

HOUSE OF LORDS

Common Frameworks Scrutiny Committee

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1st Report of Session 2019–21

# Common frameworks: building a cooperative Union

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### *Common Frameworks Scrutiny Committee*

The Common Frameworks Scrutiny Committee was appointed by the House of Lords on 17 September 2020 to scrutinise and consider matters relating to common frameworks.

#### *Membership*

The Members of the Common Frameworks Scrutiny Committee are:

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[Lord Bruce of Bennachie](#)

[Lord Caine](#)

[Baroness Crawley](#)

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#### *Declaration of interests*

See Appendix 1.

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Evidence is published online at <https://committees.parliament.uk/work/734/postbrexit-common-frameworks/> and available for inspection at the Parliamentary Archives (020 7219 3074).

Q in footnotes refers to a question in oral evidence.

## SUMMARY

Common frameworks are a crucial, yet overlooked, aspect of the UK's withdrawal from the EU. Their purpose is to stitch together policy across the UK in many areas previously covered by EU law—such as food safety, farming and the environment—in a cooperative way that respects the devolved administrations. As such, common frameworks embody the work needed to build a cooperative Union, as articulated by Lord Dunlop.<sup>1</sup>

Out of an original 154 potential areas, 32 are being developed into common frameworks (see Appendix 4). While they vary greatly, common frameworks all create the processes necessary for day-to-day cooperation across the UK. They can be used to create UK-wide systems to protect the environment, such as the UK Emissions Trading Scheme (ETS), or develop single processes that are essential for the functioning of the UK internal market, such as for the authorisation of nutrition and health claims. However, they also allow for policy divergence where the relevant governments agree to disagree.

Despite their success, we have identified three problems with common frameworks. First, during much of their evolution, frameworks have been developed behind closed doors and with minimal stakeholder engagement or parliamentary scrutiny, and the vast majority are unfinished and have still not been published despite being operational. Second, their relationship with the Protocol on Ireland/Northern Ireland needs to be clarified. Third, more information must be given to Parliament so that it can scrutinise effectively the operation of these important intergovernmental agreements, which remain largely invisible.

Furthermore, the United Kingdom Internal Market Act 2020 has clearly strained relations with the devolved administrations, particularly in Scotland and Wales, and could severely compromise the common frameworks programme. Unless the UK Government exercises its power to exempt policy divergence agreed through common frameworks in an appropriate manner, the Act still could constrain the ability of the devolved administrations to regulate effectively in areas of devolved competence, as their standards could be undercut from other parts of the UK.

During the course of our inquiry we spoke to ministers in the Scottish and Welsh Governments, members of each of the devolved legislatures, and academics and stakeholders from across the UK (see Appendix 2). We found widespread support for common frameworks across sectors and in every part of the UK. While the relationships between the UK and devolved administrations have become strained, we believe that the collaborative approach of common frameworks should be used as a model to reset UK intergovernmental relations and build a cooperative Union.

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1 See Policy Exchange, 'Andrew Dunlop on the Future of the Union' (10 February 2021): <https://policyexchange.org.uk/andrew-dunlop-on-the-future-of-the-union/>



# Common frameworks: building a cooperative Union

## CHAPTER 1: INTRODUCTION

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1. In June 2016, when the UK voted to leave the EU, it raised the question of what would replace the role the EU had played in coordinating key areas of policy across the UK. EU rules had overseen market integrity and established common standards in a number of policy areas—from food safety, to emissions trading to the regulation of pesticides—that had been devolved in the UK. In short, it became clear to all parts of the UK that the EU had played a significant part in the operation of the UK internal market and that this would have to be replaced. Common frameworks were seen as the solution to this and there are currently 32 active framework policy areas (see Appendix 4).
2. The Common Frameworks Scrutiny Committee was appointed by the House of Lords on 17 September 2020 “to scrutinise and consider matters relating to common frameworks”. Its membership is listed in Appendix 1.
3. On 23 October 2020, the Committee launched an inquiry on the common frameworks programme and published a Call for Evidence (see Appendix 3). This set out our intention to examine how the common frameworks programme would operate and relate to other initiatives, how it could be reviewed and improved in future, and the role for parliamentary scrutiny across the UK. We have taken oral evidence from the devolved administrations, academics, stakeholders, committee chairs from across the UK legislatures, and the Minister for the Constitution and Devolution, Chloe Smith MP. We have also received written evidence from a range of interested individuals and organisations. We are grateful to all our witnesses, who are listed in Appendix 2.
4. This is our first report on our findings to date. Chapter 2 provides an overview of the development of common frameworks, starting with their founding principles agreed in October 2017 at the Joint Ministerial Committee on EU Negotiations, or JMC(EN). Chapter 3 considers issues of transparency and stakeholder consultation. Chapter 4 focuses on the participation of Northern Ireland in the common frameworks programme, given the absence of the Northern Ireland Executive and Assembly from January 2017 to January 2020, and considers the relevance of the Protocol on Ireland/Northern Ireland for many of the frameworks.
5. Chapter 5 explores the relationship between common frameworks and the United Kingdom Internal Market Act 2020, which received Royal Assent in December 2020. Chapter 6 considers the consensual nature of common frameworks and how they relate to broader UK intergovernmental relations, with particular focus on the processes for resolving disputes between governments. Chapter 7 underlines the need for future parliamentary scrutiny of common frameworks and the opportunity that they should provide for closer interparliamentary cooperation.

## CHAPTER 2: THE DEVELOPMENT OF COMMON FRAMEWORKS

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### The creation of common frameworks

6. Before EU law ceased to apply in the UK, the EU played a significant role in the operation of the devolution settlement of the UK. In a July 2017 report, the House of Lords European Union Committee stated: “EU law is interwoven with the devolution settlements, and throughout this period, the supremacy of that EU law, and its interpretation by the Court of Justice of the EU, have helped to hold the UK together and maintain the integrity of its internal market.”<sup>2</sup> It concluded that “the European Union has been, in effect, part of the glue holding the United Kingdom together since 1997”. This is because the EU set processes for cooperation, as well as overarching policy and standards, that ensured consistency in a wide variety of policy areas across the UK. Coordination in these areas was considered vital to a functioning internal market and the management of common resources. A new system was therefore urgent and necessary to replace this before EU law ceased to apply to the UK.
7. Witnesses told us that this ‘glue’ had to be replaced. Professor Nicola McEwen, Professor of Territorial Politics and Co-Director of the Centre on Constitutional Change at the University of Edinburgh, suggested that, before Brexit, there was a general perception that the UK had a system where powers were either reserved (and therefore exercised by the UK Government) or devolved (and exercised by a devolved government).<sup>3</sup> According to Professor McEwen, this view was an oversimplification that ignored existing interdependencies between the UK and devolved governments. Brexit and the return of powers changed the situation and increased these interdependencies. She said that this created a “recognition of the need to have an ability to co-ordinate, to communicate, to co-operate and perhaps to replace the regulatory frameworks at the EU level with some form of framework at the UK or GB level”.<sup>4</sup> In her view, it is “ultimately about a process that is co-owned and based principally on consent”.
8. In the period from December 2016 to January 2017, the UK Government,<sup>5</sup> Scottish Government<sup>6</sup> and Welsh Government<sup>7</sup> all acknowledged that part of ensuring the necessary regulatory consistency after Brexit would involve creating ‘common frameworks’ to replace EU structures, where the different parts of the UK coordinate policy in a number of areas. In January 2017, the Northern Ireland Executive and Assembly collapsed, meaning that they could play no part in this process (see Chapter 4).<sup>8</sup> In October 2017, the three

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2 European Union Committee, *Brexit: devolution* (4th Report, Session 2017–19, HL Paper 9), p 3

3 Q 15 (Prof Nicola McEwen)

4 *Ibid.*

5 Theresa May, Speech on the government’s negotiating objectives for exiting the EU (17 January 2017): <https://www.gov.uk/government/speeches/the-governments-negotiating-objectives-for-exiting-the-eu-pm-speech> [accessed 24 March 2021]

6 Scottish Government, *Scotland’s Place in Europe*, ‘Chapter Four: Further Devolution and the Constitutional consequences of Brexit’ (20 December 2016): <https://www.gov.scot/publications/scot-lands-place-europe/pages/5/> [accessed 24 March 2021]

7 Welsh Government, *Brexit and Devolution: Securing Wales’ Future* (2017): <https://gov.wales/sites/default/files/publications/2018-10/brexit-and-devolution.pdf> [accessed 24 March 2021]

8 House of Commons Library, Northern Ireland: resignation of Deputy First Minister, Research Briefing, [CBP 7860](#), 11 January 2017. The Northern Ireland Executive endorsed the common frameworks principles on 15 June 2020.

remaining administrations agreed through the Joint Ministerial Committee on EU Negotiations—JMC(EN)—a communiqué setting out the principles of what would become the common frameworks programme.<sup>9</sup>

9. The Communiqué provides a definition of common frameworks:
 

“As the UK leaves the European Union, the Government of the United Kingdom and the devolved administrations agree to work together to establish common approaches in some areas that are currently governed by EU law, but that are otherwise within areas of competence of the devolved administrations or legislatures. A framework will set out a common UK, or GB, approach and how it will be operated and governed. This 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.”<sup>10</sup>
10. Common frameworks would 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.
11. The Communiqué also included principles which would ensure that common frameworks respected the devolution settlements and the democratic accountability of the devolved legislatures. These said that frameworks would:
  - 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.

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9 Cabinet Office, *Joint Ministerial Committee (EU Negotiations) communiqué* (16 October 2017): [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) [accessed 24 March 2021]

10 *Ibid.*

12. The Communiqué further established 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 frontier with the EU. They will also adhere to the Belfast Agreement.”

13. This is the founding document of the common frameworks programme and will be referred to in this report as the JMC Principles or the 2017 Communiqué.

### Progress to date

14. The first task of the UK Government and devolved administrations was to map where EU law intersected with devolved competence in one or more administration. A UK Government analysis identified 154 potential areas.<sup>11</sup> In many of these areas, it was decided that current working arrangements would be sufficient to achieve the aims of the JMC Principles. In practice, it has been deemed necessary for only a small proportion have to be developed into frameworks. There are currently 32 active framework policy areas (see Appendix 4). Where agreement has not been reached on the need to create a framework, the policy areas have been marked for ‘no further action’ for the time being (we discuss this further in Chapter 3).<sup>12</sup>
15. In the UK Government, common frameworks are being developed by a variety of different departments. As can be seen in Figure 1, almost half of the frameworks are being produced by the Department for Environment, Food and Rural Affairs (DEFRA), with the second largest number coming from the Department for Business, Energy and Industrial Strategy (BEIS).<sup>13</sup> While each framework is owned by a single department, some cut across a number of policy areas.

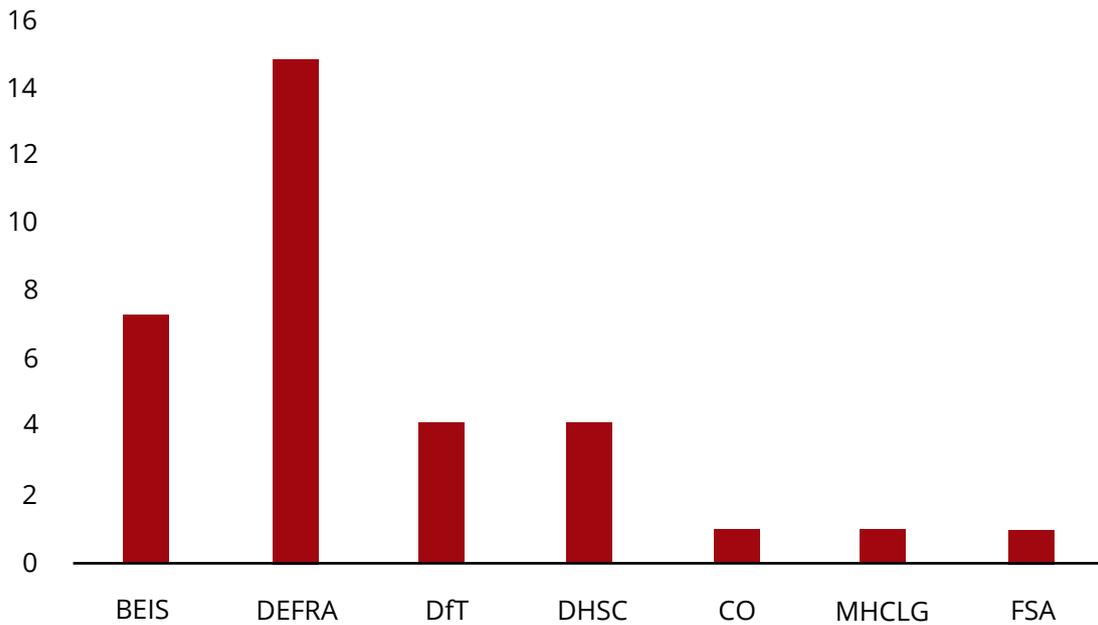
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11 Cabinet Office, *Frameworks Analysis 2020: Breakdown of areas of EU law that intersect with devolved competence in Scotland, Wales and Northern Ireland* (2020): [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/919729/Frameworks-Analysis-2020.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/919729/Frameworks-Analysis-2020.pdf) [accessed 24 March 2021]

12 Written evidence from Chloe Smith MP (PBC0007). The commercial transport and operator licensing frameworks were merged to reduce the number from 33 to 32.

13 The other UK Government departments abbreviated in the figure are the Department for Transport (DfT), the Department of Health and Social Care (DHSC), the Cabinet Office (CO), the Ministry of Housing, Communities and Local Government (MHCLG) and the Food Standards Agency (FSA).

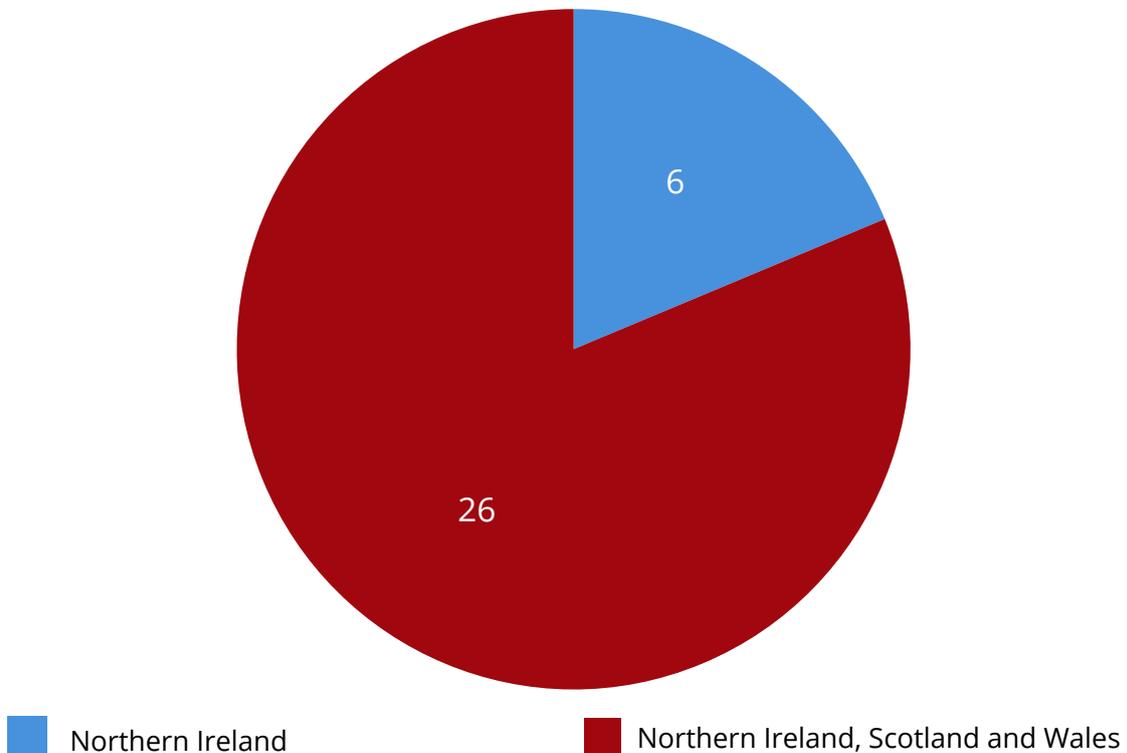
**Figure 1: Number of common frameworks by Government department**



Source: Written evidence from Chloe Smith MP ([PBC0007](#))

- Common frameworks also overlap with the devolved competence of different administrations to different extents. As can be seen in Figure 2, there are six active framework policy areas that apply to Northern Ireland but not to Wales and Scotland, due to the extent to which devolved policy in Northern Ireland overlaps with areas previously covered by EU law.

**Figure 2: Number of common frameworks by devolved administration**



Source: Written evidence from Chloe Smith MP ([PBC0007](#))

17. The original intention was that these frameworks would be agreed and fully in place by the end of the transition period (in other words, by the point at which EU law would cease to have direct effect in the UK). That has not been achieved. According to a letter from Chloe Smith MP, Minister for Constitution and Devolution, who has the responsibility for overseeing the common frameworks programme in the UK Government, by the end of the transition period only three frameworks were provisionally agreed by all governments.<sup>14</sup> These three frameworks had not completed parliamentary scrutiny and as such no frameworks were fully implemented by this deadline.
18. There are some credible reasons for this failure. Jess Sargeant, Senior Researcher at the Institute for Government, suggested that the capacity of the devolved administrations had been limited first by Brexit and then by COVID-19.<sup>15</sup> Jeremy Miles MS, Counsel General and Minister for European Transition in the Welsh Government, told us that the programme had been delayed by “two periods of no-deal planning, a general election and the absence of Ministers in Northern Ireland”.<sup>16</sup>
19. Chloe Smith MP told us that the UK Government had prioritised frameworks that would have the most impact on ‘day one’, meaning 1 January 2021.<sup>17</sup> She said that, in addition to the three provisional frameworks that had been published, a further 26 frameworks had been “operating on an interim basis across the UK” since the beginning of 2021, having been signed off by the UK, Scottish and Welsh Governments at a provisional level. The problem is that these frameworks are (i) unfinished and could be developed in other areas (see Chapter 3); (ii) lack political sign-off in Northern Ireland (see Chapter 4); (iii) need to be updated with respect to the UK Internal Market Act (see Chapter 5); and (iv) require parliamentary scrutiny (see Chapter 7). Despite these challenges, the importance of continuing policy coordination in these areas has required them to be implemented even while in development and under scrutiny.

### Supporting the devolution settlement

20. Common frameworks, both in principle and in practice, can be seen as a continuation and expansion of existing cooperation. Professor Kenneth Armstrong, Professor of European Law at the University of Cambridge, explained that such cooperation “is an intrinsic part of the devolution settlement and is the subject of an overarching Memorandum of Understanding (‘MoU’) with accompanying Concordats as well as more sectoral and detailed MoUs and concordats”.<sup>18</sup> He noted that the programme “both relies upon these existing overarching mechanisms of coordination and cooperation as well as emulating them in their own internal procedures”.
21. The United Kingdom Constitution Monitoring Group described two separate schools of thought on devolution.<sup>19</sup> One school of thought sees devolution as providing special governance arrangements in devolved territories so that policy can be flexed to meet local circumstances. The other sees devolution

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14 Letter to Baroness Andrews, Chair of the Common Frameworks Scrutiny Committee from Chloe Smith MP, Minister for the Constitution and Devolution, 23 December 2020: <https://committees.parliament.uk/publications/4184/documents/43147/default/>

15 [Q 53](#) (Jess Sargeant)

16 [Q 1](#) (Jeremy Miles MS)

17 [Q 40](#) (Chloe Smith MP)

18 Written evidence from Prof Kenneth Armstrong ([PBC0012](#))

19 Written evidence from the United Kingdom Constitution Monitoring Group ([PBC0001](#))

as an understanding of how the UK as a whole should be governed, with proper account taken of the interests of all of its parts. Common frameworks, it argued, fit into this second school of thought. It also noted that frameworks must depend on mutual respect and parity of esteem between the different administrations, adding that there is a high degree of interdependence which needs to be recognised in decision-making.

22. Michael Russell MSP, Cabinet Secretary for the Constitution, Europe and External Affairs in the Scottish Government, told us that “the biggest advantage of the common frameworks is that they are mutually agreed and voluntary”.<sup>20</sup> The Minister, Chloe Smith MP, similarly emphasised that “the core point that you see in the position of the development of the frameworks programme is that it has been agreed all round that it ought to be voluntary”.<sup>21</sup> She had no doubt that these are areas of devolved competence, but argued that cooperation is useful for good governance.<sup>22</sup>
23. Evidence suggested that the success of the programme would be based on securing consensus for decisions made through these frameworks. The Institute for Government explained that a successful common frameworks programme would feature discussions between the UK Government and devolved administrations taking place on an equal basis, making decisions by consensus, and based on expert evidence and advice.<sup>23</sup> Professor Kenneth Armstrong agreed:
 

“Considering the interests of UK and devolved governments, the metric of success is not whether the outcome of the process is policy convergence or divergence; both are legitimate outcomes. Instead, what matters is whether any given outcome is achieved with or without the consent of the other administrations. Consent must be the animating principle of intergovernmental relations.”<sup>24</sup>
24. Professor McEwen told us that the programme “has revealed what is possible in joint working, even when you have parties with very different ideological and constitutional outlooks. These things have not prevented them working collaboratively to set up a system that could offer a way of joint working in the future, based on more collaboration than we have had of late”.<sup>25</sup> The Law Society of Scotland stated that “there appears to be general acceptance that the programme is a satisfactory means of managing diversity within the regulatory arrangements across the UK”.<sup>26</sup> Professor Michael Keating, Professor of Politics at the University of Aberdeen, similarly said that it “seems to have gone quite well at a technical level, and it is a good way of trying to get agreement where there are common problems and common approaches to them”.<sup>27</sup>
25. The evidence we have received from the different administrations suggests that this close cooperation has been successful in building effective relationships between officials. Michael Russell MSP told us he wanted to “pay strong tribute particularly to the officials who have worked on these”

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20 [Q 1](#) (Michael Russell MSP)

21 [Q 43](#)

22 [Q 44](#)

23 Written evidence from the IfG ([PBC0013](#))

24 Written evidence from Prof Kenneth Armstrong ([PBC0012](#))

25 [Q 15](#) (Prof Nicola McEwen)

26 Written evidence from the Law Society of Scotland ([PBC0015](#))

27 [Q 53](#) (Prof Michael Keating)

and stressed that “the relationship between officials on this matter has been very productive indeed”.<sup>28</sup> Bruno Williams, Deputy Director of the UK Frameworks Division at the Cabinet Office, told us that there were regular meetings of a common frameworks project board to discuss the frameworks.<sup>29</sup> He emphasised that it had been a positive process at official level, where devolved administrations and the UK Government have engaged on a collaborative basis.<sup>30</sup>

26. **Common frameworks are innovative mechanisms for developing UK-wide policy by collaboration and consensus between the four administrations, taking account of the interests of each part of the UK. They strengthen the Union by acknowledging the interdependence of policy between administrations, while recognising the autonomy of each administration in its areas of competence through the possibility of divergence on the basis of consent.**
27. **Although progress on common frameworks has been delayed by other Brexit preparations and the response to COVID-19, they have still demonstrated the ability of the UK Government and devolved administrations to work together to achieve their shared interests. Common frameworks represent an example of best practice for positive cooperation across the UK and have an important role to play in an evolving devolution settlement and in strengthening the Union.**

*Processes for cooperation across the UK*

28. In addition to the three frameworks on which we have conducted our scrutiny, we have also interrogated 13 confidential framework summaries, on which we have corresponded with the UK Government. These shed some light on what common frameworks have achieved so far and to what extent they reflect the principles set out in the 2017 Communiqué.
29. Dr Viviane Gravey, Lecturer in European Politics at Queen’s University Belfast, noted that common frameworks had moved from being about common standards and common approaches to being mostly about process, in particular processes for managing divergence.<sup>31</sup> Professor Katy Hayward, Professor of Political Sociology at Queen’s University Belfast, described common frameworks as “the grimy work of civil servants, which very few people are generally interested in”, noting that a successful common frameworks programme would not generate many headlines.<sup>32</sup> Professor Jo Hunt, Professor in Law at Cardiff University, said that “common frameworks are not outputs in themselves but governance mechanisms. They are systems of good governance”.<sup>33</sup>
30. Stakeholders’ definitions of success for the programme were, however, more focused on outcomes than process. Greener UK told us that it hoped the frameworks would help address the climate crisis and secure the recovery of nature.<sup>34</sup> The Food and Drink Federation said that a successful common frameworks programme would “reduce the cost to do business across the UK

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28 [Q 8](#) (Michael Russell MSP)

29 [Q 41](#) (Bruno Williams)

30 [Q 90](#) (Bruno Williams)

31 [Q 67](#) (Dr Viviane Gravey)

32 [Q 15](#) (Prof Katy Hayward)

33 [Q 15](#) (Prof Jo Hunt)

34 Written evidence from Greener UK ([PBC0004](#))

and minimise consumer confusion”.<sup>35</sup> The Chemical Industries Association called for the frameworks to ensure that there is consistency where possible, including in legislation, or at least policies and requirements applying over consistent timeframes where appropriate. It argued that a joined-up approach would help industry to manage costs effectively and prevent confusion.

31. While common frameworks promote cooperation between administrations, individual frameworks differ on whether they contain mechanisms for agreeing common approaches or simply agree methods for communicating policy approaches. The Food and Feed Safety and Hygiene (FFSH) common framework, for example, one of the most complex and widest in scope, sets out a joint risk analysis programme, where the four constituent parts of the UK will conduct a single process for food safety across the whole of the UK.<sup>36</sup> Risk management decisions by ministers may differ in this framework, but it includes a joint process up to that point. The same applies for the Nutrition, Labelling, Composition and Standards (NLCS) framework, which creates a UK-wide system for considering nutrition rules (see Box 1).

### **Box 1: The Nutrition, Labelling, Composition and Standards (NLCS) framework**

The first provisional framework published by the UK Government was the Nutrition, Labelling, Composition and Standards (NLCS) framework. This created a UK-wide NLCS Policy Group consisting of officials from each of the four administrations to discuss and agree common recommendations on nutrition policy. Decisions are then made by relevant ministers in each administration.

Although food law is a devolved competence, the provisional framework explains that the NLCS Policy Group will, on a UK-wide basis, consider: (i) applications for new nutrition or health claims; (ii) requests to modify registers, lists, and schedules; and (iii) policy proposals within scope of this framework. However, the framework also allows for the possibility of divergence on the basis of consent and establishes a dispute settlement process for cases when an agreement cannot be reached on a particular policy.

*Source: Department of Health and Social Care, Nutrition Related Labelling, Composition and Standards Provisional Common Framework, CP 306, October 2020: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/925713/Nutrition\\_related\\_labelling\\_composition\\_and\\_standards\\_provisional\\_common\\_framework\\_web\\_accessible.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/925713/Nutrition_related_labelling_composition_and_standards_provisional_common_framework_web_accessible.pdf) [accessed 24 March 2021]*

32. Joint processes for regulation can also be found in the summaries for frameworks on blood and organs. They seek to ensure consistency where possible and allow for divergence where necessary. This contrasts with the considerably lighter-touch Hazardous Substances (Planning) common framework, which includes commitments to information sharing but does not include any processes for a joint approach.<sup>37</sup> The different approaches

35 Written evidence from the Food and Drink Federation ([PBC0005](#))

36 Department of Health and Social Care, *Food and Feed Safety and Hygiene Common Framework: Provisional Framework Outline Agreement and Concordat*, CP 321, November 2020: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/934750/food-and-feed-safety-and-hygiene-proposed-common-framework-command-paper-web-accessible.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/934750/food-and-feed-safety-and-hygiene-proposed-common-framework-command-paper-web-accessible.pdf) [accessed 24 March 2021]

37 Ministry of Housing, Communities and Local Government, *Provisionally Confirmed Hazardous Substances (Planning) Common Framework*, CP 333, November 2020: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/937560/Hazardous\\_substances\\_framework\\_WEB.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/937560/Hazardous_substances_framework_WEB.pdf) [accessed 24 March 2021]

of the frameworks are determined by the differences in the policy areas they cover, including the extent to which divergence is acknowledged to be harmful, and whether divergence is limited by obligations in international law.

33. Given the diversity of the frameworks, witnesses stressed the importance of coherence, consistency and simplicity. Professor Michael Keating told us that he saw common frameworks “going in different directions ... and they become extremely complex ... partly because some of them are on areas where there will be consensus and others are on more sensitive areas”.<sup>38</sup> He recommended that frameworks should aim for simplicity: “There should be a clear procedure, and it should be standardised across these agreements.” He argued: “You cannot anticipate everything that might come up, and trying to do so is just futile.”<sup>39</sup> Sean Kelly, Development Manager at Northern Ireland Environment Link, agreed that it would be good to keep common frameworks as simple and consistent as possible, but recognised that it would not be easy.<sup>40</sup>
34. The UK Government explained that it is seeking to ensure a consistent approach across the frameworks. Bruno Williams from the Cabinet Office told us that it is “looking to develop some text that will reflect the impact of trade and international relations issues on the common frameworks programme ... that can be lifted and shifted to all the frameworks”.<sup>41</sup> But the Minister, Chloe Smith MP, also stressed that common frameworks should be seen as part of the specialised work of departments and that while a common approach across frameworks was useful, departments owned these subject areas and that frameworks should be consistent with the rest of the department’s remit.<sup>42</sup> She stated: “What a framework adds ... is merely the links between administrations as they seek to manage [policy] together, particularly where there might be divergence that needs to be discussed between the administrations.”<sup>43</sup>
35. Our conclusions on the three frameworks that we have finished scrutinising were positive. The NLCS framework established joint processes for regulating the policy area but was clearly unfinished.<sup>44</sup> However, we accept the UK Government’s argument that this was due to the fact it was submitted early when a number of issues were unresolved.<sup>45</sup> Both the FFSH framework and the Hazardous Substances (Planning) framework were well structured agreements driven by the JMC Principles that provide strong foundations for

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38 [Q 53](#) (Prof Michael Keating)

39 [Q 55](#) (Prof Michael Keating)

40 [Q 68](#) (Sean Kelly)

41 [Q 92](#) (Bruno Williams)

42 [Q 99](#)

43 [Q 91](#)

44 Letter to Edward Argar MP, Minister for Health from Baroness Andrews, Chair of the Common Frameworks Scrutiny Committee, 17 November 2020: <https://committees.parliament.uk/publications/3506/documents/33582/default/>

45 Letter to Baroness Andrews, Chair of the Common Frameworks Scrutiny Committee from Chloe Smith MP, Minister for the Constitution and Devolution, 23 December 2020: <https://committees.parliament.uk/publications/4184/documents/43147/default/>

policy work in these areas.<sup>46</sup> Although we had specific concerns about each, they are a positive sign of the cooperation happening through the common frameworks programme.

36. **Common frameworks create new processes for day-to-day cooperation between the four administrations on a wide variety of policy areas. They can and should be used to build consensus with the devolved administrations and develop a coherent approach to policy across the UK. Frameworks to date have not established minimum standards, though they could be used to create these in the future, and in some cases create joint processes for regulating certain areas. While these are technical agreements that have not yet been tested, this work on a range of specific policy issues provides the essential building blocks needed to establish a functioning cooperative Union.**

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46 Letter to Emily Miles, Chief Executive of the Food Standards Agency from Baroness Andrews, Chair of the Common Frameworks Scrutiny Committee, 20 January 2021: <https://committees.parliament.uk/publications/4368/documents/44321/default/>; letter to Christopher Pincher MP, Ministry of Housing, Communities and Local Government from Baroness Andrews, Chair of the Common Frameworks Scrutiny Committee, 10 December 2020: <https://committees.parliament.uk/publications/3945/documents/39484/default/>

## CHAPTER 3: TRANSPARENCY AND STAKEHOLDER CONSULTATION

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### Transparency on ‘no further action’ areas

37. The UK Government’s latest Frameworks Analysis, published in September 2020, suggested that there are 154 areas of EU law that intersect with the devolved competence of one or more of the devolved administrations.<sup>47</sup> However, common frameworks are only in development in 32 of these areas (see Appendix 4). The others have been designated as ‘no further action’, meaning that, although a framework could be developed in future, there are currently no plans to develop a framework in these policy areas. The 2017 Communiqué set out the principles for when a common framework should be agreed but it is unclear how these apply to specific areas.
38. Dr Viviane Gravey, Lecturer in European Politics at Queen’s University Belfast, told us that the lack of transparency on these decisions was a major issue, noting that “the justification for no framework being required for environmental issues such as water has not been made public. We do not know why the four administrations decided that, when we already know that England is planning to diverge under the 25-year environment plan and when Wales and Scotland have cross-border rivers”.<sup>48</sup> Dr Mary Dobbs of Maynooth University argued that, although the 2017 Communiqué had set out that frameworks should be created to protect common resources, as well as maintaining an internal market, there had been a clear prioritisation of frameworks to protect the market and facilitate trade over frameworks on environmental protection. She argued that “justifications are needed regarding the identification of whether common frameworks are needed or not (and their nature), as well as to why progress is being made in some and not others”<sup>49</sup>
39. Some frameworks that were of most concern to external stakeholders have been designated for ‘no further action’. Jess Sargent, Senior Researcher at the Institute for Government, identified the framework on GMO marketing and cultivation as a particular area of concern, noting that “Defra is consulting on proposals in this area to change the definition of a genetically modified organism. It is also an area where Northern Ireland is bound to continue to comply with EU law under the Protocol, so if England, or the UK Government for England, were to change the definition, it could create a barrier within the UK internal market. It is also an area that is covered by the market access principles, particularly mutual recognition.”<sup>50</sup> NFU Scotland also noted that this framework was a concern.<sup>51</sup> While it was reported as in development in September 2020,<sup>52</sup> the Minister for the Constitution and Devolution, Chloe Smith MP, told us on 9 December 2020 that it was no longer in development. No justification was given.<sup>53</sup>

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47 Cabinet Office, *Frameworks Analysis 2020: Breakdown of areas of EU law that intersect with devolved competence in Scotland, Wales and Northern Ireland* (24 September 2020): [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/919729/Frameworks-Analysis-2020.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/919729/Frameworks-Analysis-2020.pdf) [accessed 24 March 2021]

48 Q 67 (Dr Viviane Gravey)

49 Written evidence from Dr Mary Dobbs (PBC0016)

50 Q 52 (Jess Sargeant)

51 Written evidence from NFU Scotland (PBC0014)

52 *Frameworks Analysis 2020*

53 Written evidence from Chloe Smith MP (PBC0007)

40. The UK Government’s Frameworks Analysis noted that a number of policy areas had been reclassified as requiring ‘no further action’ and that the UK Government and devolved administrations created a set of ‘reclassification review’ questions to test the decision to reclassify against the JMC Principles.<sup>54</sup> The document said that policy teams produced rationales, including an outline of whether there are any new intergovernmental agreements to manage the risks posed by divergence in that area; confirmation that policy teams in all four administrations agreed to the reclassification; an assessment of whether the absence of a framework would pose any risk to the JMC Principles; and an explanation of how continued cooperation in the area would be monitored. It explained that framework areas “were moved to ‘no further action’ in cases where divergence between administrations was not planned or expected or where pre-existing arrangements for ensuring regulatory coherence were deemed to be sufficient”. While the analysis included this information in the abstract, none of this information was released about any of the specific framework areas that it disclosed as being designated for ‘no further action’.
41. The most detailed justification we have received for a framework being marked for ‘no further action’ was when this occurred after we had received a summary, on Intelligent Transport System standards. We wrote to the department with a number of questions on how the framework would operate, including in the context of the relationship between Northern Ireland and the Republic of Ireland.<sup>55</sup> The department did not answer these questions but instead said that a framework was no longer thought to be necessary in this area, due to the existence of the STREETWISE Working Group, which it described as “a well-established forum ... for managing any divergence that may arise in the policy area of intelligent transport systems following the end of the Transition Period”.<sup>56</sup>
42. Chloe Smith MP told us that she anticipated providing more detail on frameworks which have been moved for ‘no further action’. The vehicle for doing so was the annual Frameworks Analysis, which would next be published in September 2021. She said that “we will look afresh at policy areas this year to provide a double-check on that decision. Indeed, it remains open to administrations to keep looking at that if they wish to ... and decide how to handle it in the future”.<sup>57</sup> Bruno Williams, Deputy Director of the UK Frameworks Division at the Cabinet Office, reiterated that the UK Government will review this in the next analysis published in September. He added:

“A large number of frameworks have been reclassified as ‘no further action’. We have been working very hard with departments in the devolved administrations behind the scenes to make sure that robust rationales are provided for that reclassification. You are correct that those rationales have not always been set out as fully as possible in the public domain; I hear what you are saying in that respect. We can

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54 *Frameworks Analysis 2020*

55 Letter to Rachel Mclean MP, Parliamentary Under Secretary of State for Transport from Baroness Andrews, Chair of the Common Frameworks Scrutiny Committee, 17 November 2020: <https://committees.parliament.uk/publications/3507/documents/33584/default/>

56 Letter to Baroness Andrews, Chair of the Common Frameworks Scrutiny Committee from Rachel Maclean MP, Parliamentary Under Secretary of State for Transport, 30 November 2020: <https://committees.parliament.uk/publications/3831/documents/38380/default/>

57 [Q 94](#) (Chloe Smith MP)

probably commit to putting more information about those rationales into the public domain when we publish our report in September.”<sup>58</sup>

43. **To date, the UK Government has provided limited justification for its decision to take ‘no further action’ in 121 policy areas and for its belief that a common framework is not needed. This is particularly concerning for those areas where a common framework was initially envisaged, and which therefore met the criteria established in the JMC Principles. We recommend that the UK Government should publish a short justification for each policy area where it has decided to take ‘no further action’, on the basis that no common framework is currently necessary, with reference to the agreed JMC Principles.**

#### Summaries and insufficient stakeholder consultation

44. One of the key elements of our scrutiny has focused on the transparency of the frameworks process and engagement with both stakeholders and the four legislatures of the UK. In a letter to the Senior Deputy Speaker in the House of Lords, Minister Chloe Smith MP explained the process for stakeholder engagement and parliamentary scrutiny.<sup>59</sup> She stated that after the initial phase of policy development for a framework, policy leads from the relevant departments “will prepare a summary of the framework, to be jointly written by all four administrations”. At the same time as it is sent to stakeholders the summary will be sent by each department to its respective legislatures.
45. However, as noted by chairs from committees across the House of Commons, “departments have instructed committees not to publish” summaries, and have not themselves published them.<sup>60</sup> Dr Viviane Gravey told us that the common frameworks process was considerably less transparent than the EU process it replaced:
- “The EU directives were debated publicly in the European Parliament and in the Council of Ministers, with stakeholders who could decide for themselves whether they felt they were affected, whether they wanted to speak about this topic and whether they wanted to influence it.”<sup>61</sup>
46. This engagement has been reduced in the transfer to common frameworks. In our correspondence with departments that have produced common frameworks, we have sought to find out which stakeholders the frameworks have been sent to. Where departments have provided lists, these have not

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58 [Q 94](#) (Bruno Williams)

59 Letter to Lord McFall of Alcluith, Chair of the House of Lords Liaison Committee from Chloe Smith MP, Minister for the Constitution and Devolution, 1 June 2020: <https://committees.parliament.uk/publications/1550/documents/14396/default/>

60 Letter to Chloe Smith MP, Minister for the Constitution and Devolution from House of Commons Chairs of Select Committees, 19 October 2020: <https://committees.parliament.uk/publications/3080/documents/28885/default/>

61 [Q 67](#) (Dr Viviane Gravey)

been extensive.<sup>62</sup> Early summaries lacked information on relevant legislation.<sup>63</sup> Other summaries failed to provide basic information on the policy area that the framework would cover. For example, the Department for Transport submitted a number of summaries that were lacking in detail and on one occasion sent near-identical summaries for two different frameworks.<sup>64</sup> In December 2020, we concluded that “the quality of these summaries has not been sufficient”.<sup>65</sup> In response to our concerns, the Minister said the Cabinet Office had “reviewed and audited the summaries” and “will ensure that departmental leads include necessary information” and provide “a consistent level of high-quality summaries”.<sup>66</sup>

47. There was a particular challenge with respect to consultation in Northern Ireland. For example, the summary for the Food and Feed Safety and Hygiene (FFSH) framework, which was the basis for consultation with stakeholders, contained minimal information on the interaction between the framework and the Protocol on Ireland/Northern Ireland.<sup>67</sup> We concluded that the Food Standards Agency (FSA) and Food Standards Scotland’s (FSS) choices on how to manage potential divergence between GB and NI could affect stakeholders in Northern Ireland and therefore should be the subject of proper consultation. We recommended that it “extensively consult with stakeholders in Northern Ireland” in the first year of the framework’s operation (see Box 2 on page 28).
48. Stakeholders in Northern Ireland told us that they had not been adequately consulted on common frameworks. Aodhán Connolly, Director of the Northern Ireland Retail Consortium, explained that given “the importance of this to NI to GB and GB to NI, and the fact that we are the people at the coalface, I would have assumed that we would have had a lot more consultation on this”.<sup>68</sup> Victor Chestnutt, President of the Ulster Farmers’ Union, told us that his organisation had not been consulted on any framework and that he had concerns about the transparency of the programme.<sup>69</sup>

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62 Letter to Baroness Andrews, Chair of the Common Frameworks Scrutiny Committee from Emily Miles, Chief Executive of the Food Standards Agency 3 November 2020: <https://committees.parliament.uk/publications/3277/documents/30911/default/>; letter to Baroness Andrews, Chair of the Common Frameworks Scrutiny Committee from Rachel Maclean MP, Parliamentary Under Secretary of State for Transport, 14 December 2020: <https://committees.parliament.uk/publications/3968/documents/39914/default/>; letter to Baroness Andrews, Chair of the Common Frameworks Scrutiny Committee from Edward Argar MP, Minister for Health, 29 January 2021: <https://committees.parliament.uk/publications/4628/documents/46819/default/>; letter to Baroness Andrews, Chair of the Common Frameworks Scrutiny Committee from Edward Argar MP, Minister of Health, 29 January 2021: <https://committees.parliament.uk/publications/4629/documents/46820/default/>

63 Letter to Chloe Smith MP, Minister for the Constitution and Devolution from Baroness Andrews, Chair of the Common Frameworks Scrutiny Committee, 14 October 2020: <https://committees.parliament.uk/publications/2996/documents/28493/default/>

64 Letter to Chloe Smith MP, Minister for the Constitution and Devolution from Baroness Andrews, Chair of the Common Frameworks Scrutiny Committee, 17 December 2020: <https://committees.parliament.uk/publications/4043/documents/40358/default/>

65 *Ibid.*

66 Letter to Baroness Andrews, Chair of the Common Frameworks Scrutiny Committee from Chloe Smith MP, Minister for the Constitution and Devolution, 23 December 2020: <https://committees.parliament.uk/publications/4184/documents/43147/default/>

67 Letter to Emily Miles, Chief Executive of the Food Standards Agency from Baroness Andrews, Chair of the Common Frameworks Scrutiny Committee, 20 January 2021: <https://committees.parliament.uk/publications/4368/documents/44321/default/>

68 [Q 29](#) (Aodhán Connolly)

69 [Q 70](#) (Victor Chestnutt)

49. Sean Kelly, Development Manager for Northern Ireland Environment Link, said that engagement and consultation on the frameworks had been very piecemeal across the UK. He told us that his organisation had only been consulted on the Emissions Trading Scheme framework and “only at a very general level”.<sup>70</sup> Greener UK, an alliance of environmental groups, stated that “most provisional frameworks that will have effect from 1 January 2021 will have been subject to little or no stakeholder engagement. The process has lacked transparency which must be addressed during 2021, with a clear, structured plan and timetable published”.<sup>71</sup>
50. The Minister, Chloe Smith MP, was keen to reject the challenge to us that the frameworks process had not been transparent: “I rebut the idea that it is all happening in private and behind closed doors. It is not.” She said that discussions had taken place with “real people on behalf of real customers on behalf of real businesses”.<sup>72</sup> The Minister noted that the UK Government had spoken to the Food and Drink Federation. However, the Food and Drink Federation told us that “much of the development of common frameworks has been done behind closed doors for most of the time period”.<sup>73</sup> It cited the engagement by the FSA and FSS as examples of good practice, arguing that: “Early industry engagement should be critical to effective framework, policy and legislative development.”
51. William Wragg MP, Chair of the Public Administration and Constitutional Affairs Committee in the House of Commons, also commented that there has been a lack of engagement, so much so that his committee had called on the UK Government to improve its engagement with stakeholders.<sup>74</sup> David Rees MS, Chair of the External Affairs and Additional Legislation Committee in the Senedd/Welsh Parliament, said that “we do not know what engagement has been taking place on these frameworks and what the outcomes of an engagement are”.<sup>75</sup> Colin McGrath MLA, Chair of the Committee for the Executive Office in the Northern Ireland Assembly, suggested that engagement with stakeholders had been very limited, partly due to the absence of the Northern Ireland Executive during the initial development of the frameworks.<sup>76</sup>
52. Gillian Martin MSP, Convener of the Scottish Parliament’s Environment, Climate Change and Land Reform Committee (ECCLRC), explained that the four administrations are making regulations “in a locked cupboard ... that will affect people who are standing outside that cupboard. In that way chaos will lie”.<sup>77</sup> She gave the example of “animal welfare issues and controls around the transportation of livestock if the weather is worse than a force 6 gale or the temperature is less than 5 degrees. For places such as Orkney and Shetland, that is pretty much the case for a great part of the year, so there has obviously not been engagement with remote areas of Scotland and the UK”.

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70 [Q 67](#) (Sean Kelly)

71 Written evidence from Greener UK ([PBC0004](#))

72 [Q 49](#)

73 Written evidence from the FDF ([PBC0005](#))

74 [Q 81](#) (William Wragg MP)

75 [Q 80](#) (David Rees MS)

76 Northern Ireland Assembly, Committee for the Executive Office, *Post-Brexit Common Frameworks: House of Lords Common Frameworks Scrutiny Committee*, 9 December 2020, p 5: <http://data.niassembly.gov.uk/HansardXml/committee-24524.pdf> [accessed 24 March 2021]

77 [Q 80](#) (Gillian Martin MSP)

53. Chloe Smith MP told us that “the level of technicality entailed by frameworks is often different, for example, from the level entailed by a piece of primary legislation, to draw an obvious comparison. At this level of detail, it is quite normal to do a targeted stakeholder approach”.<sup>78</sup> She explained that stakeholders involved are usually a trade body or professional association and very often already work with the governments on the particular area of regulation. The Minister addressed the issue raised by Gillian Martin MSP, stating that some areas are rightly devolved and that only where there needs to be interaction between the territories of the UK should it be considered as a frameworks issue. She highlighted that her aim was “that those who are expert in an area of regulation and those who are governed by an area of regulation ought to be involved”.
54. **Common frameworks are weakened by the lack of inclusion of external stakeholders and should have been transparent from their inception. We were told that this process has been less transparent than the EU system it has replaced. Greater transparency could have been achieved through the publication of framework summaries during the initial development of each common framework and having an open stakeholder consultation process that reached out beyond the ‘usual suspects’.**
55. **We recommend that the UK Government should make up for the lack of involvement of stakeholders in the initial development of common frameworks by revising them based on stakeholders’ feedback. Future reviews of the frameworks should include an open and well-publicised stakeholder consultation process that reaches beyond the small number of stakeholders previously consulted, so as to ensure that all those directly affected have a meaningful opportunity to contribute.**

#### **The need to publish the provisional frameworks**

56. According to the agreed process, after stakeholder consultation has taken place the frameworks are reviewed and updated, to reflect stakeholder comments, before going to the JMC(EN) to be approved as provisional frameworks.<sup>79</sup> Following JMC(EN) agreement, the provisional frameworks are supposed to be published and they undergo parliamentary scrutiny. Select committees in all four legislatures scrutinise the documents and can suggest amendments to their respective governments. The amendments that are accepted are then taken back to the JMC(EN) and a final framework can be agreed and implemented.
57. As discussed in Chapter 2, delays to the frameworks process have meant that no framework was finalised before the end of the transition period. Three provisional frameworks were published but had not completed scrutiny in all legislatures before the end of the transition period. The Nutrition Labelling, Composition and Standards (NLCS) framework was published on 9 October and the Hazardous Substances (Planning) framework was published on 23

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78 Q 93 (Chloe Smith MP)

79 Letter to Lord McFall of Alcluith, Chair of the House of Lords Liaison Committee from Chloe Smith MP, Minister for the Constitution and Devolution, 1 June 2020: <https://committees.parliament.uk/publications/1550/documents/14396/default/>

November,<sup>80</sup> after being agreed on 3 September by the JMC(EN).<sup>81</sup> The Hazardous Substances (Planning) framework completed scrutiny in all legislatures before the end of February.<sup>82</sup> This suggests that if the framework had been published when it was agreed, parliamentary scrutiny could have been completed before the end of the transition period. A further four provisional frameworks were published in late March 2021 but were not in a state where they could be submitted for parliamentary scrutiny.<sup>83</sup>

58. Despite no framework being agreed by the end of the transition period, 29 frameworks are currently the basis of current intergovernmental cooperation. 22 have not yet been published (see Appendix 4).<sup>84</sup> Of these, 16 have been signed off by the UK Government, the Welsh Government and Scottish Government, and six, which apply to only Northern Ireland and the UK Government, have only been signed off by the UK Government. To date, we have only seen 10 other framework summaries. This means that there are 12 frameworks currently in operation on which there has been no information provided to Parliament and there has been limited engagement of stakeholders. Other than summaries, the UK Government has facilitated scrutiny by publishing the full draft text of the Hazardous Substances (Planning) framework in July 2019.<sup>85</sup>
59. Our concerns about the lack of engagement and scrutiny are shared across committees looking at the frameworks. The Scottish Parliament's Environment, Climate Change and Land Reform Committee (ECCLRC) told us:
- “The decision by the administrations to progress all frameworks to provisional framework stage, in order for them to be minimally operable for the end of the transition period—before stakeholder and parliamentary engagement has been undertaken—further suggests a marginal role for both stakeholder and parliamentary engagement in the frameworks process.”<sup>86</sup>
60. In a letter to Chloe Smith MP on 9 February, Sir Bernard Jenkin MP, Chair of the Liaison Committee in the House of Commons, said that the provisional frameworks should be published as quickly as possible. He asked for an “assurance that the Cabinet Office will do everything it can to support departments in engaging with committees at the earliest possible stage, even on a confidential basis, to ensure that frameworks can receive proper scrutiny

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80 *Nutrition Related Labelling, Composition and Standards Provisional Common Framework; Provisionally Confirmed Hazardous Substances (Planning) Common Framework*

81 Executive Office of the Northern Ireland Assembly, Departmental Briefing Paper, 6 October 2020: <http://www.niassembly.gov.uk/globalassets/committee-blocks/executive-office/2017---2022/20201006-common-frameworks.pdf> [accessed 24 March 2021]

82 *Q 90* (Chloe Smith MP)

83 The Public Health Protection and Health Security framework has also reached provisional status but has not yet been published.

84 Letter to Baroness Andrews, Chair of the Common Frameworks Scrutiny Committee from Chloe Smith MP, Minister for the Constitution and Devolution, 22 February 2021: <https://committees.parliament.uk/publications/4780/documents/48283/default/>. There are an additional three frameworks in development that have not reached provisional status and are not described as provisionally active.

85 Cabinet Office, *An update on progress in Common Frameworks* (3 July 2019): [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/814326/Frameworks\\_Products\\_Update\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/814326/Frameworks_Products_Update_.pdf) [accessed 24 March 2021]

86 Written evidence from ECCLRC (*PBC0017*)

even as they continue to apply in preliminary form”.<sup>87</sup> Alun Davies MS, a member of the External Affairs and Additional Legislation Committee in the Senedd, warned the Welsh Government that frameworks “can be used in order to create almost an opaque bureaucracy governed through that opaqueness rather than through democratic debate and discussion”.<sup>88</sup>

61. The Minister told us that she was very keen to publish frameworks. However, she cautioned that “we need to work with our colleagues in the devolved administrations because this is a jointly owned process”.<sup>89</sup> The Minister stressed that: “This is a common process between us, but we are keen to make frameworks as widely available and as quickly as we all can.” Although she acknowledged the tension involved, she explained that she was “as keen as you are to move as quickly as we can to publishing frameworks, so that those who are governed by them have the fullest picture”.<sup>90</sup>
62. **We acknowledge that most common frameworks have not been agreed by the Northern Ireland Executive, but that should not have prevented the UK Government from being substantially more open throughout the process. Detailed summaries of the frameworks or draft frameworks could have been published for committees and stakeholders to engage with, as was done with the Hazardous Substances (Planning) framework.**
63. **Despite almost all common frameworks being operational since the end of the transition period, only three were published before 1 January 2021. The fact that the vast majority of these frameworks have been active for three months without being published underscores the lack of transparency of the programme. We recommend that, in future, the UK Government should publish frameworks as they are agreed or amended, and that where new frameworks are developed, it should publish draft framework documents as early as possible in the process to allow for comments from stakeholders.**

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87 Letter to Chloe Smith MP, Minister for the Constitution and Devolution from Sir Bernard Jenkin MP, Chair of the House of Commons Liaison Committee, 9 February 2021: <https://committees.parliament.uk/publications/4621/documents/46783/default/>

88 National Assembly for Wales, scrutiny session with the Counsel General and Minister for European Transition before the External Affairs and Additional Legislation Committee, 22 February 2021: <https://record.assembly.wales/Committee/11095#C357743> [accessed 24 March 2021]

89 [Q 90](#) (Chloe Smith MP)

90 [QQ 90–91](#) (Chloe Smith MP)

## CHAPTER 4: THE PARTICIPATION OF NORTHERN IRELAND

### The involvement of the Northern Ireland Executive

64. Northern Ireland has a particularly complex relationship with common frameworks. The JMC Principles specify that common 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 frontier with the EU.” The scope of devolution in Northern Ireland also means that there are more intersections between EU law and devolved competence than in Scotland and Wales,<sup>91</sup> and the Protocol on Ireland/Northern Ireland means that Northern Ireland will continue to follow EU rules in a range of areas.<sup>92</sup> There are six common frameworks that apply only to the Northern Ireland Executive and the UK Government, as well as Northern Ireland being a party to every other framework currently in development.<sup>93</sup> However, between January 2017 and January 2020, most of the time during which common frameworks were being developed, Northern Ireland was without a properly functioning Executive and Assembly. The Executive endorsed the common frameworks principles on 15 June 2020.<sup>94</sup>
65. Professor Katy Hayward, Professor of Political Sociology at Queen’s University Belfast, told us that the absence of the Executive during this period was problematic because it meant that Northern Ireland was only represented by officials, whose input was confined to analysis and factual responses, meaning that the strategic views of the Northern Ireland Executive were not heard.<sup>95</sup> Although the Executive and Assembly were re-established in January 2020, Professor Hayward said that the Executive was “behind the curve somewhat” and had to deal both with making up for its previous absence and the difficulties of implementing the Protocol on Ireland/Northern Ireland.<sup>96</sup> Dr Viviane Gravey, Lecturer in European Politics at Queen’s University Belfast, added that the Northern Ireland Executive was a small administration with limited capacity for divergence. She said that “the ability to diverge meaningfully will require a lot of effort on the part of civil servants even to be able to prepare a case for divergence. In many ways, it is likely that Northern Ireland will not be at the forefront of divergence.”<sup>97</sup>
66. Members of our Committee discussed this with the Committee for the Executive Office in the Northern Ireland Assembly on 9 December 2020, and heard similar concerns.<sup>98</sup> Doug Beattie MLA, the Committee’s Deputy Chairperson, told us that not having an Executive for so long had put them “on the back foot”, and that this had then been compounded by the response to the COVID-19 pandemic. However, he was positive about the efforts that have been made more recently by the Executive and said it was “doing a

91 Written evidence from Prof Katy Hayward ([PBC0003](#))

92 European Union Committee, *The Protocol on Ireland/Northern Ireland* (9th Report, Session 2019–21, HL Paper 66)

93 [Q 90](#) (Bruno Williams) and *Frameworks Analysis 2020*

94 Northern Ireland Assembly, evidence taken before the Committee of The Executive Office on 24 June 2020: <http://aims.niassembly.gov.uk/officialreport/minutesofevidencereport.aspx?AgendaId=22831&eveID=12032> [accessed 24 March 2021]

95 Written evidence from Prof Katy Hayward ([PBC0003](#))

96 [Q 18](#) (Prof Katy Hayward)

97 [Q 68](#) (Dr Viviane Gravey)

98 Northern Ireland Assembly, Committee for the Executive Office, *Post-Brexit Common Frameworks: House of Lords Common Frameworks Scrutiny Committee*, 9 December 2020, p 5: <http://data.niassembly.gov.uk/HansardXml/committee-24524.pdf> [accessed 24 March 2021]

good job in trying to catch up, but we are still on catch-up”. Colin McGrath MLA, the Committee’s Chairperson, stressed that progress on common frameworks had been slowed by the difficulty of getting agreement on Brexit-related matters in a divided Executive. He stressed that this was not a criticism but noted that it had undermined the Assembly’s ability to conduct its scrutiny: “If two people have differing views on something, asking them to get an agreed view, which they then present to this Committee for scrutiny, is going to be a very difficult process.”

67. These concerns are important context to the explanation by Chloe Smith MP, Minister for the Constitution and Devolution, that 26 common frameworks were currently making their way through the Northern Ireland Executive after having been signed off by all the other administrations.<sup>99</sup> Five of these were approved in late March 2021. The rest of these frameworks have been awaiting a decision for over three months. It is unclear if this is due to a lack of capacity in the Executive, or to political disagreement on the frameworks themselves. One result of this lack of progress is that officials in Northern Ireland are having to use these agreements as the basis for their way of working with the other administrations without them first having been signed off by the Executive as a whole.
68. **The fact that the Northern Ireland Executive has yet to approve 21 frameworks, of which six deal exclusively with cooperation between the UK Government and the Northern Ireland Executive, is extremely regrettable. It is undesirable for common frameworks to be active without the backing of all four elected administrations across the UK. It has also meant that parliamentary committees across the UK have been unable to scrutinise these important agreements, even though they are already operational.**

### Interactions with the Protocol on Ireland/Northern Ireland

69. The importance of Northern Ireland in the arrangements for the UK leaving the EU was acknowledged early on in the withdrawal process. In summer 2017, the UK and EU agreed that one of three key areas to address would be issues relating to the border between Ireland and Northern Ireland.<sup>100</sup> This led, in December 2017, to the agreement of a ‘Northern Ireland backstop’ in the UK-EU Joint Report, which would have ensured that the UK and EU remained part of a single customs territory until the UK-EU could agree a future relationship which avoided a hard border on the island of Ireland.<sup>101</sup> In August 2019, Rt Hon Boris Johnson MP became Prime Minister and signalled his wish to change this approach, and in October 2019 the UK and EU agreed a new Protocol on Ireland/Northern Ireland.<sup>102</sup> Professor Katy Hayward told us that the effect of the Protocol was that “NI is de facto in the EU’s single market for goods and applying the Union customs code”.<sup>103</sup>

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99 Q 90 (Chloe Smith MP)

100 *The Protocol on Ireland/Northern Ireland*

101 HM Government and European Commission, *Joint report from the negotiators of the European Union and the United Kingdom Government on progress during phase 1 of negotiations under Article 50 TEU on the United Kingdom’s orderly withdrawal from the European Union* (8 December 2018): [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/665869/Joint\\_report\\_on\\_progress\\_during\\_phase\\_1\\_of\\_negotiations\\_under\\_Article\\_50\\_TEU\\_on\\_the\\_United\\_Kingdom\\_s\\_orderly\\_withdrawal\\_from\\_the\\_European\\_Union.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/665869/Joint_report_on_progress_during_phase_1_of_negotiations_under_Article_50_TEU_on_the_United_Kingdom_s_orderly_withdrawal_from_the_European_Union.pdf) [accessed 24 March 2021]

102 *The Protocol on Ireland/Northern Ireland*

103 Written evidence from Prof Katy Hayward (PBC0003)

70. The Protocol, agreed in October 2019, thus changed the common frameworks processes two years after the JMC Principles had been agreed. Professor Katy Hayward explained that “there is dynamic alignment in the protocol, and this is relevant to the common frameworks process as well, for Northern Ireland to EU rules. This means that, if the technical regulations that Northern Ireland has to follow, as included in the annexes in the Protocol, are amended or replaced, those automatically apply in Northern Ireland”.<sup>104</sup> Bruno Williams, Deputy Director of the UK Frameworks Division at the Cabinet Office, told us that “about three-quarters of the active frameworks” intersect in some way with the Protocol on Ireland/Northern Ireland.<sup>105</sup> For some frameworks, this intersection covers part of the relevant area. For example, Kwasi Kwarteng MP, then Minister of State for Business, Energy and Clean Growth, wrote to us on the interaction between the Protocol and the Emissions Trading Scheme framework:

“Article 9 and Annex 4 of the Ireland / Northern Ireland Protocol helps to maintain the continued operation of the Single Electricity Market by providing for Northern Ireland power generators to continue to participate in the EU ETS after the Transition Period. There are five power generators in NI that will continue to participate in the EU ETS, with the remaining non-electricity generating emitters in NI (who had previously participated in the EU ETS) participating in a separate carbon pricing scheme. This will either be the UK ETS, or a carbon emissions tax.”<sup>106</sup>

71. In other frameworks, the entire policy area is subject to the Protocol on Ireland/Northern Ireland. For example, Emily Miles CEO of the Food Standards Agency, told us in reference to the Food and Feed Safety and Hygiene (FFSH) framework that “Northern Ireland Ministers will not have scope to set their own policy approaches in areas of food and feed safety and hygiene law”.<sup>107</sup>
72. Sean Kelly of NI Environment Link explained that if the EU changes policy on pesticides or another issue covered by the Protocol “we have no option but to follow the Northern Ireland Protocol ruling on this one and to follow the EU rules. If GB does not do the same, there is obviously the possibility, or likelihood, of divergence.”<sup>108</sup> He suggested that “if we do not have alignment between Northern Ireland and GB, or if we do not have alignment full stop, even between any of the countries in the UK or any of the regions in the UK, we will have a state of confusion”. Mr Kelly called for the UK Government to either “follow the EU rules or else they have to try to design their own rules, and try to do so, hopefully, in a way that ... makes it easier for Northern Ireland to try to fulfil its UK commitments as well”.<sup>109</sup>
73. There have been concerns about the implementation of the Protocol since the end of the transition period. Victor Chestnutt, President of the Ulster

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104 [Q 17](#) (Prof Katy Hayward)

105 [Q 92](#) (Bruno Williams)

106 Letter to Baroness Andrews, Chair of the Common Frameworks Scrutiny Committee from Kwasi Kwarteng MP, Minister for Business, Energy and Clean Growth, 20 October 2020: <https://committees.parliament.uk/publications/3156/documents/29319/default/>

107 Letter to Baroness Andrews, Chair of the Common Frameworks Scrutiny Committee from Emily Miles, Chief Executive of the Food Standards Agency, 8 January 2021: <https://committees.parliament.uk/publications/4198/documents/43192/default/>

108 [Q 69](#) (Sean Kelly)

109 *Ibid.*

Farmers' Union, told us that as a result of the practical implications of implementing the Protocol, "there is an increasing level of frustration at checks and blocks that we did not realise were coming". He told us that British traders were telling businesses in Northern Ireland that "we're just not going through this paperwork" in order to continue trading with Northern Ireland. Mr Chestnutt used the example of plant protection products as one area where divergence looked likely and could harm farmers in Northern Ireland: "Roundup, for instance, looks as if it is set to be banned in the EU, but it looks as though the UK might continue to use it. That will put our arable farmers, who are quite a small sector in Northern Ireland, at a disadvantage."<sup>110</sup>

74. Dr Viviane Gravey explained that there was some flexibility in how legislation introduced through the Protocol on Ireland/Northern Ireland would apply in certain areas:

"France has just agreed to reintroduce Roundup for beetroot and sugar beets, so even on the EU side it is not a one size fits all. You have national regulations that might differ, and there will be the possibility of divergence even within the rules for special treatment of certain sectors ... It could be that there is no problem there. It could be that there is enough flexibility in the UK frameworks and the EU overall frameworks—be it a regulation, be it a directive—that Northern Ireland ends up with the ability to be in them both at the same time without any problem. This will be on a case-by-case basis, and there will be a lot of pressure on stakeholders and on civil servants, because we will not know, until we actually see new rules coming from the EU and divergence starting from the UK, how much of this will be a problem in practice."<sup>111</sup>

75. Bruno Williams from the Cabinet Office told us that "as far as we are concerned the common frameworks do not have a direct role in implementing the Protocol".<sup>112</sup> He explained that officials were looking at the forthcoming EU legislative programme and "considering how soon it is likely or plausible that divergence occasioned by the Protocol might manifest itself and how that might be managed through the framework".<sup>113</sup> We will be closely monitoring the UK Government's work on this over the coming months.

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110 Roundup is the brand name of a glyphosate-based weedkiller.

111 [Q 69](#) (Dr Viviane Gravey)

112 [Q 97](#) (Bruno Williams)

113 *Ibid.*

### Box 2: The Protocol and the frameworks so far

Our scrutiny of frameworks has examined the extent to which frameworks adequately manage divergence stemming from the Protocol on Ireland/Northern Ireland. On the Nutrition Labelling Composition and Standards (NLCS) framework, we noted that:

“Although Annex 2 of the Northern Ireland Protocol states that EU nutrition rules will continue to apply to Northern Ireland, this is not referred to anywhere in the Provisional Framework. While [the Government states in its] letter that you “do not currently anticipate any issues arising as a result of policy divergence at the end of the transition period”, the likelihood of such divergence will increase over time and could have serious implications for the future operation of this as a UK-wide framework.”<sup>114</sup>

The provisional Food and Feed Safety and Hygiene (FFSH) framework states that “the parties commit to aiming to implement common policy approaches where appropriate”. However, in a footnote, it excludes Northern Ireland from this.<sup>115</sup> It similarly excludes Northern Ireland from commitments to review impacts of proposed changes and to escalate policy to ministers if officials cannot agree on a common approach.

We exchanged a number of letters with the Food Standards Agency (FSA) on the framework that discussed the Protocol on Ireland/Northern Ireland and how the framework will respond to EU-initiated policy change. The FSA clarified that ministers will only be involved in responding to ‘non-routine’ proposals and that the FSA will not consider routine proposals due to a lack of resources. We concluded that:

“It is unclear how something will be classified as a ‘routine’ change and what process there will be for reaching these decisions, including any external consultation. We are deeply concerned by the suggestion that “the UK does not have the resources” to consider each of these changes and we believe that more resources should be committed to this area. We are concerned that the costs of the analysis could be exceeded by the long-term costs of divergence to businesses across the UK. This is a crucial element of maintaining a coherent UK internal market.”<sup>116</sup>

76. The UK-EU Withdrawal Agreement establishes a Joint Consultative Working Group on the implementation of the Protocol, which will act as a forum for the exchange of information between the UK and the EU on planned and proposed changes to EU law relevant to the Protocol.<sup>117</sup>

114 Letter to Edward Argar MP, Minister of Health from Baroness Andrews, Chair of the Common Frameworks Scrutiny Committee, 17 November 2020: <https://committees.parliament.uk/publications/3506/documents/33582/default/>

115 *Food and Feed Safety and Hygiene Common Framework*

116 Letter to Emily Miles, Chief Executive of the Food Standards Agency from Baroness Andrews, Chair of the Common Frameworks Scrutiny Committee, 20 January 2021: <https://committees.parliament.uk/publications/4368/documents/44321/default/>

117 Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, presented to Parliament pursuant to Section 1 of the European Union (Withdrawal) Act (No. 2) 2019 and Section 13 of the European Union (Withdrawal) Act 2018 (19 October 2019): [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/840655/Agreement\\_on\\_the\\_withdrawal\\_of\\_the\\_United\\_Kingdom\\_of\\_Great\\_Britain\\_and\\_Northern\\_Ireland\\_from\\_the\\_European\\_Union\\_and\\_the\\_European\\_Atomic\\_Energy\\_Community.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/840655/Agreement_on_the_withdrawal_of_the_United_Kingdom_of_Great_Britain_and_Northern_Ireland_from_the_European_Union_and_the_European_Atomic_Energy_Community.pdf) [accessed 24 March 2021]

Professor Katy Hayward explained that this joint working group would be the opportunity for the UK to have input but that it was unclear how the UK's input will be "affected by concerns, issues and realities in Northern Ireland".<sup>118</sup> The Institute for Government argued that the "UK Government should ensure that systems are in place to pass on this information [from the Joint Consultative Working Group] to the relevant department, and that this triggers subsequent discussions through the appropriate channels set out in each common framework".<sup>119</sup> At the time of writing the Joint Consultative Working Group had not met other than to agree its Rules of Procedure.

77. Jess Sargent, Senior Researcher at the Institute for Government, argued that:

"[Common frameworks] should also be a forum for GB to think about how it might need to respond in its regulations to changes at an EU level. The UK Government have made it very clear that their intention is to ensure the integrity of the internal market, and, if they are serious about that, that might require, in some circumstances, making changes to their own regulation to prevent friction that could be created by Northern Ireland applying EU law. That should definitely be an option."<sup>120</sup>

78. The Minister, Chloe Smith MP, told us:

"How any new rules introduced through the Protocol could be addressed by common frameworks is a matter for the governments involved. To be clear, by that I mean the Northern Ireland Executive and the UK Government. Frameworks are agreements between the administrations inside the UK about how divergence might be managed. I expect that the parties to frameworks ... would want to be aware of where change may come, through legislation being amended or through the Protocol, or indeed change other than the Protocol."<sup>121</sup>

79. **Divergence between Northern Ireland and Great Britain is likely to have negative consequences for businesses throughout the UK. In order to maintain the integrity of the UK internal market, the UK Government should seek to minimise this divergence. This principle applies to the common frameworks process regarding the other three parts of the UK and should equally apply to changes that are introduced through the Protocol on Ireland/Northern Ireland.**

80. **The scope for regulatory flexibility in Northern Ireland is constrained by the terms of the Protocol on Ireland/Northern Ireland, in a way that the other parts of the UK are not. The UK Government should ensure that policy changes introduced through the Protocol, following decisions jointly agreed between the UK and EU at the Joint Consultative Working Committee, are subject to discussion between the relevant parties. We recommend that these changes are considered by ministers in the same manner as divergent policy changes suggested by other administrations of the UK are considered through common frameworks.**

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118 [Q 17](#) (Prof Katy Hayward)

119 Written evidence from the Institute for Government ([PBC0013](#))

120 [Q 58](#)

121 [Q 98](#)

*Reporting on divergence from the rest of the UK*

81. Under the United Kingdom Internal Market Act 2020, the Office for the Internal Market is obligated to review the interaction between common frameworks and the ‘market access principles’ in the Act (see Paragraph 131). Jess Sargent explained that “any regulation or legislative provision that gives effect to the Northern Ireland Protocol is explicitly excluded from the remit of the Office for the Internal Market”. She noted that there “are obvious reasons for doing that, such as the UK Government not wanting to make this independent office the ultimatum arbiter of whether or not the Northern Ireland Protocol is working”, but argued that “there is still the need for that evidence to be considered in discussions through common frameworks and elsewhere, and there is the need to consider alternative mechanisms for doing that”.<sup>122</sup>
82. We had encountered the lack of planning for reporting on future divergence in the FFSH framework. As a result, we recommended as follows:
- “The FSA should produce an assessment of the degree of divergence between Northern Ireland and the rest of the UK, and the associated costs of this for businesses, as part of its annual report on the framework. It should extensively consult with stakeholders in Northern Ireland on which food safety changes are considered as ‘routine’. In the first year of the framework, the FSA should also conduct a specific assessment of the potential costs of divergence in these ‘routine’ areas, which will not be subject to an analysis.”<sup>123</sup>
83. **Under the United Kingdom Internal Market Act 2020, the Office for the Internal Market will report on the functioning of the UK internal market. However, there is no such provision for reporting on the effects of regulatory divergence between Northern Ireland and the rest of the UK arising from the Protocol on Ireland/Northern Ireland. As jointly owned documents, frameworks provide an appropriate forum for agreeing reporting on this divergence. We recommend that frameworks that include a major intersection with the Protocol should include processes for reporting on the divergence that occurs and its effects, and that the results of these should be forwarded to the EU for information.**

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122 [Q 59](#)

123 Letter to Emily Miles, Chief Executive of the Food Standards Agency from Baroness Andrews, Chair of the Common Frameworks Scrutiny Committee, 20 January 2021: <https://committees.parliament.uk/publications/4368/documents/44321/default/>

## CHAPTER 5: COMMON FRAMEWORKS AND THE UK INTERNAL MARKET

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84. During 2018, as the four administrations made progress on common frameworks,<sup>124</sup> the Department for Business, Energy and Industrial Strategy (BEIS) undertook an intergovernmental programme on the UK internal market that began to look at overarching proposals that went beyond individual frameworks. In March 2019 the Scottish Government withdrew from this programme.<sup>125</sup> In July 2020, the UK Government published a White Paper outlining its intention to create a legislative underpinning for the UK internal market, replacing what had previously been provided by EU law.<sup>126</sup> This was followed by the publication of United Kingdom Internal Market Bill on 9 September 2020, which immediately proved controversial in Scotland and Wales.
85. Michael Russell MSP, Cabinet Secretary for the Constitution, Europe and External Affairs in the Scottish Government, said “quite clearly, we do not see the need for the Bill”, describing it as “very heavy-handed” and “a much cruder instrument” than common frameworks.<sup>127</sup> Jeremy Miles MS, Counsel General and Minister for European Transition in the Welsh Government, told us that the devolved administrations had not been involved in designing the legislation:
- “The truth is that it was introduced without any co-design with the devolved governments. I would not have been able to tell you the contents of it 24 hours before it was introduced. There was a similar picture in relation to the White Paper. We did not know whether it was a Green Paper or a White Paper until a couple of days before. That is how the Bill came forward.”<sup>128</sup>
86. Mr Miles said the UK Government “have not stipulated any areas” that would not be sufficiently covered by common frameworks, and argued that the Bill’s provisions should only apply once the frameworks process had been exhausted.<sup>129</sup> Both the Scottish and Welsh Parliaments withheld their legislative consent to the legislation, and the Welsh Government has launched a legal challenge because of the way it “diminishes the Senedd’s legislative competence” and “cuts down the devolution settlement”.<sup>130</sup>
87. In the White Paper, the UK Government argued that common frameworks “on their own cannot guarantee the integrity of the entire Internal Market”, and that the proposed UK Internal Market Bill “complements Frameworks

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124 Cabinet Office, *The European Union (Withdrawal) Act and Common Frameworks: 26 June 2018 to 25 September 2018* (November 2018): [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/755498/EU-Withdrawal-Act-Schedule-3-Report.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/755498/EU-Withdrawal-Act-Schedule-3-Report.pdf) [accessed 24 March 2021]

125 Scottish Government, United Kingdom Internal Market Bill, Legislative Consent Memorandum, 28 September 2020: [https://www.parliament.scot/S5\\_Finance/General%20Documents/SPLCM-S05-47.pdf](https://www.parliament.scot/S5_Finance/General%20Documents/SPLCM-S05-47.pdf) [accessed 24 March 2021]

126 Department for Business, Energy and Industrial Strategy, *UK Internal Market*, CP 278, July 2020: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/901225/uk-internal-market-white-paper.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/901225/uk-internal-market-white-paper.pdf) [accessed 24 March 2021]

127 Q 8 (Michael Russell MSP)

128 Q 3 (Jeremy Miles MS)

129 Q 5 (Jeremy Miles MS)

130 The Northern Ireland Executive has not taken a formal position on the legislation, although a motion opposing the Bill was passed in the Northern Ireland Assembly.

by providing a baseline level of regulatory coherence across a wider range of sectors”. It also said that common frameworks “tend to be sector-specific” and “do not address the totality of economic regulation or the cumulative effects of divergence”. Lord True, Minister of State at the Cabinet Office, told the House of Lords that the Bill would work “in tandem with the common frameworks programme by providing a broad safety net and additional protections to maintain the status quo of seamless intra-UK trade across all sectors of the economy, and ... will ensure maximum certainty for businesses and investors, both domestic and overseas”.<sup>131</sup>

88. The Bill received Royal Assent on 17 December 2020 and became the United Kingdom Internal Market Act 2020.<sup>132</sup>

### Tensions with the UK Internal Market Act 2020

89. We were told that there was a tension between the UK internal market legislation and common frameworks, notably as regards the application of the ‘market access principles’ of mutual recognition<sup>133</sup> and non-discrimination.<sup>134</sup> The Institute for Government explained that, under the market access principles, “each government of the UK will be able to continue to regulate goods and services produced in their part of the UK, but not all the goods or services sold on their markets”. It said that, as a result, “any new standards introduced in one part of the UK that create higher costs to producers will only be enforceable on local producers, potentially putting them at competitive disadvantage against cheaper goods coming from elsewhere in the UK”.<sup>135</sup>
90. While the United Kingdom Internal Market Act 2020 does provide some exclusions from the market access principles, the Institute for Government noted that “unlike the EU framework it replaces, which allows for exclusions under a broad range of public policy grounds, the Act only provides for a narrow set of exclusions”.<sup>136</sup> Dr Mary Dobbs of Maynooth University expressed concerns that the “very limited exclusions (narrower than under EU law)” would mean that the devolved administrations are “curtailed in practice from achieving legitimate objectives in devolved matters”.<sup>137</sup> Moreover, Dr Viviane Gravey, Lecturer in European Politics at Queen’s University Belfast, noted that—in contrast to the EU, where decisions are taken collectively—the UK Government “can change the rules for all parties, such as changing the list and scope of exceptions to the market principles. This further amplifies the imbalance in power between different parts of the UK.”<sup>138</sup>
91. According to the JMC Principles, the common frameworks programme was designed to “enable the functioning of the UK internal market, while acknowledging policy divergence”.<sup>139</sup> However, the Law Society of Scotland

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131 HL Deb, 9 December 2020, [col 1246](#)

132 [United Kingdom Internal Market Act 2020](#)

133 In this context, ‘mutual recognition’ means that a good authorised for sale in any part of the UK can automatically be sold in any other part of the UK, regardless of any local regulatory requirements.

134 In this context, ‘non-discrimination’ means that any rules that directly or indirectly discriminate against goods or services from another part of the UK do not apply.

135 Written evidence from the IfG ([PBC0013](#))

136 *Ibid.*

137 Written evidence from Dr Mary Dobbs ([PBC0016](#))

138 Written evidence from Dr Viviane Gravey ([PBC0011](#))

139 [Frameworks Analysis 2020](#)

told us that while the market access principles “formally preserve the scope for regulatory divergence, they substantially undermine its practical effect”.<sup>140</sup> Professor Kenneth Armstrong, Professor of European Law at the University of Cambridge, said that “it is evident that insofar as regulatory divergence can be a legitimate outcome of a [common frameworks] process, the application of the UKIM Act could serve to frustrate that divergence through the introduction of regulatory competition”.<sup>141</sup>

92. Professor Jo Hunt, Professor in Law at Cardiff University, told us that the legislation “cuts across any agreed divergence” and explained that “differences on nutritional compositional standards or on labelling might be accepted and agreed under the frameworks, but those rules will apply only to producers within the local market, and the market access principles may still apply”.<sup>142</sup> Food Standards Scotland, a non-ministerial department of the Scottish Government, told us that “any national measure could be caught—and radically undermined—by the automatic application of the Bill’s market access principles”.<sup>143</sup>

### **Box 3: Food safety and the ‘market access principles’**

In October 2020, the UK Government published the provisional framework on Food and Feed Safety and Hygiene (FFSH), which outlined how it would cooperate with the devolved administrations on future food safety rules. In our four letters to the UK Government on this framework, we expressed concerns about how it would relate to the market access principles in the UK Internal Market Bill (and Act).

The common framework is underpinned by the memorandum of understanding between the Food Standards Agency and Food Standards Scotland, which provide independent advice to their respective governments on food safety. But Geoff Ogle, Chief Executive of Food Standards Scotland, said that the market access principles in the legislation “undermines a key plank of the framework—that Ministers can make decisions for their own countries—and at worst, makes it irrelevant”.<sup>144</sup>

While the Act includes a number of exclusions, Food Standards Scotland said it made “very little provision for the objective justification on public health grounds, in contrast with the EU, where wide-ranging exemptions to the mutual recognition principle can be found in the Treaties and a growing body of European Court jurisprudence”.<sup>145</sup> The Food Standards Agency also described the public health exemption as “a narrow exclusion” from the principle of mutual recognition.<sup>146</sup>

These tensions between the internal market legislation and the framework were acknowledged within the provisional framework itself, which included a disclaimer stating that its scope would be reviewed once Act was in place.

140 Written evidence from the Law Society of Scotland (PBC0015)

141 Written evidence from Prof Kenneth Armstrong (PBC0012)

142 Q 19 (Prof Jo Hunt)

143 Written evidence from Food Standards Scotland (PBC0002)

144 *Ibid.*

145 *Ibid.*

146 Letter to Baroness Andrews, Chair of the Common Frameworks Scrutiny Committee from Emily Miles, Chief Executive of the Food Standards Agency, 3 November 2020: <https://committees.parliament.uk/publications/3277/documents/30911/default/>

93. Jeremy Miles MS gave the example of hormone-injected beef and said that “if one of the Governments decided to deregulate significantly ... we would be in a position where the legislative preferences in the Senedd could not be enforced on the ground in Wales”. He also expressed concern that the legislation “removes any incentive for the UK Government to continue engaging in a constructive way in the common frameworks”.<sup>147</sup> Michael Russell MSP explained that, regardless of the rules introduced in Scotland, “a lower standard [in the rest of the UK] would automatically be permitted and recognised. In those circumstances, it would at the very least be unfair competition and more likely it would swamp whatever had been decided by the Scottish Parliament.” He warned that the legislation, as initially drafted, would leave common frameworks “largely inoperable, frankly, because they can constantly be second-guessed and, indeed, overruled by other actions elsewhere”.<sup>148</sup> In contrast, Bruno Williams, Deputy Director of the UK Frameworks Division at the Cabinet Office, told us that only around half of the frameworks interacted with the internal market legislation.<sup>149</sup>
94. The Institute for Government also told us that “common frameworks provide a process through which all governments could agree minimum standards, or to jointly raise standards—countering these market competition effects”.<sup>150</sup> NFU Cymru described “the vital role we see for Common Frameworks in terms of setting out minimum product standards and agreed limits on potential policy divergence”.<sup>151</sup> Huw Thomas, Political Adviser at NFU Cymru, said that “if we are going down the Internal Market Bill route, we also have to have the common frameworks setting those minimum standards”.<sup>152</sup> Greener UK, which represents 13 large environmental organisations, also noted that “where possible, there should be common minimum standards, to provide a ‘floor’ below which all jurisdictions agree not to fall while also encouraging a ‘race to the top’”.<sup>153</sup> To date, common frameworks have not included minimum standards but have created processes that could later agree such standards (see Paragraphs 28–36).
95. Professor Nicola McEwen, Professor of Territorial Politics and Co-Director of the Centre on Constitutional Change at the University of Edinburgh, told us that that the UK Internal Market Bill and common frameworks were “trying to do different things for a similar problem”, noting that “there is not an awful lot of evidence that the perceived problem that the UK Internal Market Bill is intended to address exists”. She argued that “the more effective option ... would be one that allowed the frameworks to work or not work, to explore them and to see where and whether there are any gaps that need to be filled”.<sup>154</sup>
96. On 1 December 2020, Chloe Smith MP, Minister for the Constitution and Devolution, told us that the UK Government had been “very clear in saying that we think the two things are complementary, but we think it is important that the principles set out in the United Kingdom Internal Market Bill would apply even where there may have been areas where divergent approaches had

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147 [QQ 1 and 4](#) (Jeremy Miles MS)

148 [QQ 1 and 4](#) (Michael Russell MSP)

149 [Q 92](#) (Bruno Williams)

150 Written evidence from the IfG ([PBC0013](#))

151 Written evidence from NFU Cymru ([PBC0006](#))

152 [Q 31](#) (Huw Thomas)

153 Written evidence from Greener UK ([PBC0004](#))

154 [Q 16](#) (Prof Nicola McEwen)

been agreed through common frameworks”. She said that the binding rules in the legislation would complement the voluntary common frameworks “whereby the administrations of the UK ought to be able to work together to collaborate on other areas of regulation”.<sup>155</sup>

97. **The market access principles in the United Kingdom Internal Market Act 2020 could constrain the ability of the devolved administrations to regulate effectively in areas of devolved competence, as it is possible that their standards could be undercut from other parts of the UK. This would occur by the importation of goods and services from other parts of the UK that adhered to standards different from those of the administration concerned. The same also applies for the UK Government when legislating for England. This could be contrary, rather than complementary, to the approach taken in common frameworks, which can allow for intra-UK divergence as long as it is agreed by all parties to the framework.**

#### **The powers to exempt common frameworks**

98. On 15 December 2020, in a significant change of approach, the UK Government introduced amendments to the UK Internal Market Bill to enable it to use delegated powers under Sections 10 and 18 to exclude divergence agreed through common frameworks from the operation of the market access principles. The Institute for Government told us that this “allows for UK ministers, after seeking the consent of the devolved administrations, to add new exclusions ... including to give effect to an agreement reached through common frameworks”.<sup>156</sup> Professor Armstrong explained while this gives UK ministers the power to exclude common frameworks from the application of the market access principles, “this is, however, a discretion. It may or it may not be exercised.”<sup>157</sup>
99. Professor Keating, Professor of Politics at the University of Aberdeen, said “the UK Government can, subject to consent, change these lists and ... frameworks might be the sort of thing they take into account when doing that”. This meant that frameworks could be used to “roll back some of the overreach” of the legislation. However, he argued that “the UK Government are still master of the game”.<sup>158</sup> Dr Hugh Rawlings, Honorary Professor at Cardiff University and former Director of the Department for the First Minister and Cabinet in the Welsh Government, said that the amendments had a “moderating effect” on the legislation, but left “the market principles in the primary position and the products of frameworks where implemented as exceptional”. He was “hoping for a generous application of those order-making powers ... I rather doubt that that will be the case, but that is what I hope for.”<sup>159</sup>
100. Jess Sargeant, Senior Researcher at the Institute for Government, told us that “the UK Government have been clear that even though these powers now exist, the intention is that they should be used very rarely, if at all”. She explained that the Department for Business, Energy and Industrial Strategy (BEIS) had committed to hold annual meetings with the devolved

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155 [Q 44](#) (Chloe Smith MP)

156 Written evidence from the IfG ([PBC0013](#))

157 Written evidence from Prof Kenneth Armstrong ([PBC0012](#))

158 [Q 57](#) (Prof Michael Keating)

159 [Q 57](#) (Dr Hugh Rawlings)

administrations to consult on new exclusions, noting that “there is a question about how particular policy expertise from common frameworks or evidence or information should feed into those discussions”. She argued that “common frameworks will be doing all the detailed work, so they are best placed to consider where exclusions might be appropriate and necessary”.<sup>160</sup>

101. BEIS Minister Paul Scully MP told the House of Commons that the use of this power would “follow consensus being reached between the UK Governments and all the relevant parties” and would be used “in a small number of cases”.<sup>161</sup> But Chloe Smith MP told us that “we are not operating a policy that says that that number ought to be small. We are instead expecting it to be small.”<sup>162</sup> Bruno Williams explained that “the reference to a small number probably refers to the fact that, so far, we do not have a huge amount of evidence that there will be a need to operate this exclusion in practice”. He noted that work is ongoing to determine how the powers to exempt common framework will be used:

“We are working with officials from the Department for Business, Energy and Industrial Strategy and across Government at the moment to determine some preliminary work on how the specific provisions of the Act can operate in relation to a common framework and agreed divergence under a framework. We will then be undertaking discussions with the devolved administrations in due course. We hope to progress the discussions soon with a view to making good progress on the issue. We are looking at a range of considerations, such as how the role of the Secretary of State dovetails with the common frameworks programme and what sort of evidence might be considered when assessing the case for granting an exclusion.”<sup>163</sup>

102. **Under the United Kingdom Internal Market Act 2020, the Secretary of State is granted powers to exempt divergence agreed under common frameworks from the market access principles. We recommend that the UK Government should work closely with the devolved administrations to develop a consistent and transparent process for using these powers. It should then update the relevant frameworks to state clearly how and when they will agree exemptions from the market access principles. Unless these powers are exercised with proper regard to the JMC Principles, the future of the common frameworks programme is likely to be severely compromised.**

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160 [Q 57](#) (Jess Sargeant)

161 HC Deb, 16 December 2020, [col 338](#)

162 [Q 95](#) (Chloe Smith MP)

163 [Q 95](#) (Bruno Williams)

## CHAPTER 6: UK INTERGOVERNMENTAL RELATIONS AND RESOLVING DISPUTES

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103. Despite the constructive work between the four administrations on common frameworks, a number of witnesses described the poor state of broader UK intergovernmental relations. Jeremy Miles MS, Counsel General and Minister for European Transition in the Welsh Government, said that “the experience of intergovernmental relations in the context of leaving the European Union and the transition period has been turbulent”,<sup>164</sup> referring to the UK Government’s decision not to involve the devolved administrations in the development of the UK Internal Market Bill (see Paragraph 85).<sup>165</sup> Michael Russell MSP, Cabinet Secretary for the Constitution, Europe and External Affairs in the Scottish Government, said “the relationships between Governments have been very poor and [are] getting poorer”.<sup>166</sup>
104. The views of the devolved governments are thus clear, and Dr Hugh Rawlings, Honorary Professor at Cardiff University and former Director of the Department for the First Minister and Cabinet in the Welsh Government, also said the four administrations are “operating in a low trust environment”, adding that the UK Government’s approach to the UK Internal Market Bill had “exacerbated problems”.<sup>167</sup> David Rees MS, Chair of the External Affairs and Additional Legislation Committee in the Senedd/Welsh Parliament, noted that UK intergovernmental relations were in “a state of suboptimal mutual hostility”.<sup>168</sup>

### The need to reset intergovernmental relations

105. The need to reset UK intergovernmental relations has been recognised by the UK Government. In March 2018 the Prime Minister and the First Ministers of Scotland and Wales agreed to review UK intergovernmental relations and the existing Memorandum of Understanding on Devolution.<sup>169</sup> In July 2019 Lord Dunlop was appointed to produce an independent report into the UK Government’s Union capability, which was published on 24 March 2021.<sup>170</sup>
106. Scottish Cabinet Secretary Michael Russell MSP told us that there was a lack of understanding of devolution in the UK Government, saying that “devolution is not about a hierarchy of Governments; it is about a hierarchy of Parliaments”.<sup>171</sup> The United Kingdom Constitution Monitoring Group explained that, within their territories, the devolved administrations generally have exclusive responsibility for the exercise of their statutory functions. It therefore argued that future intergovernmental relations “must proceed on the basis of mutual respect and parity of esteem, given those administrations’ responsibilities and accountabilities within their territories”.<sup>172</sup>

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164 Q 1 (Jeremy Miles MS)

165 Q 3 (Jeremy Miles MS)

166 Q 8 (Michael Russell MSP)

167 Q 61 (Dr Hugh Rawlings)

168 Q 88 (David Rees MS)

169 Cabinet Office, *Devolution: memorandum of understanding and supplementary agreement* (October 2013): <https://www.gov.uk/government/publications/devolution-memorandum-of-understanding-and-supplementary-agreement> [accessed 24 March 2021]

170 Cabinet Office, *Review of UK Government Union Capability* (24 March 2021): <https://www.gov.uk/government/publications/the-dunlop-review-into-uk-government-union-capability>

171 Q 2 (Michael Russell MSP)

172 Written evidence from the United Kingdom Constitution Monitoring Group (PBC0001)

107. Mr Russell said that UK intergovernmental relations should mean “working together, not in a subsidiary way but as equals, recognising the different roles we have”.<sup>173</sup> The Senedd’s David Rees MS also told us that the four administrations should “treat one another with respect and as equals”.<sup>174</sup> William Wragg MP, Chair of the Public Administration and Constitutional Affairs Committee (PACAC) in the House of Commons, suggested “some sort of family of nations counselling”, noting that “as long as that can be done with a degree of parity ... you can make progress”.<sup>175</sup>
108. Jeremy Miles MS criticised the current system of intergovernmental relations for its “absence of institutional resilience”. It “depends on good will and individuals who happen to be prepared to make it work. You cannot have a robust constitutional settlement capable of bearing the weight of things such as Covid and EU exit that is so heavily dependent on that dynamic.”<sup>176</sup> Jess Sargent, Senior Researcher at the Institute for Government, agreed that there was a “need for mechanisms or forums that facilitate modern working on the issues of the day for the four governments”.<sup>177</sup>
109. Both Dr Rawlings and Professor Jo Hunt, Professor in Law at Cardiff University, advocated some form of “shared governance”.<sup>178</sup> Dr Rawlings saw the common frameworks programme as “a very good illustration of that, because of course it involves, or should involve, agreeing rules for particular areas of public policy and maintaining oversight of them by the four governments operating on the basis of consensus”.<sup>179</sup> Lord Dunlop has also recently spoken about the need for a new approach to UK intergovernmental relations on the basis of a Cooperative Union or a Union of Cooperation.<sup>180</sup>
110. Professor Nicola McEwen, Professor of Territorial Politics and Co-Director of the Centre on Constitutional Change at the University of Edinburgh, said that common frameworks have “begun to move us to a way of working that recognises the distinctive roles of each of the administrations within their areas of competence”, noting that “it suggests a different working culture”.<sup>181</sup> Professor Kenneth Armstrong, Professor of European Law at the University of Cambridge, argued for formalising this new culture: “There may be an argument for amending the existing devolution Memorandum of Understanding to include a new Concordat that builds on the positive experiences of the programme.”<sup>182</sup>
111. Dr Viviane Gravey, Lecturer in European Politics at Queen’s University Belfast, said that the common frameworks programme “should become the flagship” for UK intergovernmental cooperation, describing it as “the four administrations’ Working Together programme”.<sup>183</sup> Jeremy Miles MS was critical about the UK Government’s recent approach to intergovernmental

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173 [Q 9](#) (Michael Russell MSP)

174 [Q 89](#) (David Rees MS)

175 [Q 88](#) (William Wragg MP)

176 [Q 2](#) (Jeremy Miles MS)

177 [Q 62](#) (Jess Sargeant)

178 [Q 15](#) (Prof Jo Hunt) and [Q 53](#) (Dr Hugh Rawlings)

179 [Q 53](#) (Dr Hugh Rawlings)

180 Policy Exchange, ‘Andrew Dunlop on the Future of the Union’ (10 February 2021): <https://policyexchange.org.uk/andrew-dunlop-on-the-future-of-the-union/> [accessed 24 March 2021]

181 [Q 20](#) (Prof Nicola McEwen)

182 Written evidence from Prof Kenneth Armstrong ([PBC0012](#))

183 [Q 71](#) (Dr Viviane Gravey)

relations, though noted:

“Throughout all that time, all those choppy waters, the one thing we have been able to point to as demonstrating the capacity of governments to work together in a collaborative and productive way has been the common frameworks work stream. That has been consistently an area where we could say, ‘Look, if we managed to adopt the principles and the common frameworks across the board, it would lead to much better collaboration between the governments’.”<sup>184</sup>

112. Chloe Smith MP described common frameworks as “a marker of good working between the administrations”.<sup>185</sup> She referred to the “incredibly valuable” relationships that can be developed through the territorial offices which “ensure that inside the UK Government at all times there is a clear and very passionate voice for Scotland, Wales and Northern Ireland”.<sup>186</sup> On the review of intergovernmental relations, the Minister explained that the UK Government “remains committed to working closely with the DAs to finalise the package as soon as possible”,<sup>187</sup> and publishing the Dunlop review once that has been finalised.<sup>188</sup> On 24 March 2021, the same day as our Committee agreed this report, the UK Government published the Dunlop review<sup>189</sup> and a progress update on the review of intergovernmental relations.<sup>190</sup>
113. **Evidence suggests that relations between the four administrations of the UK are in a particularly poor state, and that UK intergovernmental relations need to be reset. We recommend that this reset should be based on the consensual approach taken in common frameworks with the involvement of all three territorial offices, identifying areas of shared interest and demonstrating mutual respect.**

### Reforming the dispute settlement process

114. As part of the review of intergovernmental relations, the UK Government and devolved administrations are considering changes to the current process for settling disputes at the Joint Ministerial Committee (JMC), as currently outlined in the Memorandum of Understanding on Devolution.<sup>191</sup> Chloe Smith MP told us that this “will build on the existing structures and dispute avoidance and resolution processes in place for common frameworks”. Each common framework would contain standard text requiring that

184 [Q 1](#) (Jeremy Miles MS)

185 [Q 90](#) (Chloe Smith MP)

186 We have invited the three territorial offices to give evidence to our inquiry, as they play an essential role in building and maintaining positive relationships between the UK Government and the devolved administrations.

187 Letter to Baroness Andrews, Chair of the Common Frameworks Scrutiny Committee from Chloe Smith MP, Minister for the Constitution and Devolution, 22 February 2021: <https://committees.parliament.uk/publications/4780/documents/48283/default/>

188 [Q 101](#) (Chloe Smith MP)

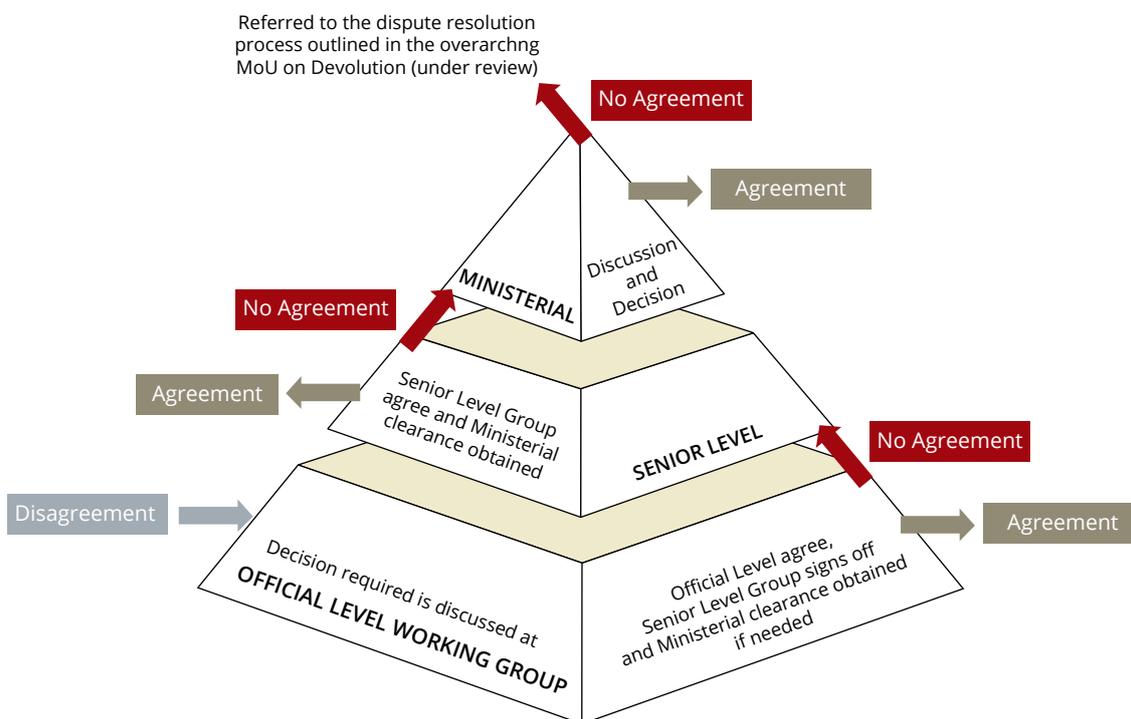
189 *Review of UK Government Union Capability*

190 Cabinet Office, *Progress update on the review of intergovernmental relations* (24 March 2021): [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/972983/Progress\\_update\\_on\\_the\\_review\\_of\\_intergovernmental\\_relations.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/972983/Progress_update_on_the_review_of_intergovernmental_relations.pdf) [accessed 24 March 2021]

191 Cabinet Office, *Devolution: memorandum of understanding and supplementary agreement* (October 2013): <https://www.gov.uk/government/publications/devolution-memorandum-of-understanding-and-supplementary-agreement> [accessed 24 March 2021]

disagreements be resolved at the lowest possible level, starting with policy officials, before escalating to senior officials and ministers (see Figure 3).<sup>192</sup>

**Figure 3: Dispute resolution in common frameworks**



Source: Letter to Baroness Andrews, Chair of the Common Frameworks Scrutiny Committee from Chloe Smith MP, Minister for the Constitution and Devolution, 20 October 2020: <https://committees.parliament.uk/publications/3118/documents/29161/default/>

115. The Institute for Government explained that while each common framework sets out its own procedure, two out of the three frameworks published by the end of 2020 state that disagreements that cannot be resolved at ministerial level will be escalated to the JMC process.<sup>193</sup> Professor Armstrong said that “the escalation policy envisaged in the dispute-resolution mechanisms is appropriate”, but noted that certain disputes may need to be accelerated through the stages if necessary.<sup>194</sup> The Institute for Government, on the other hand, told us that “current JMC Dispute Resolution Protocol, agreed in 2010, is widely considered inadequate”.<sup>195</sup>
116. David Rees MS expressed concerns that, when there are disagreements, “the UK Government might act as the Government of England in these discussions, and therefore put a bigger bias on what is good for England rather than what is good for the United Kingdom”.<sup>196</sup> Professor Michael Keating, Professor of Politics at the University of Aberdeen, explained that “the underlying principle of the whole system is that at the end of the day the UK Government always have the last word”. Even if it did not always exercise this power, negotiations would be “conducted in the shadow of this

192 Letter to Baroness Andrews, Chair of the Common Frameworks Scrutiny Committee from Chloe Smith MP, Minister for the Constitution and Devolution, 23 December 2020: <https://committees.parliament.uk/publications/4184/documents/43147/default/>

193 Written evidence from the IfG (PBC0013)

194 Written evidence from Prof Kenneth Armstrong (PBC0012)

195 Written evidence from the IfG (PBC0013)

196 Q 82 (David Rees MS)

hierarchical relationship and we know that one side can have its own way if it comes to a conflict”.<sup>197</sup>

117. While there have been suggestions of a UK Council of Ministers to replace the JMC,<sup>198</sup> which would introduce a voting process, Dr Hugh Rawlings noted that “given the low levels of trust between the governments I think it is probably a step too far at the moment”. Instead, he argued for a dispute settlement process “that all governments have signed up to and are happy to operate”, which “will probably involve some third-party assistance on occasion to enable the parties to reach a conclusion”.<sup>199</sup> Professor Keating also said he would “like to see some capacity in these mechanisms for research and assessing the impact of various mechanisms, rather than having the governments just bringing their own evidence together”.<sup>200</sup> The Welsh Government’s Jeremy Miles MS said:

“We have been pressing for there to be a role for an independent secretariat, which would provide comfort to the four governments that there was an independent element in how disputes are managed, and a role for independent advice in that process, again to give reassurance that there is some objective measure against which those things have been considered.”<sup>201</sup>

118. The Minister, Chloe Smith MP, told us that “we are looking to refresh the structures, culture, methods and mechanisms of the governments being able to work together”. The UK Government was considering how dispute resolution should work in the review of intergovernmental relations, noting that “there is a spectrum in how to use independent material, from the simple provision of material all the way through to advice, mediation or something that might be binding on governments”. She said it was “keen to ensure that there is good independent input to dispute resolution”.<sup>202</sup>
119. **Common frameworks all contain processes for avoiding and resolving disputes. However, if a dispute cannot be resolved within an individual framework, the issue can be escalated to the dispute settlement process outlined in the Memorandum of Understanding on Devolution. We heard concerns about the power imbalance that exists in this process, with the UK Government both representing the interests of England and acting as the ultimate arbiter in disputes.**
120. **We welcome the publication of the Dunlop report, as we consider the reform of UK intergovernmental processes to be an essential part of building a cooperative Union. We also welcome the fact that the progress update of 24 March 2021 on the review of intergovernmental relations acknowledges the need for there to be greater capacity for providing impartial support and evidence to inform discussions, as well as providing options for remedies, when seeking to resolve disputes.**

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197 [Q 60](#) (Prof Michel Keating)

198 [Brexid and Devolution: Securing Wales’ Future](#)

199 [Q 62](#) (Dr Hugh Rawlings)

200 [Q 62](#) (Prof Michael Keating)

201 [Q 10](#) (Jeremy Miles MS)

202 [Q 42](#) and [Q 102](#) (Chloe Smith MP)

## CHAPTER 7: THE NEED FOR FUTURE PARLIAMENTARY SCRUTINY

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121. The Common Frameworks Scrutiny Committee was appointed by the House of Lords on 17 September 2020 “to scrutinise and consider matters relating to common frameworks”. The Liaison Committee report recommending our appointment noted that “importance of scrutiny of devolution-related issues has been magnified by the impact of Brexit on the devolution settlements” and argued that there was a “scrutiny gap” with respect to common frameworks.<sup>203</sup>
122. Witnesses underlined the importance of parliamentary scrutiny of common frameworks. Professor Nicola McEwen, Professor of Territorial Politics and Co-Director of the Centre on Constitutional Change at the University of Edinburgh, told us that “parliamentary scrutiny is crucial to ensure that individual governments are held to account for their decisions and their actions in making or breaking common frameworks and the other aspects of intergovernmental relations that may accompany this process”.<sup>204</sup> Dr Hugh Rawlings, Honorary Professor at Cardiff University and former Director of the Department for the First Minister and Cabinet in the Welsh Government, said “it is important as a matter of principle that there should be parliamentary scrutiny of common frameworks in all four legislatures”.<sup>205</sup>
123. David Rees MS, Chair of the External Affairs and Additional Legislation Committee—which is responsible for overseeing the common frameworks programme in the Senedd/Welsh Parliament—said that it “has become clear is that that scrutiny is needed, and we need to test the frameworks. It is a question of EU retained law. We start looking at the EU retained law and the implications for devolution, and the way the common framework changes things.”<sup>206</sup> Gillian Martin MSP, Convener of the Environment, Climate Change and Land Reform Committee (ECCLRC) in the Scottish Parliament, agreed.<sup>207</sup>

### The parliamentary scrutiny process to date

124. While common frameworks have been in development since October 2017, the parliamentary scrutiny process was only outlined in June 2020 in a letter from Chloe Smith MP, Minister for the Constitution and Devolution, to the Chairs of the House of Lords Liaison Committee and the House of Commons Public Administration and Constitutional Affairs Committee (PACAC).<sup>208</sup> The letter stated: “Throughout the scrutiny process the administrations will be sharing the same information at the same time with their own legislatures.” It specified that policy teams in each administration would lay the provisional framework in its respective legislature, suggesting a scrutiny conducted simultaneously across the four legislatures.

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203 Liaison Committee, *A Common Frameworks Scrutiny Committee* (4th Report, Session 2019–21, HL Paper 115)

204 Q 24 (Prof Nicola McEwen)

205 Q 64 (Dr Hugh Rawlings)

206 Q 84 (David Rees MS)

207 Q 84 (Gillian Martin MSP)

208 Letter to Lord McFall of Alcluith, Chair of the House of Lords Liaison Committee from Chloe Smith MP, Minister for the Constitution and Devolution, 1 June 2020: <https://committees.parliament.uk/publications/1550/documents/14396/default/>

125. While the Minister said that the process should “ensure a consistent approach to scrutiny is taken by governments and legislatures across both the UK and devolved administrations”,<sup>209</sup> it has been implemented differently across the UK. While committees in the UK Parliament have been given 21 sitting days to scrutinise individual frameworks, in the Scottish Parliament this has been extended to 28 days.<sup>210</sup> David Rees MS told us that “the Welsh Government gave a commitment not to finally agree any frameworks until Senedd scrutiny was completed. They gave us the flexibility on time, in one sense, to undertake our scrutiny.”<sup>211</sup> Differences in timetables between the legislatures are likely to be exacerbated by elections to the Scottish and Welsh Parliaments on 6 May 2021, as scrutiny will continue in the UK Parliament and Northern Ireland Assembly.
126. Dr Viviane Gravey, Lecturer in European Politics at Queen’s University Belfast, described the common frameworks programme as “an Executive-led process, with Parliament being involved very little and very late”.<sup>212</sup> The ECCLRC in the Scottish Parliament also expressed concerns that the development of common frameworks was “almost exclusively an inter-governmental process with limited opportunities for parliamentary engagement”.<sup>213</sup> William Wragg MP, Chair of PACAC—which oversees common frameworks scrutiny in the House of Commons—told us that, because the frameworks are already being applied, his committee had reserved the right to extend the 21 sitting day scrutiny period proposed by the UK Government if necessary.<sup>214</sup>
127. The Minister, Chloe Smith MP, told us that the justification for the 21 sitting day scrutiny period was that “we thought it was important to have a minimum”. She explained that “treaties have a 21-day scrutiny period, so if it is good enough for those it should be good enough for one of these”.<sup>215</sup> Bruno Williams, Deputy Director of the UK Frameworks Division at the Cabinet Office, noted that “this is a recommendation, not a stipulation, and of course it is perfectly possible for the committees to negotiate a longer period with departments if they feel that that is necessary or desirable”.<sup>216</sup> We note that having sufficient time to conduct effective scrutiny will be essential for our ongoing work.
128. **The common frameworks programme was developed by the four administrations of the UK; a process for parliamentary scrutiny was included only as an afterthought. While the UK Government suggested that parliamentary committees should only have 21 sitting days to scrutinise individual frameworks, following the end of the transition period this has become an unnecessary and arbitrary deadline. Although we will endeavour to work with UK Government**

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209 *Ibid.*

210 [Q 11](#) (Michael Russell MSP)

211 [Q 84](#) (David Rees MS)

212 [Q 71](#) (Dr Viviane Gravey)

213 Written evidence from the ECCLRC ([PBC0017](#))

214 [Q 84](#) (William Wragg MP)

215 [Q 48](#) (Chloe Smith MP). We note that this scrutiny period for international treaties has come under criticism. For example, the House of Lords European Union Committee concluded that the Constitution Reform and Governance (CRAG) Act, which provides for the 21 sitting day scrutiny period for international treaties, was “poorly designed to facilitate parliamentary scrutiny”. European Union Committee, *Scrutiny of international agreements: lessons learned* (42nd Report, Session 2017–19, HL Paper 387)

216 [Q 48](#) (Bruno Williams)

**departments to conduct timely scrutiny, we reserve the right to extend our scrutiny beyond 21 sitting days if required.**

### **The need for continuing parliamentary scrutiny**

129. We were told by witnesses that scrutiny of common frameworks would need to continue even after they have been implemented. Professor Jo Hunt, Professor in Law at Cardiff University, explained that “common frameworks themselves are a process, not an outcome, so it is in terms of having that continual engagement with that process”.<sup>217</sup> The Senedd’s David Rees MS said “we see it not as an event but as a process and a continuation of a process. Therefore, scrutiny cannot stop once we have an agreed framework.”<sup>218</sup>
130. Dr Hugh Rawlings told us that future parliamentary scrutiny should focus on how common frameworks are functioning: “If you had a requirement for the publication of annual reviews ... to facilitate scrutiny of how the frameworks are working, I think that would be a very useful addition.”<sup>219</sup> This is something that we have pushed for in our scrutiny of common frameworks. For example, we argued that the annual report to ministers in the Nutrition Labelling, Composition and Standards (NLCS) framework should be shared with the UK Parliament and devolved legislatures. This, we argued, “would ensure an appropriate degree of transparency of the development of UK nutrition rules after the end of the transition period and would be essential for the purposes of effective parliamentary scrutiny”.<sup>220</sup>
131. The Law Society of Scotland said that future reviews “could be undertaken in a variety of ways depending on the nature of the common framework”. However, it argued that there should also be an overarching review “on how successfully the common frameworks programme is working in relation to the operation in law of the market access principles” in the UK Internal Market Act.<sup>221</sup> The Institute for Government noted that the legislation requires the Office for the Internal Market to prepare a report every five years on the operation of the market access principles and their interaction with common frameworks. It suggested that a general review of the common frameworks programme “could be timed to coincide with these statutory reports”, alongside more regular interim reviews.<sup>222</sup>
132. Dr Rawlings agreed on the need for “holistic oversight ... if you only had the operation of individual frameworks subject to scrutiny, you would lose the possibility of having an overall look at the common frameworks programme, with a view to maintaining consistency across the board so far as that is appropriate”. Professor McEwen, on the other hand, highlighted the need for “individual subject area committees to be mindful of the role of frameworks within their particular policy field”.<sup>223</sup> The United Kingdom Constitution Monitoring Group told us:

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217 [Q 24](#) (Prof Jo Hunt)

218 [Q 87](#) (David Rees MS)

219 [Q 64](#) (Dr Hugh Rawlings)

220 Letter to Edward Argar MP, Minister for Health from Baroness Andrews, Chair of the Common Frameworks Scrutiny Committee 17 November 2020: <https://committees.parliament.uk/publications/3506/documents/33582/default/>

221 Written evidence from the Law Society of Scotland ([PBC0015](#))

222 Written evidence from IfG ([PBC0013](#)). Under Section 33 of the United Kingdom Internal Market Act 2020, the Office for the Internal Market must report no later than 31 March 2023, and at least once every five years thereafter, on the interaction between the market access principles and agreements made under common frameworks.

223 [Q 24](#) (Prof Nicola McEwen)

“The scrutiny of the operation and impact of particular agreed frameworks would seem naturally to fall within the remits of the various committees in each legislature which have responsibility for oversight of executive action in particular areas of public policy. The common frameworks programme as a whole ... should also be scrutinised holistically from a UK-wide perspective.”<sup>224</sup>

133. Chloe Smith MP said that the work on an individual framework “is best done through the department that is specialised in it, whether that is agriculture, business or any of the others in the list ... I would expect departments to be able to assess that and to respond properly to their own scrutiny committees”. While the UK Government was “hammering out the things to which a common approach across common frameworks is helpful ... There is probably a natural time limit on the ways you would endeavour to do all these things together, compared to the point where you have to accept that departments own these subject matters.”<sup>225</sup>
134. **Parliamentary scrutiny of common frameworks will need to continue even after they have been finalised to ensure that important policy decisions are made transparently. Parliamentary committees will need to have information on how the individual frameworks are operating in their respective policy areas, as well as on the common frameworks programme as a whole. We recommend that, to facilitate this, the four administrations should provide regular updates to their legislatures and publish reports as part of their planned reviews of the frameworks.**

#### **An opportunity for closer interparliamentary cooperation**

135. Future scrutiny of common frameworks could also provide an opportunity for closer interparliamentary cooperation. The United Kingdom Constitution Monitoring Group said that “greater cooperation between the UK and devolved legislatures would seem to be essential”.<sup>226</sup> Professor Michael Keating, Professor of Politics at the University of Aberdeen, agreed that “while you have cross-UK or cross-GB frameworks, the various Parliaments could come together to discuss that and see what the real issues are”. He argued that “you could economise on a lot of work, because instead of doing these things separately they could pool their understandings and agree on a common position”.<sup>227</sup>
136. Colin McGrath MLA, Chairperson of the Committee for the Executive Office in the Northern Ireland Assembly, told members of our Committee that the common frameworks programme “seems to happen at executive level between the various devolved regions, but, at assembly level, there is very little connection for people to discuss concerns”.<sup>228</sup> The Scottish Parliament’s ECCLRC also called for legislatures to “invest and nurture parliamentary connections and networks across the UK in order to share information and expertise and to co-ordinate scrutiny”.<sup>229</sup> David Rees MS argued that there should be “commonality” of common frameworks

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224 Written evidence from the United Kingdom Constitution Monitoring Group ([PBC0001](#))

225 [Q 99](#) (Chloe Smith MP)

226 Written evidence from the United Kingdom Constitution Monitoring Group ([PBC0001](#))

227 [QQ 65-66](#) (Prof Michael Keating)

228 *Post-Brexit Common Frameworks: House of Lords Common Frameworks Scrutiny Committee*, p 9

229 Written evidence from the ECCLRC ([PBC0017](#))

scrutiny across UK legislatures, which “gives us greater power in holding Governments to account”.<sup>230</sup>

137. Professor Kenneth Armstrong, Professor of European Law at the University of Cambridge, argued in favour of processes “bringing together parliamentarians across the UK and devolved legislatures in identifying examples of good and bad intergovernmental working practices, positive and perverse incentives, scrutiny successes and failures”.<sup>231</sup> However, Professor Keating underlined that interparliamentary cooperation “should be at committee level, where we have specific remits, and focus on particular issues, otherwise these things become talking shops. If they are formalised, they just become purely formal and they feel that they have to meet every six months or so”.<sup>232</sup>
138. The Institute for Government’s Jess Sargeant highlighted the value of “informal opportunities” for collaborative working, giving as an example a joint letter from the Interparliamentary Forum on Brexit which drew attention to where different committees had made common recommendations.<sup>233</sup> The United Kingdom Constitution Monitoring Group described the Interparliamentary Forum on Brexit, which has informally brought together committee chairs and members from the legislatures of the UK, as “perhaps ... a starting point for establishing UK-wide structures for holistic review of any future common frameworks programme”.<sup>234</sup> David Rees MS also argued that “the understanding of devolved issues in that interparliamentary forum showed how the different Parliaments can get together and actually do some work”.<sup>235</sup>
139. Several witnesses also referred to the role of the House of Lords, which Dr Rawlings argued, “could have a convening role for scrutiny”.<sup>236</sup> William Wragg MP, Chair of PACAC, said “you have a valuable role to play, because you have been focused with great attention, and dare I say expertise, on this area, whereas ... many of the committees of the House of Commons can find themselves bogged down in all kinds of things and not necessarily give the attention to some aspects that they ought to”.<sup>237</sup> Professor Armstrong said that our Committee in particular “could play a leading role in facilitating a process of parliamentary dialogue and scrutiny”.<sup>238</sup> He told the Senedd that he saw the House of Lords Common Frameworks Scrutiny Committee as a “resource for everybody” that allowed “devolved Parliaments to work out, within their own spheres of interest and competence, to what extent they want to engage, and engage with one another, in developing good scrutiny arrangements”.<sup>239</sup> Gillian Martin MSP told us: “If we can continue engagement such as this or some other format, my committee would be happy to engage.”<sup>240</sup>
140. **As joint agreements between the four administrations of the UK, common frameworks provide a clear opportunity for closer**

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230 Q 85 (David Rees MS)

231 Written evidence from Prof Kenneth Armstrong (PBC0012)

232 Q 66 (Prof Michael Keating)

233 Q 59 (Jess Sargeant)

234 Written evidence from the United Kingdom Constitution Monitoring Group (PBC0001)

235 Q 85 (David Rees MS)

236 Q 66 (Dr Hugh Rawlings)

237 Q 87 (William Wragg MP)

238 Written evidence from Prof Kenneth Armstrong (PBC0012)

239 Welsh Parliament, evidence taken before the External Affairs and Additional Legislation Committee, 3 December 2020: <https://record.assembly.wales/Committee/6516> [accessed 24 March 2021]

240 Q 87 (Gillian Martin MSP)

**cooperation between the four legislatures of the UK. This could facilitate the sharing of information and ideas, and enable legislatures to hold their governments to account more effectively. As part of this, the House of Lords and its committees could play a valuable role in providing a neutral forum for receiving the views of devolved legislatures and facilitating closer interparliamentary cooperation.**

## SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

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1. Common frameworks are innovative mechanisms for developing UK-wide policy by collaboration and consensus between the four administrations, taking account of the interests of each part of the UK. They strengthen the Union by acknowledging the interdependence of policy between administrations, while recognising the autonomy of each administration in its areas of competence through the possibility of divergence on the basis of consent. (Paragraph 26)
2. Although progress on common frameworks has been delayed by other Brexit preparations and the response to COVID-19, they have still demonstrated the ability of the UK Government and devolved administrations to work together to achieve their shared interests. Common frameworks represent an example of best practice for positive cooperation across the UK and have an important role to play in an evolving devolution settlement and in strengthening the Union. (Paragraph 27)
3. Common frameworks create new processes for day-to-day cooperation between the four administrations on a wide variety of policy areas. They can and should be used to build consensus with the devolved administrations and develop a coherent approach to policy across the UK. Frameworks to date have not established minimum standards, though they could be used to create these in the future, and in some cases create joint processes for regulating certain areas. While these are technical agreements that have not yet been tested, this work on a range of specific policy issues provides the essential building blocks needed to establish a functioning cooperative Union. (Paragraph 36)
4. To date, the UK Government has provided limited justification for its decision to take ‘no further action’ in 121 policy areas and for its belief that a common framework is not needed. This is particularly concerning for those areas where a common framework was initially envisaged, and which therefore met the criteria established in the JMC Principles. We recommend that the UK Government should publish a short justification for each policy area where it has decided to take ‘no further action’, on the basis that no common framework is currently necessary, with reference to the agreed JMC Principles. (Paragraph 43)
5. Common frameworks are weakened by the lack of inclusion of external stakeholders and should have been transparent from their inception. We were told that this process has been less transparent than the EU system it has replaced. Greater transparency could have been achieved through the publication of framework summaries during the initial development of each common framework and having an open stakeholder consultation process that reached out beyond the ‘usual suspects’. (Paragraph 54)
6. We recommend that the UK Government should make up for the lack of involvement of stakeholders in the initial development of common frameworks by revising them based on stakeholders’ feedback. Future reviews of the frameworks should include an open and well-publicised stakeholder consultation process that reaches beyond the small number of stakeholders previously consulted, so as to ensure that all those directly affected have a meaningful opportunity to contribute. (Paragraph 55)

7. We acknowledge that most common frameworks have not been agreed by the Northern Ireland Executive, but that should not have prevented the UK Government from being substantially more open throughout the process. Detailed summaries of the frameworks or draft frameworks could have been published for committees and stakeholders to engage with, as was done with the Hazardous Substances (Planning) framework. (Paragraph 62)
8. Despite almost all common frameworks being operational since the end of the transition period, only three were published before 1 January 2021. The fact that the vast majority of these frameworks have been active for three months without being published underscores the lack of transparency of the programme. We recommend that, in future, the UK Government should publish frameworks as they are agreed or amended, and that where new frameworks are developed, it should publish draft framework documents as early as possible in the process to allow for comments from stakeholders. (Paragraph 63)
9. The fact that the Northern Ireland Executive has yet to approve 21 frameworks, of which six deal exclusively with cooperation between the UK Government and the Northern Ireland Executive, is extremely regrettable. It is undesirable for common frameworks to be active without the backing of all four elected administrations across the UK. It has also meant that parliamentary committees across the UK have been unable to scrutinise these important agreements, even though they are already operational. (Paragraph 68)
10. Divergence between Northern Ireland and Great Britain is likely to have negative consequences for businesses throughout the UK. In order to maintain the integrity of the UK internal market, the UK Government should seek to minimise this divergence. This principle applies to the common frameworks process regarding the other three parts of the UK and should equally apply to changes that are introduced through the Protocol on Ireland/Northern Ireland. (Paragraph 79)
11. The scope for regulatory flexibility in Northern Ireland is constrained by the terms of the Protocol on Ireland/Northern Ireland, in a way that the other parts of the UK are not. The UK Government should ensure that policy changes introduced through the Protocol, following decisions jointly agreed between the UK and EU at the Joint Consultative Working Committee, are subject to discussion between the relevant parties. We recommend that these changes are considered by ministers in the same manner as divergent policy changes suggested by other administrations of the UK are considered through common frameworks. (Paragraph 80)
12. Under the United Kingdom Internal Market Act 2020, the Office for the Internal Market will report on the functioning of the UK internal market. However, there is no such provision for reporting on the effects of regulatory divergence between Northern Ireland and the rest of the UK arising from the Protocol on Ireland/Northern Ireland. As jointly owned documents, frameworks provide an appropriate forum for agreeing reporting on this divergence. We recommend that frameworks that include a major intersection with the Protocol should include processes for reporting on the divergence that occurs and its effects, and that the results of these should be forwarded to the EU for information. (Paragraph 83)

13. The market access principles in the United Kingdom Internal Market Act 2020 could constrain the ability of the devolved administrations to regulate effectively in areas of devolved competence, as it is possible that their standards could be undercut from other parts of the UK. This would occur by the importation of goods and services from other parts of the UK that adhered to standards different from those of the administration concerned. The same also applies for the UK Government when legislating for England. This could be contrary, rather than complementary, to the approach taken in common frameworks, which can allow for intra-UK divergence as long as it is agreed by all parties to the framework. (Paragraph 96)
14. Under the United Kingdom Internal Market Act 2020, the Secretary of State is granted powers to exempt divergence agreed under common frameworks from the market access principles. We recommend that the UK Government should work closely with the devolved administrations to develop a consistent and transparent process for using these powers. It should then update the relevant frameworks to state clearly how and when they will agree exemptions from the market access principles. (Paragraph 101)
15. Evidence suggests that relations between the four administrations of the UK are in a particularly poor state, and that UK intergovernmental relations need to be reset. We recommend that this reset should be based on the consensual approach taken in common frameworks with the involvement of all three territorial offices, identifying areas of shared interest and demonstrating mutual respect. (Paragraph 112)
16. Common frameworks all contain processes for avoiding and resolving disputes. However, if a dispute cannot be resolved within an individual framework, the issue can be escalated to the dispute settlement process outlined in the Memorandum of Understanding on Devolution. We heard concerns about the power imbalance that exists in this process, with the UK Government both representing the interests of England and acting as the ultimate arbiter in disputes. (Paragraph 118)
17. We welcome the publication of the Dunlop report, as we consider the reform of UK intergovernmental processes to be an essential part of building a cooperative Union. We also welcome the fact that the progress update of 24 March 2021 on the review of intergovernmental relations acknowledges the need for there to be greater capacity for providing impartial support and evidence to inform discussions, as well as providing options for remedies, when seeking to resolve disputes. (Paragraph 119)
18. The common frameworks programme was developed by the four administrations of the UK; a process for parliamentary scrutiny was included only as an afterthought. While the UK Government suggested that parliamentary committees should only have 21 sitting days to scrutinise individual frameworks, following the end of the transition period this has become an unnecessary and arbitrary deadline. Although we will endeavour to work with UK Government departments to conduct timely scrutiny, we reserve the right to extend our scrutiny beyond 21 sitting days if required. (Paragraph 127)
19. Parliamentary scrutiny of common frameworks will need to continue even after they have been finalised to ensure that important policy decisions are made transparently. Parliamentary committees will need to have information on how the individual frameworks are operating in their respective policy

areas, as well as on the common frameworks programme as a whole. We recommend that, to facilitate this, the four administrations should provide regular updates to their legislatures and publish reports as part of their planned reviews of the frameworks. (Paragraph 133)

20. As joint agreements between the four administrations of the UK, common frameworks provide a clear opportunity for closer cooperation between the four legislatures of the UK. This could facilitate the sharing of information and ideas, and enable legislatures to hold their governments to account more effectively. As part of this, the House of Lords and its committees could play a valuable role in providing a neutral forum for receiving the views of devolved legislatures and facilitating closer interparliamentary cooperation. (Paragraph 139)

## APPENDIX 1: LIST OF MEMBERS AND DECLARATIONS OF INTEREST

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### Members

Baroness Andrews (Chair)  
 Lord Bruce of Bennachie  
 Lord Caine  
 Baroness Crawley  
 Lord Foulkes of Cumnock  
 Lord Garnier  
 Lord Hope of Craighead  
 Lord McInnes of Kilwinning  
 Lord Murphy of Torfaen  
 Baroness Randerson  
 Baroness Redfern  
 Baroness Ritchie of Downpatrick  
 Lord Thomas of Cwmgiedd

### Declarations of interest

Baroness Andrews  
*No relevant interests declared*

Lord Bruce of Bennachie  
*No relevant interests declared*

Lord Caine  
*No relevant interests declared*

Baroness Crawley  
*Vice President, Chartered Trading Standards Institute*

Lord Foulkes of Cumnock  
*No relevant interests declared*

Lord Garnier  
*No relevant interests declared*

Lord Hope of Craighead  
*No relevant interests declared*

Lord McInnes of Kilwinning  
*Constitutional Advisor to the Secretary of State for Scotland (Unpaid)*

Lord Murphy of Torfaen  
*No relevant interests declared*

Baroness Randerson  
*Chancellor, Cardiff University*

Baroness Redfern  
*No relevant interests declared*

Baroness Ritchie of Downpatrick  
*Member of the board, Co-operation Ireland (Non remunerated)*  
*Member, Down Community Arts (Non remunerated)*  
*Part-time consultant (remunerated)*  
*Member of the Board, Rsquared (Human resources e platform - remunerated (level of remunerated not yet determined))*

Lord Thomas of Cwmgiedd  
*Member, First Minister of Wales' European Advisory Group*

A full list of Members' interests can be found in the Register of Lords' Interests:  
<https://www.parliament.uk/mps-lords-and-offices/standards-and-interests/register-of-lords-interests>

## APPENDIX 2: LIST OF WITNESSES

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Evidence is published online at <https://committees.parliament.uk/work/734/postbrexit-common-frameworks/> and available for inspection at the Parliamentary Archives (020 7219 5314).

Evidence received by the Committee is listed below in chronological order of oral evidence session and in alphabetical order. Those witnesses marked with \*\* gave both oral and written evidence. Those marked with \* gave oral evidence and did not submit any written evidence. All other witnesses submitted written evidence only.

### Oral evidence in chronological order

|    |  |                          |
|----|--|--------------------------|
| *  | Jeremy Miles MS, Counsel General and Minister for European Transition, Welsh Government  | <a href="#">QQ 1–14</a>  |
| *  | Michael Russell MSP, Cabinet Secretary for the Constitution, Europe and External Affairs, Scottish Government                              | <a href="#">QQ 1–14</a>  |
| *  | Professor Nicola McEwen, Professor of Territorial Politics and Co-Director of the Centre on Constitutional Change, University of Edinburgh | <a href="#">QQ 15–26</a> |
| *  | Professor Jo Hunt, Professor in Law, Cardiff University  | <a href="#">QQ 15–26</a> |
| ** | Professor Katy Hayward, Professor in Sociology, Queen’s University Belfast   | <a href="#">QQ 15–26</a> |
| *  | Aodhán Connolly, Director, Northern Ireland Retail Consortium (NIRC)   | <a href="#">QQ 27–39</a> |
| ** | Geoff Ogle, Chief Executive, Food Standards Scotland   | <a href="#">QQ 27–39</a> |
| ** | Huw Thomas, Political Adviser, NFU Cymru   | <a href="#">QQ 27–39</a> |
| ** | Rt Hon Chloe Smith MP, Minister for the Constitution and Devolution, Cabinet Office  | <a href="#">QQ 40–52</a> |
| *  | Bruno Williams, Deputy Director, UK Frameworks Division, Cabinet Office  | <a href="#">QQ 40–52</a> |
| *  | Bridget Micklem, Deputy Director, UK Internal Market, BEIS   | <a href="#">QQ 40–52</a> |
| *  | Professor Michael Keating, Professor of Politics, University of Aberdeen   | <a href="#">QQ 53–66</a> |
| *  | Dr Hugh Rawlings, Honorary Professor, Cardiff University   | <a href="#">QQ 53–66</a> |
| ** | Jess Sargeant, Senior Researcher, Institute for Government   | <a href="#">QQ 53–66</a> |
| *  | Dr Viviane Gravey, Lecturer in European Politics, Queens University Belfast  | <a href="#">QQ 67–78</a> |
| *  | Sean Kelly, Development Manager, Northern Ireland Environment Link   | <a href="#">QQ 67–78</a> |
| *  | Victor Chestnutt, President, Ulster Farmers’ Union   | <a href="#">QQ 67–78</a> |

- \* David Rees MS, Chair of the External Affairs and Additional Legislation Committee, Senedd/Welsh Parliament [QQ 79–89](#)
- \*\* Gillian Martin MSP, Convener of the Environment, Climate Change and Land Reform Committee, Scottish Parliament [QQ 79–89](#)
- \* William Wragg MP, Chair of the Public Administration and Constitutional Affairs Committee, House of Commons [QQ 79–89](#)
- \*\* Rt Hon Chloe Smith MP, Minister for the Constitution and Devolution, Cabinet Office [QQ 90–102](#)
- \* Bruno Williams, Deputy Director, UK Frameworks Division, Cabinet Office [QQ 90–102](#)

### Alphabetical list of all witnesses

- Professor Kenneth Armstrong, Professor of European Law, University of Cambridge [PBC0012](#)
- \* Aodhán Connolly, Director, Northern Ireland Retail Consortium ([QQ 27–39](#))
- Chemical Industries Association [PBC0010](#)
- \* Victor Chestnutt, President, Ulster Farmers’ Union ([QQ 67–78](#))
- Dr Mary Dobbs, Department of Law, Maynooth University, Ireland [PBC0016](#)
- \*\* Environment, Climate Change and Land Reform Committee (ECCLRC), Scottish Parliament [PBC0017](#)
- Food and Drink Federation [PBC0005](#)
- \*\* Food Standards Scotland ([QQ 27–39](#)) [PBC0002](#)
- \*\* Dr Viviane Gravey, Lecturer in European Politics, Queens University Belfast ([QQ 67–78](#)) [PBC0011](#)
- Greener UK [PBC0004](#)
- \*\* Professor Katy Hayward, Professor in Sociology, Queen’s University Belfast ([QQ 15–26](#)) [PBC0003](#)
- \* Professor Jo Hunt, Professor in Law, Cardiff University ([QQ 15–26](#))
- \*\* Institute for Government ([QQ 53–66](#)) [PBC0013](#)
- \* Sean Kelly, Development Manager, Northern Ireland Environment Link ([QQ 67–78](#))
- \* Professor Michael Keating, Professor of Politics, University of Aberdeen ([QQ 53–66](#))
- Law Society of Scotland [PBC0015](#)

- \*\* Gillian Martin MSP, Convener of the Environment, Climate Change and Land Reform Committee, Scottish Parliament ([QQ 79–89](#)) [PBC0017](#)
- \* Professor Nicola McEwen, Professor of Territorial Politics and Co-Director of the Centre on Constitutional Change, University of Edinburgh ([QQ 15–26](#))
- \* Bridget Micklem, Deputy Director, UK Internal Market, BEIS ([QQ 40–52](#))
- \* Jeremy Miles MS, Counsel General and Minister for European Transition, Welsh Government ([QQ 1–14](#))
- \*\* NFU Cymru ([QQ 27–39](#)) [PBC0006](#)
- NFU Scotland [PBC0014](#)
- \*\* Geoff Ogle, Chief Executive, Food Standards Scotland ([QQ 27–39](#)) [PBC0002](#)
- \* Dr Hugh Rawlings, Honorary Professor, Cardiff University ([QQ 53–66](#))
- \* David Rees MS, Chair of the External Affairs and Additional Legislation Committee, Senedd/Welsh Parliament ([QQ 79–89](#))
- Professor Colin T Reid, Professor of Environmental Law, University of Dundee [PBC0008](#)
- \* Michael Russell MSP, Cabinet Secretary for the Constitution, Europe and External Affairs, Scottish Government ([QQ 1–14](#))
- \*\* Jess Sargeant, Senior Researcher, Institute for Government ([QQ 53–66](#)) [PBC0013](#)
- \*\* Rt Hon Chloe Smith MP, Minister for the Constitution and Devolution, Cabinet Office [PBC0007](#)
- ([QQ 40–52](#)) ([QQ 90–102](#))
- \*\* Huw Thomas, Political Adviser, NFU Cymru [PBC0006](#)
- ([QQ 27–39](#))
- United Kingdom Constitution Monitoring Group [PBC0001](#)
- Welsh Local Government Association [PBC0009](#)
- \* Bruno Williams, Deputy Director, UK Frameworks Division, Cabinet Office ([QQ 40–52](#)) ([QQ 90–102](#))
- \* William Wragg MP, Chair of the Public Administration and Constitutional Affairs Committee, House of Commons ([QQ 79–89](#))

### APPENDIX 3: CALL FOR EVIDENCE

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The Common Frameworks Scrutiny Committee was appointed on 17 September 2020 to scrutinise and consider matters relating to common frameworks.

The United Kingdom's exit from the European Union will result in a number of powers that are currently held by the EU being returned to the UK. Many of these powers currently intersect with the competences of at least one of the Scottish, Welsh or Northern Irish governments.

Common frameworks are a mechanism for the UK and devolved governments to mutually agree some amount of regulatory consistency for policy areas where returning EU powers are within devolved competence. They are sector-specific and jointly agreed between the UK Government and Devolved Administration(s), covering areas like food safety, air quality and the UK Emissions Trading System.

These common frameworks may be implemented by legislation, executive action, memorandums of understanding or other means depending on the context in which the framework is intended to operate.

The Committee wishes to examine how the common frameworks programme will operate and relate to other initiatives, how it could be reviewed and improved in future, and the role for parliamentary scrutiny across the UK.

The questions set out below are intended to provide an outline for those who wish to offer their views. You need not answer all these questions.

Diversity comes in many forms and hearing a range of different perspectives means that Committees are better informed and can more effectively scrutinise public policy and legislation. Committees can undertake their role most effectively when they hear from a wide range of individuals, sectors or groups in society affected by a particular policy or piece of legislation. We encourage anyone with experience or expertise of the issues under investigation to share their views with the committee, with the full knowledge that their views have value and are welcome.

Information on how to submit evidence is set out below. If you have any questions or require adjustments to enable you to respond, please contact the Committee team, whose details are below.

It is helpful if opinions are supported by factual evidence where appropriate. Comparisons with practice in other countries are welcome.

The deadline for written evidence submissions is 15 January 2021.

The Committee is seeking input on the following questions:

1. What would a successful common frameworks programme look like? How should common frameworks fit within the broader devolution settlement?
2. How can common frameworks relate to the Internal Market Bill, in particular the Market Access Commitment?
3. How should common frameworks facilitate cooperation or manage divergence between the four administrations? Is the dispute mechanism that has been proposed satisfactory?

4. What international examples of coordinating devolved policy issues, if any, could inform the development of common frameworks?
5. How will common frameworks interact with the Northern Ireland Protocol? How should they operate with respect to Northern Ireland?
6. What role should common frameworks have during the negotiation and implementation of any international agreements that touch on devolved competences?
7. How successful has the common frameworks programme been to date? What has worked and what has not? What lessons should be learnt from progress so far?
8. Should any other areas be covered by a common framework beyond those already in progress?
9. What should the process be for reviewing common frameworks after their implementation? What role should there be for parliamentary scrutiny and to what extent should this be underpinned by greater cooperation between the UK and devolved legislatures?

## APPENDIX 4: OVERVIEW OF COMMON FRAMEWORK POLICY AREAS

### Active framework policy areas

There are 32 active common frameworks, as set out below. All of these have a Northern Ireland (NI) intersect and 26 have a Scotland and Wales intersect.

| Lead dept. | Common framework  | Devolution intersect | Documents received    |
|------------|---|----------------------|-----------------------|
| BEIS       | Company law   | NI                   | Provisional framework |
| BEIS       | Late payment (commercial transactions)                    | S/W/NI               | Provisional framework |
| BEIS       | Specified quantities and packaged goods legislation       | NI                   | Summary               |
| BEIS       | Services Directive*                                       | S/W/NI               | No document           |
| BEIS       | Mutual recognition of professional qualifications (MRPQ)* | S/W/NI               | No document           |
| BEIS       | Emission Trading System (ETS)                             | S/W/NI               | Summary               |
| BEIS       | Radioactive substances                                    | S/W/NI               | Summary               |
| CO         | Public procurement  | S/W/NI               | Provisional framework |
| Defra      | Food labelling and compositional standards                | S/W/NI               | Provisional framework |
| Defra      | Agricultural support                                      | S/W/NI               | No document           |
| Defra      | Fertiliser regulation                                     | S/W/NI               | No document           |
| Defra      | Organic farming*  | S/W/NI               | No document           |
| Defra      | Zootech   | S/W/NI               | No document           |
| Defra      | Animal health and welfare                                 | S/W/NI               | No document           |
| Defra      | Best Available Techniques                                 | S/W/NI               | No document           |
| Defra      | Chemicals and pesticides                                  | S/W/NI               | No document           |
| Defra      | Fisheries management and support                          | S/W/NI               | No document           |
| Defra      | Ozone depleting substances and F-gases                    | S/W/NI               | No document           |
| Defra      | Plant health  | S/W/NI               | No document           |
| Defra      | Plant varieties and seeds                                 | S/W/NI               | No document           |
| Defra      | Resources and waste                                       | S/W/NI               | No document           |
| Defra      | Air quality   | S/W/NI               | No document           |
| DfT        | Operator licensing and commercial transport               | NI                   | Summary               |

|       |  |        |                       |
|-------|--|--------|-----------------------|
| DfT   | Roads motor insurance                                      | NI     | Summary               |
| DfT   | Driver licensing   | NI     | Summary               |
| DfT   | Rail technical standards (interoperability)                | NI     | Summary               |
| DHSC  | Blood safety and quality                                   | S/W/NI | Provisional framework |
| DHSC  | Nutrition Labelling, Composition and Standards             | S/W/NI | Provisional framework |
| DHSC  | Organs, tissues and cells (apart from embryos and gametes) | S/W/NI | Provisional framework |
| DHSC  | Public health (serious cross-border threats to health)     | S/W/NI | Summary               |
| FSA   | Food and Feed Safety and Hygiene                           | S/W/NI | Provisional framework |
| MHCLG | Hazardous Substances (Planning)                            | S/W/NI | Provisional framework |

\* Frameworks that have not yet been agreed by UK, Scottish and Welsh governments

### Frameworks moving from active to ‘no further action’

There are seven common frameworks moving from active to ‘no further action’ since the last Frameworks Analysis was published in September 2020.

| Lead dept. | Common framework  | Devolution intersect | Documents received |
|------------|---|----------------------|--------------------|
| Defra      | GMO marketing and cultivation                             | S/W/NI               | No document        |
| DHSC       | Reciprocal and cross-border healthcare                    | S/W/NI               | No document        |
| MHCLG      | Strategic Environmental Assessment                        | S/W/NI               | No document        |
| DfT        | Intelligent Transport Systems                             | S/W/NI               | Summary            |
| CO         | Statistics  | S/W/NI               | No document        |
| BEIS       | Recognition of insolvency proceedings in EU Member States | S/NI                 | No document        |
| GEO        | Equal Treatment Legislation                               | NI                   | No document        |