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SPICe Briefing

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Common Frameworks

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This briefing explains what common frameworks are and considers why they are necessary and how they are being developed. It also outlines the key principles underpinning common frameworks and some of the challenges they could pose for parliamentary scrutiny.

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Executive Summary

- During the UK's membership of the European Union (EU), the UK Government and the devolved administrations were required to comply with EU law. This has meant that a consistent approach has been adopted in some policy areas across all four nations in the UK, even where those policy areas are devolved.
- The UK left the EU on 31 January 2020 and entered a transition period, during which it has continued to comply with EU law. When the transition period ends on 31 December 2020 this requirement to comply will also end, which may lead to policy divergence in areas where EU law has previously provided a common legal framework. The UK and devolved governments have agreed that, to limit such divergence where it would be undesirable, a number of common frameworks are required.
- The UK Government Cabinet Office is coordinating work on developing common frameworks in consultation with the devolved administrations. It has produced a [Frameworks Analysis](#) which identifies policy areas where common frameworks might be required and a Frameworks Delivery Plan which sets out the five phases that each framework should go through as it is developed and implemented:
 - **Phase one** brings together the UK Government and devolved administrations to engage in initial discussions on how the common framework should proceed;
 - **Phase two** is focussed on detailed policy development;
 - **Phase three** is a period of review, consultation and further policy development;
 - **Phase four** is when the framework is agreed and implemented; and
 - **Phase five** deals with post-implementation arrangements.
- Two categories of common frameworks are under development - legislative and non-legislative:
 - **Legislative common frameworks** will be introduced in policy areas where a common UK approach is considered crucial and could take the form of primary legislation (an Act of the UK Parliament), secondary legislation or a combination of both.
 - **Non-legislative frameworks** will be used in policy areas where a degree of uniformity, short of complete compliance, is considered beneficial. These are likely to be a set of policy approaches agreed between the UK and devolved governments, perhaps in the form of Memorandums of Understanding or Concordats.
- The COVID-19 pandemic has had a considerable impact on resources at both the UK and devolved levels, leading the UK's four governments to agree a revised frameworks delivery plan. Seven frameworks are now due to be implemented by the end of December 2020. A further twenty five provisional frameworks will also be established within that time frame before being finalised in 2021.

- In its March 2019 [Report on Common Frameworks](#), the Scottish Parliament Finance and Constitution Committee concluded that it is important that the Scottish Parliament is able to scrutinise frameworks as they are being developed, agreed and implemented.
- The Scottish Parliament's committees will take the lead on scrutinising common frameworks that fall within their respective policy areas, while the Finance and Constitution Committee will also consider their wider implications and potential constitutional impact. This work can be tracked on the [SPICe Post Brexit Hub](#).
- Common frameworks are likely to pose significant challenges for the Scottish Parliament and other legislatures as they seek to provide scrutiny. These challenges could include:
 - how to engage most effectively to ensure the views of the Scottish Parliament and other stakeholders are fed into the development of common frameworks, particularly when the five phase approach outlined envisages that legislatures will only have a role during phase three, once frameworks have already been largely developed and agreed by the UK Government and devolved administrations;
 - how to ensure the appropriate scrutiny of legislative frameworks when these are likely to take different forms and make use of a variety of legislative vehicles;
 - how to scrutinise non-legislative frameworks when these are likely to be underpinned by intergovernmental agreements (e.g. Memorandums of Understanding or Concordats), for which the Scottish Parliament currently has no formal scrutiny mechanisms; and
 - remaining alert to the possibility that, in practice, the competence of the Scottish Parliament may be restricted by the terms of such intergovernmental agreements, without it having any formal say in the process.
- Proactive and innovative new approaches may have to be considered to ensure that Parliamentary scrutiny of common frameworks is as detailed and effective as possible.

What are common frameworks and why are they being developed?

During its membership of the European Union, the UK was required to comply with EU law. This means that, in many policy areas, a consistent approach has often been adopted across all four nations of the UK, even where those policy areas are devolved.

The UK formally left the EU on 31 January 2020, entering a transition period which is due to expire on 31 December 2020. During the transition period the UK will continue to comply with EU law. Once the transition period ends, the requirement to comply will also end. This could lead to policy divergence between the different nations within the UK in areas where EU law has previously provided a common legal framework.

The UK and devolved governments have agreed that, to prevent or limit significant policy divergence between the nations of the UK where that would be undesirable, a number of common frameworks are required.

In its [October 2017 communique on common frameworks](#), the Joint Ministerial Committee (EU Negotiations) (JMC (EN)) stated 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.”

Joint Ministerial Committee (EU Negotiations), 2017¹

The European Union (Withdrawal) Act 2018 and common frameworks

Schedule 3 of the [European Union \(Withdrawal\) Act 2018](#) (the 2018 Act) requires the UK Government to report to the UK Parliament every three months on progress in the development of common frameworks. On 20 May 2020, the UK Government published [the seventh such report](#).

These statutory reports provide information on

- the development and implementation of common frameworks; and
- legislation relating to retained EU law restrictions (so-called ‘freezing powers’)

Legislation relating to retained EU law restrictions

Section 12 of the 2018 Act removes the requirements in each of the devolution settlements that devolved legislatures can only legislate in ways that are compatible with EU law. The Act replaces those requirements with powers for UK Government Ministers to make regulations (secondary legislation) which apply a temporary ‘freeze’ on devolved competence in specified areas. The use of these section 12 powers is subject to the approval of the UK Parliament. The process for making, agreeing and revoking these regulations can be found in [the first statutory report on the European Union \(Withdrawal\) Act and Common Frameworks](#).

The purpose of these powers is to ensure that the current parameters of devolved competence in relation to EU law are retained for a period of up to five years while replacement common frameworks are developed and implemented. The powers to apply the ‘freeze’ expire two years after exit day.

To date, the UK Government has made no regulations to ‘freeze’ any devolved competencies because, in its view, “significant progress is being made across policy areas to establish common frameworks in collaboration with the devolved administrations.”²

Principles underpinning common frameworks

The Joint Ministerial Committee (JMC) is a set of committees that comprises ministers from the UK and devolved governments. The JMC (EU Negotiations) sub-committee was created specifically as a forum to involve the devolved administrations in discussion about the UK's approach to EU Exit. Ministers responsible for Brexit preparations in the UK and devolved governments attend these meetings. Before the January 2020 restoration of power-sharing in Northern Ireland senior officials in the Northern Ireland civil service attended in an observer capacity, in lieu of ministers

In October 2017, the JMC (EN) agreed an underlying set of principles to guide work in creating common frameworks. These principles are set out below.

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; and
- safeguard the security of the UK.

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; and
- lead to a significant increase in decision-making powers for the devolved administrations.

Source: ¹

The approach to developing common frameworks

The Cabinet Office is coordinating work on developing common frameworks on behalf of the UK Government, in consultation with the devolved administrations. The Frameworks Delivery Plan, [set out most recently in the UK Government's seventh statutory report on common frameworks](#), outlines five phases that common frameworks must go through as they are developed and implemented.

- **Phase one** brings together the UK Government and devolved administrations to engage in initial discussions on how the common framework should proceed.
- **Phase two** is focussed on detailed policy development.
- **Phase three** is a period of review, consultation and further policy development.
- **Phase four** is when the framework is agreed and implemented.
- **Phase five** deals with post-implementation arrangements.

Each framework will move through this process at its own pace. The May 2020 statutory report indicates that, by the end of the most recent reporting period, only two common frameworks - covering Hazardous Substances (Planning) and Nutrition Health Claims, Composition and Labelling - had reached and completed phase three ².

Each of the five phases is outlined and explored in further detail below.

Phase one

Principles and proof of concept: First phase of multilateral “deep dives” (involving UK Government and devolved administration officials) which took place between October 2017 and March 2018, and focussed on legislative and key non-legislative framework areas and cross-cutting issues.

This was an overarching developmental phase, now complete. During this phase the UK and devolved governments undertook an initial assessment of the UK and devolved legislative and non-legislative landscapes to identify areas where common frameworks might be required. This assessment resulted in the publication of a [Frameworks Analysis](#) in March 2018. A [Revised Frameworks Analysis](#) was subsequently published in April 2019. This updated document set out 160 areas where EU law intersected with devolved competence, including:

- 21 areas where legislation may be needed, in whole or in part, to implement common rules and ways of working, alongside a non-legislative framework agreement and - potentially - a consistent approach to retained EU law;
- 78 areas where common rules or ways of working may be needed and are likely to be implemented through a non-legislative common framework agreement (e.g. a concordat or Memorandum of Understanding); and

- 63 areas where no further action was required.

The initial framework analysis listed 12 areas that the UK Government believed were reserved. In the revised framework analysis this was reduced to 4 areas, subject to further discussions with the devolved administrations:

- State Aid;
- Elements of product safety and standards relating to explosive atmospheres;
- Food Geographical Indications; and
- Data sharing in relation to Eurodac, the EU database containing the fingerprints of "illegal entrants and asylum applicants"

The UK Government is currently preparing a third iteration of its framework analysis, which will be published in due course.

Phase two

Policy development: This phase involves multilateral engagement work to develop outline frameworks in each area; development of required frameworks legislation; the beginning of bilateral stakeholder engagement; and a light touch review of outline frameworks. At the end of this phase, ministers will be sighted on the outline framework and will agree the direction of travel.

Phase 2 has been running since April 2018. It is focussed on more detailed policy development for 21 priority framework areas. Priority areas are those where legislation may be required. Work on each of these frameworks has been progressing at its own pace.

Phase three

Review and consultation: Includes policy finalisation and an exploration of the interaction between frameworks and other key workstreams (for example, international obligations and trade); multilateral stakeholder engagement, including high-level programme engagement, parliamentary engagement and technical engagement; and an in-depth review and assessment process. This phase will end with collective agreement of the policy approach, and a provisional framework confirmed by the JMC (EN).

During this phase, the Frameworks Delivery Plan states that the UK Government and devolved administrations will undertake a review of each specific framework and consult on its development with stakeholders and the UK and devolved legislatures.

The UK Government has stated that the "in-depth" review will:

“adopt a peer review approach, involving desk-based assessment, evidence gathering and interviews, and drawing on expertise from both policy-specific and central teams. This process will address in particular the constitutional and cross-cutting impacts of each framework, in order to ensure that there is a consistent approach taken on these across the frameworks programme in line with the principles for common frameworks agreed by JMC (EN).”

Cabinet Office, 2020²

The precise form that the consultation process will take remains unclear.

Phase four

Preparation and implementation: Collaborative work to prepare and deliver the implementation of legislative and non-legislative elements of individual frameworks, alongside stakeholder (in addition to UK Government and devolved administration) engagement as appropriate. Some reappraisal of framework agreements may be required based on the outcomes of cross-cutting issues.

During this phase each common framework is further developed and implemented. This includes, where necessary, legislation to implement the framework. Additional engagement with stakeholders and across the UK Government and devolved administrations will also take place where necessary. It is currently unclear whether this additional engagement is also intended to include UK and devolved legislatures although, in the case of legislative frameworks at least, existing parliamentary procedures would ideally provide opportunities for detailed scrutiny.

Phase five

Post-implementation: Post-implementation arrangements will take place in this phase, alongside a reappraisal of framework agreements. These reappraisals will be based on the outcome of work on cross-cutting issues.

Once each common framework has been implemented it will move to phase five, during which post implementation arrangements and a review of framework agreements will take place.

The Frameworks Delivery Plan states that post-implementation arrangements will vary between frameworks. The precise details of these arrangements are being developed as the frameworks programme progresses and, to date, remain unclear.

Impact of COVID-19 and revised frameworks delivery plan

The UK Government and devolved administrations had originally intended that all common frameworks would be agreed, and the majority implemented, by the end of 2020. However, as the most recent statutory report acknowledges, the COVID-19 pandemic has had a considerable impact on resources at both the UK and devolved levels, leading to a re-evaluation of plans and timelines ².

On 11 August 2020, [the Cabinet Secretary for the Constitution, Europe and External Affairs wrote to the Convener of the Finance and Constitution Committee regarding the UK Government's planned consultation on its UK internal market proposals](#). In that letter he confirmed that, as a result of the ongoing public health crisis, a revised delivery plan for common frameworks has been agreed by the UK Government and devolved administrations. Seven frameworks, six of which relate to Scotland, are to be fully developed, agreed and implemented by the end of December 2020. The letter goes on to state that all seven will be made available to legislatures in the autumn, and will include frameworks on:

- Hazardous Substances (Planning);
- Nutrition Health Claims, Composition and Labelling;
- Emissions Trading System (ETS);
- Radioactive Substances;
- Recognition of Insolvency Proceedings;
- Food and Feed Safety and Hygiene (FFSH); and
- Company Law (which will not cover Scotland)

Provisional frameworks will be also established in twenty five remaining policy areas before being finalised for agreement as full frameworks during 2021. These provisional frameworks will consist of a framework outline agreement and accompanying concordat, including essential arrangements required for the framework to operate at the end of the transition period. Further policy development and refinement will continue to take place thereafter, following the same process as full frameworks. The letter indicates that the Scottish Parliament and other UK legislatures will receive a summary of each provisional framework and an update on its progress before the end of 2020, with the expectation that they will be ready for scrutiny in 2021.

Finally, the letter states that a reclassification exercise is being undertaken by the UK Government and devolved administrations to determine whether 'no further action' should be taken in relation to some proposed frameworks. It is expected that this will result in fewer frameworks requiring development than previously indicated in the UK Government's 2019 Revised Frameworks Analysis. These changes will be outlined in a planned third frameworks analysis document, due to be published later in 2020.

The challenge of parliamentary scrutiny

Schedule 3 of the [European Union \(Withdrawal\) Act 2018](#) requires the UK Government to report to the UK Parliament every three months on progress in the development of common frameworks. These regular reports make little mention of the role of legislatures in scrutinising common frameworks and their development. Any role for legislatures is seen as coming at the end of the process when the need for a framework, the approach to be taken in developing it, the content and the final form have already been agreed by the UK Government and devolved administrations.

The [most recent iteration of the UK Government's report](#) states that:

“ Progress is being made by the UK, Welsh and Scottish Governments to engage with their respective legislatures on pre-implementation scrutiny of provisional frameworks. Officials from each government have developed a joint approach for formal Parliamentary scrutiny of frameworks and are working together to coordinate timelines.”

The precise form this "pre-implementation scrutiny" will take remains unclear - as it stands, there is no formal role for legislatures in scrutinising common frameworks as they are developed. The five phase approach [set out above](#) envisages that legislatures will only have a role during phase three, once a framework has largely been agreed. As an example, both frameworks considered by the Scottish Parliament to date - on Hazardous Substances (Planning) and Nutrition Health Claims, Composition and Labelling - have been submitted at a late stage in the development process, providing only a limited opportunity for meaningful engagement.

The resulting challenges for parliamentary scrutiny include:

- how to engage with frameworks at an earlier stage if that is deemed desirable;
- how to work with stakeholders to ensure that their concerns and interests can be fed into the development of frameworks; and
- for legislative frameworks, how to ensure appropriate scrutiny of the relevant legislation, bearing in mind the likely time constraints involved and the need to ensure that Members are properly briefed on the detail.

What is the Scottish Parliament's role in relation to common frameworks?

As part of its scrutiny role, the Scottish Parliament needs to be able to consider the Scottish Government's approach and actions in relation to the development and implementation of common frameworks.

The committees of the Scottish Parliament will lead on scrutinising those common frameworks that fall within their respective policy areas. Work the committees carry out on frameworks can be tracked on the [SPICe Post Brexit Hub](#).

The Finance and Constitution Committee also has a more general role in considering the wider implications of common frameworks and their potential constitutional impact. In its March 2019 [report on common frameworks](#), the Committee reached a number of conclusions relating to the development, implementation and Parliamentary scrutiny of frameworks, including:

“

- 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.”
- 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.”
- 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 which will facilitate greater transparency and accountability.”

Finance and Constitution Committee, 2019³

The [Scottish Government responded to the Committee on 3 June 2019](#), broadly welcoming the "timely and comprehensive report". In particular, the Scottish Government stressed that, in its view:

“ The starting point in the negotiation and implementation of any new frameworks must be that the reality of devolution is recognised and respected. We will only agree common frameworks where these are in Scotland’s interests.”

Scottish Government, 2019⁴

On the subject of Parliamentary scrutiny, the Scottish Government stated that it:

“committed to work with the Parliament to develop a suitable scrutiny procedure and would welcome the views of the Finance and Constitution Committee as well as other committees, from their experience of the current existing examples of agreed processes on which we can draw.....”

Scottish Government, 2019⁴

The [UK Government responded to the Committee on 7 May 2019](#) and also welcomed the report. In acknowledging the importance of engaging with the UK's various legislatures, the UK Government stated that:

“ The UK, Scottish and Welsh Governments and Northern Ireland Civil Service recognise the importance of engaging Parliament, the devolved legislatures and wider stakeholders in the work on common frameworks. We are currently developing a wider programme of stakeholder engagement, to ensure that proposals for future frameworks meet the needs of those who will be impacted by them.”

Cabinet Office, 2019⁵

However, in response to the Committee's comments regarding a possible role for the Scottish Parliament should non-legislative frameworks require revision in light of future trade agreements or international treaties, the UK Government went on to say:

“ The frameworks programme is managed jointly between the UK Government and the devolved administrations, and so it will be the responsibility of the Scottish Government to consider the role of Scottish parliamentary scrutiny where relevant throughout this process.”

Cabinet Office, 2019⁵

Legislative and non-legislative common frameworks

Legislative frameworks

In its [April 2019 revised frameworks analysis](#), the UK Government identified 21 policy areas where future legislation may be needed, in whole or in part, to implement the common rules and ways of working required to implement common frameworks⁶. A summary of these policy areas is provided at Annex A.

For the vast majority of proposed frameworks, it remains unclear as to whether such legislation will take the form an Act of the UK Parliament (which would require the legislative consent of the devolved legislatures), secondary legislation (statutory instruments and, potentially, other mechanisms) or a combination of both. In addition, it is possible that some frameworks could be established using [the Order in Council process](#). Whatever the approach taken, it is unlikely that any two legislative common frameworks will look exactly the same.

It is also possible that secondary legislation made under powers from previous and future Brexit bills will form parts of a common framework. As such, in some cases it might not be immediately clear that a particular piece of secondary legislation forms an element of a common framework. This presents a particular challenge for legislatures seeking to scrutinise the development of common frameworks.

Non-legislative frameworks

Non-legislative frameworks are likely to pose more significant challenges. In the case of legislative frameworks, parliaments will at least have the opportunity to provide scrutiny through the existing mechanisms by which they consider any primary and/or secondary legislation. These will not apply to non-legislative frameworks. The Finance and Constitution Committee highlighted this in its March 2019 report:

“ 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.”

Finance and Constitution Committee, 2019³

In practice, non-legislative common frameworks are likely to be a set of policy approaches agreed between the UK and devolved governments, perhaps in the form of Memorandums of Understanding or Concordats. There are currently no formal opportunities for parliamentary scrutiny of such agreements although, in its response to the Finance and Constitution Committee's [January 2018 interim report on the European Union \(Withdrawal\) Bill LCM](#) the Scottish Government confirmed that it:

“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.”

Scottish Government, 2018⁷

Unless and until such procedures are agreed however, effective scrutiny of non-legislative frameworks may rely on a proactive approach from the relevant parliamentary committee or committees. This will also present challenges - particularly in accessing information on non-legislative common frameworks under development. This is because intergovernmental relations in the UK have to date been conducted in private with little information shared with legislatures.

In addition, where agreements on non-legislative frameworks in devolved areas are decided at an intergovernmental level, there is a possibility that the competence of devolved legislatures may be restricted without those legislatures having any formal say in the process. For example, the Scottish Government could commit to not introducing or supporting legislation in a particular policy area - this may, in practice, place limits on Parliament's ability to subsequently legislate in that area should it choose to do so.

How can the Scottish Parliament scrutinise non-legislative frameworks?

Scrutiny of non-legislative frameworks will require a greater degree of proactive work from the Parliament's committees. Regular evidence sessions with those Scottish Ministers responsible for specific non-legislative frameworks will be an important scrutiny tool.

Likewise, having a good grasp of Brexit related primary and secondary legislation (at both a Scottish and UK level) may give Committees an idea of the general policy direction being taken and the legislative parameters being forged.

The [Inter-Governmental Relations Written Agreement between the Scottish Parliament and Scottish Government](#) (the Agreement) also provides a mechanism through which the Parliament and its Committees can scrutinise the Scottish Government's activity in relation to non-legislative frameworks.

The Agreement establishes a set of principles to govern the relationship between the Scottish Parliament and Scottish Government with regard to inter-governmental relations: transparency; accountability; and respect for the confidentiality of discussions between governments. It also places specific commitments on the Scottish Government in relation to the participation of Scottish Ministers in formal inter-governmental structures. The most relevant of these commitments include:

- Giving the committees advance written notice of relevant meetings, including agenda items and a broad outline of the key issues to be discussed. This is intended to provide committees with the opportunity to express a view on the topics being discussed and, if appropriate, invite the Minister responsible to attend a Committee meeting in advance of the intergovernmental meeting.
- Providing the committees with a written summary of the issues discussed at relevant inter-governmental meetings as soon as practicable. This should include any joint

statements released after the meeting, information on who attended, when it took place and, subject any confidentiality requirements, an indication of the key issues discussed and the positions advanced by the Scottish Government.

- Providing committees with the text of any multilateral or bilateral intergovernmental agreements, memorandums of understanding or other resolutions within the scope of the Agreement.
- In circumstances where the Scottish Government intends to establish new arrangements with the aim of reaching an intergovernmental agreement, providing advance notice to the Scottish Parliament of its intention to do so.

Conclusions

As the Finance and Constitution Committee made clear in [its March 2019 report](#), common frameworks will be required in the longer term to deliver common policy and regulatory approaches across the UK in a number of areas currently subject to EU law. These frameworks will play a significant role in shaping public policy making and intergovernmental relations across the UK for years to come.

A great deal of work has already been done by the UK Government and devolved administrations to identify the relevant policy areas and make progress in developing and agreeing the combination of measures necessary to deliver the required frameworks. However a great deal more work is still to come. By the end of the most recent reporting period no framework had completed phase 4 of the Framework Delivery Plan, meaning no framework had yet been implemented.

In addition, and as the UK Government's most recent statutory report acknowledges, the COVID-19 pandemic has had a considerable impact on resources at both a UK and devolved level, leading to a re-evaluation of plans and timelines for the delivery of common frameworks. The Cabinet Secretary for the Constitution, Europe and External Affairs has since confirmed that a revised frameworks delivery plan has been agreed, with seven frameworks due to fully developed, agreed and implemented by the end of December 2020. A further twenty five provisional frameworks are also to be established within that time frame, before being finalised for agreement as full frameworks during 2021.

Regardless of the final timescales involved, the Scottish Parliament has an important part to play in scrutinising the Scottish Government's role in the development and implementation of common frameworks. This will pose significant challenges however, particularly in relation to non-legislative frameworks. Such challenges could include:

- how to engage most effectively to ensure the views of the Scottish Parliament and other stakeholders are fed into the development of common frameworks, particularly when the five phase approach outlined envisages that legislatures will only have a role during phase three, once frameworks have already been largely developed and agreed by the UK Government and devolved administrations;
- how to ensure the appropriate scrutiny of legislative frameworks when these are likely to take different forms and make use of a variety of legislative vehicles;
- how to scrutinise non-legislative frameworks effectively when these are likely to be underpinned by intergovernmental agreements (e.g. Memorandums of Understanding or Concordats), for which the Scottish Parliament currently has no formal scrutiny mechanisms; and
- remaining alert to the possibility that, in practice, the competence of the Scottish Parliament may be restricted by the terms of such intergovernmental agreements, without it having any formal say in the process.

Proactive and innovative new approaches may have to be considered to ensure that Parliamentary scrutiny of common frameworks is as detailed and effective as possible.

Annex A

Policy areas where legislative common frameworks are likely to be required

Implementation of EU Emissions Trading System (EU ETS)	Waste packaging and product regulations
Mutual recognition of professional qualifications (MRPQ)	Pesticides
Services Directive	Plant health, seeds and propagating material
Agricultural support	Food compositional standards
Agriculture - GMO marketing and cultivation	Food labelling
Agriculture - zotech	Chemicals Regulation (including pesticides)
Fisheries management & support	Agriculture - organic farming
Ozone depleting substances and F-gases	Agriculture - fertiliser regulations
Animal health and traceability	Reciprocal Healthcare
Animal welfare	Food and feed safety and hygiene law
Chemicals	

Cabinet Office, 2019⁶

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