

**Intergovernmental Agreement on the European Union (Withdrawal)  
Bill and the Establishment of Common Frameworks<sup>1</sup>**

1. The UK Government and the Devolved Administrations ('the governments') will work together to ensure that the European Union (Withdrawal) Bill ('the Withdrawal Bill') and associated secondary legislation creates a fully functioning statute book across the UK on exit from the European Union. Building on the principles on the establishment of common frameworks ('the principles') agreed by the Joint Ministerial Committee (EU Negotiations) (JMC(EN)) in October 2017, the governments will also continue to work together to create future common frameworks where they are necessary.
2. This agreement and attached supplementary 'Memorandum on the EU (Withdrawal) Bill and the Establishment of Common Frameworks' ('the Memorandum'), together with agreed proposed amendments to the Withdrawal Bill, form the basis of an agreed approach between the governments. If the UK Parliament makes the amendments, the Devolved Administrations will recommend that the Devolved Legislatures give legislative consent to the Withdrawal Bill.
3. This agreement is without prejudice to the UK's Withdrawal Agreement (including any Implementation Period) and future relationship with the EU. It is also without prejudice to the Devolved Administrations' policy positions in relation to the UK's withdrawal from the EU.
4. This agreement respects established constitutional conventions and practices. Consistent with those, the governments reaffirm their commitment to seek to proceed by agreement.
5. The governments agree that EU law should be temporarily preserved where it is envisaged that future common frameworks with a legislative underpinning may be necessary. The governments agree that this is likely, in whole or in part, in 24 areas. For the devolved institutions, temporary preservation will be given effect through regulations made under the provisions in clause 11 of and Schedule 3 to the Withdrawal Bill ('clause 11 regulations'). For England, temporary preservation will be given effect by the UK Government committing not to bring forward legislation that would alter areas of policy in so far as the devolved legislatures are prevented from doing so by virtue of clause 11 regulations, for as long as those regulations are in force. It is possible that some additional areas that the UK Government believes are reserved, but are subject to ongoing discussions between the governments, will also be subject to clause 11 regulations.
6. The implementation of this agreement will result in the UK Parliament not normally being asked to approve clause 11 regulations without the consent of the devolved legislatures. The UK Government commits to make regulations through a collaborative process and

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<sup>1</sup> As of 24 April 2018, the UK Government and the Welsh Government have agreed to the terms of this IGA and Memorandum. The IGA and Memorandum remain open to the Scottish Government and a future Northern Ireland Executive.

in accordance with this agreement and the Devolved Administrations commit not to unreasonably withhold recommendations of consent. In the absence of the consent of the devolved legislatures, UK Ministers will be required to make an explanatory written statement to the UK Parliament if a decision is taken to proceed. This will be accompanied by any statement from the relevant devolved Ministers on why, in their view, the consent of their legislature has not been provided.

7. The power to make clause 11 regulations will expire 2 years after exit day (if not repealed earlier) in line with other powers in the Withdrawal Bill, while the temporary clause 11 regulations themselves will last for a maximum of five years after they come into force.
8. Under this agreement, the UK Government has committed to ensure that clause 11 regulations will not affect the operation of the Sewel convention and that related practices and conventions in relation to future primary legislation, including legislation giving effect to common frameworks, will continue to apply. Accordingly, those established practices and conventions will operate as if clause 11 regulations had not been made.
9. In the interests of transparency and accountability, the Withdrawal Bill will contain a duty on UK Ministers regularly to report to the UK Parliament on progress on implementing common frameworks and removing temporary clause 11 regulations and powers. UK Ministers will formally send any such report to the devolved administrations. Ministers in the devolved administrations will share this report with their own legislatures as part of the reporting arrangements agreed between them.
10. As part of the implementation of this agreement, the governments agree that steps will be initiated to secure the repeal of Bills passed by the devolved legislatures as possible alternatives to the Withdrawal Bill, before the Withdrawal Bill receives Royal Assent. The governments will also ask their principal legal officers to make or support applications to the Supreme Court by consent to withdraw the references made to that Court in respect of such Bills.

## **Memorandum on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks**

1. This memorandum between the governments provides further detail on how the Agreement on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks will be put into operation by the governments.

### **Common frameworks**

2. At the meeting of the Joint Ministerial Committee (EU Negotiations) on 16 October 2017, the governments agreed a set of principles that would determine the creation of common frameworks. Using these principles, the governments have made a joint initial assessment of the 153 areas of EU law that intersect with devolved competence in one or more settlement, assessing the impact that future divergence would have on the following criteria:
  - a. the functioning of the UK internal market, while acknowledging policy divergence;
  - b. compliance with international obligations;
  - c. the UK's ability to negotiate, enter into and implement new trade agreements and international treaties;
  - d. management of common resources;
  - e. the administration of and provision of access to justice in cases with a cross-border element; and
  - f. the security of the UK.
3. The UK Government published its analysis of the 153 areas, based on joint work between the governments, on 9 March 2018. This includes 24 policy areas where frameworks may require to be underpinned through subsequent primary legislation in whole or in part; 82 areas where non-legislative frameworks are being explored; and 49 areas where no further action is thought to be necessary. Also included in the analysis are 12 areas that the UK Government believes are reserved, subject to ongoing discussions between the governments.
4. 'Deep Dive' sessions between the governments, held without prejudice to the views of Ministers in each administration, have been used to begin to test and refine the analysis. These sessions indicate that legislative frameworks may not be necessary in all of the 24 areas identified, and that only specific elements of some areas will require legislation, with the remainder of the framework being established in a memorandum of understanding or other non-legislative approach. Deep dive sessions have also begun to explore areas where non-legislative frameworks are envisaged and cross-cutting issues, and the DAs role in them, including the governance of frameworks, the functioning of the UK internal market, and trade agreements.
5. Further discussions between the governments are now required to define the precise scope and form of future common frameworks. Deep dives in May and June 2018 will refine policy thinking on legislative frameworks and cross-cutting issues in conjunction

with a broader review of intergovernmental relations. Discussions on non-legislative frameworks are underway, but will be the focus on deep dive discussions from June onwards. The Joint Ministerial Committee (EU Negotiations) will retain oversight of the frameworks programme and will review the outcome of deep dive discussions periodically.

6. As these discussions proceed, It is anticipated that regulations made under clause 11 and related provisions will be made for all or part of the 24 areas where legislation may be required, and in such other relevant areas as the governments seek to agree to be appropriate, as set out in **Annex A**.

### **Clause 11 Regulations**

7. Clause 11 regulations will be made in accordance with the following process, underpinned by provisions in the Withdrawal Bill:
  - a. Building on the 'Deep Dive' process, which has been a collaborative effort between the governments, discussions will take place between the governments to seek to agree the scope and content of regulations. This process will continue to report into JMC(EN).
  - b. Following those discussions between the governments, a UK Minister will formally send draft clause 11 regulations to the relevant devolved administration(s), notifying the relevant Presiding Officer(s) of the relevant devolved legislature(s) that the regulations have been sent.
  - c. Where the draft regulations have been developed in line with this agreement, the relevant devolved administration(s) will lay them before their legislature(s) and will not unreasonably withhold an accompanying recommendation to their respective legislature(s) to provide consent.
  - d. If the consent of a devolved legislature is not provided within 40 days of the draft regulations being sent to the relevant devolved administration, the UK Minister may decide either not to proceed with the regulations or to ask the UK Parliament to approve the regulations. If a UK Minister decides to proceed with the regulations, the Minister must provide a written statement to the UK Parliament indicating the reasons why, in the Minister's view, the devolved legislature did not provide consent.
  - e. The relevant devolved administration(s) will also provide a written a statement to the UK Parliament setting out why, in their view, the consent of their legislature has not been provided.
  - f. In these circumstances, the UK Minister may make the regulations where they are approved by the UK Parliament.

### **Use of Concurrent Powers in the Withdrawal Bill**

8. The UK Government will be able to use powers under clauses 7, 8 and 9 to amend domestic legislation in devolved areas but, as part of this agreement, reiterates the commitment it has previously given that it will not normally do so without the agreement

of the devolved administrations. In any event, the powers will not be used to enact new policy in devolved areas; the primary purpose of using such powers will be administrative efficiency.

9. The UK Government will bring forward amendments to Schedule 2 to the Withdrawal Bill to enable the devolved administrations to amend retained directly applicable EU law which relates to areas that are otherwise devolved except where clause 11 regulations have been made. While the UK Government will also be able to use the powers in clause 7, 8 and 9 to amend this retained directly applicable EU law, as part of this agreement it commits it will not normally do so without the agreement of the devolved administrations. Where the UK Government is proposing to amend retained directly applicable EU law which relates to areas that are otherwise devolved, but which cannot be amended by the devolved administrations because clause 11 regulations have been made, the UK Government commits that it will first consult the relevant devolved administration(s).

## **Annex A: policy areas that are likely to be subject to clause 11 regulations**

The governments are exploring the extent to which legislation could be required, in whole or in part, in 24 policy areas; these areas are likely to be subject, in whole or in part, to regulations made under the provisions in clause 11 of and Schedule 3 to the Withdrawal Bill ('clause 11 regulations') and are detailed below. It is possible that other areas that continue to be discussed by the governments will also be subject to clause 11 regulations - examples are provided below.

24 areas where legislation could be required, in whole or in part:

1. Agricultural support
2. Agriculture - fertiliser regulations
3. Agriculture - GMO marketing and cultivation
4. Agriculture - organic farming
5. Agriculture - zootech
6. Animal health and traceability
7. Animal welfare
8. Chemicals regulation (including pesticides)
9. Elements of reciprocal healthcare
10. Environmental quality - chemicals
11. Environmental quality - ozone depleting substances and F-gases
12. Environmental quality - pesticides
13. Environmental quality - waste packaging and product regulations
14. Fisheries management & support
15. Food and feed safety and hygiene law (food and feed safety and hygiene law, and the controls that verify compliance with food and feed law (official controls))
16. Food compositional standards
17. Food labelling
18. Hazardous substances planning
19. Implementation of EU Emissions Trading System
20. Mutual recognition of professional qualifications (MRPQ)
21. Nutrition health claims, composition and labelling
22. Plant health, seeds and propagating material
23. Public procurement
24. Services Directive

Other policy areas - which the UK Government believes are reserved (or excepted in the Northern Ireland Act 1998), but are subject to ongoing discussion with the devolved administrations - that could be subject to clause 11 regulations:

25. Food Geographical Indications (protected food names)
26. State aid