



Cabinet Office

The European Union (Withdrawal) Act and Common Frameworks

26 September 2018 to 25 December 2018



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(Withdrawal) Act 2018**



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Foreword

As we approach 29 March 2019, the Government remains committed to ensuring the whole of the United Kingdom has a smooth and orderly withdrawal from the European Union. To achieve this, we know that businesses and individuals need stability and certainty as decision making powers return from the EU to London, Edinburgh, Cardiff and Belfast.

This Government recognises the importance of accountability and transparency and has therefore committed in legislation to report to Parliament every three months and to share this report with the devolved administrations. The report includes the steps we are taking, with those administrations, to establish common frameworks and the use of the powers in section 12 of the European Union (Withdrawal) Act 2018 to temporarily freeze devolved competence. The first report was laid before Parliament on 13 November 2018 covering the period from 26 June to 25 September 2018.

Since that report, we are pleased that UK Government officials and their devolved administrations counterparts have been able to continue to work closely to prepare the UK for EU Exit, where legislation is required and where future common frameworks are necessary, in line with the principles on common frameworks and the Intergovernmental Agreement on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks.

The devolved administrations are in agreement with the Government that cooperation and coordination is required to prepare our laws for EU Exit. This necessary planning requires a substantial number of statutory instruments containing changes to reserved and devolved law. Close working between the Government and the devolved administrations has enabled significant progress to be made towards this and has ensured that it is aligned with the longer term work on future frameworks.

This report details the progress made in the second reporting period (26 September to 25 December 2018) as required under Schedule 3 to the European Union (Withdrawal) Act 2018. On the basis of this continuing joint progress and collaboration on future frameworks which ensures the statute book is ready for exit day, the UK Government has again concluded that it does not need to bring forward any section 12 regulations at this juncture. In addition, the Scottish and Welsh Governments have re-confirmed their commitment not to 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 prior to publication to maintain a concurrent level of devolved scrutiny. The first report was published on 13th November 2018, covering the three month period after the Act was granted Royal Assent (26 June to 25 September).

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 work to create common UK-wide approaches - or 'frameworks' - even where those policy areas otherwise fall within devolved competence. The Scottish and Welsh Governments agree that common frameworks will continue to be required in some areas after we leave 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 The principles continue to guide all discussions between the UK Government and 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 current reporting period, toward implementing our future, long-term common frameworks, and explains how the frameworks principles have been taken into account.

1.7 Significant joint progress continues to be made on future common frameworks, which is underpinned by the joint structures that have been developed under the guidance of JMC(EN) and the political commitment made by the Scottish and Welsh Governments in the first report not to pursue policy divergence in areas where frameworks discussions are ongoing.

1.8 Common frameworks continue to be developed through constructive discussions between the UK Government and devolved administrations. During this reporting period, detailed multilateral engagement has continued to take place at official level, in relation to the 24 priority areas, including standalone sessions on:

- Animal Health and Welfare (26 September 2018)
- Chemicals and Pesticides (2 October & 21 November 2018)
- Plant Health, Seeds and Propagating Material (4 October 2018)
- Food and Feed Hygiene and Safety Law (9 October 2018)
- Nutrition Health Claims, Composition and Labelling (21 November 2018)
- Public Procurement (23 November 2018)
- Fertiliser Regulations (23 November 2018)

1.9 Discussions have also continued on cross-cutting issues that are captured in the common frameworks principles, such as the functioning of the UK internal market.

1.10 In the absence of Northern Ireland Executive Ministers, officials from the Northern Ireland Civil Service continue to participate in this work on a factual and analytical basis.

1.11 Within the latest reporting period (26 September to 25 December 2018), policy teams engaged in these discussions have continued to develop “outline frameworks” in the 24 priority areas where frameworks are likely to require legislative elements, in whole or in part, at this time.

1.12 Among the policy and operational issues being considered are: the scope of the frameworks and where, if any, legislation may be required; decision making processes and the potential use of third parties; mechanisms for monitoring, reviewing and amending frameworks; the roles and responsibilities of each administration; and the detail of future governance structures, including arrangements for resolving dispute and information sharing.

1.13 Overall, preliminary outputs suggest a high degree of consensus about potential scope of frameworks, areas of agreement and disagreement and the next steps required to establish a framework. In some instances, approaches to governance are taking shape, often building on existing arrangements for cooperation. Whilst discussions are without prejudice to a range of factors, good progress has been made in developing outline frameworks in line with the requirements of the principles, whilst acknowledging the range of dependencies (including the nature of the future relationship the EU), which will have a bearing on the final shape of a number of individual frameworks.

1.14 As work on the outline frameworks continues, it also remains the case that legislation - primary or secondary - may only be required to implement elements of future frameworks in these areas, accompanied by non-legislative arrangements articulating agreed ways of working between the administrations.

1.15 In some areas, the focus of outlines is based on the work to secure fixes to EU law being put in place under the EU (Withdrawal Act). It is possible these may provide a starting point for interim or long-term framework arrangements in some areas, but this will depend on the outcome of negotiations with the EU.

1.16 All discussions have identified the need for governance arrangements to both guide decision-making and enable co-operation in the future, consistent with the wider framework for Intergovernmental Relations, which is currently under review. The scope and scale of these arrangements vary in each area, depending on the technical detail and complexity involved. Discussions have considered what

arrangements are already in place, such as concordats, and the extent to which these could provide a basis for future governance arrangements.

1.17 Themes and issues that feature consistently in discussions include the need for robust arrangements for information sharing, decision-making, dispute resolution, and the role of evidence, including in some cases, expert opinion/technical advice. In each of these policy areas there is a recognition that detailed technical arrangements, set out either in legislation or administrative agreements, probably need to be supplemented by new arrangements to enable policy cooperation and political engagement, in the future in the absence of overarching arrangements provided for by membership of the EU. Discussions also point to the need for the governments to agree their expectations and broad infrastructure for such cooperation and engagement, and look to the ongoing review of Intergovernmental Relations commissioned by JMC(Plenary) to provide the overarching context and guidance on best working practice for policy teams.

Northern Ireland

1.18 Due to the absence of a Northern Ireland Executive, there remains 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 EFEF Act expires on 26 March 2019 - though this can be extended by a period of up to 5 months with the consent of Parliament.

Non-Legislative Frameworks

1.19 Our initial analysis indicates that there are 82 policy areas in which a UK common approach is potentially needed, but that can be best achieved through non-legislative frameworks. We are currently taking stock of policy development and engagement to date in these areas. We will provide an update in due course.

Common Frameworks Analysis

1.20 The provisional analysis published in March 2018 continues to inform framework developments. The UK Government identified 153 areas of EU law that

intersect with devolved competence; 150 of these policy areas intersect with competence in Northern Ireland, 107 in Scotland and 64 in Wales.¹

1.21 The provisional analysis provides an assessment of the areas where we will and will not need continued common rules or ways of working. It is also a decision on whether we plan to deliver required common frameworks through legislative or non-legislative means. As work on the outline frameworks continues legislation - primary or secondary - may be required to implement elements of future frameworks in these areas, accompanied by non-legislative arrangements articulating agreed ways of working between the administrations.

1.22 We have always been clear that this analysis was provisional, and that the assessments made within the analysis have been part of an ongoing dialogue, without prejudice to our ongoing EU negotiations and the need to find practical solutions that acknowledge the unique economic, social and political context in Northern Ireland.

1.23 UK Government officials are working with devolved administration officials to revise this analysis and take into account progress on framework areas since March 2018. We anticipate publishing a further iteration of this analysis within the next reporting period, which will form the basis of our next phase of policy development and wider engagement.

¹ www.gov.uk/government/publications/frameworks-analysis

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 2018².

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.

²<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 yet sought to make use of the powers to apply retained EU law restrictions. As outlined earlier in this report, significant progress is being made across the policy areas where it is envisaged that legislative frameworks will be needed, and where there is outstanding disagreement on the boundaries of devolved competence. Our priority is to continue working with the devolved administrations to establish a shared understanding of where common approaches will need to be given effect through shared legislation, so that we can jointly design and implement those approaches.

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 those future 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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