Review of Intergovernmental Relations. Consideration is also being given to the effect that the outcomes of other cross-cutting issues, such as the Future Economic Partnership and Internal Market, may have on the governance of common frameworks.
- 1.16 As activity continues to move into the third phase, further planning has taken place to deliver on a programme of multilateral engagements with stakeholders. The UK, Scottish and Welsh Governments and Northern Ireland Civil Service have worked collaboratively to develop and agree a joint approach to stakeholder engagement, which plans to engage with Parliament, the devolved legislatures, business organisations and wider sector-specific stakeholders as work on common frameworks continues. They are:
- **High level programme engagement** focused on academics and umbrella organisations. The UK Government and the devolved administrations are working together on the best way of presenting the overarching principles and purpose of frameworks at key events across the UK;
 - **Parliamentary engagement** with UK Parliament and the devolved legislatures. We will be updating parliamentary committees at key moments in the process, and consulting them on the arrangements that will need to be put in place to enable the formal scrutiny of frameworks; and
 - **Technical engagement** by policy teams on specific frameworks. This work is engaging relevant sectors to test provisional conclusions, informing future policy development.

The UK Government and devolved administrations recognise the importance of, and are collectively committed to, bringing stakeholders and their expertise into the development process.

- 1.17 After testing the provisional policy conclusions with stakeholders, the UK Government and devolved administration's 'Hazardous Substances Planning' policy teams have published their draft outline framework in full. We envisage further policy-owning teams will test the detail of their outline framework to stakeholders within the next reporting period. The Northern Ireland Civil Service will continue to participate in this area of work.

Northern Ireland

- 1.18 Frameworks need to ensure recognition of the economic and social linkages between Northern Ireland and Ireland and that Northern Ireland will be the only part of the UK that shares a land frontier with the EU. As set out in the agreed principles frameworks will also adhere to the Belfast Agreement.
- 1.19 Due to the absence of a Northern Ireland Executive, there remain significant limits to the decision-making capacity of the Northern Ireland Civil Service. Guidance issued by the Secretary of State under the Northern Ireland (Executive Formation and Exercise of Functions) Act (EFEF) - legislation which enables senior officers of NI departments to continue to take a limited range of decisions, where they are satisfied that it is in the public interest to do so - provides departments with increased clarity and certainty about when they can make decisions in the absence of Ministers. The Secretary of State for Northern Ireland issued guidance under the Act on 5 November 2018. This guidance has, and will continue to inform our ongoing collective processes regarding changes to primary and secondary legislation, as well as non-legislative mechanisms. The Secretary of State extended the Act for a period of 5 further months on 21 March, and it will now expire towards the end of August.
- 1.20 Officials from the Northern Ireland Civil Service have engaged in the common frameworks process where the policy area intersects with the devolved competence of the Northern Ireland Assembly. However, in the absence of the Northern Ireland Executive, officials' input has been limited to analytical and factual responses only. Where framework arrangements have been developed, they are without prejudice to the views of future Northern Ireland Executive Ministers.

Common Frameworks Analysis

- 1.21 The revised Frameworks Analysis⁴ was published on 4 April 2019, setting out the progress that has been made to develop common frameworks in collaboration with the devolved administrations since the initial analysis was published in March 2018.
- 1.22 The revised analysis was published by the UK Government, although it was co-authored by officials in all administrations. It demonstrates the progress that has been made by proceeding collaboratively. It also highlights the

⁴ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/792738/20190404-FrameworksAnalysis.pdf

commitment by the Scottish and Welsh Governments to ongoing cooperative working, including in policy areas where no formal common frameworks are required.

1.23 The analysis set out each of the 160 areas of EU law that intersect with devolved competence in one or more of the devolved administrations. As the devolution settlements are asymmetrical, a different range of powers is relevant to Scotland, Wales and Northern Ireland. The analysis set out the latest policy positions, including the reclassification of some policy areas and further detail on the shape that some of these frameworks might take. The changes in the analysis since the initial publication in March 2018 demonstrate the careful and considered joint work underway to establish common frameworks, which in some areas has led to reclassification.

1.24 The revised frameworks analysis outlined:

- There are 63 areas where no further action is required to make a framework and the UK Government and devolved administrations will continue to cooperate. This has increased from 49 in the initial analysis.
- There are 78 (reduced from 82) areas where we think that common rules or ways of working will be needed and we expect to implement this through a non-legislative common framework agreement (e.g. a concordat). In some of these areas, consistent fixes to retained EU law (made using secondary legislation) will create a unified body of UK law alongside the non-legislative framework agreement.
- There are now 21 (reduced from 24) policy areas where future legislation may be needed, in whole or in part, to implement the common rules and ways of working, alongside a non-legislative framework agreement and - potentially - a consistent approach to retained EU law.
- Finally, there are now only four areas where competence is disputed, and conversations between the UK Government and devolved administrations continue. This is reduced from twelve in the first publication, demonstrating the significant progress made in this area.

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

Legislation Relating to Retained EU Law Restrictions

- 2.1 Section 12 of the EU (Withdrawal) Act removes the current requirements in each of the devolution statutes that the devolved legislatures can only legislate in ways that are compatible with EU law. The Act then replaces those requirements with powers for the UK Government to apply, by regulations, a temporary ‘freeze’ on devolved competence in specified areas, subject to the approval of the UK Parliament, via the draft affirmative scrutiny procedure.
- 2.2 The process for making, agreeing and revoking these regulations can be found in our first report: *The European Union (Withdrawal) Act and Common Frameworks - 26 June 2018 to 25 September 2018*⁵.

Regulations to ‘Freeze’ Devolved Competence

Retained EU law restrictions applied during reporting period

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

Progress towards removal of retained EU law restrictions

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

Regulations to Repeal the ‘Freezing’ Powers

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

Powers to apply retained EU law restrictions repealed during reporting period

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

⁵ <https://www.gov.uk/government/publications/the-european-union-withdrawal-act-and-common-frameworks-report>

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

- 2.7 The UK Government has not sought to make use of the powers to apply retained EU law restrictions at this juncture. As outlined earlier in this report, significant progress is being made across policy areas to establish common frameworks in collaboration with the devolved administrations.

- 2.8 The 'freezing' powers provide a mechanism to give certainty across those areas where common rules do need to be maintained, by ensuring that there will not be substantive policy change in different parts of the UK until those future arrangements are in place. In order to remove those powers from the statute book, further progress towards the implementation of common frameworks would be needed. We will keep this position under review, in line with the statutory duty in section 12(10) of the EU (Withdrawal) Act.

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