



The Scottish Parliament
Pàrlamaid na h-Alba

Published 25 March 2019

SP Paper 498

4th Report (Session 5)

Finance and Constitution Committee Comataidh Ionmhais is Bun-reachd

Report on Common Frameworks



Published in Scotland by the Scottish Parliamentary Corporate Body.

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Finance and Constitution Committee

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Introduction


1. It was in our [Interim Report on the European Union \(Withdrawal\) Bill LCM](#) that we highlighted the importance of what have been termed 'common frameworks'. This term refers to those areas where the UK and devolved Governments consider that it would be beneficial to establish common policy and regulatory approaches in some areas that are currently governed by the European Union.
2. The Scottish Government and the Welsh Government agree with the UK Government that should the UK leave the EU there will be a requirement for common frameworks in areas currently governed by EU law.¹
3. On 16 October 2017, the Joint Ministerial Committee on EU Negotiations (JMC EN) agreed a definition and a set of principles for these common frameworks. In their communique they set out that:
 - 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;
 - There will also be close working between the UK Government and the devolved administrations on reserved and excepted matters that impact significantly on devolved responsibilities. Discussions will be either multilateral or bilateral between the UK Government and the devolved administrations. It will be the aim of all parties to agree where there is a need for common frameworks and the content of them;
 - The outcomes from these discussions on common frameworks will be without prejudice to the UK's negotiations and future relationship with the EU.
4. A set of principles were also agreed at that meeting which apply to common frameworks in areas where EU law currently intersects with devolved competence. Those principles are as follows:

Common frameworks will be established where they are necessary in order to:

- enable the functioning of the UK internal market, while acknowledging policy divergence;
- ensure compliance with international obligations;
- ensure the UK can negotiate, enter into and implement new trade agreements and international treaties;
- enable the management of common resources;
- administer and provide access to justice in cases with a cross-border element;

- safeguard the security of the UK.
5. In addition, that communique explained that, as part of those principles, frameworks will respect the devolution settlements and the democratic accountability of the devolved legislatures, and will therefore:
- be based on established conventions and practices, including that the competence of the devolved institutions will not normally be adjusted without their consent;
 - maintain, as a minimum, equivalent flexibility for tailoring policies to the specific needs of each territory as is afforded by current EU rules;
 - lead to a significant increase in decision-making powers for the devolved administrations.²
6. A number of options for the implementation of frameworks are also proposed including legislation, concordats, executive action and memorandums of understanding.
7. On 9 March 2018, the UK Government published a [provisional breakdown of areas of EU law that intersect with devolved competence in Scotland, Wales and Northern Ireland](#)ⁱ. In that assessment they highlighted that as there are different devolution settlements, a different range of powers may be relevant to Scotland, Wales and Northern Ireland and that across the devolved governments there are:
- 49 policy areas where no further action is required;
 - 82 policy areas where non-legislative common frameworks may be required; and
 - 24 policy areas that may require legislative common frameworks either in part or in whole.
8. One hundred and eleven areas of EU law were then identified as falling within the devolved competence of the Scottish Parliament although the second UK Government report on Common Frameworks refers to 107 such policy areas.³ The Committee's evidence taking focused primarily on those 24 areas where legislative common frameworks may therefore be required. In March 2018, the UK Government analysis also identifies 12 policy areas which it considers are reserved but which are subject to ongoing discussion with the devolved administrations.
9. This report sets out the Committee's initial findings on common framework following its consideration of:
- written and oral evidence;
 - its commissioned research on Canada, Germany, Norway and Switzerland;

ⁱ Annexe A contains a summary of those areas.

- its visit to Brussels to discuss agreement making between countries and within countries as well as;
 - stakeholder views from its Conference on Common Frameworks.ⁱⁱ
10. This is the Committee's first report specifically on common frameworks and there are a number of areas (identified within this report) where we will undertake further work. The countries we commissioned research on have provided us with valuable examples of how the framework approach might be developed further.
 11. In particular, the consensual approach adopted to agreement making in Switzerland is a model that we will explore further. More specifically, its well established intergovernmental structures and formal arrangements for agreement making between cantons and the Federal Government (such as the Conference of Cantonal Governments) merit further consideration.
 12. This report is also intended to inform the ongoing review of intergovernmental relations and to contribute to the ongoing development of common frameworks by UK and Devolved Governments officials. Given common frameworks are being developed on a collaborative basis, we have focussed our recommendations on the Scottish Government as one partner in this joint working relationship.
 13. We have included the UK Government's views on the basis of published documents and their comments to UK Parliamentary Committees. The Interparliamentary Forum on Brexit also heard from the UK Minister for the Constitution, Chloe Smith MP on Intergovernmental Relations. We will therefore send this report to the UK Government for their views and will seek to discuss common frameworks with the appropriate UK Minister at a future Committee meeting.
 14. The Committee thanks all of those who have provided it with evidence and views. As we acknowledge there is overlap between common frameworks and the Committee's work on the Trade Bill LCM, the European Union (Withdrawal) Act 2018 (EUWA) and the UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill (hereafter referred to as 'the Continuity Bill'). All have the potential to shape the content, policy areas and speed at which common frameworks develop. This report comments on this interplay where it is particularly relevant.
 15. Another factor which will impact on the content of and requirement for common frameworks is the terms of any agreement between the UK and the European Union on the UK's exit from and future relationship with the EU. This is recognised by the UK Government in its second report on common frameworks when it explained that in relation to developing outlines for common frameworks—
 In some areas, the focus of outlines is based on the work to secure fixes to EU law being put in place under the EU (Withdrawal) Act. It is possible these may provide a starting point for interim or long-term framework arrangements in some areas, but this will depend on the outcome of negotiations with the EU.³

ⁱⁱ Further information on the Committee's evidence taking can be found in Annexe B to this report.

16. The Cabinet Secretary for Government Business and Constitutional Relations, Michael Russell, (hereafter referred to as 'the Cabinet Secretary') explained that it was never intended to have common frameworks in place by exit day—

” Frameworks remain discrete longer-term arrangements that are to be put in place post-Brexit. They will be agreed only when there is clarity about the UK’s final agreement, the future relationship with the EU and the situation in Northern Ireland. The progress on frameworks will therefore continue until the end of the implementation period, if that is December 2020—although, again, that is absolutely up for grabs.

Source: Finance and Constitution Committee 27 February 2019 [Draft], The Cabinet Secretary for Government Business and Constitutional Relations (Michael Russell), contrib. 2⁴

17. The UK-EU Withdrawal Agreement sets out the proposed terms on which the UK will leave the EU. Should the Withdrawal Agreement and the Political Declaration be agreed to by the UK Parliament and ratified by the UK Government, then there will be a transition period until 31st December 2020. During that transition period:
- the whole body of EU law will continue to apply as if the UK were a Member State;
 - the UK will be bound to respect all its EU law obligations; and
 - the UK Parliament and the Scottish Parliament will have no greater freedom to legislate on matters covered by EU law than they have now.
18. If the UK leaves the European Union with or without an agreement, common frameworks will be required.

Why are Common Frameworks necessary?

19. The EUWA provides that certain non-reserved matters can be temporarily "frozen" as reserved powers (referred to as 'retained EU Law'). Under Section 12 of the EUWA a temporary 'freeze' can be sought by regulations by the UK Government on devolved legislative or executive competence in specified areas, so that, in those areas the current parameters of devolved competence are maintained. The use of the 'freezing' powers is a transitional arrangement while decisions are taken on where common policy approaches are or are not needed, with both the powers themselves and any regulations made under them being subject to sunset provisions. The powers will expire two years after exit day although they can be repealed earlier under the power in section 12(9) and the regulations themselves will expire five years after they come into force (if not revoked earlier).

20. In its second report on Common Frameworks, the UK Government explains that "Significant joint progress continues to be made on future common frameworks". They conclude that they don't need to bring forward any Section 12 regulations at this time. Given this, the Scottish and Welsh Governments continue to commit to not diverging in ways that would cut across future frameworks, where it has been agreed they are necessary or where discussion continues. The UK Government then explains that, in relation to removing section 12 powers from the statute book,—

” further progress towards the implementation of those future frameworks would be needed. We will keep this position under review, in line with the statutory duty in section 12(10) of the EU (Withdrawal) Act.³

21. The Cabinet Secretary explained that work on common frameworks has to date progressed on the basis of negotiation between Governments rather than imposition but that "it will not discuss a framework if a restriction is imposed on devolved powers". The Cabinet Secretary observed that progress with developing common frameworks has slowed since November 2018 as a result of the UK Government's focus on Brexit and that in his view—

” We are in a period of flux, and it is difficult to see common frameworks returning as an issue unless there is a continuation of the process of trying to secure an orderly departure. However, it is very difficult to see when that would be.

Source: Finance and Constitution Committee 27 February 2019 [Draft], Michael Russell, contrib. 4⁵

22. As the Committee stated in our interim report and supplementary report on the European Union (Withdrawal) Bill (EUWB), we strongly believe that both the process for agreeing common frameworks and the actual content must be arrived at through agreement and not imposed.

23. We therefore welcome that the progress made with common frameworks has been achieved on the basis of negotiation and agreement between Governments.

It is clear however that any finalisation and agreement of common frameworks will be in the longer term.

24. This provides time for the Scottish Parliament and others to contribute to the development of these frameworks and this report sets out our expectation of what that role should be.

The UK internal market

25. The first of the principles agreed by the UK and Devolved Governments in its JMC Communique is that Common Frameworks are necessary "to enable the functioning of the UK internal market, while acknowledging policy divergence".
26. Currently, the UK is part of the European Single Market (sometimes referred to as the Internal Market or Common Market) where rules require the free movement from one EU member country to another of goods, people, services and capital. In addition to the single market providing tariff free access to EU markets, a common framework of regulations means companies in EU member states have to abide by common standards - whether they trade across the EU or solely within their member state. The purpose of this is to stop one business or country having an unfair advantage. Those regulations can apply minimum standards where countries are free to make it tougher for products made in their own countries or maximum standards where countries have no room to make them tougher.
27. As the law stands, if the UK leaves the EU its single market rules, regulations and standards will apply in the UK subject to the provisions of the EUWA. The JMC communique proposes that common frameworks will be used to achieve that common approach across the UK which is currently achieved through the EU.
28. The EU approach of a broad set of principles underpinning all subsequent EU laws provides a commonality of approach despite the different legal and constitutional frameworks in each member state. In relation to the UK approach to developing common frameworks the UK Minister for the Cabinet Office, Rt. Hon. David Lidington MP, and Lucy Smith, Director General of the UK Governance Group in the Cabinet Office confirmed in June 2018 that there is currently no plan to publish a white paper on common frameworks, nor for there to be a coordinated policy for how common frameworks will operate. Instead, common frameworks will be developed on an issue by issue basis and are likely to differ from one competence to another and from one Government department to another.⁶
29. As Iain Wright, a Research Fellow at the University of Glasgow, and Professor David Heald explain, before the referendum on the United Kingdom leaving the European Union—
- ” There were almost no references to the internal market, protection of which largely came from all parts of the United Kingdom being subject to EU law.⁷
30. The Committee heard from Professor Keating that the the EU single market was not about particular competencies but a broad set of principles. Professor Keating points out that nothing like these mechanisms exists in the UK or in relation to

devolution yet there may be instances in which the internal market principle could impinge on devolution.⁸

31. Those broad set of principles of law are applied by the European Court of Justice and the national courts of the member states when determining the lawfulness of legislative and administrative measures within the European Union. These principles include, amongst others, fundamental rights, proportionality, legal certainty, equality before the law and subsidiarity. As we heard during evidence on the EUWB LCM, a number of these principles (such as proportionality and subsidiarity) are not contained within the JMC communique on common frameworks.
32. Subsidiarity is the principle which governs the choice of which level of government should act, in situations where potentially more than one actor is able to act. In the EU context, it refers to the choice of whether to act at EU level or member state with a preference for the level closest to citizens.⁹ Proportionality requires that action be no more than is needed to achieve the intended objective. This means that the need for action, and the costs and benefits that can be expected must be examined.¹⁰
33. A number of those we heard from highlighted that if common frameworks are to enable the functioning of a UK internal market then there needs to be a better understanding of what it is and what principles it should embody before identifying the specific policy areas it might engage. The Royal Society of Edinburgh (RSE) proposed that to assist with addressing these questions an independent secretariat be established to, in part, "commission research, analyse it and see what a future UK internal market needs to look like."¹¹
34. Professor Keating explained that there appeared to be two processes going on - the concept of an internal market and the deep dives in individual policy fields both of which should then join up at some stage. He questioned this approach explaining the complexities of defining an internal market requires more than identifying policy areas—

” It is about regulations, product standards, state aids, public procurement—which is a really big one—and what kinds of things are thought to interfere with the market. It requires consideration of the boundary between things that are provided in the market and things that are provided as public services, which is a highly controversial and political issue.

Source: Finance and Constitution Committee 24 October 2018 [Draft], Professor Keating, contrib. 23¹²

35. In its first and second reports on common frameworks, the UK Government explains that detailed discussions between the UK and Devolved Governments had explored some of the cross cutting issues like the internal market. Two internal market meetings and a technical policy workshop had been held and these discussions will continue alongside intensive work on the 24 areas where legislative frameworks may be required.

Environmental Protections

36. The UK and Scottish Governments are each proposing environmental principles to underpin their policy considerations. The attempt to create common environmental

principles illustrates how complex the enterprise of creating common frameworks might become.

37. The EUWA provides that the Secretary of State must, within six months of the Act being passed, publish a draft Bill consisting of—
- a set of 9 environmental principles including the precautionary principle and polluter pays principle,
 - a duty on the Secretary of State to publish a policy statement on the application and interpretation of those principles, and
 - a duty which ensures that Ministers have regard to that statement in appropriate circumstances.
38. On 19 December 2018, the UK Government published the Draft Environment (Governance and Principles) Bill which proposes a set of environmental principles which will be applied by Ministers of the Crown in making, developing and revising policies.¹³
39. The Bill also proposes establishing a statutory and independent Office for Environmental Protection (OEP) to "scrutinise environmental policy and law, investigate complaints, and take action where necessary to make sure environmental law is properly implemented". The OEP will have the power to receive and investigate complaints that public authorities have failed to comply with environmental law. This function would be exercised primarily in relation to England and the OEP would not have powers to enforce any environmental legislation that is within devolved competence. However, the Explanatory Notes which accompany the draft Bill state that "The new body could, subject to the ongoing framework discussions with the devolved administrations, exercise functions more widely across the UK." The Notes also state that no legislative consent motion is being sought in relation to any provisions of the Bill as the matters to which they relate are not within devolved legislative competence but goes on to state if there are amendments affecting devolved legislative competence the consent of the relevant devolved legislature(s) will be sought for those amendments.¹³
40. On 16 February 2019, the Scottish Government published a consultation on Environmental principles and governance after Brexit in Scotland which seeks views on future arrangements for the application of EU environmental principles and on the design of clear, appropriate governance arrangements consistent with the roles of the Scottish Parliament and courts. This Bill includes four principles (also set out within the Continuity Bill and included amongst the nine principles set out in the Draft Environment (Governance and Principles) Bill) which derive from EU law. These four principles are (a) the precautionary principle as it relates to the environment, (b) that preventative action should be taken to avert environmental damage, (c) that environmental damage should as a priority be rectified at source, and (d) that the polluter should pay to rectify environmental damage.¹⁴
41. Responding to concerns that current environmental principles and standards could be diluted or diminished by common frameworks, the Cabinet Secretary explained that the Scottish Government considers that it should continue with EU environmental standards and that that the keeping-pace powers within the Continuity Bill could be used to maintain current approaches, albeit how those

powers are applied and the Bill taken forward is still the subject of discussion with political parties. The Cabinet Secretary told the Committee—

” I want to ensure that if there is an interim period in which Scotland is not a member of the EU—in my view, that is not inevitable—we maintain the standards and do not diminish them in any way. It would simply not be possible to take action parallel to that of those who seek to diminish standards.

Source: Finance and Constitution Committee 27 February 2019 [Draft], Michael Russell, contrib. 59¹⁵

42. Given the different approaches to environmental principles being proposed by the UK and Scottish Governments, we seek clarification from the Scottish Government as to whether this represents a common framework where the Governments have agreed to policy divergence, and if not, what impact two sets of differing environmental principles will mean for common frameworks.
43. Given these differing approaches, it will also be important to ensure that there is clarity as to where responsibilities will lie in future in the environmental field and that there is no encroachment on devolved competence without the consent of the Scottish Parliament. This also demonstrates the increased complexity that the Scottish Parliament will face in undertaking scrutiny in common framework areas and which could have resource implications which the Scottish Parliamentary Corporate Body will have to address.

Policy Divergence

44. The other key aspect of a UK internal market referred to by the JMC Communiqué was the acknowledgement of policy divergence across the UK whilst also providing for, as a minimum, equivalent flexibility for tailoring policies to the specific needs of each territory as is afforded by current EU rules.
45. The RSE and others observed that much of the EU single market is achieved through the principle of minimum harmonisation providing flexibility. Consequently in a UK internal market, consideration should be given to how much harmonisation is needed to make the market work (as well as an evidence base as to why there might be minimum or maximum harmonisation). Rather than aiming for a level playing field across the UK, the RSE argued that—

” the question, in every area where we think that there is an internal market issue, is how much harmonisation we need to make the market work and how much we do not need. We can debate that—that is where we need a political element—but we also need the underlying analysis of the technical area to see what the reasons are why we might have minimum or maximum harmonisation. We can then have a political debate about which is the right outcome. That outcome will change over time.

Source: Finance and Constitution Committee 24 October 2018, Professor Beaumont, contrib. 28¹⁶

46. Scottish Environment Link (SE Link) and others also highlighted the importance of policy flexibility not being seen solely through the prism of governmental jurisdictional boundaries. They consider that there is no one size fits all approach

and common frameworks must allow for policy to be adapted or to differ when circumstances require it such as climate, geography, local biodiversity and local traditions.¹⁷

47. Too much policy flexibility could however become a barrier to trade or competition. As Iain Wright cautioned—

“one thing about an internal market is that you have to be able to run a business in it. You have to understand why you should make the investment and what the risks and potential rewards are. It is very important that we look at not just the theoretical mechanics of how this is done, but the effect on economic players.

Source: Finance and Constitution Committee 24 October 2018 [Draft], Iain Wright (University of Glasgow), contrib. 39¹⁸

48. The Brexit and Environment academics (who comprise of Professor Colin Reid, Professor Andy Jordan, Professor Charlotte Burns, Professor Richard Cowell, Dr Viviane Gravey and Brendan Moore) note in their written evidence, that there may be a tension in developing common frameworks between what is desired in constitutional terms to mark out separate areas of competence and what is needed to address shared substantive concerns—

“The reasons why Member States have moved towards close collaboration within the EU on various matters, surrendering some of their independence to act, apply also within the UK: transboundary problems, the integrity of a single market, avoiding free riders, meeting international obligations, etc. The resolution of this tension is central to decisions on the structural issues. The current reserved/devolved distinction was designed to reflect areas where uniform or distinctive policies and laws are or are not appropriate. That boundary, however, was created in the context of membership of the EU providing a broader envelope to limit divergence in devolved areas; it is therefore inevitable that there will be non-reserved matters where it is thought inappropriate for there to be unlimited scope for each nation to “do its own thing”.¹⁹

49. Iain Wright and Professor David Heald also noted that, in order to support a UK internal market, common frameworks will also require to address the challenge of seeking to deliver policy co-ordination whilst respecting the devolved legislative competences and that “the implementation of common frameworks must address this asymmetry in a rational manner”. In their view, this challenge could be met by adopting the EU single market approach with “Holyrood retaining all its devolved competences and implementing these frameworks as it would previously have done with EU directives.”²⁰

50. A range of options were provided by the Brexit and Environment academics as to how greater or lesser policy flexibility could be provided to enable individual jurisdictions to adopt their own policies whilst still supporting a common UK approach to its internal market—

- Exclusive power on common positions to rest with UK authorities (representing a rolling back of devolution);

- A legal arrangement whereby the devolved authorities contribute to (and possibly even have a veto over) the common position but are obliged to implement it once in place (similar to the UK's current relationship with the EU);
- A political agreement could be reached to follow the common position (meaning the legal competences of the devolved authorities might not have to be restricted); and
- The common position could be merely a recommendation with no political or legal fetters on the devolved authorities.¹⁹

51. The UK Government set out the approach taken by the JMC to categorising each area as requiring a legislative or non-legislative common framework—

” the UK Government assessed the risks associated with further divergence, based on the criteria set out in frameworks principles, agreed with the devolved administrations... For example, acknowledging current policy divergence and the need to maintain equivalent flexibility, we looked at the impact that further divergence in fisheries might have on the future functioning of the UK internal market. We also assessed the impact that this would have on our ability to manage our common resources (e.g. fish stocks) across the UK, and our ability to project ourselves as a credible international trading partner in the future.²¹

52. This is an evolving area though and more recently the UK Government had reported that legislation may not be required in some of the 24 areas and that a—

” ‘hybrid’ approach is emerging. While elements of a policy area will be governed by consistent approaches in primary and/or secondary legislation, these arrangements will be complemented by wider working arrangements set out in a memorandum of understanding.²¹

53. NFU Scotland questioned how policy equivalence could be delivered across the UK given the degree of policy divergence that already existed in some areas—

” In the agricultural context, we do not play on a level playing field to begin with. There are already four different settlements of the common agricultural policy across the UK, and we do things very differently in Scotland from how they are done in England, Wales and Northern Ireland.

Source: Finance and Constitution Committee 24 October 2018 [Draft], Jonathan Hall (NFU Scotland), contrib. 18²²

54. The Cabinet Secretary explained that work was ongoing on the cross cutting issues that are required to be worked through in order for frameworks to be finalised in areas such as domestic governance, internal markets, trade and international obligations and, where appropriate, future funding.

55. For the Scottish Government, however, the matter of what the UK internal market is or might be is inextricably linked to the issue of policy divergence and—

” whether devolved settlements are the basis on which any new understanding of an internal market will be built or whether a new understanding of the internal market will change what devolution is and how it operates...My understanding is that the devolved settlements allow substantial, and sometimes complete, policy divergence on key issues and that an internal market would not overrule that.

Source: Finance and Constitution Committee 27 February 2019 [Draft], Michael Russell, contrib. 8²³

56. The Committee heard that so far officials had considered some areas in more detail than others but discussions had focussed on the extent to which it was necessary or desirable to have consistent standards or approaches compared with those where there might be legitimate scope for divergence (and if so, why). Discussions are long and complicated and "a lot remains in dispute". ²⁴
57. The Cabinet Secretary clarified that discussions at official level are without prejudice to the final outcome and that "I am not saying that we accept the UK internal market in any of those areas". ²⁵
58. In relation to the impact of different approaches to agriculture across the UK, Scottish Government officials confirmed that whilst all Governments accepted that each nation should have its own approach to agricultural support—

” there is an anxiety about how those approaches rub up against each other, the impact on producers in different parts of the United Kingdom and whether there could be claims of unfair competition or subsidy regimes disadvantaging others.

Those are very complicated arrangements, but we have sought not to leap to the conclusion that uniformity should therefore be imposed across the UK, because that would be a significant backwards step from the current arrangements under the EU.

Source: Finance and Constitution Committee 27 February 2019 [Draft], Ian Davidson (Scottish Government), contrib. 11²⁴

59. The Cabinet Secretary stated that, in the event of the UK leaving the EU without a deal in place, it was unclear what the UK internal market would be. Whilst an extensive programme of legislative fixes was underway in the event of a no deal, those arrangements do not establish longer term foundations for common frameworks. In relation to areas not covered by legislation then it was expected that a wide range of pragmatic and practical arrangements will be required. The Scottish Government was clear, however, that these arrangements must proceed on the basis of agreement and "must not jeopardise the future frameworks that will be required once the relationship with the EU is clearer." ²⁶

60. At EU level the internal market is defined through Treaties and legislation. In the absence of such provision, however, it is not clear what the UK equivalent is. We therefore question how common frameworks can be developed to "enable the functioning of the UK internal market" when that UK internal market is not defined as such in law.

61. For both the UK and Scottish Governments, the key focus of common frameworks appears to be managing policy divergence across the UK. We therefore consider that resolving by negotiation the extent to which policy divergence can exist within common frameworks is critical to securing longer term agreement to common frameworks.
62. In our Interim report on the EUWB LCM, we stated our belief that the application of general principles of EU law to common frameworks is a critically important area of work. As we heard, the UK and Devolved Governments already have experience of managing policy divergence within the requirements of the EU internal market underpinned by principles such as subsidiarity and proportionality. These principles enable flexibility for tailoring policies which common frameworks also seek to achieve. We therefore seek clarification from the Scottish Government as to whether it has considered (or will consider) underpinning the development of common frameworks with such principles.
63. Given the UK and Scottish Governments are each developing environmental principles to underpin their policy development we seek information from the Scottish Government on whether it also proposes to enshrine other EU principles into Scottish law.
64. We welcome that common frameworks have, to date, proceeded on the basis of agreement between the Governments and that common frameworks will respect the devolution settlement. As we stated in our interim report on the EUWB LCM, "the process for agreeing common frameworks and the actual content must be arrived at through agreement and not imposed".
65. We strongly agree that the ongoing work to define the UK internal market also respects the devolution settlement such that enabling the functioning of the UK internal market must not and will not be at the cost of adjusting the devolved competencies without the consent of the Scottish Government and Scottish Parliament.
66. Some common frameworks may be developed on an interim basis depending upon the outcome of negotiations with the EU, whilst in the event of a 'no deal' scenario "a wide range of pragmatic and practical arrangements" will be required in non-legislative areas. We seek confirmation from the Scottish Government that these interim frameworks and 'practical arrangements' will be made available to the Scottish Parliament for scrutiny. We will look to work with the Scottish Government to develop proportionate and timeous scrutiny procedures.

Trade deals, International Treaties and Obligations

67. The JMC Communique also sets out that Common Frameworks will be established where they are necessary in order to:
 - ensure compliance with international obligations; and

- ensure the UK can negotiate, enter into and implement new trade agreements and international treaties.
68. As currently constituted in the EU Treaties, membership of the Single Market also means membership of the Customs Union. The Customs Union applies a common external tariff to all goods entering from outwith the EU. As of October 2017 the EU is party to 36 regional or bilateral Free Trade Agreements, covering more than 60 countries.²⁷
 69. Witnesses questioned whether common frameworks might be a consequence of trade agreements (as opposed to ensuring the UK can negotiate and implement new trade agreements). As SE Link highlighted, negotiations around new trade and other international agreements will also then have implications for common framework discussions in relation to environmental standards.²⁸
 70. The Scottish Centre for European Relations (SCER) suggested that, should the UK remain highly aligned with large parts of EU policy, then the objective of common frameworks would shift from managing divergence with EU law to ensuring the ongoing implementation of and compliance with relevant aspects of EU law.²⁹ The Convention of Scottish Local Authorities (COSLA) also noted that the UK's flexibility in terms of other international agreements may be constrained by the degree of alignment with EU policies that results from the final deal with the EU.³⁰
 71. The Law Society of Scotland observed that formal structures rather than ad hoc arrangements will be advisable to facilitate trade related collaboration across the UK and to tie in with common frameworks. In the Law Society's view, one option would be to make any frameworks (or relevant sections thereof) provisional on devolved consent being provided in a similar way to the EU approach to ratifying agreements.³¹
 72. The Cabinet Secretary observed that, although there is a subject connection between common frameworks and trade, "there is no direct link between the frameworks that we are talking about today and the wider issue of how trade deals are arrived at, although the subject issue is extremely important."³²
 73. Common frameworks may also be shaped by compliance with international obligations. Where a consistent UK approach is necessary to uphold international agreements and obligations, the Scotland Act 1998 already provides scope to UK ministers to ensure compliance, for example, by enabling the Secretary of State to prohibit the Presiding Officer from submitting Bills for Royal Assent which contain provisions which are incompatible with international obligations. Section 58 of the 1998 Act also provides the Secretary of State with a power to prevent or require action to secure compliance with international obligations. This includes requiring the Scottish Government to introduce primary legislation. To date these powers have never been used.
 74. The Brexit and Environment academics point out there is no "automatic legal restriction" which would prevent the Scottish Parliament from seeking to take action (such as through legislation) inconsistent with an agreed framework. There are, however, political interventions (as set out above) which can be made to ensure compliance. Whilst this structure may have been adequate under the jurisdiction of

the EU, they contend that “it seems inadequate for ensuring implementation of the UK’s own international agreements.”³³

75. They propose two potential solutions to this:

- firstly the extension of the powers of UK authorities “to ensure more effective control of affected matters (reserved or devolved)” (essentially overriding the devolution settlement); or
- Development of “a more sophisticated arrangement for engaging the devolved administrations in the making and implementation of international agreements, with a mechanism for resolving disputes.”¹⁹

76. At the JMC (Plenary) meeting on 15 March 2018, Ministers agreed that officials should review and report to Ministers on the existing intergovernmental structures, including the Memorandum of Understanding, to ensure they are fit for purpose in the event of the UK’s exit from the EU. This review is currently underway with the First Minister’s letter following the JMC(P) meeting of 19 December 2018 noting that officials have confirmed they would present finalised proposals at a future Plenary meeting.³⁴

77. In its second report on Common Frameworks the UK Government highlights a number of areas where the development of common frameworks will be consistent with the wider framework for Intergovernmental Relations including in relation to governance and guidance on best working practice in policy teams.³ In a letter to the Committee the UK Government also confirmed it proposes a new intergovernmental Ministerial Forum to provide a formal mechanism for Devolved Government Ministers to discuss and provide input to future trade negotiation.³⁵

78. Speaking to the Committee, the Cabinet Secretary considered that there had been no significant progress with the IGR review and that intergovernmental relations require “urgent attention” if issues such as poor communication and lack of transparency are to be addressed so that disputes can be avoided.

79. As he explained it, whilst progress might be made with common frameworks at official level, ultimately they will require to be agreed by politicians where there needs to be a satisfactory way to resolve issues at the political level. At present however the current dispute resolution process means that—

” In a court in which the UK Government is the judge and jury, dispute resolution runs into the sand.

Source: Finance and Constitution Committee 27 February 2019 [Draft], Michael Russell, contrib. 22³⁶

80. This highlighted the question of how any disputes arising with common frameworks within JMC would be resolved. The Withdrawal Agreement sets out dispute settlement mechanisms regarding the interpretation and application of the Withdrawal Agreement after the end of the transition period. This includes an early role for JMC, and if not resolved it includes a mechanism to establish an independent arbitration panel to rule on the dispute. In the event a dispute concerns the interpretation of EU law, then the European Court of Justice also has a role.

81. Some, such as those we met in Brussels, however highlighted that enforcement delivered via judicial remedies such as the courts could prove costly and time consuming with the risk that it might destabilise the agreement making process. It was suggested that in terms of trade, Countries have stronger bargaining power if they are able to band together with substate governments in presenting their views. A number of the member states we met with (such as Germany and Switzerland) actively sought to secure agreement across tiers of government despite, in some cases, having a constitutional court available to arbitrate on disputes.
 82. Professor Keating noted that the role of the courts in respect of enforcement of legislative frameworks is likely to become more complicated and that an arbitration procedure may be necessary in the case of non-legislative frameworks to prevent any Government interpreting them at will. He notes the difficulties encountered by other countries with framework laws, pointing out that Germany abandoned them after the last federal reform whilst they “have been subject to constant litigation” in Spain and Italy.³⁷
 83. The potential pitfalls of seeking to impose agreements based on 'exclusive legislative jurisdiction' in increasingly complex policy areas was highlighted to us in the comparative research we commissioned on Canada. It stated that this approach can create a litigious policy environment that breeds "political posturing and thus undermines collaborative policy formulation and implementation."³⁸
 84. In evidence to the Convener's Group, the First Minister explained that much of the agreement on common frameworks, will come down to "political will, attitude and approach as much as, if not more than, it rests on how the policies and memorandums are drafted....we all need to play our part in that."³⁹
85. In our EUWB LCM report, we state that consideration needs to be given to the interaction between common frameworks and the EUWA, Trade Bill, International treaties and agreements. To date we have not heard any evidence that these different forms of agreement making are being considered in any 'joined up' manner and there is a risk that an agreement in one sphere could be inconsistent or conflict with that in another.
 86. We therefore seek confirmation from the UK and Scottish Governments of how they plan to ensure consistency across common frameworks and agreements in other spheres. Where non-legislative common frameworks require revision to reflect subsequent agreements such as trade agreements or international treaties, we seek clarification of the process for making such revisions including an opportunity for Parliamentary scrutiny and agreement.
 87. We note the on-going review of IGR initiated by the JMC, however, progress with this review appears to have stalled. One of the principles for common frameworks is to, by agreement, ensure compliance with international obligations whilst respecting the devolution settlement. We agree with witnesses that it is vital therefore that there is a robust and trusted process of intergovernmental relations, especially in relation to dispute resolution if this principle is to be delivered upon. We recommend that the review of IGR is taken forward urgently and request clarification from the UK Government of the timetable for completing this review.

88. A clear and trusted mechanism to resolve disagreements between Governments is essential if common frameworks are to be agreed rather than imposed and any disputes with subsequent implementation addressed quickly and effectively. We note that one of five IGR review workstreams includes "how we seek to avoid and resolve disagreements in the future". Given this work is to inform common frameworks, we request further information from the Scottish Government on the progress of this work stream and how the timescales for its completion will enable it to inform work on dispute resolution and enforcement mechanisms for common frameworks.

Policy areas subject to Common Frameworks

89. As is highlighted by the UK Government analysis of areas that might be subject to common frameworks, there are a range of legislative and non-legislative approaches being considered. More recently, a hybrid approach has been emerging in some of the 24 areas where legislative approaches had previously been considered. The UK Government cited the Agriculture Bill where the UK and Welsh Governments consider that agricultural support can be "suitably managed through non-legislative, intergovernmental co-ordination."
90. In its discussion paper on *Scotland's Role in the Development of Future UK Trade Arrangements*, the Scottish Government state that the UK's analysis of the 111 policy areas that may be subject to common frameworks—
- ” was compiled without consulting the Scottish Government and does not reflect an agreed position.⁴⁰
91. A number of witnesses highlighted concerns about the transparency of and approach to identifying those 111 areas. The Law Society of Scotland explained that—
- ” The make-up of that list of 111 powers gave me the impression that the Cabinet Office had sent out a general call to Whitehall, saying, “Tell us the intersection areas between the EU and devolved matters,” and it had got back various returns. Some of the returns were duplications and the clustering of them might have come from different departments. We are dealing with a thought process at the very beginning of the whole idea of withdrawal, before the full consequences of that had been identified, even after the referendum.
- Source: Finance and Constitution Committee 24 October 2018 [Draft], Michael Clancy (Law Society of Scotland), contrib. 6⁴¹
92. SE link highlighted that greater understanding of the how the 111 areas were arrived at might help resolve some of the impasses and clarify areas of concern.⁴²
93. RSPB Scotland were also concerned that “decisions seem to have been made based on a narrow consideration of internal market and trade issues, without considering the wider importance of transboundary cooperation or coordination to solve shared environmental challenges.” They expressed particular concern about the implications of assigning policy as requiring no further action or non-legislative frameworks only for example in the area of “nature policy.” Furthermore, they noted the omission of certain policy areas from the analysis, with no explanation provided of the reasons for this, such as those relating to non-native species.⁴³
94. Some highlighted concerns about how this might impact on a wider understanding of frameworks. Professor Keating commented that—

” We have the existing mechanisms for non-EU matters; we have frameworks, some of which will be legislative and some of which will be non-legislative; we have the individual sectoral bills such as the Agriculture Bill, and an environment bill is coming up; we have matters to do with negotiation of international agreements, where the discussions have hardly started; and then we have various ad hoc measures. The whole thing is so complicated that it is difficult to see how anybody could really understand it.

Source: Finance and Constitution Committee 24 October 2018 [Draft], Professor Michael Keating (University of Aberdeen), contrib. 4⁴⁴

95. In its first report on implementation of Common Frameworks, the UK Government explain that progress is regularly reviewed by the JMC but that—

” “at official level a central co-ordinating function has been formalised to complement the daily working level engagement that takes place between the administrations, with senior UK Government and devolved administration officials meeting through a Frameworks Project Board. 4⁵

96. In its second report on Common Frameworks, the UK Government explained that detailed multilateral engagement has continued to take place at official level in relation to the 24 priority areas. This includes a number of standalone sessions on issues such as Animal Health and Welfare, Public Procurement and Chemicals and Pesticides. In addition—

” UK Government officials are working with devolved administration officials to revise this analysis and take into account progress on framework areas since March 2018. We anticipate publishing a further iteration of this analysis within the next reporting period, which will form the basis of our next phase of policy development and wider engagement. 3

97. We note the ongoing work to refine the policy areas that will be subject to common frameworks but, to date, no information has been made available about why certain areas have been identified over others as being subject to common frameworks. This has meant that Parliament and others have had no opportunity to understand how and why these areas are regarded as requiring common frameworks. We recommend that the further iteration of policy areas to be consulted on clearly identifies and explains the reasons for any changes.

98. We recognise that both legislative and non-legislative approaches may be necessary to securing agreement in different policy areas. However, given the number of frameworks that could arise over time (and the time frames over which they could endure) greater transparency over the reasons why a particular approach has been adopted for each common framework would support more effective scrutiny. We recommend that the Scottish and UK Governments include this information as part of each agreed framework.

99. We welcome confirmation that officials are working together on common frameworks but note that the number and range of potential types of frameworks being developed by different policy areas adds complexity. Given this approach

we recommend that each agreed common framework is laid in every relevant Parliament to better facilitate transparency.

Content of Common Frameworks

100. As the Cabinet Secretary explained to us in November 2018—

” the real problem with frameworks is that the more we have to write them down, the less easy it is to get agreement. If frameworks operate on the basis of mutual co-operation and established relationships, they tend to work quite well. However, when we try to be very specific, in relation to the Agriculture Bill, for example, we have a problem because there will clearly be difficulties in finding agreement.

Source: Finance and Constitution Committee 21 November 2018 [Draft], Michael Russell, contrib. 78⁴⁶

101. In evidence to the Committee on 27 February 2019, the Cabinet Secretary set out the JMC's five stage process for developing common frameworks and the progress made with each stage:

- Phase one was the principles and proof of concept (this phase has been completed);
- Phase two was the detail and development of those details (which has largely happened);
- Phase three is the consultation with stakeholders such as other elected representatives, third sector and business organisations among others;
- Phase four is final proposals;
- Phase five will be post-implementation. ⁴⁷

102. Whilst legislative common frameworks have existing requirements for impact assessments, funding and expenditure, and consultation and engagement, it is not yet clear what level of detail will be set out in non-legislative frameworks. SE Link called for their development to be based on robust evidence and data including impact assessments and scenario development adapted for relevant policy areas. ⁴⁸

103. A concern we heard repeated by a number of witnesses, including COSLA, is that neither the JMC Communiqué of 16 October 2017 nor successive documents on common frameworks make very clear what a common framework is. As COSLA highlight, a reading of the various lists identified by civil servants shows that such frameworks are a combination of legal, political, organisational and aspirational issues. COSLA observe that stability of such mix of issues and purposes has not yet met the test of time and may well be contested when such frameworks are in operation. ⁴⁹

104. Others such as Iain Wright also commented on how the content of common frameworks can also build trust and understanding—

” It is very important to define the scope of what is being discussed and what can be discussed. When you look at a European directive, for example, it always starts off with something like, “This is based on the Treaty of the Functioning of the European Union, article whatever.” That comes up front. It says, “Here is the authority that we have for doing this.” The overarching agreement or framework, whatever structure it has, should have something that defines the scope very clearly so that everybody understands that some things will be ultra vires and other things will be part of what has already been agreed.

Source: Finance and Constitution Committee 24 October 2018, Iain Wright, contrib. 54⁵⁰

105. A risk of not including sufficient detail in the agreed common framework is that whilst it may initially lead to intergovernmental agreement, in the longer term there may be greater risk of disputes as they require to be interpreted by governments, agencies and others across the UK in order to become operational.
106. In its second quarterly report on Common Frameworks, the UK Government confirmed that UK policy teams are developing "outline frameworks" in the 24 priority areas where frameworks are likely to require legislative elements (in whole or in part). They set out the range of issues being considered as—
- ” the scope of the frameworks and where, if any, legislation may be required; decision making processes and the potential use of third parties; mechanisms for monitoring , reviewing and amending frameworks; their roles and responsibilities of each administration; and the detail of future governance structures, including arrangements for resolving disputes and information sharing.⁵¹
107. Scottish Government officials confirmed that each of the 24 areas had been subject to one stand-alone discussion session, with seven areas benefiting from approximately 6 such sessions. This has meant that in those seven areas, an outline template agreement has been populated covering a range of governance areas.

108. There is a balance to be struck between providing sufficient information to give effect to agreed frameworks without being overly detailed so as to risk their agreement by UK and Devolved Governments. We consider that the final agreed frameworks require to have sufficient information so as to ensure that those required to implement them can clearly understand their purpose and the outcomes they are designed to achieve.
109. We therefore recommend that frameworks (especially non-legislative frameworks) should include the following, most of which the UK Government has confirmed is currently being considered:
- their scope and the reasons for the framework approach (legislative or non-legislative) and the extent of policy divergence provided for;
 - decision making processes and the potential use of third parties;

- mechanisms for monitoring, reviewing and amending frameworks including an opportunity for Parliamentary scrutiny and agreement;
- the roles and responsibilities of each administration; and
- the detail of future governance structures, including arrangements for resolving disputes and information sharing.

Engagement and scrutiny of Common Frameworks

110. The UK Government's memorandum on the EUWA states that the JMC (EN) will retain oversight of the frameworks programme. The JMC (P) is the principal mechanism of delivering IGR in the UK. In response to concerns about a lack of transparency of the discussions at its meetings, the Scottish Parliament and Scottish Government concluded [an agreement](#) in 2016 to improve the flow of information from executive to legislature about intergovernmental negotiations.
111. In our evidence taking on the EUWB LCM, we heard from a number of witnesses about the need for effective parliamentary scrutiny, greater transparency and meaningful consultation with stakeholders and the wider public in developing and agreeing common frameworks.
112. The EUWA contains a duty on UK Ministers to regularly report to the UK Parliament on progress on implementing common frameworks and that these reports will be sent to the devolved administrations to share with the devolved legislatures. We have received two such reports to date covering the periods from 25 June to 25 September 2018 and 26 September to 25 December 2018.

The role of Parliaments and stakeholders

113. There are a range of reasons why Parliamentary scrutiny is considered to be essential to developing effective common frameworks, most of which were reiterated by those attending our conference on Common Frameworks:
- it enables Parliament to fulfil their scrutiny role in holding government to account for their actions;
 - it enables Parliament to judge between potentially competing interpretations of intergovernmental discussions;
 - Parliament can provide a mechanism by which wider sectoral and stakeholder engagement can be delivered;
 - Parliament can ensure that in making final decisions, the different vested interests are properly balanced.
114. In our report on the EUWB LCM, we stated that the Committee strongly believes that the process for agreeing common frameworks is not solely a matter for governments but must be transparent and inclusive. The Committee therefore recommended that—
- The Scottish Parliament must have the opportunity to consider the approach to common frameworks currently being negotiated at governmental level prior to being asked to give consent to the Bill;
 - The Bill should be amended to include the approach to agreeing common UK frameworks, including the need for parliamentary consent and consultation with stakeholders;

- Where non-statutory arrangements are appropriate, such as Memorandums of Understanding and Concordats between governments, there must be opportunities for parliamentary oversight;
 - Common frameworks, if binding, must apply equally to both UK and devolved governments;
 - Clarity is required around which frameworks will be bilateral and which are multilateral and if the latter which are UK wide and which are GB wide.⁸
115. The Scottish Government committed to appropriate oversight and consultation of common frameworks in its response to the EUWB LCM interim report. It highlighted the importance of striking the right balance between the room needed for intergovernmental negotiations and oversight and scrutiny taking place at the right time. The Scottish Government also confirmed that it—
- ” recognises the particular issues of Parliamentary oversight of nonlegislative arrangements, such as protocols and Memorandums of Understanding. The Government believes that the Parliament should have the opportunity to scrutinise and agree such non-statutory arrangements for common frameworks, as well as legislative arrangements, in line with the provisions set out in the Inter-Governmental Relations Written Agreement between the Scottish Parliament and Scottish Government. The Government will consider, with the Parliament, appropriate procedures for such consideration.⁵²
116. In its discussion paper entitled *Scotland's Role in the Development of Future UK Trade Arrangements*, the Scottish Government goes further and states "the Scottish Government and Scottish Parliament must have a guaranteed role in all stages of the formulation, negotiation, agreement and implementation of future trade deals and future trade policy."⁴⁰
117. Responding to the House of Commons Public Administration and Constitutional Affairs Committee report on *Devolution and Exiting the EU: reconciling differences and building strong relationships*, the UK Government stated that "it welcomes the scrutiny of the UK Parliament and the devolved legislatures in relation to the ongoing work on common frameworks."⁶
118. However, as we have learned, common framework development and agreement continues apace, in private. In a letter accompanying the first quarterly report the Scottish Government confirmed that—
- ” on the basis of the significant joint progress on future frameworks, and the continued collaboration to ensure the statute book is ready for exit day, the UK Government has concluded that it does not need to bring forward any section 12 regulations at this juncture. On this basis, the Scottish and Welsh Governments continue to commit to not diverging in ways that would cut across future frameworks, where it has been agreed they are necessary or where discussion continue.⁵³
119. In recognition of the shared interests of Parliament in scrutinising the process of the UK's withdrawal from the European Union, the Interparliamentary Forum on Brexit

first met in October 2017. It consists of the Chairs and Conveners of Committees scrutinising Brexit-related issues in the Scottish Parliament, National Assembly for Wales, House of Commons and House of Lords. Following its meeting on 25 October 2018, the Forum wrote to the UK Government highlighting the recommendations of Parliamentary Committees on improving IGR noting that—"It is important that there should be clearly-defined structures and processes for taking decisions on common frameworks in the years to come. More effective intergovernmental and interparliamentary mechanisms are required to examine this and the wider implications of UK withdrawal from the EU for the devolution settlement and other issues of common concern." ⁵⁴

120. Responding on 17 January 2019, the Minister for the Cabinet Office, the Rt. Hon. David Lidington MP explained that two of five work streams being undertaken as part of the IGR review were on:

- The principles underpinning intergovernmental relations, including Parliamentary scrutiny and dialogue;
- The structures needed to assist domestic UK governance, for example the formal and informal forums and engagement needed to govern common frameworks. ⁵⁵

121. In its report on IGR, the Centre for Constitutional Change highlighted 3 key factors which can shape the ability to scrutinise IGR:

- timing and access to relevant information relating to intergovernmental co-operation and co-decision;
- tools of procedures available to legislatures to engage in scrutiny and influence outcomes;
- the transparency and publicity associated with both the intergovernmental and scrutiny processes. ⁵⁶

122. The Brexit and Environment academics recommend that, as a minimum, reporting and notice requirements be put in place to allow parliamentary scrutiny in all relevant legislatures (and jointly through interparliamentary cooperation where appropriate). They state that "a clear route should be identified...for the devolved parliaments to have timely input into the exercises at UK level of legislative powers in relation to common frameworks within normally devolved areas." In their view, "a simple yes/no vote at a late stage in the process...is far from adequate" as the option of withholding consent "may well be impractical" by then, "resulting in a legal vacuum." ¹⁹

123. They recognised that there was a balance to be struck between the ability to reach agreement which might involve some compromises decided behind closed doors and greater transparency to support Parliament and others to inform the negotiation process—

” If there were, at the very least, an announcement of what was going to be discussed, the possibility of discussing possible policy positions that were going to be embarked on and fuller reporting afterwards of what had happened, that might go some way to solving what has been identified as a big gap.

Source: Finance and Constitution Committee 24 October 2018 [Draft], Professor Colin Reid (University of Dundee), contrib. 37⁵⁷

124. The Law Society of Scotland also recognised that balance but highlighted that involving others in such deliberations enabled potential solutions to be identified—

” That is why I think that there is a role for parliamentarians. Accountability demands—and scrutiny requires—that parliamentarians play that role; if that does not happen, we might end up with common frameworks that do not function properly.⁵⁸

125. The need for greater transparency was also recognised by those who attended our conference on Common Frameworks, where they highlighted the risk that, especially for non-legislative frameworks, decision-making will further disappear behind informal intergovernmental structures, damaging political engagement.

126. SE Link called for “meaningful” parliamentary involvement from the relevant legislatures as well as the process for developing common frameworks including meaningful stakeholder engagement and input from across all UK countries. They commented that currently “Meetings within the existing structures are not transparent and as a result there were few opportunities for stakeholder engagement or buy in”.¹⁷ As SE Link and others highlighted the JMC(EN) principles do not mention stakeholder engagement or address issues of transparency and exclusivity.

127. Other benefits of meaningful engagement were raised with us in Brussels including delivering a greater sense of ownership of the final agreement by all those who were party to its negotiation. This, we heard, provided greater transparency over the progress and nature of negotiations but also of the compromises that might be necessary to deliver the agreement. As a result, the final agreement was well understood and those party to it were able to explain why particular approaches had been adopted.

128. As highlighted to us by the Law Society of Scotland, if common frameworks are to mean anything and have permanence—

” they have to be rooted in general acceptance, not some kind of formalistic political acceptance that breaks down over time as political priorities change. I think, therefore, that there is a role for parliamentarians to play here, and I think that Administrations and Governments should not exclusively be the authors of these arrangements.

Source: Finance and Constitution Committee 24 October 2018 [Draft], Michael Clancy, contrib. 31⁵⁹

129. In its second quarterly report, the UK Government explained that UK Government officials were working with officials in devolved governments to further refine the analysis of policy areas that might be subject to frameworks with a further iteration to be published and then consulted on soon.³

130. The Cabinet Secretary reiterated the importance of transparency and engagement with bodies and organisations as key to common framework operation along with a "clear set of scrutiny arrangements". In that regard he highlighted the current IGR agreements between the Scottish Parliament and Scottish Government as supporting scrutiny of Scottish Ministers. However in order to make sure this happen the Cabinet Secretary stressed that it needs to be part of the machinery of government with democratic oversight part of any new democratic structures.⁶⁰
131. The [Inter-governmental Relations Written Agreement between the Scottish Parliament and Scottish Government](#) sets out the range and type of information the Scottish Government will provide the Scottish Parliament on its participation in formal, ministerial level inter-governmental meetings, concordats, agreements and memorandums of understanding. This includes providing "the relevant committee of the Scottish Parliament the text of any multilateral or bilateral intergovernmental agreements, memorandums of understanding or other resolutions within the scope of this Agreement".
132. When questioned whether Parliament would have a role in considering and agreeing frameworks, especially where they seek to constrain devolved powers, the Cabinet Secretary stated that—

” I think that I made it clear at the beginning—I say this without prejudice to such decisions—that I would not sign up to a decision without coming to Parliament for that discussion. In fact, I am highly unlikely to sign up to the decisions, anyway. This is about what we will have to do non-legislatively and how we will take forward such decisions. However, it is absolutely essential that that process involves the committees, among others.

Source: Finance and Constitution Committee 27 February 2019 [Draft], Michael Russell, contrib. 40⁶¹

133. Scottish Government officials clarified that any constraints on the exercise of competencies would be entirely voluntary and associated with the delivery of common frameworks. Non-legislative frameworks would be developed by agreement between the Governments based on trust and "mutuality of interest"—

” Parliament would be free to choose to legislate in any of those areas, of course, although there would obviously be reactions from others to that.

Source: Finance and Constitution Committee 27 February 2019 [Draft], Ian Davidson, contrib. 41⁶²

134. In terms of stakeholder engagement going forward, the Cabinet Secretary confirmed that engagement under phase three had yet to happen and that Brexit may mean it is less of a priority. Scottish Government officials explained that at the end of phase two Ministers would be invited to note the progress made and to sign off the next phase which is stakeholder engagement. They also stated it is important that this phase has a "controlled process of stakeholder engagement" and a plan for multilateral engagement would be tested in two framework areas first (yet to be decided). That engagement would involve Scottish Parliament committees. The Scottish Government has also offered to work with the Finance and Constitution Committee on a shared consultation approach.
135. Scottish Government officials also explained that at phase three—

” the intention at this stage is to use the outline framework-template agreements that have been developed, which identify the scope of where we think that frameworks might be required, the extent to which co-operation would be necessary or desirable, and the outline of the initial thinking to date on the associated governance arrangements. At this stage, the templates are no more than a playing out of the thinking that has been done between the Governments.

Source: Finance and Constitution Committee 27 February 2019 [Draft], Ian Davidson, contrib. 41⁶²

136. Despite commitments from the UK and Scottish Governments that there is a role for Parliament to scrutinise common frameworks this has not yet been made manifest in the approach adopted by the JMC. Whilst we welcome the phase 3 proposals for consultation on some outline frameworks as well as the next iteration of policy areas, this will not extend to seeking views on future working arrangements between governments currently being considered. We also seek clarification from the Scottish Government of what the proposal for a "controlled process of stakeholder engagement" would entail and the reasons for not consulting more widely during this phase.
137. We recommend that in order for Parliament and stakeholders to meaningfully contribute towards framework development, the future approaches being considered by the UK and Devolved Governments are included in the consultation. Such a collaborative approach will help build confidence that future common frameworks will endure over governments and will work on the ground.
138. Legislative common frameworks will be subject to Parliamentary scrutiny through the usual legislative procedure which provides for greater transparency and stakeholder engagement. Non-legislative approaches, however, do not provide an automatic right for Parliamentary consideration and amendment either during development or once agreed which could mean Parliament being presented with the equivalent of a 'fait accompli' with little scope to influence or test the compromises that have been made in order to secure agreement.
139. We welcome the Cabinet Secretary's recognition that a Parliamentary role in non-legislative common frameworks is "absolutely essential" and the Scottish Government's commitment that Parliament should have an opportunity to consider and agree legislative and non-legislative arrangements for common frameworks, in line with the current IGR agreement.
140. This matters since the Scottish Government has committed "not to create divergent policy" in some areas where it would cut across future frameworks. We welcome the Scottish Government's commitment that non-legislative frameworks will not limit Parliament's ability to legislate in devolved areas. The practical impact of this commitment however is that the Scottish Government has committed not to introduce or to support legislation both now, and in the future, if they are to maintain agreed frameworks. The Committee will consider further whether this could imply an inappropriate limit on Parliament and we will seek views of other Committees (both in the Scottish Parliament, the UK and other devolved Parliaments).

141. We recommend that Parliament should have a formal role in relation to the process for developing, agreeing and implementing non-legislative common frameworks. We welcome the Scottish Government's commitment, in its response to the EUWB LCM to "consider, with the Parliament, appropriate procedures for such consideration" and we therefore ask the Brexit legislation working groupⁱⁱⁱ to take this matter forward as a matter of priority.

ⁱⁱⁱ This is a working group of Scottish Parliament and Scottish Government officials.

Governance Arrangements


142. The JMC communique which defined common frameworks identified their role as "enabling the management of common resources" and that they will set out how any UK or GB approach will be "operated and governed" as well as being important to "administer and provide access to justice in cases with a cross-border element".
143. Currently the UK's compliance with EU requirements is overseen by the European Commission and EU agencies which oversees the implementation of policy in the member states and makes sure that EU policies are enforced. It also monitors government, businesses and individuals to ensure they are following EU law and can take action if they do not. Once the UK leaves the EU however, new governance structures may be required and these may be established through both legislative and non-legislative common frameworks.
144. As was emphasised to us in our visit to Brussels, a well understood and clear monitoring and enforcement regime is important to ensure that the rights of citizens and others such as businesses are properly safeguarded by enabling them to make complaints where they consider an agreement hasn't been adhered to. The value of developing a collaborative, proportionate and robust approach to monitoring as well as building on existing trusted agencies was stressed as providing confidence in their effective operation as well as enabling any implementation issues to be quickly remedied.
145. The lack of any obvious institutional body to oversee the operation of common frameworks was highlighted by a number of respondents and by those at our conference.

Monitoring

146. The importance of establishing oversight structures post-Brexit has been recognised in the Withdrawal Agreement and the accompanying political declaration. The Political Declaration recognises that in any future relationship between the UK and the EU, governance structures will be important and that the future relationship should be based on an "overarching institutional framework covering chapters and linked agreements relating to specific areas of cooperation". At the same time, it recognises that the precise legal form of the future relationship will be determined as part of the formal negotiations, and that there may be "specific governance arrangements", particularly in respect of agreements that sit outside the overarching institutional framework. Whatever the terms of the UK's exit from the EU, governance arrangements may require to be established through common frameworks in order to ensure that the UK can negotiate, enter into and implement new trade arrangements and international treaties.
147. Some governance structures are proposed within the Withdrawal Agreement itself including a Joint Committee responsible for the implementation and application of the Agreement and composed of representatives of the EU and of the UK. Also proposed is an Independent Monitoring Authority which would be granted "powers equivalent to those of the European Commission" to receive and investigate complaints from EU citizens and their family members, to conduct inquiries, and to bring legal actions before UK courts concerning alleged breaches.

148. These are UK wide bodies rather than separate agencies in each devolved jurisdiction (some of which already exist and fulfil a monitoring role in relation to current EU obligations). We heard a range of views as to whether a single UK wide agency should oversee the effective operation of all common frameworks or whether different agencies should have oversight of common frameworks relating to particular policy areas (such as in the area of environmental oversight). RSPB Scotland highlighted the need for “some form of joint mechanism across the four nations to ensure the monitoring, implementation and enforcement of common frameworks.”⁴³ Others such as COSLA considered that, given the asymmetric nature of devolution, any such body should be 'owned' by all governments (including local government) and be truly independent of government.³⁰
149. The majority of the 24 policy areas relate to environmental standards, agriculture and food production and at present, enforcement bodies in respect of environmental standards reflects the devolution settlements with separate agencies having responsibility for environmental compliance in the four constituent parts of the UK. However, in respect of food standards, a single regulatory body has responsibility for England, Wales and Northern Ireland with a separate Scottish agency responsible for maintaining food standards in Scotland. These examples highlight the complexity of current arrangements and suggest that it is unlikely that a “one size fits all” approach would be acceptable post-Brexit.
150. SE Link, the RSE and others recommended that an independent secretariat be created to manage both the development and oversight of common frameworks. Funded by all Governments on a proportionate basis, the RSE envisage this body would have a range of roles including oversight and dispute resolution as well as research capacity.⁶³
151. The Brexit and Environment academics highlight that whatever frameworks are established, the consequences of one administration not taking the action, or taking incompatible action demanded by an agreed framework has to be considered. They suggest that reporting requirements could assist in the monitoring of the implementation of frameworks or that a new body or bodies (either shared at the UK level or one for each jurisdiction) could be given a scrutiny role. Alternatively, this role could be conferred on existing bodies. Regardless of the option adopted, there would be resource implications, questions relating to expertise and capacity, as well as the need for such structures to endure (and be protected) over time and across successive UK and Devolved Governments.¹⁹
152. SE LINK suggest that retaining membership of EU agencies such as the European Environment Agency (which includes non-member states) would be invaluable in providing access to best practice and data sharing and comparison.¹⁷
153. In the Trade Bill, power is provided to establish a data sharing gateway between HMRC and other public and private bodies, including the Department of International Trade (DIT) so that those bodies can discharge their public functions and access record-level data for research, monitoring and evaluation.
154. COSLA's position was that, as the return of EU legislation concerns local government, the recreation of regulatory and enforcement bodies, along with reporting and future commitments "necessarily needs the contribution and ownership of Scottish local government." It welcomes the UK Government's

intention to replicate the kind of engagement local government has on EU policy through a “lighter touch” arrangement based on the Committee of the Regions model. This, COSLA recommends, should be embedded into intergovernmental arrangements at ministerial level and this approach should extend to other UK-wide oversight bodies the UK Government is considering establishing.³⁰

155. The need for monitoring and enforcement agencies may be driven by other agreements such as future trade relations (one of the purposes for creating common frameworks). In its report on Supervision after Brexit, the Institute for Government (IfG) highlights the roles it considers might be necessary in order to ensure that the UK and the EU can maintain a long term trading relationship. Using the UK Government's July 2018 white paper on the UK's future relationship with the EU, the IfG identifies options for this including an independent (from Government(s)) supervisory authority or network of authorities.⁶⁴
156. In its second quarterly report on Common Frameworks, the UK Government explained the approach being considered to governance “often building on existing arrangements for co-operation”. Discussions have identified—
 the need for governance arrangements to both guide decision-making and enable co-operation in the future, consistent with the wider framework for Inter-governmental Relations, which is currently under review. The scope and scale of these arrangements vary in each area, depending upon the technical details and complexity involved. Discussions have considered what arrangements are already in place, such as concordats, and the extent to which these could provide a basis for future governance arrangements.³
157. The UK Government confirms that themes that consistently feature include: the needs for robust arrangements for information sharing, decision-making, dispute resolution, and the role of evidence, including in some cases, expert opinion/ technical advice. There is a recognition that detailed technical arrangements, set out in legislation or administrative agreements probably will need to be supplemented by new arrangements to enable policy co-operation and political engagement when EU arrangements no longer apply.³
158. Responding to the proposal by the RSE for an independent secretariat to develop common frameworks, the Cabinet Secretary explained that work on common frameworks was being taken forward by officials as tasked by the JMC albeit since then politicians hadn't made it a priority. Scottish Government officials also confirmed that in some policy areas outline templates had been drawn up covering all the governance issues that have been identified.

Environmental Oversight

159. Proposals for future governance arrangements are much more well developed in relation to oversight of environmental matters. As has already been set out in this report, the UK Government has published a draft Bill (which applies to England only in some areas and to the UK for reserved matters) proposing the creation of an OEP. The OEP would provide independent and impartial scrutiny, assessments and advice on environmental legislation. It will also offer a system of accountability, taking enforcement action where needed to make sure that government is delivering on its obligations under environmental law.¹³

160. The Scottish Government committed in its Programme for Government 2018-19 to consult on “future environmental governance arrangements in Scotland as well as [on] how EU principles will continue to guide our approach to environmental policy”. The Scottish Government then commissioned a [report by the Roundtable on Environment and Climate Change](#) about any environmental governance gaps resulting from the loss of EU oversight and what options there are for providing appropriate levels of scrutiny, reporting and accountability in Scotland in future.
161. Regarding the potential for setting up a new Scottish body versus a single new UK body to deliver environmental governance functions, the Roundtable report noted advantages and disadvantages of each option. Given many environmental issues cut across national boundaries within the UK, and also for reasons of compliance with international standards and effectiveness and efficiency, there were thought to be advantages of a single UK body. On the other hand, a Scottish body with a thorough understanding of Scottish law, procedures and systems could be more focused on the issues that are most significant in a Scottish context, and Scotland was thought to be of a scale at which a separate body could be justifiable and effective. A Scottish body could also be part of a system of wider arrangements across the UK to allow collaboration, comparisons, efficient use of expertise and promotion of best practice.⁶⁵
162. In relation to proposals for a UK wide environmental body, COSLA argues that its structure should “clearly separate policy and guidance from enforcement,” with the two tasks of oversight and enforcement allocated to separate bodies. These bodies could then complement or take over some functions of existing joint agencies such as the Joint Nature Conservation Committee.³⁰
163. The Scottish Government is currently seeking views, by 11 May 2019, on environmental governance arrangements in Scotland in four areas (building on the Roundtable report) - monitoring, scrutiny, complaints and enforcement.
164. The Cabinet Secretary confirmed that it would be for the Cabinet Secretary for Environment, Climate Change and Land Reform to address issues of environmental governance arrangements but that—

” I am convinced that her objectives are the same as mine and are about maintaining the highest standards, ensuring that they are enforced and not allowing any drift or determined drive downwards.

Source: Finance and Constitution Committee 27 February 2019 [Draft], Michael Russell, contrib. 61⁶⁶

165. Whatever the final governance arrangements for each framework we consider that, in order to respect the devolution settlement, those who exercise oversight in relation to devolved areas should be accountable to the Scottish Parliament. This is irrespective of whether those functions are undertaken by new or existing Scottish or UK bodies. We therefore request confirmation from the UK and Scottish Governments that common frameworks will reflect this approach.
166. As we did in our report on the Trade Bill LCM, we recommend that any frameworks which propose UK wide oversight agencies should also recommend diverse representation to ensure that they are viewed, both domestically and

internationally, as credible and transparent. The Committee therefore recommends that the need for diverse representation, including as a minimum knowledge of the relevant Scottish, Welsh and Northern Ireland sectoral area, should be reflected in any appointment process.

167. Given any monitoring bodies will require to endure across successive governments we seek clarification from the Scottish Government that any new Scottish agencies or changes to existing agencies' functions will be set out in legislation. This approach will ensure that information about the funding, expertise and accountability mechanisms necessary to fulfil those monitoring duties is clearly set out and supports those functions to endure across successive governments.
168. Given the wide range and complexity of governance arrangements being proposed as well as the potential for existing arrangements to be supplemented by new arrangements, there is the potential for those individuals and organisations (subject to those arrangements) to be unclear as to how to raise concerns. We therefore seek confirmation from the Scottish Government on whether common frameworks will include information on the following—
- public reporting requirements;
 - Parliamentary accountability;
 - complaints processes.

Non-compliance with frameworks

169. A number of those we heard from explained that meaningful enforcement of common frameworks is important - as the RSPB put it “the effectiveness of common frameworks will only be as good as the enforcement mechanisms which support them.” SE Link agreed with the Brexit and Environment academics that a “watchdog body” is necessary to allow external stakeholders to raise concerns and complaints.¹⁷
170. The Brexit and Environment academics suggest a number of possible mechanisms for enforcement, including “mere publicity” or a form of intervention sparking negotiation or other dispute resolution mechanisms including arbitration or adjudication. In the event of a legislative framework, a judicial remedy might be available. However, they point to the reluctance of EU member states to invoke formal enforcement measures, “even where there is blatant non-compliance” meaning there may be a role for external stakeholders in invoking compliance mechanisms.¹⁹
171. The UK Government confirmed that discussion on the governance of common frameworks, for example, covering issues such as dispute resolution, have also informed and been informed by the on-going review of intergovernmental relations.

172. Parliamentary scrutiny and stakeholder involvement in the development and operation of common frameworks can also build trust and ensure that agreed frameworks are as robust as possible and should work as envisaged. As such we reiterate our recommendation that Parliament should have an opportunity "to scrutinise and agree non-statutory arrangements for common frameworks as well as legislative arrangements."
173. As we heard, there may be a role for external stakeholders in invoking compliance mechanisms when governments are less keen to act. We therefore seek information from the Scottish Government as to the extent to which it envisages that stakeholders and the public will be able to raise complaints or concerns in relation to potential non-compliance with or activities contrary to common frameworks.
174. We also seek clarification from the Scottish Government of the extent to which non-judicial remedies are being considered including arbitration or adjudication in relation to disputes arising from alleged non-compliance with frameworks.

Funding

175. As we recognised in our interim report on the EUWB LCM there are a range of options as to how the UK's net contribution to the EU will be distributed across the UK post-Brexit including how common framework commitments and obligations will be funded. The financial implications of common frameworks can be broadly broken down into three areas:
- The funding necessary to support the structures required to reach agreements in both legislative and non-legislative areas;
 - The funding required to deliver the outcomes of the agreed frameworks;
 - The extent to which existing funding arrangements under current EU frameworks will be replicated in the UK post-Brexit.
176. Reference has been made to the potential costs of creating or supporting the structures required to reach agreements in both legislative and non-legislative areas. The Brexit and Environment academics stated “If you are going to have any institutional structure that is meant to oversee compliance with common frameworks to provide the back-up to ensure that common frameworks are properly researched and properly backed up beforehand, that structure needs funding.”¹⁹
177. However, the UK Government's reports on Common Frameworks state that significant joint progress is being made by officials and a Framework Project Board has been established. This work is therefore taking place under existing structures, with the requisite funding presumably being found by Governments from within existing budgets.
178. In addition to intergovernmental structures, there will also be cost implications arising from the structures and bodies required to ensure compliance with the frameworks once agreed, for example through monitoring and enforcement regimes. The Brexit and Environment academics and SE Link agreed that “guaranteed funding at an appropriate level to support the work of any joint bodies or networks will be a further requisite for long-term effectiveness.”¹⁷
179. In addition to the funding needed to ensure compliance, there is also the question of funding provided to support the delivery of outcomes governed by common frameworks. The Law Society of Scotland notes that the funding of obligations and commitments arising from common frameworks would be subject to political agreement but recommends that each framework “should be accompanied by a detailed Financial Memorandum and policy and equality impact assessments.” However, in the case of non-legislative frameworks it is not clear whether or by what mechanism detailed financial implications might be set out.³¹
180. RSPB Scotland highlighted two forms of funding that may be affected by frameworks – the amount and distribution mechanisms for any replacement for current EU funding along with the amount and distribution of existing UK/Scottish Government funding, particularly where its purpose is to meet EU-led environmental obligations. The RSPB has therefore called on the Scottish Government “to recognise the funding challenge and commit itself to working to address it within its

own budget.” RSPB Scotland also recommends that the Committee challenges the UK and Scottish Governments over their plans for the management of public sector environmental funding and the implications of any common frameworks for it. ⁴³

181. Iain Wright and Professor Heald highlight that the impact of Brexit will bring further complexities to the devolved financing system partly as a result of differences in per capita spending across the UK’s four nations to achieve the same policy results. SE Link echoed these concerns observing that there are fewer private funding opportunities available in Scotland for environmental issues compared with elsewhere in the UK. ⁶⁷
182. Iain Wright and Professor Heald commented that another outcome to guard against in relation to common frameworks is “giving financial levers to the UK Government which would result in micro management of devolved finances, thus negating one of the strengths of the 1999 fiscal settlement.” ⁷ The NFUS elaborated on this concern giving the Agriculture Bill as an example—

” Part 7 of that bill relates to the UK’s commitments to WTO obligations. As part of that, it effectively gives the UK secretary of state—because the UK is the signatory to the WTO agreement—the power to essentially limit the amount of spending on different types of agricultural support measures. In theory, that would limit the ability of the Scottish Government or another devolved Administration to spend what it saw fit in terms of the policy objectives that it sought to achieve. That is causing great concern for us and for the Scottish Government.

Source: Finance and Constitution Committee 24 October 2018 [Draft], Jonathan Hall, contrib. 77⁶⁸

183. Common frameworks may however provide opportunities for longer term funding. NFUS Scotland explained that EU funding is multiannual which provides certainty for farmers and crofters managing longer term environmental issues. As common frameworks could potentially endure over a number of years—

” we would like to see something like that replicated so that it would be possible for a longer-term commitment to continue, by and large, despite there being a change of Government. Under such a system, the Government might shift the emphasis on how the money should be spent, but the broad agricultural and rural development framework would be a given for a longer period than the length of a parliamentary session.

Source: Finance and Constitution Committee 24 October 2018 [Draft], Jonathan Hall, contrib. 84⁶⁹

184. In setting out the work that officials have undertaken to date on common frameworks, the Cabinet Secretary confirmed that future funding was one of the cross cutting issues under discussion in relation to non-legislative frameworks. ⁴

185. The Committee notes that the ongoing review of intergovernmental relations has not yet completed its deliberations but is clear that the review must address issues relating to how any replacement intergovernmental structures will be funded. We also note that the current IGR dispute resolution mechanism has only been used in relation to disputes relating to funding. Given this previous

experience and the number of types of frameworks being proposed, we consider it vital that common frameworks are clear about the funding and expenditure arrangements necessary to successfully deliver them.

186. In addition, as frameworks are to endure over a number of years then we consider any funding necessary to deliver them should also be committed over the longer term.
187. We note that the first and second quarterly reports on common frameworks are silent on funding for common frameworks and therefore seek clarification from the Scottish Government as to the extent common frameworks will:
- include a clear funding statement and any explanations to how any figures are derived;
 - identify who will provide those funds as well as the likely costs which may fall on others;
 - confirm the time frame over which any funding will be provided.

Conclusions

188. Whatever the terms of any UK exit from the EU, common frameworks will be required over the longer term, to deliver common policy and regulatory approaches in some areas currently governed by the EU. We welcome the progress being made with common frameworks on the basis of negotiation and agreement between Governments. As we state in previous reports we strongly believe that common frameworks must be arrived at through agreement and not imposed. We consider that key to this is resolving by negotiation the extent to which policy divergence can exist within common frameworks.
189. A robust and trusted process of intergovernmental relations (especially dispute resolution) is also vital to agreement making. Parliamentary Committees across the UK consider the Joint Ministerial Committee mechanism not fit for purpose, with the Interparliamentary Forum on Brexit calling for more effective intergovernmental and interparliamentary mechanisms to examine common frameworks and to deliver greater transparency. As we heard, however, the current review of IGR appears to have stalled and we therefore recommend it is taken forward urgently.
190. Parliament and stakeholders have an important role in contributing to and scrutinising common frameworks. We recommend that Parliament has a formal role in relation to the process for developing, agreeing and implementing both legislative and non-legislative common frameworks. We commit to work with the Scottish Government to develop such processes and will also work with other Parliamentary Committees at the Scottish Parliament and across the UK to develop a co-ordinated approach. We consider that the final governance arrangements for each framework should ensure that public bodies which exercise oversight in devolved areas should be accountable to the Scottish Parliament. We also make a number of recommendations about the content of non-legislative frameworks^{iv} which will facilitate greater transparency and accountability.

^{iv} See recommendations at paragraphs 109, 168 and 187.

ANNEXE A

Summary of UK Government "Frameworks Analysis: Breakdown of Areas of EU law that intersect with devolved competence in Scotland, Wales and Northern Ireland"

191. The UK Government describes its [Frameworks Analysis](#) 9 March 2018 ⁷⁰ as a “working document, designed to inform engagement between officials.” The Analysis “sets out the UK Government’s provisional assessment of areas of EU law that intersect with devolved competence in each devolved administration” whilst noting the possibility that policy positions might change “following further analysis, including on the UK internal market, and as conversations between the UK and devolved governments continue.”
192. The Analysis notes that in some instances “the devolution intersect will require more detailed discussion and may include a mixture of reserved and devolved competence.” It also includes 12 policy areas that the UK Government believes are reserved, but that are “subject to ongoing discussion with the devolved administrations.”
193. The policy areas in question are broken down as follows—
- 24 policy areas that are subject to more detailed discussion to explore whether legislative common framework arrangements might be needed, in whole or in part;
 - 82 policy areas where non-legislative common frameworks may be required; and
 - 49 policy areas where no further action is required.
194. **The 24 policy areas where legislative common frameworks “might be needed, in whole or in part” are—**
1. Agricultural support
 2. Agriculture - fertiliser regulations
 3. Agriculture - GMO marketing and cultivation
 4. Agriculture - organic farming
 5. Agriculture - zootech
 6. Animal health and traceability
 7. Animal welfare
 8. Chemicals regulation (including pesticides)

9. Elements of reciprocal healthcare
 10. Environmental quality - chemicals
 11. Environmental quality - ozone depleting substances and F-gases
 12. Environmental quality - pesticides
 13. Environmental quality - waste packaging and product regulations
 14. Fisheries management & support
 15. Food and feed safety and hygiene law (food and feed safety and hygiene law, and the controls that verify compliance with food and feed law (official controls)
 16. Food compositional standards
 17. Food labelling
 18. Hazardous substances planning
 19. Implementation of EU Emissions Trading System
 20. Mutual recognition of professional qualifications (MRPQ)
 21. Nutrition health claims, composition and labelling
 22. Plant health, seeds and propagating material
 23. Public procurement
 24. Services Directive
195. **The 82 policy areas where non-legislative common frameworks may be required** cover a diverse range of topics including regulations relating to public health, medicine, organ donations and clinical trials, roads, hauliers, licensing and motor insurance, efficient energy usage, tobacco regulations, environmental quality, equalities, workplace health and safety, cross-border cooperation on civil and criminal policing and courts, rail operators and firearms.
196. The Analysis also refers to “**12 policy areas that the UK Government believes are reserved, but are subject to ongoing discussion with the devolved administrations**” as follows—
1. Ecodesign and energy labelling;
 2. Elements of product safety and standards relating to explosive atmospheres;
 3. Elements of the Network and Information Security (NIS) Directive;
 4. Environmental quality - international timber trade (EUTR and FLEGT);
 5. Data sharing – Eurodac;
 6. Food Geographical Indications (protected food names);

7. Medical devices;
8. Migrant access to benefits;
9. Provision in the 1995 Data Protection Directive (soon to be replaced by the General Data Protection Regulation) that allows for more than one supervisory authority in each member state;
10. Radioactive source notifications and transfrontier shipments of radioactive waste;
11. State aid;
12. Vehicle standards - various type approval Directives (roads).

ANNEXE B

Summary of evidence

197. The Committee considered evidence provided via a number of different means during the inquiry:
198. It issued a call for views receiving 10 responses which can be viewed on the Committee's webpage. A summary of written evidence is also available online along with all individual submissions received.⁷¹
199. The Committee also commissioned comparative research on agreement making within the following four countries—
- Canada (by Professor Charles Conteh)⁷²
 - Germany (by Dr Carolyn Rowe)⁷³
 - Norway (by Professor John Erik Fossum and Jan Edøy)⁷⁴
 - Switzerland (by Dr Florian Keller, Dr Christoph Ebnöther, Dominique Ursprung)⁷⁵
200. A summary of the comparative research⁷⁶ was then produced by SPICe.
201. In September 2018, the Committee undertook a fact-finding visit to Brussels to learn more about the experiences of other countries. A summary note of discussions held⁷⁷ is available online.
202. The Committee held an event in conjunction with the Royal Society of Edinburgh, Scotland's Futures Forum and the Scottish Parliament's External Experts Panel on 2 November to explore what common frameworks might look like and how they might work in practice. The event was attended by a broad range of stakeholders including members of the Scottish Parliament, House of Commons, House of Lords and National Assembly for Wales, as well as experts from academia, industry and the third sector from across the UK. An unattributed note of the event⁷⁸ has been published online.
203. The Committee took oral evidence in a roundtable format on 24 October 2018 from—

Professor Michael Keating, Professor of Politics, University of Aberdeen; Daphne Vlastari, LINK Advocacy Manager, Scottish Environment LINK; Professor Colin Reid, Professor of Environmental Law, University of Dundee; Jonathan Hall, Director of Policy and Member Services, NFU Scotland; Iain Wright, Research Fellow, Adam Smith Business School, University of Glasgow; Professor Paul Beaumont, Chair of EU sub-group on Constitution and Law, Royal Society of Edinburgh; Michael Clancy, Director, Law Reform, Law Society of Scotland; Lloyd Austin, Head of Conservation Policy, RSPB Scotland; Anthony Salamone, Research Fellow and Strategic Advisor, Scottish Centre for European Relations.

The meeting papers ⁷⁹ and official report ⁸⁰ for this meeting can be accessed online.

204. The Committee then took evidence from the Cabinet Secretary for Government Business and Constitutional Relations on 27 February 2019.

The meeting papers ⁸¹ and official report ⁸² can be accessed online.

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