



Cabinet Office

# The European Union (Withdrawal) Act and Common Frameworks

26 June 2018 to 25 September 2018

November 2018





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26 June 2018 to 25 September 2018

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(Withdrawal) Act 2018

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**The Rt Hon David Lidington CBE MP**  
**Chancellor of the Duchy of Lancaster**  
**and Minister for the Cabinet Office**



**The Rt Hon Karen Bradley MP**  
**Secretary of State for Northern Ireland**



**The Rt Hon David Mundell MP**  
**Secretary of State for Scotland**



**The Rt Hon Alun Cairns MP**  
**Secretary of State for Wales**

## Foreword

The Government is committed to ensuring that our withdrawal from the European Union is a successful and smooth process for the whole United Kingdom. As decision making powers return from the EU to London, Edinburgh, Cardiff and Belfast, we need to give the maximum possible certainty to individuals and businesses as we leave the EU, and provide for a smooth and orderly exit.

This Government recognises the importance of this process being both transparent and accountable; therefore we committed in legislation to report to Parliament every three months on the steps the Government is taking, working with the devolved administrations, to design and implement common frameworks; and on any use of the section 12 powers to temporarily ‘freeze’ devolved competence.

UK Government officials have been working closely with officials from all of the devolved administrations to design future common frameworks where they are necessary, in line with the principles on common frameworks agreed with the Scottish and Welsh Governments in October 2017 and the Intergovernmental Agreement on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks, agreed between the United Kingdom and Welsh Governments in April 2018.

The Government remains committed to restoring devolution in Northern Ireland but also acknowledges that in the absence of Northern Ireland Executive Ministers, engagement has continued with the Northern Ireland Civil Service on common frameworks.

This report details the progress made in the first reporting period covered under the legislation. These discussions have been collaborative and constructive enabling us to define jointly the potential scope and shape of future common frameworks in the highest priority areas, where it makes sense to continue with common approaches after we leave the EU.

On the basis of the significant joint progress on future frameworks, and the continued collaboration to ensure the statute book is ready for exit day, the UK Government has concluded that it does not need to bring forward any section 12 regulations at this juncture. On this basis, the Scottish and Welsh Governments continue to commit to not diverging in ways that would cut across future frameworks, where it has been agreed they are necessary or where discussions continue.

## Implementation of future common frameworks

- 1.1 The European Union (Withdrawal) Act 2018 requires the UK Government to report to Parliament on various matters pertaining to common frameworks, and the use of the section 12 powers to temporarily maintain the existing EU law limits on devolved competence, after the end of each period of three months, beginning with the three months from Royal Assent of the Act. This is to ensure that the process of developing common frameworks, in collaboration with the devolved administrations, is transparent, and subject to the robust parliamentary scrutiny.
- 1.2 The reports must also be shared with the devolved administrations to ensure the same levels of devolved scrutiny.

### Principles for common frameworks

- 1.3 Under the current devolution settlements, the devolved legislatures and administrations cannot act incompatibly with EU law. This has the effect, in policy areas where there is EU law, of creating 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. The principles agreed by the Joint Ministerial Committee (EU Negotiations) in October 2017 guide this work.
- 1.4 These 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.*

## Progress towards establishing future frameworks

- 1.5 The following section sets out the steps taken by the UK Government during the reporting period towards implementing our future, long-term common frameworks (which will replace the need for the section 12 ‘freezing’ powers and regulations) and explains how the frameworks principles have been taken into account, in accordance with paragraphs 4(1)(a) and 4(1)(b) of Schedule 3 to the EU (Withdrawal) Act.
- 1.6 In provisional analysis published in March 2018, 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.<sup>1</sup> The provisional analysis also sets out an assessment of the areas where we will and will not need continued common rules or ways of working, and whether we plan to deliver these through legislative or non-legislative means.
- 1.7 To categorise each policy area the UK Government assessed the risks associated with further divergence, based on the criteria set out in frameworks principles, agreed with the devolved administrations, set out above. For example, acknowledging current policy divergence and the need to maintain equivalent flexibility, we looked at the impact that further divergence in fisheries might have on the future functioning of the UK internal market. We also assessed the impact that this would have on our ability to manage our common resources (e.g. fish stocks) across the UK, and our ability to project ourselves as a credible international trading partner in the future.

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<sup>1</sup> [www.gov.uk/government/publications/frameworks-analysis](http://www.gov.uk/government/publications/frameworks-analysis)

- 1.8 The assessments were made 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. The first iteration of our analysis was published in March this year and work continues to refine this; a further iteration will be published in due course.
- 1.9 Policy development and engagement with the devolved administrations in this reporting period (June to September 2018) has largely focused on the 24 areas, like fisheries, food labelling and chemicals regulation, where frameworks are likely to be needed that will include legislative elements. Detailed discussions have also explored our cross-cutting approach to specific issues that are captured in the principles, for example the functioning of the UK internal market, where a technical policy workshop took place in Belfast on 18 September. This was the third workshop covering this cross-cutting issue, following two internal market meetings that took place prior to this reporting period. Discussions relating to the governance of common frameworks, for example covering issues such as dispute resolution, have also informed and been informed by the ongoing review of intergovernmental relations commissioned by the Joint Ministerial Committee (Plenary) in March.
- 1.10 In specific policy areas, engagement has also primarily taken place through multilateral workshops, building on the extensive multilateral engagement that took place prior to this reporting period. 6 formal technical policy workshops have been held during this reporting period in context of a wider picture of multilateral engagement across the relevant policy areas, e.g. regular meetings of official level technical working groups.
- 1.11 The workshops held during this period were:
- Food and Feed Hygiene and Safety Law (10 July)
  - Agricultural Support (16 August)
  - Fisheries Management and Support (28 and 29 August)
  - Nutrition Health Claims, Composition and Labelling (29 August)
  - Hazardous Substances Planning (4 September)
  - Public Sector Procurement (17 September)
- 1.12 All these discussions continue to be informed by the frameworks principles and overseen at Ministerial level by the Joint Committee (EU Negotiations), which has regularly reviewed progress including on 13 September during this reporting period. At official level, a central coordinating function has also been formalised to complement the daily working level engagement that takes place between the administrations, with senior UK Government and devolved administration officials meeting through a Frameworks Project Board. Officials from the Northern Ireland

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

- 1.13 During this reporting period, engagement in priority areas has focused on officials in the UK Government and devolved administrations developing detailed frameworks outlines. These documents set out the proposed approach for each component part of a policy area, along with the operational elements of the framework, for example how decisions will be made, and the roles and responsibilities of each administration. Although the frameworks outlines are still being developed, the work to date on the 24 legislative areas shows us that a ‘hybrid’ approach is emerging. While elements of a policy area will be governed by consistent approaches in primary and/or secondary legislation, these arrangements will be complemented by wider working arrangements set out in a memorandum of understanding.
- 1.14 Our policy work and engagement over this period has also shown us that legislation will not be necessary in some of the areas where this was previously envisaged. For example, as set out in a joint policy statement related to the Agriculture Bill, published on 12 September, the UK and Welsh Governments are of the view that no legislative framework will be required to cover the devolved elements of agricultural support. Instead, based on discussions to date, the two administrations are of the view that agricultural support can be suitably managed through non-legislative, intergovernmental coordination. Further detail on the specific arrangements that are subject to ongoing discussion in relation to agricultural support is available online.<sup>2</sup>
- 1.15 Intensive work will continue with the devolved administrations on the 24 areas in which a legislative framework may be required. It is anticipated that the resulting proposals will be submitted for consideration by Ministers from the UK Government and the devolved administrations in the next reporting period, and will subsequently inform further stakeholder engagement. Our aim to do this multilaterally with the devolved administrations where possible, as part of the ongoing policy development process.
- 1.16 While this work is taking place, discussions will also continue on cross-cutting matters like the functioning of the UK internal market. Multilateral discussions on the 82 policy areas where non-legislative agreements are expected will take place in due course, where they are not already underway, with progress overseen by the Joint Ministerial Committee (EU Negotiations).
- 1.17 In the absence of a Northern Ireland Executive, specific arrangements will need to be made as we seek to agree the implementation of legislative and non-legislative frameworks.

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<sup>2</sup> [www.gov.uk/government/publications/agricultural-framework-progress-update-joint-statement](http://www.gov.uk/government/publications/agricultural-framework-progress-update-joint-statement)

## 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.
- 2.2 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. The effect of such a ‘freeze’ would be to retain the current parameters of devolved competence in relation to EU law for a period of up to five years while the UK Government and devolved administrations work together to design and implement the replacement UK frameworks. The powers to apply the ‘freeze’ will expire two years after exit day.
- 2.3 Before draft regulations may be laid before Parliament they must have been shared with the relevant devolved administration, and either the relevant devolved legislature must have made a decision on whether it agrees to the regulations being laid or 40 days must have elapsed without such a decision being made. If draft regulations are laid without the support of the relevant devolved legislature, the UK Government must publish a statement explaining why the Minister has decided to lay the draft in the absence of consent, and must lay before Parliament any statement provided by the relevant devolved administration that explain why consent was not given.
- 2.4 The provisions in the EU (Withdrawal) Act are supplemented by an Intergovernmental Agreement, signed by the UK Government and the Welsh Government.<sup>3</sup> This sets out how the UK Government will work with the devolved administrations on ‘freezing’ regulations and the establishment of future common frameworks.
- 2.5 The Agreement includes a commitment that the UK Government will not normally ask the UK Parliament to approve ‘freezing’ regulations without the consent of the relevant devolved legislature. In addition, to maintain the existing frameworks where ‘freezing’ regulations are in place, the UK Government will not bring forward legislation that would alter areas of policy in so far as the devolved legislatures are prevented from doing so by those ‘freezing’ regulations, for as long as they are in force.

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<sup>3</sup> [www.gov.uk/government/publications/intergovernmental-agreement-on-the-european-union-withdrawal-bill](http://www.gov.uk/government/publications/intergovernmental-agreement-on-the-european-union-withdrawal-bill)

2.6 In accordance with normal rules for statutory instruments, the powers to apply retained EU law restrictions can also be used to revoke those restrictions when they are no longer required, for instance because legislation has been brought forward to implement the replacement framework. Additionally, section 12(9) provides a power for the UK Government to repeal the ‘freezing’ powers prior to the date on which they expire.

## Regulations to ‘freeze’ devolved competence

2.7 The powers to place a ‘freeze’ on devolved legislative competence are inserted into the relevant devolution statutes by section 12 of the EU (Withdrawal) Act. Corresponding powers relating to devolved executive competence are inserted into the devolution statutes by Part 1 of Schedule 3 to the Act.

2.8 The relevant powers can be found in:

- section 30A of the Scotland Act 1998 in relation to the Scottish Parliament’s competence;
- section 57 of the Scotland Act 1998 in relation to the Scottish Government’s competence;
- section 80 of the Government of Wales Act 2006 in relation to the Welsh Government’s competence;
- section 109A of Government of Wales Act 2006 in relation to the National Assembly for Wales’ competence;
- section 6A of the Northern Ireland Act 1998 in relation to the Northern Ireland Assembly’s competence; and
- section 24 of Northern Ireland Act 1998 in relation to the competence of a Northern Ireland Minister or department.

2.9 This section specifies regulations made under those powers and provides the Minister’s assessment of progress which still needs to be made before they can be removed, in accordance with paragraphs 4(1)(c) and 4(1)(d) of Schedule 3 to the EU (Withdrawal) Act.

## Retained EU law restrictions applied during reporting period

2.10 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

2.11 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

- 2.12 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. This power requires the approval of the UK Parliament via the draft affirmative scrutiny procedure.
- 2.13 This provides a mechanism to remove the ‘freezing’ powers from the statute book earlier than their statutory expiry date of two years from exit day, if it has been determined that they are no longer required prior to then.
- 2.14 This section specifies regulations made under this powers and provides the Minister’s assessment of progress which still needs to be made before the ‘freezing’ powers can be repealed, in accordance with paragraphs 4(1)(c) and 4(1)(e) of Schedule 3 to the EU (Withdrawal) Act.

### Powers to apply retained EU law restrictions repealed during reporting period

- 2.15 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.

### Progress required in order to repeal the powers to apply retained EU law restrictions

- 2.16 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.
- 2.17 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.