



Law Society
of Scotland

Response by the Law Society of Scotland

Common UK Frameworks: Inquiry by the Scottish
Parliament's Finance and Constitution Committee

September 2018



Introduction

The Law Society of Scotland is the professional body for over 11,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

Our Constitutional Law Sub Committee welcomes the opportunity to consider and respond to the Common UK Frameworks inquiry by the Finance and Constitution Committee.

What should replace the current EU policy-making processes across the UK?

Our Comment

The replacement for current EU policy making processes is dependent on the following factors:-

- (a) If there is a withdrawal agreement in place on 29 March 2019 and the anticipated European Union (Withdrawal Agreement) Bill has been passed by the UK Parliament the transitional or implementation period will apply until 31 December 2020. This means that the status quo is preserved based on the EU Acquis and the UK will remain a member of the single market and customs union from exit day until the end of 2020. Trade and co-operation will continue and the CJEU will maintain its jurisdiction. The UK will however lose its decision making powers and representation in all EU institutions as detailed in Article 6.1(a) and (b) of the Withdrawal Agreement. Because the entire EU Law will apply to the UK (see article 121 of the Withdrawal Agreement —including any new EU law adopted during the transition or implementation period) the current arrangements for exchange of information between the UK Government and the Scottish Government (and the other Devolved Administrations) should continue to apply subject to modifications which take into account that the UK will not be represented in the European Institutions, Bodies or Agencies and will have no decision making powers. The White Paper on *Legislating for the Withdrawal Agreement between the United Kingdom and the European Union* explains that key provisions of the EU (Withdrawal) Act 2018 will be repealed such as section 1 (the repeal of the European Communities Act 1972) to save the ECA for the transition or implementation period. This means that the supremacy of EU Law and adherence to CJEU case law will continue during the transition or implementation period. The UK will also be subject to EU law which is made during the transition or implementation period.
- (b) Article 157 of the Withdrawal Agreement establishes the Joint Committee, Article 158 establishes the Specialised Committees and under Article 122 the UK may be invited by the EU to participate as a third

country and to co-operate in some new measures. The current arrangements will therefore require to be modified to take account of these institutional changes and this change in the UK's status under the Withdrawal Agreement.

(c) The situation which will apply if there is no Withdrawal Agreement will be considered later in this paper.

Arrangements for engagement in EU policy-making processes if a Withdrawal Agreement is in place by exit day

The UK office of Permanent Representation in Brussels (UKRep) is the main contact point between the EU and the UK. It advises on contacting the EU institutions and coordinates EU communications. It is led by Sir Tim Barrow, the UK's Permanent Representative to the EU who is supported by a number of policy officers and legal advisors. The Scottish Government EU Office has very close links with UKRep.

The Concordat on the Coordination of European Union Policy Issues (2013)

<https://beta.gov.scot/publications/devolution-mou/Devolution%20Agreement.pdf?inline=true> is part of the Memorandum of Understanding between the UK Government and the Devolved Administrations. This states in paragraph 18 that "As a matter of law, international relations and relations with the European Union remain the responsibility of the United Kingdom Government and the UK Parliament. However, the UK Government recognises that the devolved administrations will have an interest in international and European policy making in relation to devolved matters, notably where implementing action by the devolved administrations may be required. They will have a particular interest in those many aspects of European Union business which affect devolved areas, and a significant role to play in them" and at paragraph 21 that "The UK Government will involve the devolved administrations as fully as possible in discussions about the formulation of the UK's policy position on all EU and international issues which touch on devolved matters".

The Concordat also states: B1.6 Participation will be subject to mutual respect for the confidentiality of discussions and adherence by the Scottish Ministers to the resulting UK line without which it would be impossible to maintain such close working relationships. This line will reflect the interests of the UK as a whole.

The Scottish Government document *Influencing EU Policy guide for Scottish Government officials* (March 2016) states that "In return, the Scottish Government agrees to support the resulting UK negotiating line which we will play a part in developing".

Engagement with the Commission can be on a technical or a political level. The technical issues are raised with the relevant Directorate General whereas political issues are raised with the Commissioners and their Cabinets.

The Council of the EU is a single legal entity, but it meets in 10 different 'configurations', depending on the subject being discussed. The configurations are:-

- (1) [Agriculture and Fisheries](#), (2) [Competitiveness](#) (3) [Economic and Financial Affairs](#), (4) [Environment](#),
- (5) [Employment, Social Policy, Health and Consumer Affairs](#), (6) [Education, Youth, Culture and](#)

[Sport](#), (7) [Foreign Affairs](#), (8) [General Affairs](#), (9) [Justice and Home Affairs](#), (10) [Transport, Telecommunications and Energy](#)

There is no hierarchy among the Council configurations, although the General Affairs Council has a special coordination role and is responsible for institutional, administrative and horizontal matters.

Council meetings comprise one representative from each Member State, authorised to commit the Member State government. Most meetings are chaired by the Member State holding EU presidency at the time of the meeting.

Impact of the Withdrawal Agreement

The Withdrawal Agreement means that the current arrangements for UK (and Scottish) ministerial representation at Council meetings will no longer apply. However the principle of cooperation between UK and Scottish Ministers which has been established under the current arrangements including agreement of a common position and representation of the UK by Scottish Ministers should serve as a basis for arrangements which will apply in dealings with the EU Institutions and the Joint Committee under the Withdrawal Agreement.

At official level there is presently general acceptance that Scottish Government Officials may attend Working Parties in areas of devolved responsibility — this should continue in relation to the Joint Committee and the Specialised Committees and those circumstances where the UK is invited to participate in EU committees under Article 122. In some subject areas this will more common than others. In the past such involvement has been commonplace in areas such as fisheries, agriculture, regional development, judicial co-operation (as noted in the Culture, Tourism, Europe and External Relations Committee report *Determining Scotland's future relationship with the European Union* SP Paper 99.14th Report, 2017 (Session 5)). The Scottish Government has always, to some degree, been involved alongside UK Government ministers in negotiations with their counterparts in other Member States in meetings of the Council of Ministers. Scottish Ministers have participated in negotiations following the prior agreement of a UK negotiating line and set of priorities.

Interaction with the Council is of a different nature than that with the Commission and the Parliament. Engagement is primarily through the UK Government, which is responsible for representing the UK as Member State in EU Council Meetings.

The [European Parliament](#) represents Europe's citizens in the EU decision making process. There are currently 751 MEPs elected every 5 years on the basis of the population of each Member State and its constituencies, 73 of which represent the UK of which six represent Scotland. Under the Withdrawal Agreement the UK will have no MEPs after exit day. This will impact the need for lobbying at the European Parliament by both UK and Scottish interests.

Nearly 95% of EU legislation is co-decided between the European Parliament and the Council, under the Ordinary Legislative Procedure. This procedure is designed to put the European Parliament on an equal footing with the Council.

The Ordinary Legislative Procedure does not apply to aspects of justice and home affairs, the setting of annual total allowable catch limits in fisheries and taxation.

During the transition or implementation period the Scottish Parliament will be responsible for scrutinising the impact of legislative proposals and voting on regulations which will transpose EU law into Scottish law. Subject Committees will require to deal with EU legislation coming forward in their areas, and the Culture Tourism Europe and External Relations Committee will continue to examine cross-cutting EU issues. Scottish Ministers need to be aware of current EU issues, so that they can explain to Parliament how the Scottish Government is engaging on these matters.

Care will need to be taken to ensure that the European Union (Withdrawal Agreement) bill so far as it affects the powers of the Scottish Parliament will be subject to proper consultation with the Scottish Parliament, the Scottish Ministers and external stakeholders. In our view that bill will engage the legislative consent convention.

Arrangements for Engagement in Retained EU Law and Policy Making Processes if no Withdrawal Agreement in place by exit day

The arrangements set out above are inappropriate for circumstances where there is no Withdrawal Agreement or for when the transition or implementation period under the Withdrawal Agreement comes to an end on 31 December 2020.

If there is no Withdrawal Agreement and the UK's membership of the EU ends on exit day in March 2019, the treaties (and EU law) will not apply in the UK. The Supranational legal order will deconstruct and the National legal order as envisaged by the European Union (Withdrawal) Act 2018 will require to be in place in order to maintain a functional Statute Book and apply EU retained law.

In these circumstances the Inter-governmental agreement as agreed by the JMC(EN) in October 2017 and the terms of the European Union (Withdrawal) Act 2018 will apply.

Similar circumstances would apply on 31 December 2020 at the end of the transition or implementation period under the Withdrawal Agreement when the European Union (Withdrawal) Act 2018 will be brought into effect.

The UK Withdrawal from the European Union (Legal Continuity) (Scotland) bill is designed for the equivalent eventualities but as the bill's competence has not been decided we have no comment to make on it at the moment.

The Inter-governmental Agreement and Common Frameworks

In October 2017 the JMC(EN) agreed that common frameworks should be established where necessary. The communique stated:

“The following principles apply to common frameworks in areas where EU law currently intersects with devolved competence. 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.

Principles

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.”

The intergovernmental agreement and the memorandum agreed by the JMC(EN) require to take into account also the White Paper on *Legislating for the Withdrawal Agreement between the United Kingdom and the European Union* (Cm 9674) (paragraph 67) and also the White Paper on *the Future Relationship between the United Kingdom and the European Union* (Cm 9593) (paragraph 56) whilst at the same time recognising the recommendations of the Public Administration and Constitutional Affairs Committee’s report *Devolution and Exiting the EU: Reconciling Differences and Building Strong Relationships* (HC1485).

The agreement and the memorandum require to be amended to take account of the changes which were made to the European Union Withdrawal Bill as it progressed through Parliament. The bill received the Royal Assent on 26 June 2018 and is now the European Union (Withdrawal) Act 2018. For example, references to Clauses 7, 8 and 9 should now read as references to Sections 8 and 9 and references to Clause 11 should be now be references to Section 12,

Section 12 of the Act inserted into the Scotland Act 1998 a new section 30A entitled Legislative Competence: Restriction relating to retained EU Law. Section 30A provides that –

“an Act of the Scottish Parliament cannot modify or confer power by subordinate legislation to modify retained EU law so far as the modification is of a description specified in regulations by a Minister of the Crown.”

The power to lay regulations is covered by subsection (30A)(3) which states that “a Minister of the Crown must not lay for approval before each House of the Parliament of the United Kingdom a draft of a statutory instrument containing regulations under this section unless:-

- (a) “The Scottish Parliament has made a consent decision in relation to the laying of the draft or*
- (b) The forty day period has ended without the Parliament having made such a decision”.*

A consent decision is defined as:-

- (a) “A decision to agree a motion consenting to the laying of the draft*
- (b) A decision not to agree to a motion consenting to the laying of the draft or*
- (c) A decision to agree a motion refusing to consent to the laying of the draft”.*

We welcome the fact that no regulation may be laid under new section 30A after the end of the period of two years beginning with exit day. This has been described as a “sunset clause” but that is not truly accurate. A true sunset clause would require the repeal of the provision rather than simply a provision that no regulations were to be made.

Common Frameworks Applications

The Cabinet Office published in late 2017 a list of 111 points where EU Law intersects with devolved matters. This has been supplemented by the publication of the UK Government’s Frameworks analysis: breakdown of areas of EU law that intersect with devolved competence in Scotland, Wales and Northern Ireland on 9 March 2018. The analysis was published in March 2018 and sets out the UK Government’s provisional assessment of areas of EU law that intersect with devolved competence in each devolved administration. The analysis makes clear that as the devolution settlements are asymmetrical, a different range of powers is relevant to Scotland, Wales and Northern Ireland. The policy areas in question are broken down as follows:

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 are subject to more detailed discussion to explore whether legislative common framework arrangements might be needed, in whole or in part.

In order to add further information to the debate, we offer a survey of those 24 policy areas (Annexed to this paper) which includes details of the EU law concerned and the implementing legislation for Scotland

and, where appropriate, for the UK (occasionally on a GB basis) and for England and Wales. The 24 areas 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

The 24 areas are important, complex and technical in nature. They comprise highly regulated areas of policy implemented by EU Directives, Regulations and Decisions and transposed by UK Acts and subordinate legislation, Scottish Acts and Scottish subordinate legislation; as well as a number of administrative, non-statutory arrangements.

Scottish Ministers acting under the European Communities Act 1972 have made subordinate legislation in most of the areas which has been approved by the Scottish Parliament.

UK Ministers have also made subordinate legislation with the consent of Scottish Ministers in areas which have been subject to a Transfer of Powers Order. These have tended to be in areas of policy where there is a clear interest in a pan-UK legal structure, e.g. organic products or greenhouse gas emissions.

As would be expected, when implementing EU law there are a number of occasions where parallel regulations have been passed by each legislature in exactly the same terms.

There are also occasions where guidance or other administrative arrangements have been issued by the Scottish Government following consultation with the UK Department e.g. the Animal Health and Welfare Framework.

In a set of Parliamentary answers in April 2018 Lord Young of Cookham confirmed that “The Government’s provisional frameworks analysis published in March sets out the 24 policy areas in which it envisages a legislative common framework, either in whole or in part. This analysis remains provisional and is subject to ongoing work with the devolved administrations, parliament and external stakeholders. Where legislation is required, the Government seeks to publish bills in draft wherever possible.” And that “...that initial analysis now enables a conversation beyond governments, in an open and transparent manner. These issues are of central importance to Parliament and the devolved legislatures, but also to businesses and wider stakeholders whose day to day activities will be affected by these decisions. This analysis is part of an ongoing dialogue, not a final position. The conclusions it sets out are provisional and continue to be discussed with the devolved administrations, parliamentarians and external stakeholders. The Government will continue to consult interested parties as this work develops”.

It would be helpful were the UK Government and the Devolved Administrations to update on the work completed in this area since April 2018. In particular it would be useful if there were consultation with external stakeholders on issues such as the legislation which is envisaged. It would also be useful to know more about the additional 12 policy areas which the UK Government believes are reserved.

Addressing the governance gap in relation to the monitoring, implementation and enforcement of frameworks;

Our Comment

The need for a new Governance Agreement

The SPICe Paper Common UK Frameworks after Brexit ((2 February 2018 SB 18-09) noted that “ The 1999 devolution settlements were designed on the principle of a binary division of power between what was reserved and what was devolved. This model had advantages in terms of clear accountability, but it meant the UK did not have to develop a culture of or institutions for ‘shared rule’ between central and devolved levels. The UK membership of the EU further contributed to the weakness of intergovernmental working, since many policy issues with a cross-border component (including environmental protection, fisheries management, and market-distorting state aid) were addressed on an EU-wide basis”.

The SPICe Paper also noted that “when more decisions are taken through intergovernmental forums, as in some federal systems, accountability and parliamentary scrutiny can suffer. The creation of common frameworks signals a move away from a binary division of power towards more extensive joint working between UK and devolved governments. This therefore increases the importance of ensuring that intergovernmental bodies are transparent and accountable.

New Structures could include “new JMC-type committees in areas where common frameworks are created” and subcommittee structures. Proposals for statutory arrangements for common frameworks were debated during the passage of the European Union (Withdrawal) Act which included arrangements for determining what powers will be devolved or reserved in the event of the Governments being unable to agree where the powers should lie. It would be useful for the Governments to revisit those amendments as a way to inform discussions on the frameworks.

Not only is there a need for more systematic intergovernmental dialogue but also for increased inter-Parliamentary contact. Parliamentary scrutiny (in all the legislatures in the UK) of the activities of the JMC and any Frameworks which are created in whatever form they take will be essential if the actions of all the Governments throughout the UK are to be fully accountable.

We agree with recommendation 25 of the UK Parliament’s Public Administration and Constitutional Affairs Committee report. “25.The absence of formal and effective inter-governmental relations mechanisms has been the missing part of the devolution settlement ever since devolution was established in 1998. The process of the UK leaving the EU has provided the opportunity for the Government to re-think and redesign inter-governmental relations in order to put them on a better footing. Once the UK has left the EU, and UK Common Frameworks are established, the present lack of intergovernmental institutions for the underpinning of trusting relationships and consent will no longer be sustainable. *We recommend that the Government take the opportunity provided by Brexit to seek to develop, in conjunction with the devolved Administrations, a new system of inter-governmental machinery and ensure it is given a statutory footing. Doing this will make clear that inter-governmental relations are as important a part of the devolution settlement as the powers held by the devolved institutions.* (Paragraph132)”.

We look forward to the publication of the Review of Inter-governmental relations.

The interaction between frameworks and the negotiation of new international agreements including free trade agreements

Our Comment

One of the principles agreed at the JMC(EN) in October was that there should be a framework to ensure the UK can negotiate, enter into and implement new trade agreements and international treaties. Trade agreements can be used to effect a wide range of changes in the relationship between states and regions. In many such agreements provisions are a means to promote or reinforce the application of the rule of law. Trade negotiations should take into consideration the need to ensure protection for Human Rights minimum standards or norms and respect for the rule of law, the interests of justice and access to justice.

Other aspects of the legal framework play a similarly important role in facilitating trade. This extends, for example, to continuing protection of intellectual property rights, promotion of competition and facilitating flows of data.

In the context of negotiations for a new relationship with the EU, it is important that every effort is made to continue cooperation in terms of mutual recognition and enforcement of judgments which are so important in allowing citizens and businesses to resolve disputes. Enabling access to justice gives businesses greater confidence in their commercial relationships and is important to underpin continued trade between the UK and remaining EU countries post withdrawal.

Furthermore, the Future Relationship Agreement must make provision for dispute resolution between the UK and EU in relation to the interpretation and enforcement Future Free Trade Agreements will similarly need such provision.

We emphasise the importance of recognising that Scotland is a distinct jurisdiction with its own law, court system and separately regulated legal profession. This should be taken into account in pursuing trade agreements including negotiations with the EU.

We also underline that a coordinated and holistic approach to trade promotion is of fundamental importance, both within and across economic sectors to maximise opportunities, for example the suite of professional business and advisory services, including legal services, which support investment. This comprehensive approach should also highlight broader benefits of doing business in Scotland, incorporating the availability of talent and cultural factors, such as quality of life.

As set out in our response to the consultation *Preparing for Our Future UK Trade Policy*, we believe that a whole of governance approach should be taken when considering trade negotiations. In the context of devolved competences this is particularly relevant where international agreements would bind domestic legislatures to effect changes to domestic law. This is specifically recognized in paragraph D1.4 of the Concordat on International Relations which states:

“The UK Government recognises that the devolved administrations will have an interest in international policy making in relation to devolved matters and also in obligations touching on devolved matters that the UK may agree as a result of concluding international agreements (including UN Conventions)” and paragraph D1.5 which states:

“The parties to this Concordat recognise that the conduct of international relations is likely to have implications for the devolved responsibilities of Scottish Ministers and that the exercise of these responsibilities is likely to have implications for international relations. This Concordat therefore reflects a mutual determination to ensure that there is close co-operation in these areas between the United Kingdom Government and the Scottish Ministers with the objective of promoting the overseas interests of the United Kingdom and all its constituent parts”.

We also noted that there is a lack of clarity in the Trade Bill as to how the devolved administrations might be involved in trade negotiations. The UK Government should clarify how the Concordat and the Trade legislation will take account of the new circumstances.

The devolved legislatures and administrations have not played a formal role in negotiating international trade treaties (see the Scotland Act 1998 schedule 5, paragraph 7). However, since the EU first took over responsibility for trade negotiations, there have been constitutional developments within the UK with the creation of the devolved legislatures and administrations- including the Scottish Parliament - and subsequent further devolution of powers to them. Determining the UK’s position across a raft of sectors encompassing products and services, which may be provided from anywhere in the UK, needs a holistic approach.

As we have stated elsewhere, we believe it is important to ensure a “whole-of-government” approach in terms of the negotiations with the EU. The concept is also of particular relevance to other international agreements - including trade agreements - which may or will have an impact on domestic law. In this context “whole of government” should be interpreted as “whole of governance” to include not only the UK Government but also the Scottish Government, the Northern Ireland Executive and the Welsh Government and external stakeholders.

The procedures in place for negotiation of international trade agreements and consider how these might best be modernised to take account of changes in the UK’s political landscape, particularly those brought about by devolution and also in recognition of the increased public interest in and engagement with trade negotiations in recent years.

In order to create a comprehensive and inclusive trade policy, conduct negotiations and implement trade agreements, it would helpful were the UK government to engage with the devolved administrations and legislatures. In our recent response to the House of Commons International Trade Committee’s *UK Trade Policy Transparency and Scrutiny inquiry*, we set out a range of options for involvement of the devolved administrations as follows:

- requiring the consent of the devolved administrations to any UK negotiated trade position;

- *normally* requiring the consent of the devolved administrations, but the UK Government not being bound to obtain such consent;
- having a procedural structure for the devolved administrations' involvement similar to that in the European Union Withdrawal Act 2018 for "common frameworks" (i.e. formal consent by the devolved administrations would not be required but a procedure would be set out to ensure involvement in the process); and,
- As a minimum, and without requiring the consent of the devolved legislatures, allowing the devolved legislatures and administrations access to documents, policies etc. and allowing them to have a scrutiny and comment role (as noted above).
- With some of the above, consideration would need to be given to whether the rules should be set down in statute, convention, or a revised Memorandum of Understanding. For instance, where terms such as "normally" are being used to describe what would be expected in the relationship between parties, such provision should probably best not be stated in statute, due to the lack of precision.

Where the subject of negotiations relates to devolved matters, it should be expected that the UK Government would seek the involvement of devolved administrations in negotiations. Consideration should be given to whether the UK Government should be required to seek more than just the involvement of the devolved administrations in such negotiations but also seek their consent to the position of the UK Government during such negotiations where they relate to devolved matters. This will be important where trade agreements impact upon devolved matters and implementing legislation may be carried out by the devolved administrations or engage the legislative consent convention.

Accordingly, rather than seek to engage with devolved administrations on an ad hoc basis, to enable the smoothest possible design and operation of trade policy (and to minimise uncertainty for industry and trade partners), it would be advisable for formal structures to be established to facilitate trade-related collaboration across all the administrations e.g. to tie in with the "common frameworks" to be agreed as a result of repatriation of EU powers. Such structures may provide, for example, for devolved participation in the design of trade mandates and in the conduct of negotiations in respect of devolved areas, thereby ensuring devolved buy-in to trade agreement implementation and minimising risks to UK-wide implementation of trade agreements.

Lastly, insofar as trade negotiations relate to devolved areas, one option would be to make UK ratification of any agreements (or relevant sections thereof) provisional on devolved administration consent (which may in turn require devolved legislative consent). This is similar to the approach taken at EU level in relation to ratification of mixed agreements.

Funding of obligations and commitments arising from frameworks

Our Comment

This will be a matter of political agreement between the parties to the Frameworks. However each framework should be accompanied by a detailed Financial Memorandum and policy and equality impact assessments.

ANNEX

24 policy areas that are subject to more detailed discussion to explore whether legislative common framework agreements might be needed, in whole or in part

Responsible UK Government Department	Area of EU Law (Policy Area)	Devolution Intersect			Additional Information
		NI	S	W	
DEFRA	Agricultural support	x	x	x	<p>Policies and Regulations under the EU Common Agricultural Policy covering Pillar 1 (income and market support); Pillar 2 (rural growth, agri-environment, agricultural productivity grants or services and organic conversion and maintenance grants); and cross-cutting issues, including compliance, finance, & controls.</p> <p><u>Law Society Scotland Comments</u></p> <p><u>EU Law</u></p> <p>Direct Payments Regulation 1307/201/EU, which establishes direct payments to farmers under Support Schemes within the framework of the Common Agricultural Policy.</p> <p>https://ec.europa.eu/agriculture/direct-support_en</p> <p><u>Scottish Law</u></p> <p>Common Agricultural Policy (Direct Payments etc.) (Scotland) Regulations 2015 Scotland will receive €4.6 billion to implement the Common Agricultural Policy (CAP) in Scotland until 2020. CAP provides funding for Scotland's farmers and landowners, along with a range of other support schemes. €3.7 billion is in direct payments to farmers, with just over €840 million per the Scotland Rural Development Programme (SRDP). The SRDP funds a wide variety of projects across Scotland to help rural communities, protect and enhance the environment, develop rural businesses and support the forestry and farming sectors.</p>
DEFRA	Agriculture – fertiliser regulations	x	x	x	<p>Regulations providing common standards for compositional ingredients, labelling, packaging, sampling and analysis of fertilisers. The UK is also signed up to a number of international agreements (e.g. the Gothenburg Protocol) and EU agreements (the National Ceilings Directive related to fertiliser regulation)</p> <p><u>Law Society Scotland Comments</u></p>



				<p><u>EU Law</u></p> <p>Regulation (EC) No 2003/2003 relating to fertilisers consolidates all the EU rules that apply to fertilisers. The Regulation ensures that these technical requirements are implemented throughout the EU. This consolidated version is of documentary value only.</p> <p>The regulation applies to mineral fertilisers consisting of one or more plant nutrients. Other fertilisers are governed by EU countries' national legislation.</p> <p>The regulation lists fertiliser types according to their specific characteristics. Once a fertiliser meets this designation it may bear the letters 'EC' which guarantees farmers that the fertilisers contain a minimum nutrient content and are safe to use. Information, including the manufacturer's details and the fertiliser's characteristics, must appear on packages, labelling and accompanying documents.</p> <p><u>English Law</u> The EC Fertilisers (England and Wales) Regulations 2006</p> <p><u>Scottish Law</u> The EC Fertilisers (Scotland) Regulations 2006</p>	
DEFRA	Agriculture – GMO marketing and civilisation	x	x	x	<p>Standards for marketing and cultivation of genetically modified organisms.</p> <p><u>Law Society Scotland Comments</u></p> <p><u>EU Law</u></p> <p>Directive 2001/18/EC (Deliberate Release) Directive (EU) 2015/412 (Deliberate Release-possibility to restrict cultivation of GMOs in Member State's territory) Directive 2009/41/EC (Contained Use) Regulation 1829/2003 (Food and Feed) Regulation 1830/2003 (Traceability and Labelling) Regulation 1946/2003 (Transboundary Movements) Genetically Modified Organisms (GMO) technology is strictly regulated and the EU has had a legal framework since the 1990s.</p> <p>EU legislation establishes the conditions for the development, use or marketing of a GMO or a food/feed</p>



product derived from GMOs. EU legislation on GMOs has two main objectives:
To protect health and the environment: a GMO or a food product derived from a GMO can only be put on the market in the EU after it has been authorised on the basis of a detailed EU procedure based on a scientific assessment of the risks to health and the environment and to ensure the free movement of safe and healthy GM products in the EU. GM authorisation in Europe adopts a precautionary, case-by-case approach where the scale of release is related to the level of risk.

There are the following levels of authorisation:

- a. Contained use – This is GM research carried out in a contained environment, under Directive 2009/41/EC.
- b. Research releases - this is the deliberate release to the environment authorised under the Deliberate Release into the Environment of GMOs Directive, 2001/18/EC. These are small scale releases carried out under tight control.
- c. Commercial releases – is the deliberate release to the environment authorised under Part C of the Deliberate Release into the Environment of GMOs Directive, 2001/18/EC, or under the Genetically Modified Food and Feed Regulation, 1829/2003. This type of authorisation covers import and use of a GMO for food or feed and non-food use and it can allow EU-wide commercial scale growing of a GM crop. The Food Standards Agency (FSA) is responsible for food safety issues whilst Defra and the devolved agriculture departments are responsible for assessing risks to the environment. All new crop varieties (GM and non GM) also have to be approved as suitable for agriculture via the National List trials route. The Traceability and Labelling Regulation 1830/2003/EC and Food and Feed Regulation 1830/2003/EC require the labelling of any intentional use of GM ingredients in food and feed. A GMO that has not been approved is not allowed in food and feed for sale in the EU.

UK Law

Environmental Protection Act 1990

The Genetically Modified Organisms (Contained Use) Regulations 2014

The competent authority responsible for the Regulations consists of the Health and Safety Executive (HSE) and the Secretary of State for the Environment, Food and Rural Affairs (Defra) in England and Wales www.gov.uk/government/organisations/department-for-environment-food-rural-affairs

In Scotland, the HSE and the Scottish Government are the joint competent authority. The HSE considers the risk to the operator and the Scottish Government considers the risk to the environment from any GMO release.



				<p><u>Scottish Law</u></p> <p>Enforcement in Scotland</p> <p>In Scotland there are four sets of regulations granting powers to authorised officers for enforcement, and creating penalties for non-compliance. Local authorities are responsible for the enforcement of traceability and labelling requirements and for sampling and testing food and feed for GMOs. The GM Inspectorate and Science and Advice for Scottish Agriculture (SASA) is responsible for ensuring compliance with the regulations governing the deliberate release into the environment of GMOs in Scotland.</p> <p>The Genetically Modified Organisms (Deliberate Release) (Scotland) Regulations 2002 Genetically Modified Food (Scotland) Regulations 2004 Genetically Modified Organisms (Traceability and Labelling) (Scotland) Regulations 2004 Genetically Modified Organisms (Transboundary Movements) (Scotland) Regulations 2005</p>	
DEFRA	Agriculture – organic farming	x	x	x	<p>Regulations setting out standards for organic production certification.</p> <p><u>Law Society Scotland Comments</u></p> <p><u>EU Law</u></p> <p>The Council Regulation 834/2007/EC sets out the principles, aims and overarching rules of organic production and defines how organic products are to be labelled.</p> <p>The regulation has the following aims:</p> <ul style="list-style-type: none"> a. sustainable cultivation systems b. a variety of high-quality products c. greater emphasis on environmental protection d. more attention to biodiversity e. higher standards of animal protection f. consumer confidence g. protecting consumer interests <p>Synthetic resources may be permissible if there are no suitable alternatives. Such products, which must be scrutinised by the Commission and EU countries before authorisation, are listed in the annexes to the implementing regulation 889/2008/EC. 15</p>



					<p>Labelling organic foods</p> <p>Foods can be labelled "organic" if at least 95% of the agricultural ingredients meet the necessary standards. In non-organic foods, any ingredients which meet organic standards can be listed as organic. Organic production outlaws GMOs. However, the regulation on genetically modified food and feed sets a threshold (0.9%) under which a product's GMO content does not have to be indicated. Products with GMO content below this threshold can be labelled organic.</p> <p>Since 1 July 2010, EU producers of organic food have been required to use the EU organic logo.</p> <p><u>UK Law</u></p> <p>The Organic Products Regulations 2009 The power of the Secretary of State, as a designated Minister, to make regulations which extend to Scotland, Wales and Northern Ireland remains exercisable by virtue of section 57(1) of the Scotland Act 1998 (c. 46); article 3(4) of the European Communities (Designation) (No. 3) Order 1999 (S.I.1999/2788), and article 3(2) of the European Communities (Designation) (No. 3) Order 2000(S.I. 2000/2812).</p>
DEFRA	Agriculture – zootech	x	x	x	<p>EU legislation providing a common framework of rules on breeding and trade in pedigree animals and germinal products in the EU and the treatment of imports from 3rd countries. Each of the UK regions has competent authorities in their areas for recognition of breed societies under this legislation.</p> <p><u>Our Comments</u></p> <p><u>EU Law</u></p> <p>https://ec.europa.eu/food/animals/zootechnics/legislation_en</p> <p>a. Decision 2007/371/EC as regards herd books for animals of the bovine species b. Decision 2006/427/EC laying down performance monitoring methods and methods for assessing cattle's genetic value for pure-bred breeding animals of the bovine species c. Decision 2005/379/EC on pedigree certificates and particulars for pure-bred breeding animals of the bovine species, their semen, ova and embryos d. Decision 2005/375/EC on entering male sheep and goats in an annex to the flock book e. Directive 94/28/EC as amended by Directive 2008/73/EC on third country imports, which also requires Member States to publish up to date lists of approved breed societies and associations on the internet</p>



					<p><u>English Law</u></p> <p>The Zootechnical Standards (England) Regulations 2012 https://www.gov.uk/government/publications/lists-of-recognised-animal-breeding-organisations</p> <p><u>Scottish Law</u></p> <p>The Zootechnical Standards Regulations 1992 The Zootechnical Standards Amendment (Scotland) Regulations 2007</p>
DEFRA	Animal health and traceability	x	x	x	<p>EU rules and standards that aim to maintain animal health and allow their movement, including policies covering: prevention of disease (entering UK) control of disease (endemic and exotic, surveillance (for exotic disease) movement of livestock, pet passports and veterinary medicines.</p> <p><u>Law Society Scotland Comments</u></p> <p><u>EU Law</u></p> <p>The Regulation on Transmissible Animal Diseases, the EU Animal Health Law provides:</p> <ol style="list-style-type: none"> Simpler rules to enable authorities to focus on preventing and eradicating disease Clearer responsibilities for farmers, vets and others dealing with animals Better surveillance of pathogens, electronic identification and registration of animals Earlier detection and control of animal diseases to reduce animal epidemics More flexibility to adjust rules to local circumstances <p>The Animal Health Law strengthens the enforcement of health and safety standards for the agri-food chain and is also a key output of the Animal Health Strategy 2007-2013 "Prevention is better than cure". Several delegated and implementing acts will be adopted by the EU until April 2019 to make the new rules applicable.</p> <p>Farmed Animals – Council Directive 98/58/EC concerning the protection of animals kept for farming purposes. Regulation 1/2005 on the Protection of Animals during Transport and related operations sets out</p>



			<p>minimum standards for the welfare of animals during transport. The Regulation applies to the transport of all live vertebrate animals for the purposes of economic activity, i.e. a business or trade.</p> <p><u>English Law</u></p> <p>The Animal Welfare Act 2006 (AWA) contains the general laws relating to animal welfare. It is an offence to cause unnecessary suffering to any animal. The AWA contains a Duty of Care to animals - anyone responsible for an animal must take reasonable steps to make sure the animal's needs are met. The welfare of farmed animals is additionally protected by The Welfare of Farmed Animals (England) Regulations 2007, which are made under the AWA.</p> <p>The Welfare of Animals at Markets Order 1990 (WAMO) covers treatment of animals in markets to ensure they are not caused injury or unnecessary suffering. The order sets out arrangements for penning, food and water and the care of young animals. Responsibility for enforcing WAMO rests with local councils.</p> <p>The Welfare of Animals (Transport) (England) Order 2006 The welfare of farmed animals is additionally protected by the Welfare of Farmed Animals (England) Regulations 2007, which are made under the AWA. Welfare of Farmed Animals (England) Regulations 2007 Welfare of Farmed Animals (England) (Amendment) Regulations 2010 These regulations implement EU directives on the welfare of calves, pigs, laying hens, conventionally reared meat chickens and a general welfare framework directive, which sets down minimum standards for the protection of all farmed livestock. The regulations cover all farmed animals. Schedule 1 contains requirements for inspections, record keeping, freedom of movement, buildings, equipment and the feeding and watering of animals. Guidance has been prepared to accompany the regulations.</p> <p><u>Scottish Law</u></p> <p>The Animal Health and Welfare (Scotland) Act 2006 The Welfare of Farmed Animals (Scotland) Regulations 2010 The Welfare of Animals (Transport) (Scotland) Regulations 2006 The functions conferred upon the Minister of the Crown under section 2(2) of the European Communities Act 1972, insofar as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998. http://www.gov.scot/Topics/farmingrural/Agriculture/animal-welfare/policies/Legislation http://www.gov.scot/Resource/0051/00512255.pdf The Animal Health and Welfare Framework has been introduced to recognise the importance of central and local government working together. It is a partnership between the Scottish Government, the</p>
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					<p>Convention of Scottish Local Authorities (COSLA), the Society of Chief Officers of Trading Standards in Scotland (SCOTSS), the Society of the Chief Officers of Environmental Health in Scotland (SOCOEHs) and the Animal and Plant Health Agency (APHA). The Framework also helps to address the requirements of Regulation 882/2004/EC on Official Feed and Food Controls, in ensuring verification of compliance with animal health and welfare rules. This regulation aims to improve the consistency and effectiveness of official controls within Member States and across the EC.</p> <p>The Food Hygiene (Scotland) Regulations 2006 The Meat (Official Controls Charges) (Scotland) Regulations 2009 The Animal By-Products (Enforcement) (Scotland) Regulations 2013</p>
DEFRA	Animal welfare	x	x	x	<p>EU rules relating to aspects of animal welfare including on-farm issues, movement of livestock and slaughter.</p>
HSE and DERRA	Chemicals regulation (including pesticides)	*x	*x	*x	<p>EU regulations on the classification, labelling and packaging of substances and mixtures (CLP); the placing on the market and use of biocidal products (e.g. rodenticides); the export and import of hazardous chemicals; the registration, evaluation, authorisation and restriction of chemicals (REACH); and plant protection products (e.g. pesticides)</p> <p><u>Law Society Scotland Comments</u></p> <p><u>EU Law</u></p> <p>The Sustainable Use of Pesticides Directive 2009/128/EC The European Commission is responsible for the approval of active substances for use in pesticides in Member States. Approval is given after a rigorous assessment process involving the European Food Safety Authority, Member States and scientific experts. The Directive includes provisions aimed at reducing risks and impacts on human health and the environment, and to improve controls on distribution and use:</p> <ol style="list-style-type: none"> a. A National Action Plan b. compulsory testing of application equipment c. provision of training for and arrangements for the certification of operators, advisors and distributors d. a ban (subject to limited exceptions) on aerial spraying e. provisions to protect water, public spaces and conservation areas f. the minimisation of risks from handling, storage and disposal g. the promotion of low input regimes



				<p><u>UK Law</u></p> <p>The Food and Environmental Protection Act 1985 as amended by the Pesticides Act 1998.</p> <p>When an active substance is approved by the EU, companies can apply to the regulatory authority in each Member State for permission to place their product on the market. In the UK this is the Chemicals Regulation Division (CRD) of the Health and Safety Executive. The CRD publishes guidance on the Health and Safety Executive website.</p> <p>Code of Practice for Using Plant Protection Products in Scotland: http://www.gov.scot/resource/doc/161422/0043816.pdf</p> <p>The Code of Practice reflects the Scottish Government’s policy to reduce the effect of pesticide use on people and on the environment while controlling pests, diseases and weeds. The Plant Protection Products (Sustainable Use) Regulations 2012 are UK regulations which implement Directive 2009/128/EC.</p> <p>The power of the Secretary of State, as designated Minister, to make Regulations that extend to Scotland remains exercisable by virtue of section 57(1) of the Scotland Act 1998.</p>	
DHSC	Elements of reciprocal healthcare	*x	*x	*x	<p>Regulations 1408/71 and 883/2004 are the main pieces of EU legislation providing for reciprocal healthcare.</p> <p><u>Law Society Scotland Comments</u></p> <p><u>EU Law</u></p> <p>Directive 2011/24/EC on EEA Patients’ Rights Regulations 1408/71/EEC and 883/2004/EC</p> <p>There are a number of healthcare arrangements that apply in the EU, the EEA and Switzerland. These arrangements are administered through programmes to which individuals must subscribe to exercise their right to reciprocal healthcare. There are four principal schemes, the EHIC (European Healthcare Insurance Card), S1, S2, and S3 schemes. These arrangements apply equally across the UK and are managed and funded centrally by the UK government.</p> <p>Eligibility for these schemes is based on residence and economic status, not nationality. The S1 scheme enables individuals from one nation to get health and social care in another, with the costs of that care met by the state that they would either ordinarily reside in or that provides their exportable benefit.</p>



				<p>The S2 scheme enables individuals to travel to another EU or EEA country or Switzerland to access specific healthcare treatments, with the cost of that treatment met by their country of residence. The S3 scheme provides a certificate of entitlement that enables individuals to access healthcare in a country in which they were previously employed.</p> <p><u>English Law</u></p> <p>The National Health Service (Cross-Border Healthcare) Regulations 2013 (2269) https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/252944/NHS_cross_border_regulations_2013.pdf</p> <p><u>Scottish Law</u></p> <p>The National Health Service (Cross-Border Health Care) (Scotland) Regulations 2013 292 http://www.legislation.gov.uk/ssi/2013/292/contents/made</p> <p><u>EU Law</u></p> <p>A valid European Health Insurance Card gives EEA nationals the right to access state-provided healthcare during a temporary stay in another European Economic Area (EEA) country or Switzerland: Anyone insured for healthcare in another EEA member state or Switzerland and who, for medically necessary treatment, presents either a European Health Insurance Card (EHIC) from that member state or a Provisional Replacement Certificate (PRC) for that card, or, for elective treatment, presents an S2 document for that treatment. The spouse/civil partner and children under 18 of the above are also exempt when lawfully visiting the UK with them.</p>	
DEFRA	Environmental quality – chemicals	*x	*x	*x	<p>Regulation of the manufacture, authorisation and sale and use of chemical products primarily through the REACH regulation but also including: Persistent Organic Pollutants (POP's), Polychlorinated Biphenyls (PCBs) and Minamata.</p> <p><u>Law Society Scotland Comments</u></p> <p><u>EU Law and Policy</u></p> <p>EU REACH (registration, evaluation, authorisation and restriction of chemicals) Regulation 1907/2006/EC: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02006R1907-20140410 REACH provides a single regulatory framework for the control of chemicals, replacing the previous patchwork of controls. It ensures that information on the properties of chemicals is transmitted down the supply chain, so they can be safely handled.</p>



				<p>The Water Framework Directive 2000/60/EC: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32000L0060 established provision for a list of Priority Substances (Annex X of the Directive). Decision 2455/2001/EC: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32001D2455 established the First list, and Directive 2008/105/EC, the Environmental Quality Standards Directive – EQSD: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32008L0105, set the quality standards as required by Article 16(8) of the Water Framework Directive. Annex II to the EQSD replaced Annex X of the Water Framework Directive.</p> <p>Member States are required to take actions to meet the quality standards in the EQSD by 2015 as part of chemical status (Water Framework Directive Article 4 and Annex V point 1.4.3). Community policy concerning dangerous or hazardous substances in European waters was introduced in 1976 by Council Directive on pollution caused by discharges of certain dangerous substances (Directive 76/464/EEC, codified as 2006/11/EC). Several substances have been regulated in specific directives defining community-wide emission limit values and quality objectives in the surface and coastal waters. Directive 76/464/EEC was integrated into the Water Framework Directive: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32000L0060 Commission Directive 2009/90/EC: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32009L0090 on technical specifications for chemical analysis and monitoring of water came into effect on 21 August 2009. This Directive established common chemical analysis standards and monitoring of water, sediment and biota.</p> <p>Strategic approach to pharmaceuticals in the environment:</p> <p>The Commission is consulting a strategic approach to pharmaceuticals in the environment. This follows the provision in Article 8c of Directive 2008/105/EC as amended by Directive 2013/39/EU, which requires that the approach be followed by proposals for measures as appropriate.</p> <p><u>UK Law</u></p> <p>The REACH Enforcement Regulations 2008:</p> <p>http://www.legislation.gov.uk/uksi/2008/2852/contents/made Under the European Communities Act 1972 the power of the Minister to make regulations in relation to matters in or as regards Scotland is preserved by section 57(1) of the Scotland Act 1998. DEFRA have the policy lead on which REACH complements the Control of Substances Hazardous to Health Regulations 2002 (COSHH). The Health and Safety Executive publishes http://www.hse.gov.uk/reach/. SEPA: https://www.sepa.org.uk is one of the enforcement authorities for chemical restrictions and bans under REACH.</p>	
DEFRA	Environmental quality – ozone depleting substances and F-gases	x	x	x	<p>The UK has international obligations under the Montreal Protocol to phase out the use of ODS, phase down hydrofluorocarbons by 85% by 2036, licence imports and exports and report on usage to the UN. EU Regulations and institutions currently deliver these obligations through quota restrictions, licencing</p>



					<p>and reporting requirements. The EU Regulations also go further with product bans; leakage controls measures and certification requirements for technicians.</p> <p><u>Law Society Scotland Comments</u></p> <p><u>EU Law</u></p> <p>Unofficial consolidated EU Emissions Trading Directive 2003/87/EC Directive 2009/29/EC (Phase III). This Directive amends Directive 2003/87/EC to improve and extend the EU's emission allowance trading scheme. The revised EU ETS Directive forms part of the EU 2020 Climate & Energy Package agreed in December 2008. Aviation Directive 2008/101/EC: This Directive amends the EU Emissions Trading Directive 2003/87/EC to include aviation from 2012.</p> <p>Linking Directive (2004/101/EC): This Directive amends the EU Emissions Trading Directive 2003/87/EC to enable Member States to allow operators to use credits obtained through Kyoto Mechanisms (CERs - Certified Emissions Reductions and ERUs - Emission Reduction Units). EU Emissions Trading Directive 2003/87/EC: Monitoring, reporting and verification of greenhouse gas emissions in the EU ETS.</p> <p><u>UK Law</u></p> <p>The Greenhouse Gas Emissions Trading Scheme Regulations 2012 Under section 57 of the Scotland Act 1998 (c. 46), despite the transfer to the Scottish Ministers of functions in relation to observing and implementing obligations under Community law in respect of devolved matters, any function of the Secretary of State in relation to any matter continues to be exercisable as regards Scotland for the purposes specified in section 2(2) of the European Communities Act 1972. And similarly, under paragraph 5 of Schedule 3 to the Government of Wales Act 2006 (c. 32), despite the transfer to the Welsh Ministers of functions under section 2 of the 1999 Act so far as exercisable in relation to Wales (except in relation to offshore oil and gas exploration and exploitation), those functions continue to be exercisable by the Secretary of State in relation to Wales for such purposes.</p>
DEFRA	Environmental quality – pesticides	x	*x	*x	Regulations governing the authorisation and use of pesticides products and the maximum residue levels in food, and framework for action on sustainable use of pesticides.
DEFRA	Environmental quality – waste packaging and product regulations	x	x	x	Policies and Regulations that aim to meet certain essential product requirements and set product standards including for packaging (e.g. POHS in Electrical and Electronic Equipment, Batteries and Vehicles) in order to manage waste.



Law Society Scotland Comments

EU Law

Directive 94/62/EC on Packaging and Packaging Waste (consolidated version)

Amending laws:

- a. Directive 2004/12/EC amending Directive 94/62/EC on packaging and packaging waste
- b. Directive 2005/20/EC amending Directive 94/62/EC on packaging and packaging waste
- c. (extension of deadlines for the attainment of the recycling and recovery targets for the Member States acceding the EU in 2004)
- d. Commission Directive 2013/2/EU amending Annex I to Directive 94/62/EC on packaging and packaging waste.
- e. Directive (EU) 2015/720 amending Directive 94/62/EC as regards the consumption of lightweight plastic carrier bags.
- f. The Waste Framework Directive 2008/98/EC sets the basic concepts and definitions related to waste management, including definitions of waste, recycling, recovery. It explains when waste ceases to be waste and becomes a secondary raw material (end-of-waste criteria), and how to distinguish between waste and by-products.

The Directive lays down some basic waste management principles: that waste be managed without a. endangering human health and harming the environment, b. risk to water, air, soil, plants or animals, c. causing a nuisance through noise or odours, and d. adversely affecting the countryside. The Directive introduced the "polluter pays" principle and "extended producer responsibility". It incorporated provisions on hazardous waste and waste oil and requires that Member States adopt waste management plans and waste prevention programmes.

UK Law

Producer Responsibility Obligations (Packaging Waste) Regulations 2007

These Regulations are made by the Secretary of State for Environment, Food and Rural Affairs as respects England, Scotland and Wales in exercise of the powers conferred upon him by section 2(2) of the European Communities Act 1972 and sections 93 – 95 of the Environment Act 1995. Under section 57 of the Scotland Act 1998, despite the transfer to Scottish Ministers of functions in relation to implementing obligations under Community law in respect of devolved matters, the function of the Secretary of State in relation to implementing those obligations continues to be exercisable by him as regards Scotland.

Environmental Protection Act 1990 <http://www.legislation.gov.uk/ukpga/1990/43/contents> Part II, Waste on Land Control of Waste (Dealing with Seized Property) (England and Wales) Regulations 2015:



				<p>http://www.legislation.gov.uk/uksi/2015/426/contents/made</p> <p><u>Scottish Law</u></p> <p>Waste Management Licensing (Scotland) Regulations 2011: https://www.legislation.gov.uk/ssi/2011/228/contents/made</p> <p>Safeguarding Scotland's Resources: Blueprint For A More Resource Efficient and Circular Economy: http://www.gov.scot/Publications/2013/10/6262/0</p>	
DEFRA	Fisheries management & support	x	x	x	<p>Policies and Regulations relating to rules relating to the sustainability of fisheries (quotas), access to waters, conservation measures, enforcement and financial support.</p> <p><u>Law Society Scotland Comments</u></p> <p><u>EU Law</u></p> <p>Article 3(1) (d) TFEU provides that the EU has “exclusive competence” in the “conservation of marine biological resources under the Common Fisheries Policy” (CFP). The CFP is a set of rules for managing European fishing fleets and for conserving fish stocks. It gives all European fishing fleets equal access to EU waters and fishing grounds. EU countries have taken action to ensure the European fishing industry is sustainable and does not threaten the fish population size and productivity over the long term. The CFP was first introduced in the 1970s and went through successive updates, the most recent of which took effect on 1 January 2014. The EU maintains that CFP aims to ensure that fishing and aquaculture are environmentally, economically and socially sustainable and that they provide a source of healthy food for EU citizens. Its goal is to foster a dynamic fishing industry and ensure a fair standard of living for fishing communities.</p> <p>The current policy stipulates that between 2015 and 2020 catch limits should be set that are sustainable and maintain fish stocks in the long term.</p> <p>The reform also changed the way in which the CFP is managed, giving EU countries greater control at national and regional level.</p> <p>The CFP has 4 main policy areas detailed in these links: Fisheries management, International policy, Market and trade policy and Funding of the policy The CFP also includes rules on aquaculture and stakeholder involvement The new Common Fisheries Policy: sustainability in depth The international dimension of the EU Common Fisheries Policy</p>



					<p>The European Maritime and Fisheries Fund 2014-2020 Regulation (EU) No 1380/2013 on the Common Fisheries Policy</p> <p><u>Scottish Law</u></p> <p>The Scotland Act 1998 schedule 5 paragraph C6 provides that the regulation of sea fishing outside the Scottish Zone is reserved to the UK. Therefore the Scottish Parliament has legislative competence over sea fishing within the Scottish zone, subject to the EU competence: Aquaculture and Fisheries (Scotland) Acts 2007 and 2013.</p>
Food Standards Agency	Food and feed safety and hygiene law (food and feed safety and hygiene law, and the controls and verify compliance with food and feed law (official controls))	x	x	x	<p>EU regulations laying down the general principles and requirements of food and feed safety and hygiene; food and feed law enforcement (official controls); food safety labelling; risk analysis; and incident handling. The regulations set out an overarching and coherent framework for the development of food and feed legislations and lay down general principles, requirements and procedures that underpin decision making in matters of food and feed safety, covering all stages of food and feed production.</p> <p><u>Law Society Scotland Comments</u></p> <p><u>EU Law</u></p> <p>See the extensive EU law in this area in the Food and Feed Guide in the section on Scottish Law.</p> <p><u>UK Law (exc. Scotland)</u></p> <p>Feed and food safety and standards are devolved in the UK. The Food Standards Agency (FSA) has responsibility for feed and food safety law in England, Wales and Northern Ireland. Following changes in 2010, FSA responsibilities for food law across England, Wales and Northern Ireland are no longer harmonised.</p> <p>In England, Defra is responsible for food labelling, other than for matters of food safety such as 'Use By' dates and allergens labelling. The Department of Health has central government responsibility for nutrition-related food legislation in England.</p> <p>In Wales, the FSA retains responsibility for general food labelling. The Welsh Government is responsible for nutrition related to food legislation.</p> <p>In Northern Ireland, the FSA retains responsibility for general food labelling and nutrition related to food legislation in Northern Ireland.</p>



					<p><i>Food Standards Agency Food and Feed Law Guide</i> https://www.food.gov.uk/sites/default/files/food_feed_law_guide_dec2016.pdf</p> <p><u>Scottish Law</u></p> <p>Food Standards Scotland (FSS) was established 1 April 2015 as the national food body for Scotland, with responsibility for central Government functions previously carried out by the FSA in Scotland. The FSS has published a Food and Feed Law Guide which sets out the EU Law and Scottish implementing regulations. The Guide can be found at: http://www.foodstandards.gov.scot/downloads/Scottish_Food_and_Feed_Law_Guide_-_August_2017_1.pdf</p>
DEFRA	Food compositional standards	x	x	x	<p>Minimum standards for a range of specific food commodities such as sugars, coffee, honey, caseins, condensed milk, chocolate, jams fruit, juices and bottled water.</p> <p><u>Law Society Scotland Comments</u></p> <p><u>EU Law</u></p> <p>Regulation 1169/2011/EU on the provision of food information to consumers <u>English Law</u></p> <p>The Food for Specific Groups (Information and Compositional Requirements) (England) (Amendment) Regulations 2017</p> <p><u>Scottish Law</u></p> <p>The Food Information (Scotland) Regulations 2014</p>
DEFRA	Food labelling	x	x	x	<p>Regulations setting out requirements on provision of information to consumers on food labels.</p> <p><u>Law Society Scotland Comments</u></p> <p><u>EU Law</u></p> <p>Regulation 1169/2011/EU on the provision of food information to consumers, http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32011R1169</p>

					<p><u>English Law</u></p> <p>The Food Information Regulations 2014 http://www.legislation.gov.uk/uksi/2014/1855/contents/made</p> <p><u>Scottish Law</u></p> <p>The Food Information (Scotland) Regulations 2014</p> <p>https://www.legislation.gov.uk/ssi/2014/312/note/made UK Policy</p> <p><u>UK Policy</u></p> <p>http://www.foodstandards.gov.scot/publications-and-research/guide-to-creating-a-front-of-pack-nutrition-label-for-pre-packed-products-s - (joint UK and devolved guidance)</p>
MHCLG	Hazardous substances planning	x	x	x	<p>Elements of the Seveso III Directive relate to the land-use planning, including: planning controls relating to the storage of hazardous substances and handling development proposals for hazardous establishments.</p> <p><u>EU Law</u></p> <p>The Seveso Directive: http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex%3A32012L0018 on the control of major accident hazards involving dangerous substances (known as "hazardous substances" in legislation within the UK).</p> <p><u>English Law</u></p> <p>The National Planning Policy Framework is particularly relevant to planning for hazardous substances: The Seveso III Directive 2012/18/EU sets expectations on land-use planning. In particular, Article 13 requires planning controls to apply to all establishments within the scope of the directive and developments in the vicinity of these establishments. Article 15 sets expectations on public participation in decision making. In England these requirements are implemented through a system of consents for hazardous substances under the Planning (Hazardous Substances) Act 1990 and through arrangements for dealing with planning applications and plan-making.</p> <p>The main regulations are:</p> <p>a. the Town and Country Planning (Development Management Procedure) (England) Order 2015 (see regulation 18 and Schedule 4);</p>



					<p>b. the Town and Country Planning (Local Planning) (England) Regulations 2012 (see regulation 10(1)(a) and (b)).</p> <p><u>Scottish Policy and Law</u></p> <p>The Seveso Directive seeks to limit the risks of major accident hazards involving such substances occurring and the consequences of such accidents for human health and the environment. The non-planning elements of the Seveso III Directive are implemented (from 1 June 2015) by the Control of Major Accident Hazards Regulations 2015, which are the responsibility of the UK Government. The Scottish legislation is the Planning (Hazardous Substances) (Scotland) Act 1997 and the Town and Country Planning (Hazardous Substances) (Scotland) Regulations 2015.</p> <p>This Scottish legislation has requirements for hazardous substances consent for the presence of specified substances or categories of substance at or above controlled quantities. It also includes relevant appeal procedures and enforcement procedures.</p> <p>The 2015 Regulations also amend other planning legislation regarding requirements in relation to the preparation of development plans and supplementary guidance and on the processing of applications for planning permission for sites with hazardous substances and for development in the vicinity of such sites. In order to meet the requirements of the Seveso III Directive, the 2015 Regulations also have new provisions on: the preparation of national planning policy; public involvement in the preparation of relevant plans and programmes; and public participation procedures in relation to decisions on planning permission in cases within scope of the Seveso III Directive and to decisions on hazardous substances consent taken outside the normal application process.</p>
BEIS	Implementation of EU Emissions Trading System	x	x	x	<p>Directives 2003/87/EC establishes the European Union Emissions Trading Scheme for greenhouse gas. The Scheme sets a maximum amount of greenhouse gas that can be emitted by all participating installations and aircrafts these operators then monitor, verify and report their emissions, and must surrender allowances equivalent to their emissions annually. Allowances are issued either by being sold at auction or allocated for free to some operators, and can be traded. With the price determined by the market.</p> <p><u>Scottish Policy and Law</u></p> <p><u>EU Law</u></p> <p>The EU emissions trading system or carbon market (EU ETS) is designed to combat climate change and reduce greenhouse gas emissions.</p>



			<p>The EU ETS works on the 'cap and trade' principle. A cap is set on the total amount of greenhouse gases that can be emitted by installations in the system. The cap is reduced over time so that total emissions fall. Within the cap, companies receive or buy emission allowances which they can trade with one another as needed. They can also buy limited amounts of international credits from emission-saving projects globally.</p> <p>Each year a company must surrender enough allowances to cover all its emissions. If a company reduces its emissions, it can keep the allowances to cover its future needs or sell them to another company that is short of allowances.</p> <p>Consolidated version of Directive 2003/87/EC of the European Parliament and of the Council establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC</p> <p>EU Policy and law: https://ec.europa.eu/clima/policies/lowcarbon/ccs/directive_en Directive on the Geological Storage of Carbon Dioxide (2009/31/EC): http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32009L0031</p> <p><u>UK Law</u></p> <p>The Greenhouse Gas Emissions Trading System Regulations 2012 require operators that carry out an activity covered by the EU ETS to hold an emissions permit which is a licence to operate and emit greenhouse gases under EU ETS see: Annex I to the EU ETS Directive.</p> <p>The EU ETS Regulators enforce compliance with the EU ETS Regulations, such as granting and maintaining permits and emissions plans (for aviation), monitoring and reporting (including monitoring plans), assessing verified emission reports (and tonne-kilometre reports), assessing applications to the NER, determining reductions in allocations as a result of changes in capacity or cessation of activities, exchanging information with UKAS on verifier activities.</p> <p>Regulators include: the Environment Agency, https://www.gov.uk/government/organisations/environment-agency , Scottish Environment Protection Agency (SEPA), Northern Ireland Environment Agency (NIEA), Natural Resources Wales, and the Department for Business, Energy & Industrial Strategy (BEIS) https://www.gov.uk/government/organisations/department-for-business-energy-and-industrial-strategy for offshore installations.</p> <p><u>UK Regulatory Regime</u></p> <p>The Energy Act 2008: https://www.legislation.gov.uk/ukpga/2008/32/contents provides a licensing regime</p>
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				<p>that governs offshore storage of carbon dioxide. The regime applies to storage in the offshore area comprising both UK territorial sea and beyond. The Secretary of State for BEIS is the licensing authority for offshore storage except within the territorial sea adjacent to Scotland, where it is Scottish Ministers.</p> <p><u>Scottish Policy and Law</u></p> <p>http://www.gov.scot/Topics/Business-Industry/Energy/Energy-sources/traditional-fuels/new-technologies/SGactionCCS SEPA supervised the transposition of Directive (2009/31/EC): The Energy Act 2008 (Storage of Carbon Dioxide) (Scotland) Regulations 2011: http://www.legislation.gov.uk/sdsi/2011/9780111011911/introduction The Storage of Carbon Dioxide (Licensing etc) (Scotland) Regulations 2011: http://www.legislation.gov.uk/ssi/2011/24/contents/made The Environmental Liability (Scotland) Amendment Regulations 2011: http://www.legislation.gov.uk/ssi/2011/116/contents/made These regulations flow from the Energy Act 2008, which designates the Scottish Ministers as the competent authority under the Directive for CO2 storage in Scotland.</p>	
DEIS (DHSC MHCLG, DEFRA, DfE and MoJ also have interest)	Mutual recognition of professional qualifications	x	x	x	<p>Directives that create systems for the recognition for professional qualifications and professional experience throughout the EU. Allowing EU professionals to work in regulated professions in other EU states on either a permanent or temporary basis.</p> <p><u>Scottish Policy and Law</u></p> <p><u>EU Law</u></p> <p>Professionals in the EU can move across borders and practice their occupation or provide services abroad. Recognition of professional qualifications in practice The recognition of professional qualifications in Directive 2005/36/EC enables the free movement of professionals such as doctors or architects within the EU. This directive has now been amended by Directive 2013/55/EU. Other professions, such as lawyers or sailors, fall under the scope of different legislation. In January 2016, the Commission introduced an EU-wide digital procedure for the recognition of professional qualifications – the European Professional Card (EPC). The procedure makes it easier for nurses, physiotherapists, pharmacists, real estate agents and mountain guides to work across the UK.</p> <p><u>UK Law (England and Wales and Scotland)</u></p> <p>In order to implement Directive 2005/36/EC into UK law, it was necessary to transpose the Directive in</p>

					<p>UK statutory regulations: European Union (Recognition of Professional Qualifications) Regulations 2015 The relevant sections of these regulations have now been incorporated into the Medical Act 1983 under The European Qualifications (Health and Social Care Professions) Regulations 2016. Under section 57(1) of the Scotland Act 1998 despite the transfer to Scottish Ministers of functions in relation to implementation obligations under Union Law in relation to certain matters by virtue of section 53 of that Act, the function of the Secretary of State in relation to any matter continues to be exercisable by him as regards Scotland for the purposes specified in section 2(2) of the European Communities Act 1972. The regulation of certain professions eg Architects and Auditors is reserved under the Scotland Act 1988.</p>
DHSC	Nutrition health claims, composition and labelling	x	x	x	<p>Including Regulations and Directives on the nutrition and health claims made on food; food for special medical purposes and weight control; food intended for infants; the addition of vitamins and other substances to food; and food supplements.</p> <p><u>Scottish Policy and Law</u></p> <p><u>EU Law</u></p> <p>Regulation 1924/2006/EC on nutrition and health claims made on foods Commission Regulation 432/2012/EU on permitted health claims Regulation (EU) No. 1169/2011 on the provision of food information to consumers Regulation 1047/2012/EU amending Regulation 1924/2006/EC with regard to the list of nutrition claims.</p> <p><u>Scottish Policy</u></p> <p>http://www.foodstandards.gov.scot/downloads/Nutrition_and_health_claims_guidance_November_2011.pdf</p>
DEFRA	Plant health, see and propagating material	*x	*x	*x	<p>Requirements in relation to the import and internal EU movement of plants and plant products, risk assessment of new plant pests and outbreak management. Assurance and auditing of policies across the UK to protect plant biosecurity. Requirements for plant variety rights, registration of plant varieties and quality assurance of marketed seed and propagating material.</p> <p><u>Scottish Policy and Law</u></p> <p><u>EU Law</u></p> <p>a. EU marketing requirements, including rules for specific seeds b. Directives related to Conservation Varieties c. Lists of implementing measures related to marketing of specific seeds d. Review of EU legislation on the marketing of see and plant propagatng material</p>



					<p><u>English Law</u></p> <p>The Plant Health (England) Order 2005 Protecting Plant Health: A Plant Biosecurity Strategy for Great Britain: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/307355/pb14168-plant-health-strategy.pdf</p> <p><u>Scottish Law</u></p> <p>The Plant Health (Scotland) Order 2005 http://www.gov.scot/Topics/farmingrural/Agriculture/plant/PlantHealth/PolicyAndLegislation</p>
Cabinet Office	Public procurement	*x	*x	*x	<p>The regime provided by the EU procurement Directives, covering public procurement contracts for supplies, services, works and concessions above certain financial thresholds awarded by the public sector and by utilities operating in the energy, water, transport and postal services sectors (Directives 2014/24/EU, 2014/25/EU and 2014/23/EU).</p> <p><u>Scottish Policy and Law</u></p> <p><u>EU Law</u></p> <p>EU directives on public procurement and on procurement by public utilities (including privately owned utilities) cover tenders that are expected to be worth more than a given threshold. These directives apply transparency, equal treatment, open competition, and procedural management. They are designed to achieve a procurement market that is competitive, open and well regulated. The section on legal rules, implementation and enforcement covers current public procurement rules, modernised rules entered into force in 2016, and the monitoring and enforcement of rules. Concessions Directive 2014/23/EU Procedures for the award of works and services concession contracts. Public Contracts Directive 2014/24/EU Procedures for the award of public works contracts, public supply contracts and public service contracts. Utility Contracts Directive 2014/25/EU Procedures of entities operating in the water, energy, transport and postal services sectors. Defence & Security Directive 2009/81/EC Procedures of entities operating in the fields of defence and security. Standard Forms - Regulation 296/2015 Commission Implementing Regulation (EU) 2015/1986 http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02015R1986-20151112 established standard forms for the publication of notices in the field of public procurement and repealing Implementing Regulation (EU) No 842/2011.</p>



				<p><u>Scottish Policy and Law</u></p> <p><u>UK Law</u></p> <p>Statutory Instrument 2015 No. 102 The Public Contracts Regulations 2015 Statutory Instrument 2016 No. 274, The Utilities Contracts Regulations 2016 Statutory Instrument 2016 No. 273, The Concession Contracts Regulations 2016 Statutory Instrument 2011 No. 1848, The Defence and Security Public Contracts Regulations 2011.</p> <p><u>Scottish Law</u></p> <p>The Procurement Reform (Scotland) Act 2014 provides Ministers with powers to make regulations and issue statutory guidance. The work to develop the regulations and guidance was aligned to the work on the development of regulations to implement the EU Procurement Directives.</p> <p>The Procurement (Scotland) Regulations 2016 Public Contracts (Scotland) Regulations 2015 Utilities Contracts (Scotland) Regulations 2016 Concessions Contracts (Scotland) Regulations 2016</p>	
BEIS	Services Directive	*x	*x	x*	<p>Directive that seeks to realise the full potential of services markets in Europe by removing legal and administrative barriers to trade by increasing transparency and making it easier for businesses and consumers to provide or sue services in the EU Single Market.</p> <p><u>Scottish Policy and Law</u></p> <p><u>EU Law</u></p> <p>Directive 2006/123/EC on services in the internal market (OJ No. L 376, 27.12.2006, p.36).</p> <p><u>UK Law</u></p> <p>The Provision of Services Regulations 2009 http://www.legislation.gov.uk/ukxi/2009/2999/contents/made Under s. 57(1) of the Scotland Act 1998 (c. 46), despite the transfer to Scottish Ministers of functions in relation to implementing obligations under Community law in relation to devolved matters, the function of the Secretary of State in relation to implementing these obligations continues to be exercisable by him as regards Scotland.</p>



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