1. This paper is submitted in response to a request for further comment on common frameworks, following an evidence session before the Committee on 26 February 2019 as part of its inquiry into The Future of Scottish Agriculture Post-Brexit, and builds on the written evidence submitted at that time. It has been prepared with Dr Viviane Gravey (who also participated in the evidence session on 26 February) and with other colleagues on the Brexit and Environment Network: Prof Charlotte Burns, Prof Richard Cowell and Prof Andy Jordan.

2. It is widely agreed that on many matters there are benefits in having common rules/standards for all nations of the UK. These arise from economic factors – e.g. avoiding industry in one nation being placed at a (dis)advantage as a result of more/less demanding standards than elsewhere and enabling the same product to be sold in all nations – as well as from the need for coherent management of shared resources (e.g. cross-border rivers) and other reasons, including to ensure compliance with the UK’s international commitments. Early EU environmental standards on water, waste and air pollution were adopted to create a level playing field between the Member States, and to help usher in the EU’s Single Market. Key questions for UK actors intent on maintaining the functioning of the UK’s Internal Market are thus whether any of these frameworks should be abandoned - and if not abandoned, what shape these frameworks should take. In areas in which EU law currently provides a common framework, such as agreed standards for river pollution, the decision not to adopt frameworks (as is suggested for water in the April 2018 Cabinet Office list of frameworks) or to have looser frameworks (as is suggested for biodiversity) puts these standards at clear risk of deregulation, and opens the door to a ‘race to the bottom’ in environmental standards across the UK.

3. Different formats for common frameworks and the reasons for their adoption were examined by the Joint Ministerial Committee in October 2017 and the options and principles they set out remain valid.

[A framework] may consist of common goals, minimum or maximum standards, harmonisation, limits on action, or mutual recognition, depending on the policy area and the objectives being pursued. Frameworks may be implemented by legislation, by executive action, by memorandums of understanding, or by other means depending on the context in which the framework is intended to operate.

Principles
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;
4. The choice of when and in what form a common framework is desirable is an inherently political one. It is, first, a choice between on the one hand pursuing divergent policies unilaterally and on the other hand feeding into joint rules binding all four nations. It is, second, a choice of the level of constraint and commonality. Views can reasonably differ on the substantive issue of whether a common standard is required and what it should be. Rules on pesticide usage are desirable to protect public and environmental health; but there is legitimate room for disagreement on what is an acceptable safe level. Having the same standard across the UK allows produce to be sold across the UK market. A shared standard also prevents producers in any one country being disadvantaged by the introduction elsewhere of a different standard that enables producers there to produce crops more cheaply. On such issues there is again legitimate room for disagreement on whether the matter is best dealt with through uniform rules or a common minimum standard, allowing any nations seeking higher standards to do so. Since each decision will require specialist information and analysis of the likely impact in economic, environmental, health and even ethical terms, the challenge, then, is not to determine certain outcomes in advance but to develop a process whereby decisions can be taken in an efficient and accountable way that enjoys respect, even in the face of disagreements. Especially as the scope for conscious and unconscious divergence increases over time, a reliance on *ad hoc* decisions is likely to become increasingly unsatisfactory.

5. It should be noted that the question of how the need for, and content of, common standards are determined is separate from that of who is responsible for implementing them. This is shown by the current position whereby the devolved administrations have responsibility for enacting and enforcing the frameworks adopted under EU law within the scope of devolved matters. They may have no choice as to what the local legislation has to provide, or there may be some room for local discretion over exactly what is done, both in terms of the process to achieve specified outcomes (e.g. the combination of measures needed to achieve the required water quality) and even aspects of the outcomes within the specified “envelope” (e.g. the limited discretion over the distribution of rural support funds). Where legal implementation is required, common standards can be achieved by parallel legislation in the different nations, without legislative power being centralised.

6. At present there are two means by which a common position can be arrived at and guaranteed across the devolved UK. The first is under the Scotland Act 1998 (and the similar but not identical devolution settlements for the other nations) where power in some areas is reserved to the UK authorities, so that there is only one source of law which will produce a single set of rules for the whole of the UK. The second is through membership of the EU, which requires that EU rules be observed throughout the Union. With EU law, however, whilst sometimes there is an insistence on identical rules across all Member States, there is greater use of provisions that allow some discretion to the Member States and their sub-national constituents, provided that they put in place measures which guarantee certain minimum standards or that certain objectives are achieved.

7. Following Brexit, reserved matters will remain in the UK Government’s hands and under the European Union (Withdrawal) Act 2018, the UK Government will also have control for a time of matters currently dealt with in Brussels. Beyond that, the scope for debate and the room for manoeuvre (for UK and devolved administrations) may be largely determined by the international position, a matter exclusively in the hands of the UK Government. If the eventual Brexit settlement involves the UK remaining within the EU’s Single Market, or a more bespoke deal requires continuing alignment with
elements of this, this will establish the common rules and standards that must be applied. Similarly, any other international trade deal may have provisions which require the UK as a whole to apply certain standards (higher or lower than currently exist) or limit the extent to which changes can be made that might (dis)advantage home or overseas producers.

8. One answer on how to establish common frameworks is simply to rely on the supremacy of the UK Parliament which ultimately allows the UK authorities to retain the final say on all matters, even within currently devolved scope. This approach has clarity, but has obvious political disadvantages.

9. An alternative answer to the question of how common frameworks can be agreed and implemented lies in establishing a robust new mechanism for intra-UK discussion and decision-making. As several parliamentary inquiries have shown, it is widely accepted that the current arrangements for intra-UK governance (Joint Ministerial Council etc.) are not working well. In the EU, common frameworks in the form of directives are jointly agreed by the European Parliament and the Council of the European Union. Historically, the increasing significance of the parliamentary role within EU decision-making has been important in terms of scrutiny, openness and accountability. Replacing such a system by one where frameworks are determined by agreement within the Joint Ministerial Council, or between governments acting bilaterally, would severely reduce transparency, access for stakeholders and parliamentary oversight, and raise questions as to the legitimacy of these future frameworks. Although there seems little prospect of immediate substantial reform of the intra-UK structures, it is through a revised constitutional settlement that a long-term solution lies. There should be mechanisms that bring together the various administrations (with England represented separately from the UK) and provide a forum for discussion and agreement, with a dispute-resolution process that all parties have confidence in, all working with the degree of transparency and accountability that gives the system legitimacy.

10. Between those extremes, the answer must lie in political will and a willingness to work collaboratively. This requires dialogue and discussion between the various administrations. This should be built from the ground up through interchange between officials and from the top down, depending on whether significant policy differences exist. Progress in areas where there is a shared view of the way forward should be insulated from those where policy disagreements exist and which therefore must be resolved at a political level. The discussions must incorporate wide stakeholder engagement to ensure that there is an understanding of the economic impact of having or not having common frameworks for producers, consumers, traders (local, national and international) and those involved in subsidiary businesses (e.g. supplying related equipment) as well as the social and environmental dimensions.

11. Such dialogue and discussion could be left to an ad hoc process, but there is merit in some proceduralisation, especially as the volume of direct intra-UK coordination activity will increase with matters no longer mediated through Brussels. Revised procedures could use the existing Joint Ministerial Council, with more frequent meetings and stronger pre-meeting preparation, or by Parliament expecting or requiring UK Ministers to report on their discussions with their devolved counterparts when introducing any legislative or policy measure that is laid before Parliament. Such dialogue should go beyond administrations and ministers exchanging views – the interparliamentary side of intra-UK cooperation has been greatly neglected. Joint meetings between a House of Commons Committee and a devolved assembly or parliament committee – as is possible for the Welsh Affairs Committee – and ad hoc interparliamentary conferences such as the interparliamentary forum on Brexit should be encouraged. This is not, however, an issue where “one size is likely to fit all”.
12. A further point raised in reviews of intra-UK co-operation (notably the Institute for Government’s recent paper *Ministers Reflect on Devolution—Lessons from 20 years of Scottish and Welsh Government*) is that problems often arise unconsciously because of a lack of awareness in UK departments of the workings of the devolution settlements (and of the different conditions across the UK – what a London-based official thinks of as “typical” farming is likely to be different from what is thought of in Edinburgh, Cardiff or Belfast). The refoocussing of effort required after Brexit and the inevitable reallocation of staff create an opportunity to ensure that those dealing with heavily devolved matters such as agriculture are fully alert to the position. This would require appropriate training and perhaps mutual exchanges of staff between devolved and UK administrations. The pessimistic alternative is that in the rush to get new arrangements in place and with the significance of international trade matters (largely dealt with by those who may have less experience of the intra-UK landscape), the tendency to overlook the devolution dimension will become more pronounced, just as its significance is increased. These reviews of intra-UK cooperation strengthen the case for a proceduralisation of cooperation between the different administrations – instituting formal practices of cooperation which would make contacting counterparts in the other administration a part of the normal process of policy making and implementation.

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