

# **Professor Nicola McEwen et al – Written submission (PBC0026)**

## **1. Executive Summary**

- 1.1** Evaluation of Common Frameworks is hampered by the lack of transparency in the Frameworks process. Of the 32 Frameworks announced by the government, only seven have been published, six of which appear to be provisional. The founding principles have been central to the production of Common Frameworks and should therefore frame their evaluation.
- 1.2** Frameworks are not policy documents but set out an approach to intergovernmental engagement in some policy domains that were hitherto the subject of EU regulations. It is expected that Framework governance will be carried out by officials as part of regular interactions between administrations. The hidden nature of that process could undermine parliamentary oversight, unless there is a clear link between the operation of Common Frameworks and inter-ministerial committees, and a stronger commitment to transparency and scrutiny of intergovernmental relations, as part of the Intergovernmental Relations (IGR) review.
- 1.3** The Frameworks process is generally viewed as a positive example of intergovernmental working. But it is overshadowed by the strains in the relationships between the administrations generated by the Brexit process and, in particular, the United Kingdom Internal Market Act (UKIMA), passed in December 2020 without the legislative consent of the devolved institutions.
- 1.4** It remains unclear how the concession secured by the Lords during the latter stages of the UKIM Bill, whereby the Secretary of State may by regulations make 'Common Framework Agreements' exempt from UKIMA's Market Access principles, will be implemented. There appears to be no consensus on what constitutes a 'Common Framework Agreement', nor on the process that may lead to its exemption.

- 1.5** Common Frameworks all address policy domains that, in Scotland, Wales and Northern Ireland, are matters of devolved competence. But many of the issues addressed by Frameworks interact with, and are shaped by, reserved matters, especially international agreements. It would be in keeping with the Memorandum of Understanding to acknowledge this interaction within Framework documents, and to ensure that agreed processes and 'ways of working' provided meaningful opportunities for the devolved administrations to represent their interests at each stage of the negotiation process.
- 1.6** The Protocol on Ireland/Northern Ireland adds both to the complexity and the scale of divergence across the UK after Brexit. Political tensions over the Protocol have added to the lack of clarity about how it will be governed. Nine months after it came into effect, the biggest problem for the considerable intersections between policy areas covered by the Protocol and by Common Frameworks lies in the inadequate communication and information-sharing between Westminster/Whitehall and the Northern Ireland Assembly and departments.
- 1.7** The remainder of the submission will address the three broad themes of the Call for Evidence, embedding within these the specific questions posed by the Committee that we are competent to answer.

## **2. Evaluating Common Frameworks**

- 2.1** The Common Frameworks programme was initiated in response to the UK's anticipated departure from the European Union and the European internal market. All four administrations recognised that leaving the EU's regulatory arena could create new challenges to trade and mobility within the UK, and that it may be necessary to replace EU common rules with UK Common Frameworks.
- 2.2** Common Frameworks are not, however, a direct replacement for EU regulatory frameworks. According to the Joint Ministerial Committee (EU Negotiations) when initiating the Frameworks process in October 2017:

"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.”

**2.3** Frameworks are best understood as processes of intergovernmental cooperation. The former Minister for the Constitution and Devolution described them as ‘ways of working’ documents that set out the expected balance between: (i) legislative and non-legislative elements of the Framework; (ii) the potential scope, and process, for intra-UK divergence; and (iii) processes for resolving intergovernmental disputes. Common Frameworks are not, in themselves, policy documents or regulatory rulebooks, nor do they appear to set out common policy approaches. Rather, they develop processes that *might lead to* common approaches - or ‘Common Framework Agreements’ - where these are deemed to be necessary or desirable.

**2.4** The Minister indicated in evidence to the Common Frameworks Scrutiny Committee that there are 32 frameworks; six of these are bilateral between the UK government and Northern Ireland.<sup>1</sup> Only seven have been published in full to date, all but one of which appear to be provisional.<sup>2</sup> The delay in sign-off by the Northern Ireland Executive is only part of the reason why Frameworks are yet to be completed.

**2.5** According to their founding principles, Common Frameworks would:

- be established where they are deemed necessary, e.g. to support the internal market, trade negotiations and the implementation of international agreements
- respect the devolution settlements and the democratic accountability of the devolved legislatures
- respect the Belfast Agreement and recognise and take account of the special status of Northern Ireland

**2.6 *In evaluating the Frameworks programme overall, we suggest the Committee focus on the ability of Frameworks to live up to***

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<sup>1</sup> Common frameworks: building a cooperative Union, First Report of Session, 2019-20, <https://committees.parliament.uk/publications/5346/documents/53245/default/>

<sup>2</sup> <https://www.gov.uk/government/collections/uk-common-frameworks#published-uk-common-frameworks>

***these founding principles, as well as the extent to which they can manage interdependencies after European Union rules fall away.*** Frameworks have sometimes been cited as a means of strengthening the UK Union. Casting them in this political light is likely to prove divisive and may weaken their capacity to manage interdependence. ***Thus, whilst the effective implementation of Frameworks may contribute to strengthening the Union, this should not be the basis against which they are judged.***

- 2.7** The process of agreeing Frameworks has been broadly cooperative. Each administration has had co-ownership of the work programme, and progress has been on the basis of consensus. ***We believe it is important to the success of the programme that this co-owned, cooperative process be maintained as we move from the development of Frameworks to their operation and governance.*** Operating on the basis of codecision and consensus across four administrations, with consultation and scrutiny across four legislatures and policy communities, is inevitably laborious, time-consuming, and may appear 'inefficient'. But maintaining a diverse, multi-level system requires sustained commitment to cooperation, codecision and securing consent, and an investment of the time needed to achieve these.
- 2.8** Just as the process of developing Common Frameworks has been co-owned and an example of collaborative working against a backdrop of deteriorating intergovernmental relationships, it is important that the governance, oversight and evaluation of Common Frameworks are matters for all governments and legislatures in the UK. Evaluations of Frameworks should take account of the original aims and principles, the ongoing impact of, and their interaction with, the UK Internal Market Act 2020, development and implications of UK-EU divergence in policy spheres implicated in Frameworks, and the interaction with Trade Agreements. ***The UK Internal Market Act, both in process and substance, has generated a fear among the devolved administrations that the collegiate approach that has been central to the Frameworks process has given way to a top-down, centralised 'London decides' model that undermines the regulatory autonomy promised under the devolution settlements.***<sup>3</sup> A source of mistrust was the failure of the Internal

Market Bill, as introduced, to make any reference to Common Frameworks at all.

**2.9** There are several outstanding issues that could act as a barrier to the completion and governance of the Frameworks programme. These are discussed in the sections below, and include:

- The relationship between Common Frameworks and the UK Internal Market Act (UKIMA) and the role of the Department of Business, Energy and Industrial Strategy (BEIS) as the ministry responsible for that Act's implementation;
- The mechanism by which agreements reached under the Common Frameworks process may be exempt from the Market Access rules underpinning UKIMA, via section 10 regulations;
- The impact of Common Frameworks on devolved authority and the democratic accountability of the devolved administrations;
- The interaction between policy domains that are the focus of Common Frameworks - all of which are devolved - and reserved policy spheres, including trade policy and external relations;
- The relationship between Frameworks governance and the IGR review.

### **3. Engagement and Scrutiny in Intergovernmental Relations**

#### **IGR Scrutiny**

**3.1** There have been marked improvements in the transparency of Intergovernmental Relations over the past two years. During the last parliamentary session, the Scottish and Welsh governments each reached an agreement with their respective legislatures.<sup>4</sup> These

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<sup>3</sup> See S. Weatherill, 'Will the United Kingdom survive the United Kingdom Internal Market Act?', *UK in a Changing Europe working paper*, available at: <https://ukandeu.ac.uk/wp-content/uploads/2021/05/Will-the-United-Kingdom-survive-the-United-Kingdom-Internal-Market-Act.pdf>

<sup>4</sup> [https://archive2021.parliament.scot/S5\\_Finance/IGR\\_Agreement3.pdf](https://archive2021.parliament.scot/S5_Finance/IGR_Agreement3.pdf);  
<https://senedd.wales/laid%20documents/cr-ld12097/cr-ld12097-e.pdf>

Agreements, which are to continue in the current session, commit the governments to report on their own participation in formal, ministerial level inter-governmental meetings, concordats, agreements and Memorandums of Understanding (MoUs), as well as producing annual reports. Alongside frequent appearances before parliamentary committees, this activity goes some way toward enhancing scrutiny and accountability.

- 3.2** There is no such agreement between the Northern Ireland (NI) Executive and the Assembly, which has affected the Assembly's oversight of Common Frameworks. There has only been one question in the Assembly on the topic of Common Frameworks, and it received a non-committal reply from the First Minister in response to the request to raise awareness of the implications of Common Frameworks.<sup>5</sup> The Assembly has not been informed as to the reason for the delay in the NI Executive approving Common Frameworks by a number of months, even though this has held up the whole process across the UK.
- 3.3** The UK government has increased transparency in intergovernmental relations (IGR). There is now a website that makes it much easier to find relevant agreements, Memorandums of Understanding, and communiques from intergovernmental meetings of the Joint Ministerial Committee (JMC) and other interministerial groups, as well as reports on the IGR review.<sup>6</sup> In March 2021, the UK government published its first 'quarterly' report on intergovernmental engagement. However, this reported on meetings that had taken place and those scheduled to take place, more than on the substance of what was discussed. Moreover, as of September 2021, there have been no further reports, suggesting that these may not, in fact, be quarterly. ***To enhance accountability, the Committee may wish to seek assurances on the reporting of ongoing IGR activity, and recommend that the UK Parliament secure an agreement with the UK government, similar to those negotiated by the Scottish Parliament and the Senedd, to ensure more insight into its participation in IGR meetings.***

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<sup>5</sup> AQT 827/17-22, 14 December, see:

<http://aims.niassembly.gov.uk/officialreport/reportssearchresultsreport.aspx?&eveDate=2020/12/14&rID=319621&hwclD=3367158&aID=0&pg=3&sesID=23&dID=0&init=O>

<sup>6</sup> <https://www.gov.uk/government/collections/intergovernmental-relations>

- 3.4** Quarterly reporting on the development of Common Frameworks is a statutory obligation, derived from the European Union (Withdrawal) Act 2018 (schedule 3, para 4). Under the terms of the legislation, these are reports on progress towards removing retained EU law restrictions. This serves as an illustration of how statutory underpinning - frequently suggested as a tool to enhance the scrutiny of IGR - can contribute to enhanced accountability.
- 3.5** A more general difficulty for transparency and scrutiny arises from the inclination towards unnecessary conditions of confidentiality. For example, the Common Framework on Public Procurement (PPCF) states that the parties to the monthly working group meetings between officials and the biannual liaison meetings are to 'agree to the need for confidentiality of discussions'.<sup>7</sup> ***While it is important to provide some private space for free and frank discussion between administrations, especially at the early stage of policy development, we believe that the balance between confidentiality and openness tilts too much towards the former.*** Where intergovernmental discussions involve holders of public office, this could be seen to be in tension with the principle of openness in the Nolan Principles, namely that there should be 'clear and lawful reasons' for withholding information from the public.<sup>8</sup>
- 3.6** The timescale and coordination of the legislative process in Westminster can add to the scrutiny challenge. For example, as part of the UK Emissions Trade Scheme (ETS), statutory instruments (SIs) have been coming through prior to the publication of the Framework. These SIs clearly have consequences for the operation of the Common Framework on the ETS, but it is impossible to scrutinise these while the Framework remains unpublished. This causes particular problems for Northern Ireland, which is affected by both the EU's ETS and the UK one.
- 3.7** A lack of time for scrutiny has been a complaint raised on many occasions by those charged with that responsibility in committees in the legislatures. The concern is particularly acute in Northern Ireland given

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<sup>7</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/971419/Final\\_reformatted\\_Command\\_Paper\\_Provisionally\\_Confirmed\\_Public\\_Procurement\\_Framework\\_v4\\_pdf\\_embedded\\_links.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/971419/Final_reformatted_Command_Paper_Provisionally_Confirmed_Public_Procurement_Framework_v4_pdf_embedded_links.pdf)

<sup>8</sup><https://www.gov.uk/government/publications/the-7-principles-of-public-life/the-7-principles-of-public-life--2>

that the Assembly is coming towards the end of its mandate and there are several major pieces of primary legislation to be scrutinised with committees also scrutinising many Common Frameworks. The elections in Scotland and Wales, and consequent formation of new administrations, new parliamentary committees, and the induction of new parliamentarians, has also contributed to the challenge of scrutinising and completing Frameworks and other ongoing intergovernmental processes.

### **Engagement during Framework Development**

**3.8** Of the 32 active Frameworks, only seven have been published in full. This makes it very difficult to scrutinise the content of Frameworks in development, and to raise awareness and interest among stakeholders. Furthermore, any individual Framework needs to be understood in the context of the Common Frameworks as a whole, not to mention a complex set of cross-cutting issues (see below). ***Effective scrutiny of Common Frameworks in each devolved legislature and at Westminster will be a very demanding process which is also likely to be politically contentious. Serious consideration should be given to the time and resources necessary for proper completion of this scrutiny task.***

**3.9** Common Frameworks have a greater chance of being effective where there are existing forums that enable communication across the four administrations. For example, the Animal Disease Policy Group is a UK-wide permanent forum with long-standing and regular participation from across the UK. This has been beneficial to the development of the Common Framework on animal health and welfare. It should be recognised that the relationships supported by these forums have been developed during sustained engagement for many years. It will take time, and may be more difficult, to foster collaborative working where similar pre-existing intergovernmental forums are absent or weaker.

### **The Office for the Internal Market**

**3.10** The Office for the Internal Market's (OIM) statutory duties are set out in UKIMA, and concern the implementation and operation of the Market Access principles. This includes, in s.33(6), a duty to report on the

impact of Common Framework Agreements on the operation and development of the Internal Market in the United Kingdom.

**3.11** Information that is currently publicly available suggests that cross-cutting questions, including matters relevant to the governance of Common Frameworks, have yet to be agreed. This includes determining the appropriate balance between political and intergovernmental oversight, on the one hand, and technical assessment on the other.

**3.12** In undertaking its statutory duties, the OIM may examine and offer advice with respect to the impact of policy divergence on the functioning of the internal market. ***However, any such assessments and recommendations should be considered alongside an evaluation of the impact of market access principles on the regulatory authority and democratic accountability of the devolved institutions, both founding principles of the Frameworks programme.***

### **Reporting on the progress and implementation of the Common Frameworks**

**3.13** Quarterly reports on the development of Common Frameworks derive from the statutory obligation set out in the European Union (Withdrawal) Act 2018. However, it is not clear whether these obligations will extend to reporting on their progress once implemented. The obligation ceases to apply 'when no retained EU law restrictions have effect and all the relevant powers have been repealed'. Lord Frost's recent announcement regarding a review and possible abandonment of 'retained EU law' brings added uncertainty to the continuation of these reporting obligations.

**3.14** It is expected that Framework governance will be conducted by middle-ranking officials, and scaled up to senior officials and, if necessary, ministers only where issues cannot be resolved at a lower level. Meetings between officials are not normally reported to Parliament, and the need for frank discussions can be facilitated by them not being made public. Nonetheless, where information could serve the public interest, and the process of parliamentary scrutiny, there should not be unnecessary conditions of confidentiality on discussions at all levels.

**3.15** A distinction should be drawn between Common Frameworks as ‘ways of working’ and Common Framework Agreements, i.e. any policy-related agreements, MoUs, concordats, etc, that may emerge as outputs of the Framework process. ***In line with the UK government’s transparency commitments, the Committee may wish to seek assurance that the operation of Frameworks after implementation be incorporated into quarterly reports on IGR, and any Agreements emerging from Frameworks governance be laid before Parliament.***

#### **4. Cross-cutting Issues**

**4.1** Cross-cutting issues concern the relationship of Common Frameworks to major issues regarding the machinery of government and of policy, including the reform of Intergovernmental Relations, the Trade and Cooperation Agreement (TCA) and broader UK-EU regulatory relations, the UK Internal Market, and international trade negotiations and agreements. Since these all interlink, attempting to reconstruct all these aspects of internal structure and external relations at once is inherently tricky. The challenge has been enhanced by the fact that these very major cross-cutting issues - IGR, TCA, UKIM - have been left to the end of the process to incorporate and account for in Common Frameworks.

#### **Common Frameworks and International Agreements**

**4.2** Common Frameworks are designed to ensure that there can be a coherent regulatory framework, where this is deemed to be necessary, in areas of devolved competence. But it has long been recognised that devolved matters intersect with reserved matters, and that the devolved administrations thus have a legitimate interest in these. The Memorandum of Understanding (2013) included the commitment that: *“The UK Government will involve the devolved administrations as fully as possible in discussions about the formulation of the UK’s policy position on all EU and international issues which touch on devolved matters.”*<sup>9</sup> Additionally, although the negotiation and implementation of

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<sup>9</sup> Memorandum of Understanding and Supplementary Agreements, 2013, available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/316157/MoU\\_between\\_the\\_UK\\_and\\_the\\_Devolved\\_Administrations.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/316157/MoU_between_the_UK_and_the_Devolved_Administrations.pdf)

international agreements remains a matter for the UK government, the implementation of international agreements, insofar as these address devolved matters, is the responsibility of the devolved administrations.

**4.3** The difficulty in agreeing a form of words that recognise this interdependence and the legitimate interests of devolved governments in relation to international negotiations and agreements has been one of the barriers to completion of Common Frameworks. For example, the extensive use of square brackets in the Public Procurement Common Framework indicates both the intersection between devolved policy and reserved competence, and the extent to which there is disagreement between the UK government, on the one hand, and the devolved administrations on the other, on their respective roles in relation to international negotiations, agreements and obligations.

**4.4** *In our view, these disagreements could be overcome with reference to practices that have been recognised since devolution was introduced. Where international agreements affect devolved competence, including areas of competence that are the subject of Common Frameworks, it would be appropriate, and in keeping with the Memorandum of Understanding, to ensure that agreed processes and 'ways of working' provided meaningful opportunities for the devolved administrations to represent their interests at each stage of the negotiation process.* Unfortunately, the Protocol on Ireland/Northern Ireland (within the Withdrawal Agreement) is a model of the very opposite of this in practice. The consequences of not having had representation from Northern Ireland in the negotiation process are now being seen, not only politically, but also procedurally, as it affects devolved competence and legislation.

## **UK Internal Market**

**4.5** The United Kingdom Internal Market Act (UKIMA) overshadows the Frameworks process. Whereas the latter has been a collaborative process, the former was principally the result of a unilateral process that has undermined the authority of the devolved institutions and led to a further erosion of trust between them and the UK government.

- 4.6** There remains considerable uncertainty about the relationship between Common Frameworks and the UK Internal Market Act. The Common Frameworks Scrutiny Committee helped to secure a concession from the UK government that the Secretary of State may, by regulations, exempt some areas, including those that form part of a Common Framework Agreement, from the application of the Market Access principles. However, ***it remains unclear how this process will work, and there are several potential barriers to working in a way that upholds the underpinning principles of the Common Frameworks.***
- 4.7** First, what constitutes a 'Common Framework Agreement' that may be subject to the exemption from Market Access principles, under s.10? The UK government's response to the Committee's first report noted that this power may be used when there is 'consensus under a Common Framework'. This does not provide any clarity. Does it mean that exemptions from Market Access principles may be made when such Agreements/consensus suggest a uniform approach will be applied? Under these circumstances, their exclusion from the UKIMA principles may have little effect in practice. Or might exemptions also be made when Common Framework Agreements result in policy divergence?
- 4.8** Second, what is the process by which such an exemption may be made? Agreements are reached as part of Frameworks governance, but the regulatory power provided in the Internal Market Act lies with the Secretary of State; the Act does not specify which Secretary of State, but the responsibility for its implementation lies with the Department for Business, Enterprise and Industrial Strategy. Yet, the Secretary of State for Business, Energy and Industrial Strategy is unlikely to be involved in most areas of Framework governance as these are, by design, dealt with by relevant policy officials and, where necessary, relevant portfolio ministers. Where does the power lie in determining when Common Framework Agreements may justify an exemption from Market Access principles? ***We recommend that a process be agreed that involves officials and ministers within relevant policy domains to avoid the Secretary of State wielding veto powers over the scope and effect of Common Framework Agreements.***

## **IGR Review and Interministerial Forums**

- 4.9** Common Frameworks are the result of an intergovernmental process led by officials. The intention is that Frameworks, once agreed, will establish a way of working that promotes continued communication and collaboration between officials. Although these officials will be acting on ministerial mandate, how these ways of working relate to established, and envisaged, interministerial forums remains unclear.
- 4.10** A review of Intergovernmental Relations (IGR) was initiated by the Joint Ministerial Committee (JMC) in March 2018. A 'Progress Update' - published by the Cabinet Office in March 2021, rather than jointly by all four administrations - suggested both a willingness to introduce meaningful reforms to intergovernmental processes whilst revealing the areas of tension that may make resolution of the review difficult. Proposed reforms include revised principles, an independent secretariat, a strengthened dispute resolution procedure, with the possibility of third party mediation and/or impartial evaluation, and a new three-tiered system of interministerial engagement. Tier 1 is made up of portfolio-level engagement in Interministerial Groups (IMGs), including in areas that are the subject of Common Frameworks.
- 4.11** The review is yet to complete, and related developments, including the passing of the UK Internal Market Act without the consent of the devolved institutions, may make it difficult to resolve outstanding issues. But ***some IMGs are already up and running, and it would seem appropriate for them to have a role in the governance of Common Frameworks.***

## **Trade and Cooperation Agreement**

- 4.12** On 1 January 2021, the UK and EU entered a new relationship based on a free trade agreement (FTA): the Trade and Cooperation Agreement (TCA). The UK was no longer a member of the EU's Customs Union and Single Market. The essence of a FTA is that neither side is obliged to follow the rules of the other. However, if EU goods need to enter the UK markets, they need to comply with UK standards.
- 4.13** The position in respect of Northern Ireland is different due to the Ireland/Northern Ireland Protocol. In most areas concerning goods, the UK has not yet diverged from EU rules (divergence is mainly occurring in respect of services such as Fintech and financial services). There is,

however, likely to be divergence in respect of matters, such as gene editing, which would have consequences for areas of policy covered by Common Frameworks, such as the Food and Feed Safety and Hygiene Common Framework.

**4.14** In Scotland, the position is complicated by the Withdrawal from European Union (Continuity) (Scotland) Act 2021, which gave Scottish Ministers the power to keep devolved laws aligned with EU laws - a power that is matched by the broader strategic objective of the SNP government to rejoin the European Union after independence. The legislation sets out that the purpose of that power is to contribute towards maintaining and advancing standards in relation to environmental protection, animal health and welfare, plant health, equality, non-discrimination and human rights, and social protection. Some of these purposes intersect with policy fields that are the subject of Common Frameworks, and could make it more difficult to reach Common Framework Agreements if the UK government looks to diverge from EU law.

**4.15** Although the TCA does not require the alignment of standards by the UK with the EU (or vice versa), there are consequences if the divergence is too great. So, for example, Article 411 of the TCA says: "The Parties recognise the right of each Party to determine its future policies and priorities with respect to labour and social, environmental or climate protection, or with respect to subsidy control, in a manner consistent with each Party's international commitments, including those under this Agreement." However, it goes on to say, "If material impacts on trade or investment between the Parties are arising as a result of significant divergences between the Parties in the areas referred to in paragraph 1, either Party may take appropriate rebalancing measures to address the situation." This means proportionate tariffs which can be levied before the case is heard by the arbitration tribunal.

## **5. Interaction with the Protocol on Ireland/Northern Ireland**

**5.1** As was the case prior to Brexit, the provisions of EU law that apply in Northern Ireland (NI) through the Protocol on Ireland/Northern Ireland in the Withdrawal Agreement (as listed in Annexes 1-5 of the Protocol)

take priority over any potentially conflicting domestic law. This includes any new Common Frameworks that are intended to apply across the UK. Just as Common Frameworks are intended to cover those areas in which EU law was particularly important for the Single Market, so it is logical that many of these areas (such as environment, agriculture, energy and food) are touched on by the Protocol on Ireland/Northern Ireland.

**5.2** One example of the complex interaction between a Common Framework and the Protocol for NI is that on emissions trading, which has not yet been published.<sup>10</sup> It will be more appropriate to describe this as a GB-wide Common Framework because of the scope of EU law that applies in Northern Ireland under the Protocol. Annex 4 of the Protocol allows the five large power generators in NI to continue to participate in the EU Emissions Trading Scheme (ETS) under Directive 2003/87/EC. It means that large power installations in NI will adhere to a higher cap of emissions than in GB. The GB Framework sees the UK, Scottish and Welsh governments establish and operate a single GB-wide F-gas and ODS system to be administered by the Environment Agency. In sum, this means that Northern Ireland will be under a different administrative and governance regime in relation to trade, use and emissions of F-gases and ODS products from the rest of the UK. Nevertheless, NI emissions will still be counted as being under the UK regime and overall outputs as contributing to UK targets.

**5.3** We are at an early stage with respect to both the implementation of the Protocol and the operation of the Common Frameworks. With the exception of a brief update from junior ministers in the NI Executive to the Committee for the Executive Office, the most recent briefing given to NI Assembly committees on progress on any Common Framework was in February 2021, i.e. not two months after the end of the transition period, and very early on in the Protocol's application. As such, there has been a long period of silence on the subject in the NI Assembly, even at what is such a critical period for both Common Frameworks and for the Protocol.

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<sup>10</sup> Common framework background paper: Emissions Trading, NIAR 244-20, September 2020.  
<http://www.niassembly.gov.uk/globalassets/documents/raise/publications/2017-2022/2020/aera/4220.pdf>

- 5.4** There does appear to be considerable variation between different Common Frameworks and the 'handle' on them by different departments. Some committees in the NI Assembly have received more detailed briefings and evidence on Common Frameworks than others. Aside from departmental or policy-specific matters, this variation relates to two main factors.
- 5.5** First, one of the key priorities of the JMC was to make sure that international agreements were respected and that Frameworks enabled these to be upheld. Where EU directives have fallen broadly under the umbrella of internationally-agreed standards (e.g. on ozone-depleting substances), there is reduced risk of divergence between the UK and EU, and thus (where the Protocol applies) NI and GB.
- 5.6** Second, where there are statutory bodies that already work on an all-UK basis, or largely so, there is more opportunity for developing coherence and consensus in a common framework (e.g. food safety), even where the Protocol sees NI following EU laws. This is particularly evident in the Common Framework on Food and Feed Safety and Hygiene, and Common Framework on Nutrition Labelling, Composition and Standards, both of which come within the remit of the Food Standards Agency (NI, Wales and England). This has well-established, formalised practices of engagement with Food Standards Scotland, and with the Food Safety Authority of Ireland, and is represented directly at Codex Alimentarius (the international body where international standards and guidelines on food safety are set).
- 5.7** All consideration of the impact of the Protocol on divergence within the UK should take into account two things. First, the scope of the Protocol can expand if the UK and EU so agree to it in the Joint Committee. For example, they decided in December 2020 to add to the applicable EU law under the Protocol (to include the Directive on single use plastics).<sup>11</sup> Such decisions will potentially have consequences for the UK internal market and potentially for Common Frameworks.
- 5.8** Secondly, amendments to EU legislation that apply to Northern Ireland through the Protocol are to be automatically applied to NI. However, there are serious problems in passing on information from Westminster

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<sup>11</sup> [http://europeanmemoranda.cabinetoffice.gov.uk/files/2021/01/European\\_EM\\_13914-20\\_\(1\).pdf](http://europeanmemoranda.cabinetoffice.gov.uk/files/2021/01/European_EM_13914-20_(1).pdf)

and Whitehall on such amendments to NI officials and elected representatives. Although these amendments tend to be very technical and minor, many of them will fall in the same policy domains as Common Frameworks. The difficulty posed in keeping the NI statute book updated, let alone scrutinising it, thus becomes not merely a problem for Northern Ireland but also a potential issue for Scotland, Wales and England too.

## **6. Summary of Recommendations**

### **Evaluation**

- 6.1 We recommend that evaluation of Common Frameworks focus on the extent to which they live up to the founding principles of the Frameworks programme, and manage interdependence after European Union rules fall away.**
- 6.2 Whilst the effective operation of Common Frameworks may have positive benefits for the durability of the UK Union, judging the programme against such political criteria is likely to be divisive and counter-productive to the goal of managing interdependence.**
- 6.3 We recommend that the co-owned, cooperative process that characterised the development of common frameworks remain a central feature of their operation, governance and evaluation.**

### **Scrutiny**

- 6.4 We recommend that the balance between confidentiality and openness be reconsidered, to maximise the opportunity for parliaments to scrutinise and shape Frameworks from development to implementation.**

**6.5 We recommend that consideration be given to the time and resources necessary for effective scrutiny of Common Frameworks. Early publication of the remaining Frameworks, especially those already given provisional status, would help to identify barriers to their completion and aid parliamentary oversight.**

**6.6 In line with the UK government's transparency commitments, the Committee may wish to seek assurance that the operation of Frameworks after implementation be incorporated into quarterly reports on IGR, and any Agreements emerging from Frameworks governance be laid before Parliament.**

#### **Office of the Internal Market**

**6.7 Evaluations and recommendations issued by the Office of the Internal Market on the impact of policy divergence on the functioning of the internal market should be considered alongside an evaluation of the impact of Market Access principles on the regulatory authority and democratic accountability of the devolved institutions, both of which are founding principles of the Frameworks programme.**

#### **International Agreements**

**6.8 Where international agreements affect devolved competence, including areas of competence that are the subject of Common Frameworks, it would be appropriate, and in keeping with the Memorandum of Understanding, to ensure that agreed processes and 'ways of working' provided meaningful opportunities for the devolved administrations to represent their interests at each stage of the negotiation process.**

#### **United Kingdom Internal Market Act**

**6.9 We recommend that the Committee seek clarity on the relationship between Common Frameworks and the United Kingdom Internal Market Act (UKIMA). In particular, the**

**Committee may want to ascertain: what constitutes a 'Common Framework Agreement'; whether such Agreements may entail divergent as well as uniform policy approaches; and the process and authority for exempting Common Framework Agreements from the Market Access principles as set out in UKIMA.**

### **Intergovernmental Relations (IGR)**

**6.10 We recommend that clarity be sought on the relationship between Frameworks governance - which we understand would principally be undertaken by officials - and those interministerial groups with portfolios in related policy domains that have emerged as part of the IGR Review. We recommend that these ministerial groups be given a role in the governance of Common Frameworks.**

### **Trade and Cooperation Agreement (TCA)**

**6.11 We recommend ongoing scrutiny of the effect of the implementation of the TCA on Common Frameworks. In particular, the future status of retained EU law and the extent to which the UK government opts to diverge from EU law could make it more difficult to maintain Common Frameworks across the UK.**

### **The Protocol on Ireland/Northern Ireland**

**6.12 We recommend ongoing scrutiny to identify the complex and dynamic ways in which the Protocol interacts with Common Frameworks. The Committee may want to seek clarity on the extent to which Common Frameworks will be GB- or UK-wide in scope. The Committee may also seek to identify the cause of apparent problems in communication between Whitehall/Westminster and the Northern Ireland Assembly in relation to amendments to EU legislation that are subject to automatic application in Northern Ireland under the terms of the Protocol.**

**27 September 2021**