



Cabinet Office

Government Response to the House of Lords Common Frameworks Scrutiny Committee report: 'Common Frameworks: building a cooperative Union'

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1. Foreword

1. Since 2017, the UK Government and devolved administrations have been working collaboratively to develop Common Frameworks. Common Frameworks are agreements between the UK Government, Scottish and Welsh Governments, and the Northern Ireland Executive, to establish a common approach to policy areas previously governed by European Union (EU) law and which intersect with devolved competence. Common Frameworks embody the commitment of the UK Government, Scottish Government, Welsh Government and Northern Ireland Executive to work together to ensure policy making is coherent and supports the needs of all parts of the UK.
2. At the core of every Framework are agreements between the UK Government and the devolved administrations about how to work together to make better policy for people and businesses across the UK. Frameworks will allow all parts of the UK to maintain consistent, easily-understood rules and regulations for citizens, consumers, businesses and trading partners. Common Frameworks will help us to make the most of the opportunities afforded to the UK following our exit from the EU by giving our trading partners reassurance that the UK is a great place to do business and invest.
3. Common Frameworks are voluntary arrangements that support intergovernmental policy development and decision-making, drawing on the knowledge and expertise of each of the UK's administrations and applying the principles of good communication, consultation and cooperation to establish effective post-EU Exit ways of working. Common Frameworks respect the devolution settlements by allowing UK-wide development of common approaches, while also reflecting the potential for divergence where responsibility is devolved.
4. Common Frameworks are also designed to be adaptable enough to endure as society, the regulatory environment, and the economy changes. Each Framework will continue to be monitored and reviewed by the relevant administrations so that as needs change, the way the governments work together can keep pace.
5. Common Frameworks have a key role to play in the UK's economic development, preserving the high standards that matter to everyone across the UK and that underpin a resilient, cohesive, economy that draws on its full potential.
6. To ensure the robustness of Common Frameworks, industry and legislative stakeholders are involved in the development process of each individual Framework. Engagement on specific Frameworks provides a targeted way for stakeholders to directly influence ways of working that may impact upon their business or organisation. Parliament, and indeed the other UK legislatures, are also given the opportunity to scrutinise each Framework.
7. The House of Lords appointed the Common Frameworks Scrutiny Committee in September 2020 to scrutinise and consider matters relating to UK Common

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Frameworks. On 31 March 2021, the Common Frameworks Scrutiny Committee published its first report on UK Common Frameworks: 'Common frameworks: building a cooperative Union'. This document sets out the Government's response to the recommendations in the Committee's report.

8. While Common Frameworks are a joint undertaking with the devolved administrations, this document sets out the UK Government's approach to the issues raised in the Committee's report and highlights where it is possible that the devolved administrations may take a different approach. While the Government accepts the recommendations of the report, the programme works on the basis of consensus and, as such, any changes to the programme would need to be discussed and agreed with the devolved administrations.

2. Executive Summary

9. The Government welcomes the Committee's report and its main findings that Common Frameworks are innovative, flexible mechanisms for developing UK-wide policy by collaboration and consensus between the UK Government and the devolved administrations. The Government endorses the Committee's view that "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".
10. The Committee's recommendations fall into three areas: transparency, cross-cutting issues and wider intergovernmental relations. The Government either agrees or agrees in principle with all of the Committee's recommendations. For the recommendations relating to transparency, the Government agrees with the Committee's recommendations on providing further information on the 'no further action' classification process, on revising Frameworks in line with stakeholders' feedback, and on providing regular updates to Parliament. The Government agrees in principle that a Framework should be published once it has been cleared by each relevant government Minister, while noting the constraints imposed by a consensus-based approach.
11. With regard to cross-cutting issues, the Government agrees that Frameworks should take account of the effect of relevant EU-UK Joint Committee decisions, and that the Government should work closely with the devolved administrations to agree a process for reflecting powers in the UK Internal Market Act around exclusions from the Market Access Principles where these relate to Common Frameworks. The Government agrees in principle that Frameworks should take into consideration policy divergence stemming from the Northern Ireland Protocol, when this is within scope of a Common Framework.
12. In terms of intergovernmental relations, the Government agrees with the Committee's recommendation that a consensual approach to intergovernmental relations is important moving forward, and welcomes the Committee's finding that Common Frameworks "embody the work needed to build a cooperative Union", as the programme has proven that UK-wide working can coalesce around a shared objective, in areas that intersect devolved competence. This has been demonstrated throughout the response to the COVID-19 pandemic, where all parts of the UK have worked together to deliver better outcomes for citizens and businesses. For example, the Government has procured vaccines for the whole of the UK; mutual aid and cooperation across the UK has been a key part of ensuring Personal Protective Equipment gets to where it is needed, while the Joint Biosecurity Centre is a UK-wide organisation which provides objective, evidence-based analysis to inform local and national decision-making. The Public Health Protection and Health Security Framework will be critical in ensuring such collaboration continues in the future and in strengthening the UK's collective resilience to health threats.

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13. All Common Frameworks have been developed jointly by policy experts from the UK Government and the devolved administrations, with this development process drawing on the knowledge and expertise of each of the UK's administrations to establish effective ways of working.
14. The Government also welcomes the Committee's focus on the long-term efficacy and sustainability of Common Frameworks. The Cabinet Office has made progress in preparing UK Government departments for their increased role in overseeing Frameworks under their purview in the future. In line with the recent progress update on the review of intergovernmental relations, the Government expects that over time, operating according to Common Frameworks will become a standard operating model and routine way of working for the relevant UK Government departments, and a mechanism through which engagement with the devolved administrations will occur.

3. Transparency

Recommendation: 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*)

15. The Government agrees with this recommendation, and commits to increasing transparency around the rationale for classifying some policy areas as requiring 'no further action'. The 2020 'Frameworks Analysis' publication sets out details of the reclassification review process that is undertaken periodically, together with the devolved administrations, to determine if any relevant policy areas no longer require a full Common Framework. We agree with the finding that further detail should be provided as to why a Common Framework is not required for these policy areas. Work is underway to provide further details on the process and rationale in the upcoming 2021 'Frameworks Analysis' report.

Recommendation: 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. (*Paragraph 55*)

16. The Government notes that a wide range of stakeholders have been involved in both the initial design of the policy approach covered by the individual Frameworks, and also the specific ways of working envisaged in the Common Frameworks. The Government nevertheless agrees with the Committee's recommendation that Common Frameworks should be revised based on stakeholders' feedback, and notes that there is already a jointly agreed, intergovernmental process allowing for Common Frameworks to be revised subject to industry experts' views. This takes place during Phase 3 of Framework delivery as part of technical stakeholder engagement. For instance, the Parliamentary Secretary to the Cabinet Office noted in her letter to the Public Administration and Constitutional Affairs Committee of 12 April 2021, that the Public Procurement Framework had been revised following views of stakeholders gathered through consultation in late 2020.

17. Looking ahead, additional technical stakeholder engagement can take place as any Framework continues its development, or is subsequently reviewed, as required on a Framework by Framework basis. Any longer term engagement will form part of departmental business as usual policy review work.

Recommendation: 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*)

18. The Government agrees with this recommendation in principle, and considers that stakeholders should continue to be meaningfully engaged throughout the

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development of a UK Common Framework, including through periodic reviews where appropriate. However, since Common Frameworks are primarily about establishing and maintaining intergovernmental ways of working, rather than developing the policy itself, a full stakeholder consultation may not always be required. Stakeholder consultation on a 'ways of working' document is a different task to a more general consultation on policy development. As Common Frameworks are not themselves policy documents, external stakeholder consultation has been undertaken jointly by the relevant departments in the UK Government and the devolved administrations in a targeted and specific way, to meet the unique needs of each Framework. To date, this targeted approach has enabled the most relevant and appropriate expertise to be brought to bear on each Framework, in preparation for the Framework to be published once it has been provisionally confirmed and sufficiently developed.

19. While plans for future reviews of Frameworks are still being developed, it is likely that they will continue to be led by the relevant departments and conducted on a joint basis. We will update the Committee on these plans in due course.
20. The Government remains committed to transparency across the development of Common Frameworks. Stakeholders are invited to engage on individual Frameworks, providing them with a chance to directly influence ways of working that may impact upon their business or organisation. We have published numerous reports, updates and analyses to make the public aware of the important progress of the programme; ways in which Frameworks are developed and agreed; and the involvement of stakeholders in the process. The overwhelming majority of Frameworks have undergone some form of UK-wide technical stakeholder engagement.

Recommendation: 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*)

21. The Government supports transparency in the development of Common Frameworks and agrees in principle that Frameworks should be published once they have received relevant UK Government and devolved administration Ministerial clearance. It is important to note that the Common Frameworks programme is a joint endeavour between the UK Government and the devolved administrations and as such, any plans to publish individual Framework documents must be agreed by all parties to that Framework.
22. The majority of the 32 active Common Frameworks became operational following the end of the Transition Period, and therefore reflect established ways of working between the UK Government and the devolved administrations. The Government aims to publish these Frameworks as soon as possible in order to meet our commitment to transparency. As the Committee's report sets out, due to a delay in receiving provisional confirmation from the Northern Ireland Executive for a number of Common Frameworks, to date it has not been possible to publish all Frameworks.

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23. Additionally, the Government intends for final versions of Frameworks to be published once they have been amended to take account of any further recommendations from all relevant UK legislatures.

Recommendation: 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 134*)

24. The Government agrees with the Committee's recommendation that regular updates should be provided to legislatures, but notes the specifics of this are a matter for the individual UK Government and devolved administration departments which are parties to Common Frameworks to agree with the relevant Committees. The Government further notes that work is underway to develop guidance on the format for future routine reviews of Common Frameworks. Once complete, departments and their counterparts in the devolved administrations will be in a position to communicate the format for future reviews and updates to committees.

25. Reviews of a Common Framework will routinely consider how well a given Framework is functioning. Subject to final agreement to the recommendations of the Joint Review of Intergovernmental Relations, oversight of Common Framework operation will be provided by revised structures for intergovernmental relations. These will include standing fora organised around specific portfolios (e.g. environment, food and agriculture; business, etc.) and attended by the relevant portfolio ministers across all four administrations.

26. In line with these arrangements, the Minister for Constitution for Devolution, in her letter to the Committee of 23 December, set out that UK parliamentary committees should liaise with the relevant UK Government department to agree a timeline for scrutiny. The Minister noted additionally that, should additional time be required for scrutiny, the committees should explore this with the relevant UK Government department to see what accommodation can be made to enable full scrutiny. The Government welcomes the Committee's intention to conduct thorough scrutiny of Common Frameworks.

4. Cross-cutting issues

27. Throughout the process of Framework development, a number of cross-cutting issues have been identified. These issues will impact on Common Framework development to different degrees. The Government's aim is to ensure maximum consistency and to develop common approaches to dealing with these issues. The responses set out below represent the UK Government's views on the development of cross-cutting issues. In some cases, the devolved administrations have set out their own views on these matters elsewhere.

Recommendation: 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*)

28. As the Committee note in their report, the Joint Consultative Working Group is primarily an information sharing body, whereas decisions on policy changes to be introduced through the Northern Ireland Protocol are taken at the level of the EU-UK Joint Committee and the Specialised Committees, including the Specialised Committee on the Ireland/Northern Ireland Protocol. The Government agrees with the Committee's recommendation that, insofar as these decisions concern matters within a Common Framework policy area with a devolved intersect, they should be routinely considered through that Common Framework.

Recommendation: 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*)

29. The Government agrees in principle with the Committee's recommendation and considers that there is likely to be value in reporting on divergence, but details of how to approach this are a matter for individual departments. The Government considers that it is vital for the relevant Frameworks to take account of relevant divergence resulting from the Northern Ireland Protocol as well as other sources, and that there should be processes in place for monitoring such divergence. However, the extent to which information about this is gathered in the course of the operation of a Framework and shared with third parties is also a matter for the UK Government and devolved administrations departments which are parties to the individual Common Frameworks.

Recommendation: Under the United Kingdom Internal Market Act 2020, the Secretary of State is granted powers to exempt divergence agreed under Common Frameworks from the

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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 102*)

30. The Government agrees with the Committee's recommendation, and notes that the discussions between UK Government officials and the devolved administrations are ongoing in this regard, with a view to reaching consensus on the ways in which an agreement should be evidenced and whether that could be achieved through updating the relevant Frameworks or via a separate agreement. We will look to ensure that any agreed process is in accordance with the relevant JMC principles.
31. The market access principles in the UK Internal Market Act will work in tandem with the Common Frameworks programme, which was always envisaged as having a role in protecting the integrity of the UK Internal Market. The devolved administrations continue to be able to innovate and regulate in devolved policy areas, while the market access principles ensure that any divergence does not damage the ability of UK companies to trade with every part of the UK. Common Frameworks will provide structures through which the UK Government and the devolved administrations can consider important policy issues, which would include how proposed regulations would impact on the UK internal market. The Committee recognises that sections 10 and 18 of the UK Internal Market Act confer a power for a Minister of the Crown to create exclusions from the market access principles, and notes that this could be used to give effect to a consensus under a Common Framework.
32. The Government aims to set out a process that will give businesses and consumers certainty that they can buy and sell throughout the UK, while also ensuring there remains flexibility to create exclusions when there is consensus that they are appropriate, in line with the cooperative and by-agreement nature of Common Frameworks.

5. Intergovernmental relations

Recommendation: 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 113*)

33. The Government agrees in principle with the Committee's recommendation, and shares the Committee's view of the importance of a consensual approach to intergovernmental relations (IGR). Whilst recognising political differences exist between administrations, there is a shared ambition to improve IGR arrangements. That is why the UK Government and the devolved administrations have been working together on the joint IGR review since 2018. Regular meetings have been held to develop the proposals contained within the progress update published in March 2021.
34. The progress update reflects significant collaboration and joint working between the UK Government and devolved administrations in reconciling a range of goals and aspirations from all four corners of the UK. The Cabinet Office has led the review from the UK Government's perspective with the support of the territorial offices and other UK Government departments.
35. The progress update sets out that, as a general principle, intergovernmental business should be conducted on an ongoing basis through normal administrative channels wherever possible. This should take place between the respective officials in charge of the policy area and with the appropriate expertise to deal with the issues at stake on a day to day basis, supported as helpful by those with specific IGR or constitutional expertise. As a result of the increasingly greater role of departments in Common Framework operation and the oversight expected to be provided through the intergovernmental relations structures, the Government therefore expects that the role of the Cabinet Office in providing coordination of Common Frameworks will reduce over time.