



Cabinet Office

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Sir Bernard Jenkin MP
Chair of the Public Administration and Constitutional Affairs Committee
House of Commons,
London,
SW1A 0AA

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Dear Sir Bernard,

During the evidence session of your Committee on Wednesday 20th June, you requested clarification on details of the official level work that underpins Ministerial engagement on devolution and EU exit. You asked me to write to the Committee setting out details of the areas where framework deep dives have taken place, how common frameworks will operate and the progress of the review of intergovernmental structures. Some of this is a work in progress but please find further detail on these points below.

Common Frameworks

As set out in the principles agreed at JMC(EN) in October 2017, the UK Government and the devolved administrations agree that common frameworks will be needed in some areas. This is for a variety of reasons. For example, future frameworks will help us to safeguard the UK internal market, manage our common resources and ensure that we are seen as a credible international trading partner in the future.

The UK Government's frameworks analysis, published on 9 March, assesses each of the 153¹ areas of EU law that intersect with devolved competence. This document sets out our initial assessment of the areas where we will and will not continue to need common rules and ways of working. The analysis is based on our assessment of the risk of policy divergence in each area, but it remains provisional and subject to ongoing discussion with the devolved administrations and wider stakeholders.

It includes 24 areas, like food labelling and chemicals regulation, where frameworks are likely to be needed that will include legislative elements. The Intergovernmental Agreement between the UK and Welsh Governments recognises that these areas could be subject to the 'freezing' powers under section 12 of the European Union (Withdrawal) Act. This would preserve current EU frameworks in specific policy areas for a maximum of five years whilst we design and implement replacement framework arrangements.

Policy areas returning from the EU in otherwise devolved areas will pass to the devolved legislatures by default, except where section 12 regulations have been made. This means the vast majority of powers will transfer straight to Belfast, Cardiff and Edinburgh on exit

¹ Two policy areas appear in the analysis twice, in different categories, depending on the devolution intersect in question. These are 'High efficiency cogeneration/Combined Heat and Power (CHP)' and 'Rail Franchising Rules'.

day. These can be broken down into 82 policy areas where we are exploring non-legislative approaches like concordats or memoranda of understanding, and 49 areas where we believe no further action is needed.

Framework 'deep dives'

We are working closely with the devolved administrations to determine the areas where future frameworks will be required, and what these will look like. A programme of multilateral 'deep dives' has been the primary mechanism for taking forward discussions between the governments at official level, overseen by the Joint Ministerial Committee (EU Negotiations). Following successful pilot discussions covering agricultural support, public health and justice and home affairs issues in November last year, JMC(EN) agreed to a broader range of discussions, focusing primarily on policy areas where legislative common frameworks are envisaged, in whole or in part. A number of sessions also covered key policy areas where non-legislative frameworks are envisaged; and cross-cutting matters including governance, trade and the approach to the internal market.

In the deep dives focused on specific policy areas, as opposed to cross-cutting matters, officials worked together to first break the policy down into smaller parts. For each component part, they then discussed the extent to which the governments would need to work together. Where common rules and ways of working were thought to be required in the future, they considered how best to achieve this - whether using legislation, non-legislative arrangements like concordats, or a combination of the two.

Since December, deep dive workshops in the following areas have taken place, with multiple sessions occurring in some areas:

- Agricultural support (8-9 January)
- Fisheries (17-18, 23-24 January and 6-7 February)
- State aid (29 January)
- Animal health and welfare (29-30 January)
- Environmental quality - chemicals and pesticides (29-30 January)
- Environmental quality - ozone depleting substances and F-gases (31 January)
- Plant health (2 February and 9 March)
- Public procurement (5 February)
- Non-CAP agriculture (5-6 February)
- Food and feed (7-8 February)
- Air quality (8 February)
- Mutual recognition of professional qualifications (14 February)
- Production of statistics (15 February)
- EU citizens' voting rights (15 February)
- Hazardous substances planning (19 February)
- Environmental quality - waste (20 February)
- Radioactive waste management and shipment (20 February)
- Civil use of explosives (NI only) (21 February)
- UK internal market (23 February and 13 June)
- Vehicle standards (NI only) (26 February)
- Implementation of EU emissions trading system (26 February and 19 June)
- Trade (6 March)
- International obligations (6 March)
- Governance (7 March)
- Elements of reciprocal healthcare (21 March)

Timeline for Future Frameworks

You asked about the timeline for agreeing and setting out frameworks. Discussions continue with the devolved administrations to establish the shape of future frameworks. Following a mandate from JMC(EN) in May, further multilateral discussions will take place over the summer of 2018 on the 24 areas (listed in Annex A) where a legislative framework may be required, in whole or in part.

These sessions will look at the component parts of each policy area in greater depth, developing proposals for where and how the frameworks will operate. It is likely that this will result in 'hybrid' frameworks, made up of legislative and non-legislative elements. The resulting proposals will be submitted for consideration by Ministers from the UK Government and the devolved administrations, and will subsequently inform further stakeholder engagement.

While this work is taking place, discussions will also continue on cross-cutting matters like our treatment of the UK internal market. Multilateral discussions on the 82 policy areas where non-legislative agreements are expected will take place in due course, with progress overseen by JMC(EN).

Operation of Future Frameworks

Once Ministers in each government are content, and stakeholders have had the opportunity to consider and inform the proposals, we will then turn to implementation of a framework.

Where legislation is needed to create, for example, a single regulatory regime or a set of minimum standards, officials will work together to design the policy and draft the legislation. This could then be put on the statute book in one of two ways, for example: in the UK Parliament with the normal mechanisms for seeking the consent of the devolved legislatures (where required); or concurrently in all relevant legislatures.

Where legislation is not needed, but cooperation is required, officials will collaborate to draft non-legislative agreements. For example, we might agree to a concordat between the governments that supports legislation, and sets out arrangements for ongoing cooperation, standard setting and information sharing, along with the wider governance arrangements for the framework. This might also set out a process for dispute resolution. There will be other policy areas where no legislation is required, but ongoing cooperation arrangements are set out solely in concordats or other agreements.

Of course, these legislative and non-legislative approaches will not prevent any party from doing something different in the future, so we will need to work closely together to determine whether certain steps are required before deviation from a framework agreement takes place. We are also working with the DAs to establish whether additional action will be needed to protect our UK internal market - to provide certainty not just for the different governments, but also for businesses and consumers.

Consideration of the governance of future frameworks will also align with the wider review of intergovernmental structures.

Review of intergovernmental structures

Meetings of the Joint Ministerial Committee continue to provide an important forum for discussions on a wide range of policy issues. The JMC structures, however, were created in the context of the UK being part of the EU and, for example, before the consideration of the frameworks questions set out above. At the Plenary meeting of the Joint Ministerial

Committee on 14 March, Ministers agreed that officials should take forward a review of the existing intergovernmental structures and the MoU and report their findings to the JMC (Plenary) in due course. UK Government officials are now working closely with counterparts in the devolved administrations to take this work forward.

Officials from all four administrations met in late May in Belfast to discuss the scope of the review. Over the summer, officials will continue to work on the themes and workstreams for the review and build an evidence base for any subsequent recommendations. The immediate purpose of the review is to ensure that intergovernmental structures are fit for purpose beyond the UK's exit from the EU. As the review progresses, we must ensure that intergovernmental structures and agreements continue to remain adaptable enough to address the four governments' interests at any given time throughout the exit process.

Joint working between the UK Government and devolved administrations will increase as a result of EU exit in a number of areas, something we are already seeing through the discussions on common frameworks. As our interdependencies grow, we will need to consider the principles that underpin our relations, mechanisms for domestic governance, dispute resolution, international engagement and our shared machinery. These are some of the themes we are keen to explore as part of the review. We value the work of the Public Administration and Constitutional Affairs on these issues to date and will continue to welcome further recommendations as the review progresses.

Yours sincerely,

A handwritten signature in black ink that reads "Lucy Smith". The signature is written in a cursive, flowing style.

Lucy Smith
Director General, UK Governance Group

Annex A: 24 policy areas where legislative frameworks are being explored, in whole or in part

- Agricultural support
- Agriculture - fertiliser regulations
- Agriculture - GMO marketing and cultivation
- Agriculture - organic farming
- Agriculture - zootech
- Animal health and traceability
- Animal welfare
- Chemicals regulation (including pesticides)
- Elements of reciprocal healthcare
- Environmental quality - chemicals
- Environmental quality - ozone depleting substances and F-gases
- Environmental quality - pesticides
- Environmental quality - waste packaging and product regulations
- Fisheries management and support
- 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))
- Food compositional standards
- Food labelling
- Hazardous substances planning
- Implementation of EU Emissions Trading System
- Mutual recognition of professional qualifications (MRPQ)
- Nutrition health claims, composition and labelling
- Plant health, seeds and propagating material
- Public procurement
- Services Directive