



Cabinet Office

The European Union (Withdrawal) Act and Common Frameworks

26 June to 25 September 2020

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Foreword

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

Under Schedule 3 of the European Union (Withdrawal) Act 2018, the UK Government has a statutory requirement to report to the UK Parliament every three months on the progress made on the development of UK Common Frameworks. This ninth European Union Withdrawal and Common Frameworks report details progress from 26 June - 25 September 2020. In addition to progress made, the report details that the UK Government did not make use of powers under section 12 of the European Union (Withdrawal) Act 2019 to temporarily maintain existing limits on devolved competence in some policy areas.

During this reporting period, the COVID-19 outbreak has continued to exert capacity pressures across the programme. The UK Government and devolved administrations have remained committed to progressing UK Common Frameworks and, as such, two Common Frameworks - Nutrition Labelling, Composition and Standards and Hazardous Substances (Planning) - were provisionally approved by JMC(EN) on 3 September. They became the first Common Frameworks to reach this major milestone.

Significant work was undertaken across the UK Government and devolved administrations to produce the Frameworks Analysis 2020, which was published on 24 September 2020. This report provides a detailed technical update on the implementation arrangements for each individual framework area. In addition to the regular European Union (Withdrawal) Act and Common Framework reports, the Analysis further illustrates the ongoing collaborative work between the UK Government and devolved administrations to deliver UK Common Frameworks.

The UK Government and devolved administrations have continued to engage with technical stakeholders and early engagement with legislatures took place to prepare for upcoming parliamentary scrutiny.

In parallel to developing Common Frameworks, the UK Government has developed a cross-cutting approach to the UK Internal Market. In July the UK Government published a White Paper, launching a four week consultation on the UK Government's proposals. Following this, the UK Internal Market Bill was introduced to Parliament on 9 September.

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 24 September 2020 and covered the reporting period 26 March 2020 to 25 June 2020.¹
- 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 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) 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/919783/Eighth_EUWA_and_Common_Frameworks_Report.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, towards implementing long-term Common Frameworks. It also outlines how the frameworks principles have been taken into account.

Frameworks Delivery

1.7. Frameworks will be implemented depending on the requirements of the particular policy area. This may require a combination of legislative and non-legislative measures. A detailed overview of which frameworks fall into legislative or non-legislative categories can be found in the Frameworks Analysis 2020 published on 24 September 2020.³ The delivery process detailed below 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.

1.8. 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) focusing on legislative and key non-legislative

³https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/919729/Frameworks-Analysis-2020.pdf

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.
- **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 Common Frameworks programme progresses.

Commitment to Transparency

- 1.9. 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.
- 1.10. The previous report published on 24 September was published jointly alongside a revised frameworks analysis. The Frameworks Analysis 2020 provides specific technical details on the intended implementation arrangements for each individual framework area, and illustrates the ongoing collaborative work between the UK Government and devolved administrations to deliver Common Frameworks.

Revised Delivery Plan

- 1.11. As in the previous reporting period, the COVID-19 outbreak continued to place capacity pressures on officials working across the UK Common Frameworks programme during this ninth reporting period, in both the UK Government and the devolved administrations. The UK Government and the devolved administrations remain committed to delivering UK Common Frameworks and the programme will continue into 2021.
- 1.12. Whilst the programme of work continues into 2021, the UK Government and devolved administrations expect to deliver, at a minimum, provisional frameworks by the end of the Transition Period. During this reporting period, individual framework project timelines were reviewed to allow for the later development stages, including parliamentary scrutiny, to be conducted in 2021. A provisional framework is an outline framework 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 that those frameworks are operational on an interim basis by the end of the Transition Period.

Common Frameworks Revised Analysis

- 1.13. Over a 6-month period, policy teams worked with their counterparts in the devolved administrations to review the proposed implementation arrangements for their frameworks. Updated assessments were recorded in the Frameworks Analysis 2020, highlighting the changes that have taken place since the previous analysis publication in April 2019. Further, it outlines a reclassification process which has been undertaken by the UK Government and devolved administrations to reassess implementation arrangements. It sets out why certain policy areas previously assessed as requiring full frameworks do not require new frameworks at this time, and why other areas now require non-legislative rather than legislative arrangements.
- 1.14. The publication of the analysis is part of an ongoing dialogue between the UK Government and the devolved administrations, and should therefore not be considered as a final position. The position it sets out is provisional and subject to change as discussions with the devolved administrations continue. A fourth iteration of the Frameworks Analysis is expected to be published in 2021.

Framework Coordination

- 1.15. Common Frameworks are being developed through constructive discussions between the UK Government and devolved administrations. This has continued during the latest reporting period (26 June 2020 to 25 September 2020).
- 1.16. During this reporting period, there were three 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 Common Frameworks programme.

- 1.17. At an operational level, there have been weekly Frameworks Project Team meetings between officials in the UK Government and the devolved administrations, where productive, collaborative work has been undertaken to support the detailed development of frameworks by policy officials.
- 1.18. Multiple meetings have taken place between officials in various departments, for example, 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.
- 1.19. During this reporting period, Cabinet Office, as programme coordinator, has continued to engage with departments across the UK Government via the monthly Frameworks 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, the territorial offices, and other UK Government departments that handle large framework portfolios or cross-cutting workstreams such as trade and the UK Internal Market.

Framework Development

- 1.20. The Nutrition Labelling, Composition and Standards framework received provisional confirmation at the JMC(EN) on 3 September, and the lead policy team prepared for parliamentary scrutiny. The framework made good progress and is on track to be ready for full implementation by the end of the year.
- 1.21. The Hazardous Substances (Planning) framework also received JMC(EN) provisional confirmation on 3 September following approval from portfolio ministers in each administration. Preparations for parliamentary scrutiny were initiated.
- 1.22. The Food and Feed Safety and Hygiene (FFSH) framework team made good progress on preparations for technical stakeholder engagement in October.
- 1.23. The Emissions Trading System (ETS) framework made good progress during this reporting period. Policy teams responded to recommendations from the earlier Phase 3 Review and Assessment (R&A) panel and further developed the framework, preparing it for the latter stages of its development including portfolio ministerial approval.
- 1.24. The Radioactive Substances framework completed an initial light touch review in August, following which further policy development was conducted in preparation for an in-depth Phase 3 Review and Assessment in October.

- 1.25. Policy development for the remaining frameworks in the programme continued in anticipation of in-depth Phase 3 Review and Assessments panels in October and November.

Programme Development

Review and Assessment

- 1.26. UK Government and devolved administration officials further refined the review and assessment approach within the Common Frameworks development process to ensure it is timely and provides appropriate levels of assurance. As a result, review and assessment has been focused on the end point of policy development. This facilitates the rapid development of frameworks while ensuring that all frameworks are robust enough for provisional JMC(EN) confirmation, through in-depth review and assessment by UK Government and devolved administration officials. Policy development will continue into Phase 4 in 2021. As such, a further review will be conducted towards the end of Phase 4 to take stock of parliamentary scrutiny feedback and the resolution of cross-cutting issues that will have been worked into the provisional frameworks.
- 1.27. Within this reporting period, the Frameworks Project Team worked with the UKG-DA policy teams to sequence outstanding Review and Assessment (R&A) panel meetings for individual frameworks. Panels are being held over a 6-week period in October and November. The Project Team held multiple workshop sessions to finalise policy development and to prepare policy teams for the R&A process.

Stakeholder Engagement

- 1.28. As part of the wider commitment to transparency within the Common Frameworks programme, the UK Government and devolved administrations work in collaboration to conduct a programme of engagement with wider stakeholders and legislatures at various points in the development of each Framework. As part of this process, sector-specific engagement with industry experts takes place, conducted jointly across all administrations where possible. This updates stakeholders on the development of specific frameworks and allows an opportunity to input their views.
- 1.29. The COVID-19 outbreak continued to impact engagement work during this reporting period. Despite this disruption, a programme of engagement with key industry stakeholders by governments on individual frameworks has continued. This includes a combination of online video sessions and correspondence which has provided direct input into the policy development. To ensure progress, the timing, location and format of engagements continue to be arranged to suit the stakeholders for each individual framework.
- 1.30. During this reporting period, the Food and Feed Safety and Hygiene framework commenced its technical stakeholder engagement. Work was undertaken to prepare for technical engagement sessions to be conducted on further frameworks (expected

shortly after this reporting period). Preparations were undertaken for the following frameworks: Agricultural Support; Food Compositional Standards and Labelling; Chemicals and Pesticides; Animal Health and Welfare; Agriculture - Zootechnics; and Public Procurement. All engagement events are being planned in line with the COVID-19 guidance.

Parliamentary Engagement

- 1.31. The UK Government remains committed to transparency of the UK Common Frameworks programme, and to 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.
- 1.32. On 17 September, the House of Lords established a new Common Frameworks Scrutiny Committee (CFSC). The CFSC is chaired by Baroness Andrews and will sit for the parliamentary year with the purpose of scrutinising UK Common Frameworks.
- 1.33. The UK Government recognises the House of Commons Public Administration and Constitutional Affairs Committee's (PACAC) interest in the overall UK Common Frameworks programme. The Minister for the Constitution and Devolution (MCD) has written to Mr William Wragg MP, chair of PACAC, to set out the general process for engaging with UK Parliament, and has agreed to ensure PACAC receives copies of all framework summaries and provisional frameworks shared with UK Parliament.
- 1.34. During this reporting period, no provisional frameworks were laid in any legislature for scrutiny. The Nutrition Labelling, Composition and Standards and the Hazardous Substances (Planning) framework lead policy teams started to engage with legislatures to prepare for upcoming parliamentary scrutiny.
- 1.35. The majority of provisional frameworks are expected to be shared with the UK Parliament, Scottish Parliament, Welsh Parliament and Northern Ireland Assembly for scrutiny in 2021. As such, departments have started to engage with legislatures at official level. During this reporting period, the Nutrition Labelling, Composition and Standards, Emissions Trading System, and Food and Feed Safety and Hygiene framework summaries were formally shared with committees across all legislatures.
- 1.36. Responses to two parliamentary questions on the frameworks programme tabled on 6 July were provided to Claire Hanna MP for Belfast South. The questions concerned the frameworks within the remit of the Northern Ireland Department of Agriculture, Environment and Rural Affairs and plans for stakeholder engagement.

Northern Ireland and the Ireland/Northern Ireland Protocol

- 1.37. 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.

- 1.38. 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.

UK Internal Market

- 1.39. In parallel to developing Common Frameworks, the UK Government has developed 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 in December 2020.
- 1.40. During this reporting period, on 16 July 2020, the UK Government published a White Paper on the UK Internal Market, launching a four week public consultation on proposals for ensuring continued seamless intra-UK trade. The UK Government received 302 responses to the UK Internal Market consultation, and in addition engaged directly with a wide range of stakeholders from across all four parts of the UK. Consultation responses showed overwhelming support from businesses for measures to avoid trade barriers and provide certainty for firms. Formal responses to the consultation were received from the three devolved administrations, setting out clearly a number of concerns around the UK Government's approach to the UK Internal Market. The UK Government published a response to the consultation on 9 September 2020.
- 1.41. The UK Internal Market Bill was introduced to Parliament on 9 September, and by the end of this reporting period had completed Committee stage in the House of Commons. The Bill will ensure the UK can operate as a coherent internal market following the end of the Transition Period by enshrining in law the principles of mutual recognition, ensuring regulations from one part of the UK are recognised across all four parts of the UK, and non-discrimination, which will support companies trading in the UK regardless of where in the UK they are based. The UK Internal Market provisions will operate on a full UK-wide basis, considering the Ireland/Northern Ireland Protocol for goods.
- 1.42. Common Frameworks provide an agreed approach to ensuring regulatory coherence across the UK in specific policy areas, providing a mechanism for collaborative policy making between the UK Government and devolved administrations in devolved policy areas following the end of the Transition Period. One of the principles guiding

the development of Common Frameworks is that they will support the functioning of the UK Internal Market.

- 1.43. While the UK Internal Market legislation will intersect with frameworks that have a 'market' component (i.e. policy areas that include regulation of services or goods production or sale), many of the components of each framework, or in many cases entire frameworks, will fall out of scope of the legislation.
- 1.44. Whilst the devolved administrations have been clear that they disagree with the UK Government's approach to the internal market, discussions between the UK Government and the devolved administrations on the interaction between the UK Internal Market Bill and Common Frameworks continue.
- 1.45. Both the UK Government and the devolved administrations are committed to the progression of the Common Frameworks programme and are continuing to work collaboratively towards that aim. The UK Government considers that, on their own, Common Frameworks cannot guarantee the integrity of the entire UK Internal Market as they are primarily sector-specific and not intended to address the totality of economic regulation or the cumulative effects of divergence, and that the Internal Market Bill therefore builds upon Common Frameworks by providing additional legislative protection to intra-UK trade, ensuring that barriers are not created to the ability of UK companies to trade with every part of the UK. The UK Internal Market Bill will continue to progress through Parliament during the next reporting period.

Legislation Relating to Retained EU Law Restrictions

- 1.46. 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.
- 1.47. 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

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

Progress towards removal of retained EU law restrictions

- 1.49. 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

- 1.50. 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

- 1.51. 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

- 1.52. 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.
- 1.53. 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.