

# The European Union (Withdrawal) Act and Common Frameworks

26 March to 25 June 2021

November 2021



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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

Since 2017, the Government and devolved administrations have been working together to develop agreements covering a range of policy areas where powers which have returned from the European Union and which intersect with devolved competence. This has 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 Government and Scottish and Welsh Governments, and later on 15 June 2020, endorsed by the Executive Committee of the Northern Ireland Executive.

Under Schedule 3 of the European Union (Withdrawal) Act 2018, the 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 twelfth European Union Withdrawal and Common Frameworks report details progress from 26 March to 25 June 2021. In addition to progress made, the report details that the Government did not make use of powers under section 12 of the European Union (Withdrawal) Act 2018 to temporarily limit devolved competence in any policy areas.

The Government is committed to working collaboratively and constructively with the devolved administrations of Scotland, Wales and Northern Ireland to progress Common Frameworks. During this time, there were elections for the Senedd and Scottish Parliament and accompanying pre-election periods for the Welsh Government and Scottish Government. However, the Government and devolved administrations were still able to make progress on Common Frameworks during this time.

Within the reporting period, Hazardous Substances (Planning) became the first Common Framework in the programme to receive final confirmation and be fully implemented following completed scrutiny by all four legislatures. The finally agreed framework was subsequently published on 31 August.

Shortly after the end of this reporting period, on 8 July, provisional confirmation was secured for a further 21 Frameworks. An additional Framework was provisionally confirmed on 14 October. This takes the total number of provisionally confirmed Frameworks to 29. Work is continuing to further develop these Frameworks. The UK Government will shortly publish a fourth Frameworks Analysis update setting out a comprehensive breakdown of areas previously governed by EU law that intersect with devolved competence, including for the first time, rationales for policy areas where no Frameworks are required.

During this reporting period there was a focus on addressing cross-cutting issues that are affecting multiple Frameworks instead of working on individual Frameworks. As such officials from the Government and devolved administrations have set up a regular cross-cutting issues subgroup to focus intently on taking these forward. Since then, good progress has been achieved in developing the joint processes and ways of working necessary to address these issues, which will be reflected in the relevant Common Frameworks documents.

## 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 Framework including use of powers in Section 12 of, and Schedule 3 to, the 2018 Act to temporarily maintain 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 20 May 2021 and covered the reporting period 26 December to 25 March 2021.<sup>1</sup>
- 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. EU laws created common UK-wide approaches even where those policy areas were otherwise within devolved competence. 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 and exited the Transition Period.
- 1.4. In October 2017, the Joint Ministerial Committee (EU Negotiations) agreed upon principles to guide the work to create Common Frameworks.<sup>2</sup> 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;*

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<sup>1</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/986797/The\\_European\\_Union\\_Withdrawal\\_Act\\_and\\_Common\\_Frameworks\\_report-26\\_December\\_2020\\_to\\_25\\_March\\_2021.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/986797/The_European_Union_Withdrawal_Act_and_Common_Frameworks_report-26_December_2020_to_25_March_2021.pdf)

<sup>2</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/652285/Joint\\_Ministerial\\_Committee\\_communique.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/652285/Joint_Ministerial_Committee_communique.pdf)



- *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 Northern Ireland Executive endorsed the JMC(EN) principles in June 2020. These principles continue to guide all discussions between the 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 continue to be included in future iterations of this publication.

## Progress Towards Establishing Common Frameworks

- 1.6. The following section sets out the steps taken during this reporting period by the 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. 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:** consists of engagement between the Government and devolved administration officials (also referred to as multilateral deep dives) to focus on Frameworks, as well as to establish some of the key interdependencies that affect multiple Frameworks.
  - **Phase 2: Policy development:** Detailed policy development takes place, including joint work between the Government and devolved administration officials to agree policy approaches and operational and governance arrangements for each policy area. Initial stakeholder engagement also takes place where appropriate. This results in jointly drafted and agreed outline Frameworks.
  - **Phase 3: Review and consultation:** The Government and devolved administrations collaborate 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, 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 Government, and provisional confirmation of Frameworks by each administration. This in-depth review and joint confirmation ensures that a minimally operable framework, recognised as a 'provisional framework', is developed.

- **Phase 4: Preparation and implementation:** The Government and devolved administration officials work jointly on any ongoing reappraisals of cross-cutting issues, present the Frameworks for parliamentary scrutiny and review parliamentary recommendations in order to finalise individual Frameworks. At the end of this phase, the provisional framework receives ministerial approval from the intergovernmental forum responsible for the common Frameworks programme and the successor to JMC(EN) (agreed through the review of intergovernmental relations).
  - **Phase 5: Post-implementation:** Post-implementation arrangements take place, including regular cycles of review and, if appropriate, amendment. These vary between Frameworks and details continue to be developed as the Common Frameworks programme progresses.
- 1.8. Frameworks are undergoing continued development during 2021 according to the requirements of their particular policy areas. The delivery process detailed above takes into account the need for Frameworks to be implemented in different ways, with some activities undertaken concurrently, to ensure that all of the necessary steps have been completed. Accordingly, Frameworks will progress and be finalised at different points in time, depending on their individual requirements.

## Delivery Plan

- 1.9. Work on individual Frameworks has been ongoing during this reporting period, with a specific focus on taking into account the cross-cutting issues that apply to those Frameworks. Delivery timelines for each framework will vary according to the cross-cutting issues that apply and their level of intersect along with any need for further stakeholder engagement.
- 1.10. The pre-election period for the elections to the Senedd and Scottish Parliament applied to the first six weeks of this reporting period. The Cabinet Office continued to liaise with the devolved administrations to coordinate the progress of the programme during the pre-election period while respecting the guidance issued to civil servants of all administrations to maintain impartiality. Officials from both the Welsh Government and Scottish Government were able to continue to participate in the Frameworks Project Team and Project Board meetings during this time.

## Framework Coordination

- 1.11. Frameworks are being developed through constructive discussions between the Government and the devolved administrations. These discussions have continued during the latest reporting period (26 March to 25 June 2021).
- 1.12. During this reporting period there were four 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 monitors progress and facilitates agreement on the direction of the UK Common Frameworks programme.

- 1.13. At an operational level, there have been weekly Frameworks Project Team meetings between officials in the Government and the devolved administrations to support the detailed development of Frameworks by policy officials.
- 1.14. During this reporting period, a working-level UK Government-devolved administration sub-group was formed to focus on the resolution of cross-cutting issues that impact Frameworks. This sub-group has met on a fortnightly basis, reporting into the Frameworks Project Team and Project Board.
- 1.15. The Cabinet Office, as programme coordinator, has also engaged with UK Government departments through a fortnightly Deputy Director-level Frameworks group on strategic policy development and planning, alongside a monthly Frameworks Working Group to provide policy leads with updates and to discuss barriers and drive progress. Working group meetings have also taken place between Cabinet Office officials and officials from framework-owning departments on individual Frameworks.

## Programme Development

### Framework Agreement

- 1.16. The Hazardous Substances (Planning) framework was finalised and fully implemented during this period, having completed scrutiny by all four legislatures. This is the first framework in the programme to have reached this point. The finalised framework was subsequently published on 31 August 2021.
- 1.17. On 8 July, after the end of this reporting period, a further 21 Frameworks were provisionally confirmed by all administrations. An additional Framework was provisionally confirmed on 14 October. The Government and the devolved administrations agreed that portfolio minister clearance would represent provisional confirmation of Frameworks. This takes the total number of finalised Frameworks to one and provisionally confirmed Frameworks to 29. The provisionally confirmed Frameworks are:

1. Emissions Trading System;
2. Radioactive Substances;
3. Late Payment;
4. Specified Quantities and Packaged Goods;
5. Company Law;
6. Agricultural Support;
7. Agriculture - Fertiliser Regulations;
8. Agriculture - Organic Farming;
9. Agriculture - Zootech;
10. Animal Health and Welfare;
11. Fisheries Management and Support;
12. Plant Health;
13. Plant Varieties and Seeds;
14. Air Quality;
15. Best Available Techniques;

16. Ozone Depleting Substances and F-gases;
17. Chemicals and Pesticides;
18. Resources and Waste;
19. Operator Licensing and Commercial Transport;
20. Driver Licensing;
21. Rail Technical Standards;
22. Roads - Motor Insurance;
23. Nutrition Labelling, Composition and Standards;
24. Blood Safety and Quality;
25. Organs, Tissues and Cells (apart from embryos and gametes);
26. Public Health Protection and Health Security;
27. Food Compositional Standards and Labelling;
28. Public Procurement; and
29. Food and Feed Safety and Hygiene Law.

## Phase 4 Development

- 1.18. All provisional Frameworks continued to undergo development towards their finalisation, which requires conclusion of:
  - a) Any remaining framework-specific policy development, including the resolution of cross-cutting issues;
  - b) Any further technical stakeholder engagement required; and
  - c) Parliamentary scrutiny by the legislatures of each administration with an interest in the framework.

## Operational Monitoring

- 1.19. A specific exercise was conducted for the Nutrition Labelling, Composition and Standards (NLCS) Framework during which the NLCS policy group and the UK Government and devolved administration Frameworks teams ran two hypothetical scenarios through the NLCS decision making and dispute resolution processes to test its ability to manage policy changes which could potentially cause intra-UK divergence. The implications of the Northern Ireland Protocol were considered in the context of the two scenarios.
- 1.20. Overall, the exercise indicated that the NLCS Framework was working well on an interim basis at official level. The conclusions from this exercise were that the Framework includes the right set of discussion fora at various levels, and that it made particularly good use of the opportunity to link framework decision making structures with relevant experts and risk analysis. This enabled the group to consider the various trade-offs in the option that would be recommended to ministers, which in practical terms was likely to minimise the need to initiate the dispute resolution mechanism within the Framework. Following this successful exercise the Project Team is undertaking a series of further monitoring sessions involving other Frameworks.

## Transparency

- 1.21. The Government is 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. These reports, alongside a number of provisional Frameworks and associated publications can be accessed on the Government's UK Common Frameworks webpage on gov.uk.<sup>3</sup>

## Parliamentary Engagement

- 1.22. The Government has continued to engage constructively with the UK Parliament, most regularly with the House of Lords Common Frameworks Scrutiny Committee (CFSC) chaired by Baroness Andrews. The CFSC in particular has continued to take a close interest in the programme and wrote to UK Government Ministers regularly during this reporting period. Most notably the CFSC published a report, '*Common Frameworks: building a cooperative Union*', and submitted recommendations on the Public Procurement Provisional Framework. The Government welcomed the Committee's report and in response shared additional updates on cross-cutting issues and set out the Government's aim to ensure maximum consistency and to develop commonly agreed approaches to dealing with these cross-cutting issues. Ministers from the Office of the Secretary of State for Scotland, Office of the Secretary of State for Wales and the Northern Ireland Office appeared before the Committee on 15 June 2021.
- 1.23. At official level, the Government and UK Parliament have worked closely to prepare for formal scrutiny of all UK Common Frameworks. As a result, the UK Parliament has now received Framework Summaries or early Provisional Frameworks for the majority of UK Common Frameworks. During this reporting period UK Parliament received Framework Summaries for: Fertiliser Regulations; Ozone Depleting Substances and F-gases; Resources and Waste; Air Quality; Best Available Techniques; Chemicals and Pesticides; Agricultural Support; Animal Health and Welfare; Zootechnics; Plant Varieties and Seeds; and Plant Health.

## Stakeholder Engagement

- 1.24. The Government and devolved administrations work collaboratively to conduct a programme of engagement with sector-specific experts at various points in the development of each framework. This engagement is conducted jointly across all administrations where possible. The process updates stakeholders on the development of specific Frameworks and affords stakeholders an opportunity to input their views and expertise. In this reporting period, the Food Compositional Standards and Labelling Framework policy team conducted a video conference engagement session with stakeholders.

## Cross-Cutting Issues

- 1.25. Work has continued between Government departments and the devolved administrations to make progress on the resolution of the various cross-cutting issues which impact on individual Frameworks. The Common Frameworks Project Board

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<sup>3</sup> <https://www.gov.uk/government/collections/uk-common-frameworks>

established a joint UK Government-devolved administrations cross-cutting issues sub-group in March to determine the exact intersect between the range of cross-cutting issues and Common Frameworks and to seek ways of addressing these issues. The group met six times within the reporting period.

- 1.26. Recognising that not every Common Framework intersects with every cross cutting issue, or to the same extent, the joint UK Government-devolved administrations cross-cutting issues sub-group has engaged with the Frameworks policy teams to ascertain the precise degree to which Common Frameworks intersect with the cross-cutting issues of international relations/trade and the Trade and Cooperation Agreement. The result of this exercise will help to determine which Common Frameworks are able to progress to the next phase of development more quickly.
- 1.27. Work on the Intergovernmental Relations Review has continued throughout the reporting period. The completion of the review will necessitate some small amendments to the Common Frameworks to reflect the role of new structures in the mechanisms of the Common Frameworks. The work on the Intergovernmental Relations Review has not presented a barrier to progressing Frameworks to full implementation, since Review and Amendment mechanisms allow for post full-implementation amendments to be made.
- 1.28. The principles for Common Frameworks agreed at JMC(EN) on 16 October 2017 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 border with the EU. They will also adhere to the Belfast Agreement”.
- 1.29. The Protocol on Ireland/Northern Ireland 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. A number of pieces of EU legislation will continue to apply directly in Northern Ireland by virtue of the Protocol, in certain policy areas. These are set out in the Annexes to the Protocol.
- 1.30. Common Frameworks policy teams have continued to work with the teams responsible for the Common Frameworks programme to ensure that Common Frameworks satisfactorily take account of the operation of the Protocol where it is relevant to specific Frameworks. Common Frameworks are one of several mechanisms which will enable divergence arising from the implementation of the Protocol to be managed appropriately. The Government considers that Frameworks contain the governance structures needed to contribute to managing divergence arising from the Protocol in relevant areas.
- 1.31. In this reporting period the Government continued work on implementing the provisions within the UK Internal Market Act, including those which relate to Common Frameworks. The UK Government has been working with the devolved administrations

to determine a mechanism for agreeing exclusions from the market access principles in the UK Internal Market Act.

## Legislation Relating to Retained EU Law Restrictions

- 1.32. Section 12 of the European Union (Withdrawal) Act 2018 removed the requirements in each of the devolution statutes that the devolved legislatures could only legislate in ways that were compatible with EU law. The Act then replaced those requirements with powers for the 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. These provisions came fully into force at the end of the Transition Period.
- 1.33. 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

- 1.34. 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

- 1.35. 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

- 1.36. 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

- 1.37. 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

- 1.38. The 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.

- 1.39. 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 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.