

Common frameworks, the UK internal market and international obligations: Overview

Research Briefing

July 2020



The Welsh Parliament is the democratically elected body that represents the interests of Wales and its people. Commonly known as the Senedd, it makes laws for Wales, agrees Welsh taxes and holds the Welsh Government to account.

An electronic copy of this document can be found on the Senedd's website:
www.senedd.wales

Copies of this document can also be obtained in accessible formats including Braille, large print, audio or hard copy from:

Welsh Parliament
Tŷ Hywel
Cardiff Bay
CF99 1SN

Tel: **0300 200 7571**

Email: **Lucy.Valsamidis@senedd.wales**

Twitter: **[@SeneddResearch](https://twitter.com/SeneddResearch)**

Blog: **SeneddResearch.blog**

© Senedd Commission Copyright 2020

The text of this document may be reproduced free of charge in any format or medium providing that it is reproduced accurately and not used in a misleading or derogatory context. The material must be acknowledged as copyright of the Senedd Commission and the title of the document specified.

Common frameworks, the UK internal market and international obligations: Overview

Research Briefing

July 2020

Author:

Lucy Valsamidis and Sara Moran



Contents

1. Introduction	1
2. The common frameworks programme	2
2.1. Timelines and proposed scrutiny model.....	2
2.2. Progress	3
2.2.a General	3
2.2.b Framework areas.....	4
3. The wider context: Internal market and international obligations	6
3.1. Government approaches.....	6
3.2. The UK internal market.....	7
3.2.a Background	7
3.2.b Recent developments.....	8
3.3. International obligations.....	9
3.3.a Existing international obligations.....	9
3.3.b Ireland and Northern Ireland Protocol.....	10
3.3.c Future EU and international trading arrangements	10
3.4. Dispute resolution and the Intergovernmental Relations Review	

4. The development of law and policy in common framework areas13

4.1. The retention of EU law and common frameworks.....13

4.2. The development of interim frameworks 14

4.3. Primary legislation 14

 4.3.a The Agriculture Bill.....14

 4.3.b The Fisheries Bill..... 15

 4.3.c The Environment Bill16

 4.3.d The Trade Bill.....16

 4.3.e The Healthcare (EEA and Switzerland Arrangements) Act 2019.16

4.4. The use of intergovernmental agreements 16

1. Introduction

In 2017, the **UK, Scottish and Welsh Governments agreed** they would need to manage divergence between the different parts of the UK in some policy areas covered by EU law that intersect with devolved competence. They agreed to work together to establish **common frameworks** for those areas. The UK Government **publishes regular reports** on the progress of the common frameworks programme. **Section 2** of this briefing discusses the progress of the programme.

The UK and devolved governments agreed to establish common frameworks on the basis of set criteria. These criteria included enabling the functioning of the UK internal market, while acknowledging policy divergence, ensuring compliance with international obligations, and ensuring the UK can negotiate, enter into and implement new international agreements, including trade agreements. These interactions are considered in **section 3**.

Alongside the development of the common frameworks themselves and work on the UK internal market, new law and policy in common framework areas has also been developed. This includes the programme to retain EU law under the EU (Withdrawal) Act 2018, the development of interim frameworks, primary legislation in framework areas and the use of intergovernmental agreements. The development of law and policy in common framework areas to date is considered in **section 4**.

2. The common frameworks programme

The UK Government published an analysis of which policy areas would require common frameworks in **April 2019**. Most common frameworks are **likely to take the form of non-legislative agreements** between the UK and devolved governments. **These could include** Memorandums of Understanding (MoU), concordats or other forms of agreement. Some frameworks will also include legislation. The governments have also agreed that some areas where devolved and EU competence intersect will not require frameworks.

2.1. Timelines and proposed scrutiny model

The governments have said that frameworks will be developed in **five phases**:

- **Phase 1** - Principles and proof of concept
- **Phase 2** - Policy development leading to an 'outline framework'
- **Phase 3** - Review and consultation leading to a 'provisional framework' to be endorsed by ministers from each government
- **Phase 4** - Preparation and implementation
- **Phase 5** - Post-implementation arrangements and reappraisal

The UK and devolved governments have also been developing a joint approach to parliamentary scrutiny of frameworks. The Counsel General and Minister for European Transition wrote to the External Affairs and Additional Legislation (EAAL) Committee to **summarise the proposed scrutiny model** for common frameworks on 9 March. This followed the EAAL **Committee's proposals** for a scrutiny model in December.

The draft scrutiny model states that:

- At **Phase 3**, each government will send a summary of a draft outline framework agreement to its legislature with an offer of a technical briefing;
- At **Phase 4**, after Joint Ministerial Committee ministers agree the provisional outline framework, the framework will be laid in each legislature and committees will undertake any inquiries;
- The governments will review the responses of the legislatures and collectively agree any changes;
- UK and devolved ministers will review and agree the provisional outline

framework. They will provide each legislature with the final version and a response to committee recommendations.

In a letter to the Legislation, Justice and Constitution (LJC) Committee on 11 June, the **First Minister said** that the Welsh Government remained committed to the frameworks programme. On the scrutiny of frameworks, he said:

Common Frameworks are the subject of intergovernmental negotiations and their shape and content are by no means entirely within the gift of the Welsh Government.

[...]

So, while the Senedd and the other legislatures will be able to propose amendments or changes to the Frameworks, it may be difficult for amendments advocated by only one legislature to be accepted. It would therefore seem appropriate for the legislatures to work together in their scrutiny of draft Frameworks, as far as this is practicable.

2.2. Progress

2.2.a General

The UK Government published its **seventh report** on the EU (Withdrawal) Act 2018 and the establishment of frameworks in May, covering the period up to March 2020. In response to questions from the Senedd's **EAAL Committee** on 2 June on the progress of the common frameworks programme and the impact of COVID-19, the Counsel General said that:

[...] it's essentially impossible to deliver the common frameworks programme in the way that it was originally envisaged by the end of this year.

In a letter to the Senedd's EAAL Committee on 2 July, the **Counsel General said** that:

- the governments aim to develop a **framework outline agreement** for every framework by the end of 2020. This would have received provisional confirmation from ministers and operate in draft form. It would include 'at a minimum' 'a delivery timeline, clear governance across the relevant governments (including how divergence might be managed), a dispute avoidance and resolution mechanism, and a Statement of Purpose to confirm our shared commitment to bring this to early resolution.'
- In some cases, framework outline agreements may not be reached by the end of the year. In those cases, the governments intend to reach **interim agreements**.

He said that completion of frameworks, including scrutiny by legislatures, would take place during 2021.

2.2.b Framework areas

The **UK Government's seventh report on common frameworks** says that:

Several frameworks have completed formal review processes at official-level. These frameworks are approaching 'provisional confirmation', and will be brought before JMC(EN) ministers in due course.

Two had by then completed phase 3 review and assessment and had been approved by UK and devolved government officials: the **Nutrition Health Claims, Composition and Labelling** framework and the **Hazardous Substances (Planning)** framework.

The **draft outline framework for hazardous substances** was published in July 2019. It remains the only draft outline framework to have been published.

The seventh report also states that the Emissions Trading Systems (ETS) framework has now completed its review at Phase 2. In June, the governments jointly published a paper on a **proposed ETS**. This says that the governments are 'working together to develop a common framework which sets out roles, decision-making processes and working arrangements under a UK ETS'. It also states that the UK 'would be open to considering a link between any future UK ETS and the EU's ETS (as Switzerland has done with its ETS), if it suited both sides' interests'.

In his letter to the EAAL Committee on 2 July, the Counsel General said the governments had 'developed a shared understanding of priority frameworks' to be progressed. He says there is 'broad agreement' that this will include:

- Emissions Trading System (ETS)
- Agricultural Support
- Fisheries Management and Support
- Animal Health and Welfare
- Chemicals Regulation (including Pesticides)
- Food and Feed Safety and Hygiene

- Plant Health, Seeds and Propagating Materials
- Waste and Resources
- Food Labelling and Composition Standards
- Nutrition

3. The wider context: Internal market and international obligations

3.1. Government approaches

Different governments in the UK have different approaches to, and constraints in, aligning with or diverging from EU law after the end of the transition period. This could have an impact on the development of common frameworks and the UK internal market.

The UK Government does not intend to align with EU law after the end of the transition period. The **Scottish Government has now introduced** legislation to enable it to make regulations in areas corresponding to EU law, to enforce EU law, to implement an EU Directive or to modify retained EU law. Under the Ireland-Northern Ireland Protocol, Northern Ireland must align with EU law in a wide range of areas where frameworks are planned (summarised in this **Northern Ireland Assembly briefing**, p. 23). The **UK Government has committed** to legislate to 'guarantee unfettered access for Northern Ireland's businesses to the whole of the UK internal market' from the end of the transition period.

In October 2019, the **Counsel General told the Senedd EAAL Committee** that keeping pace with EU legislation was 'our aim and objective as a government'. However, the **Counsel General told the Senedd** in February that the Welsh Government did not plan to introduce keeping pace legislation. He said this was because there were other ways for Welsh legislation to keep pace with EU legislation where considered necessary and that he was concerned it would not be acceptable to the Senedd to give ministers powers to keep pace with EU legislation by regulations.

The Counsel General said:

We intend to follow the common frameworks process through to its end before concluding where we might need and be able to follow developments in future EU legislation.

3.2. The UK internal market

3.2.a Background

The UK and devolved governments are undertaking work on the UK internal market in parallel to the common frameworks programme.

The **UK Government's seventh report on the frameworks programme states** that the UK Government sought to develop 'a shared cross-cutting approach to the UK internal market' with the Welsh and Scottish Governments alongside 'factual input' from the Northern Ireland Civil Service, before the restoration of the Northern Ireland Executive in January.

A UK internal market could be established in different ways. In evidence to the Scottish Parliament's Finance and Constitution Committee this year, **Emily Lydgate and Chloe Antony of the UK Trade Policy Observatory at the University of Sussex** said that options for maintaining a UK market include:

- voluntary agreement between the UK and devolved governments;
- the UK Government using powers to **freeze devolved competence** under section 12 of the EU (Withdrawal) Act 2018;
- the UK Government incorporating a principle of mutual recognition, requiring that unless a country can prove that an imported product does not meet its standards on public safety, health or the environment, standards are presumed equivalent;
- relying on labelling requirements in areas of divergence, which would not prevent products from circulating but rely on consumer preference;
- devolved governments undertaking regulatory checks away from intra-UK borders to minimise disruption.

In evidence to the same inquiry, **Professor Aileen McHarg said** that if a 'comprehensive approach to the future regulation of the UK internal market' was sought, there were two broad approaches to consider:

- **a legislative model.** This could provide 'a consistent set of constraints on the devolved institutions to prevent undue regulatory divergence'. However, it would not be able to constrain the UK Parliament in the same way as the devolved institutions.
- **an intergovernmental model.** This would have 'symmetry of effect' on the UK and devolved governments, but would raise questions about transparency,

accountability and dispute resolution.

3.2.b Recent developments

In evidence to the Senedd's LJC Committee on 15 June, the **Counsel General said** the Welsh Government expected the UK Government to propose to legislate on the UK internal market.

Well, we expect a Green Paper from the Westminster Government on legislative options with regard to the internal market. We've been clear, as a Government, that it doesn't require a legislative basis, certainly not one that would extend, as they envisage it, beyond EU retained law. So, we don't see that there is a need for that and, of course, this is problematic for us, with regard to devolution, because of this idea of mutual recognition. That means that **you could create something that reaches the standard in one of the four nations and every other nation would have to agree to that and receive it in the market.** [Senedd Research emphasis]

So, if you see that in the context where you have an area such as Northern Ireland, which is subject to the European *acquis*, and then you have a Government in England, which plans to deregulate, there is a risk then that if that principle is agreed or is legislated upon, something that would go on the market in England perhaps according to different or lower standards in one area would have to be accepted in the rest of the United Kingdom.

So, that leaves you in a situation where, even though the powers haven't been transferred, you have the settlement in place. The economic impact of that, of course, is that there is an economic incentive for people to do that, and that, ultimately, is going to replace the principle of devolution in those areas. So, that will be a significant problem if that is legislated upon as a fundamental principles for the internal market.

In evidence to the Senedd's EAAL Committee on 30 June, the **Secretary of State for Wales said** 'we are determined to get any associated legislation through, and whether that includes, by the way, a specific piece of legislation around internal markets, or whether internal markets is part of a wider piece of legislation.'

On 3 July, the Scottish Government **Cabinet Secretary Michael Russell wrote to the Chancellor of the Duchy of Lancaster.** The letter states that:

We understand that it is now likely that your government wishes to introduce legislation before the end of the year that would enshrine in law what you call the 'UK internal market'.

Michael Russell raises concerns about the introduction of mutual recognition principles in his letter:

The introduction of a mutual recognition regime of the type we understand you wish to bring forward would mean that a reduction in standards in one part of the UK would have the effect of pushing down standards elsewhere in the UK, in direct contradiction of the preferred approaches of stakeholders and decisions taken by the devolved parliaments. Mutual recognition could be applied to a range of devolved policy choices such as food standards.

He also raises concerns that the UK Government is considering a proposal for a body to be established that would have the power to determine 'whether the Scottish Parliament's legislation would impact on the UK internal market'. He states that:

If such a market impact 'test' had been available in previous years, there would have been a significant risk that important and successful policies, which have attracted widespread public support, such as the imposition of minimum unit pricing, tuition fees policy and the ban on smoking in public places, would have been among the devolved policy measures that could well have been caught up in these new arrangements. Indeed they could still be challenged, depending on the powers and functions of the proposed body.

The UK Government subsequently published its **White Paper** on the internal market on 16 July. A further Senedd Research briefing will be published on the detail of the proposals.

3.3. International obligations

3.3.a Existing international obligations

Many of the UK's international obligations intersect with areas governed by the EU, devolved competence and planned common frameworks (for example, international environmental agreements).

At the end of the transition period, the UK's international obligations will come into greater focus, particularly in areas previously governed by the EU. The UK is expected to become more reliant on international law, marking a significant change in UK governance.

Additionally, the EU incorporates its international obligations into its own EU legal system and is itself a party to many international agreements. If an EU Member State is a party to the same international agreement in its own right, this has the effect of binding that Member State in EU law, as well as in international law, to a particular obligation. Therefore, some international obligations may already have been incorporated into the UK's domestic legal system via the EU's legal system,

adding an additional layer of complexity and making the process of identifying the source of an obligation challenging.

The UK has international obligations across all of the common framework areas. However, it is not clear how these will be identified and how their implications for the common frameworks programme will be determined.

3.3.b Ireland and Northern Ireland Protocol

The **UK Government's seventh report on common frameworks** states that the UK Government and the Northern Ireland Executive have been analysing 'the impact of the Protocol on both individual frameworks and the programme as a whole'.

Under the Ireland-Northern Ireland Protocol, Northern Ireland must align with EU law in a wide range of areas where frameworks are planned. Common frameworks that apply to Northern Ireland will need to take account of this. This issue will come into greater focus if the UK diverges from future EU rules and if the UK and Ireland diverge from each other in relevant international obligations.

3.3.c Future EU and international trading arrangements

The **UK Government's seventh report on common frameworks** states that the UK and devolved governments 'continue to develop' how common frameworks will interact with the negotiation of free trade agreements.

It is not clear how future trading arrangements will interact with the UK's internal market and the development of common frameworks. In evidence to the Scottish Parliament Finance and Constitution Committee on the UK internal market, **Emily Lydgate and Chloe Antony of the UK Trade Policy Observatory said:**

Trade negotiations drive changes to UK domestic legislation. They thus provide a catalyst for internal market disruption, particularly given Scotland's intent to maintain alignment with EU regulation. Again, the example of food safety is instructive. The US approach differs notably from that of the EU, and it has made clear that aligning UK rules and processes with those of the US is a key negotiating objective, which would encompass changes to regulation in virtually all of the areas we outlined above.

They outlined two options for how the UK Government might manage different positions between Scotland (in this case) and other parts of the UK:

- Allowing Scotland to maintain EU alignment (along with Northern

Ireland); or

- Seeking to impose the outcome of a trade deal with e.g. the US through e.g. the freezing powers in section 12 of the EU (Withdrawal) Act 2018.

Section 82 of the **Government of Wales Act 2006** grants powers to a UK Secretary of State to direct the Welsh Government in the course of fulfilling UK international obligations. For example, this can be to direct the Welsh Government to take action to comply with any international obligation or to not take action that the Secretary of State considers would be incompatible with any international obligation. Section 114 enables the Secretary of State to make an order prohibiting the Presiding Officer from submitting a Senedd Bill for Royal Assent, if they have reasonable grounds to believe that it would be incompatible with any international obligation.

3.4. Dispute resolution and the Intergovernmental Relations Review

Common frameworks will include their own mechanisms for resolving disputes. The **outline framework on Hazardous Substances** outlines a dispute resolution process for escalating disagreements from policy leads to directors and then to ministers. On dispute resolution at ministerial level, it says:

This is expected to be a last resort for only the most serious issues and where all alternatives have been exhausted. In very extreme cases the Secretary of State has step-in powers, already built into Devolution settlements, although we do not envisage these forming any part of the framework.

Similarly, intergovernmental agreements (see below, section 4) also provide that disputes will be escalated to ministerial level. The **Bilateral Agreement on Agriculture** states that:

[...] the administrations are committed to seek to proceed by agreement. But if this is not possible, the matter would be escalated in line with the existing MoU governing Intergovernmental relations and any future agreements in place between Defra and the DAs on dispute resolution.

It also provides that any government intending to change funding arrangements for agricultural producers must submit proposals to the four agriculture ministers with the aim of securing agreement. If consensus cannot be reached, the dispute will 'normally' be referred to an expert panel chosen by the Inter-Ministerial Group (EFRA). The final decision will be for the Secretary of State.

As well as developing dispute resolution processes for individual frameworks, the governments have also been reviewing dispute resolution at the Joint Ministerial Committee. The **Welsh Government view** is that the ministerial dispute resolution process at the Joint Ministerial Committee is not effective. The UK and devolved governments began an Intergovernmental Relations Review in 2018. In evidence to the Committee on 2 June, the **Counsel General said** that ‘I think there

is a recognition that, of the areas that ought to be progressed [dispute resolution is] the one that really is at the top of the list, and we had some reassuring indications, Chair, but that now needs to turn into quick progress’.

4. The development of law and policy in common framework areas

The UK and devolved governments have agreed to the establishment of common frameworks in some of the areas previously covered by EU law. However, this does not mean that common frameworks account for all developments in law and policy in these areas. In December 2019, the **Senedd’s EAAL Committee raised concerns** that

[...] the core framework programme does not appear to have captured the full spectrum of intergovernmental agreements and legislation that could be considered as establishing UK-wide common policy frameworks.

4.1. The retention of EU law and common frameworks

Through the process of making statutory instruments under the EU (Withdrawal) Act 2018, EU powers been transferred to authorities at UK level and in Wales. The **UK Trade Policy Observatory has said** that ‘it is implausible to suggest that new UK environmental, food safety and animal welfare laws functioning without the involvement of the EU and its institutions, do not constitute ‘new legal frameworks’.

In February 2019, **the Senedd’s LJC Committee raised concerns** that some statutory instruments had put in place new policy, in breach of the **Intergovernmental Agreement**. This agreement provides that ‘the powers will not be used to enact new policy in devolved areas’. The Committee noted that the Welsh Government had consented to EU exit statutory instruments on the basis that ‘[c]onsenting to a UK wide SI ensures that there is a single legislative framework across the UK’.

The Senedd’s **EAAL Committee gave examples** of statutory instruments made under the EU (Withdrawal) Act 2018 that may have created or contributed to the creation of frameworks without being identified as such in its December 2019 report. In its January 2020 **response** to that report the Welsh Government stated

that '[n]o legislation passed in the Fifth Assembly relates to Common Frameworks'. The **Welsh Government view** is that the common frameworks are 'a discrete area of work', distinct from other forms of intergovernmental working and subject to a set approval and scrutiny process.

4.2. The development of interim frameworks

In his letter to the Senedd's EAAL Committee on 2 July, the **Counsel General indicated** that interim framework arrangements would be developed where frameworks would not be complete by the end of the year (see above, section 2.2a).

The **UK Government has confirmed** that the UK and devolved governments developed interim frameworks in some areas, as part of their preparation for exiting the EU with no withdrawal agreement in the run-up to October 2019. These were not subject to the common frameworks approval process.

In a letter to the Children, Young People and Education Committee in August 2019, the **Welsh Government identified** the mutual recognition of qualifications as one area where a statutory instrument had been used as a no-deal interim framework.

4.3. Primary legislation

The UK Government has also introduced primary legislation in areas where frameworks are expected, establishing new statutory frameworks and granting powers to UK and devolved ministers.

In his response to the Senedd's EAAL Committee's report on the scrutiny of common frameworks, **the Minister committed** to notify the Senedd when legislation, whether to be considered by the Senedd or the UK Parliament, relates to a UK-wide common policy framework.

The Welsh Government has now laid legislative consent memorandums on the Agriculture, Fisheries, Trade and Environment Bills. In a letter in December 2019, the **First Minister said** that primary legislation would be required for the agriculture and fisheries frameworks.

4.3.a The Agriculture Bill

The Welsh Government's **legislative consent memorandum** (LCM) and **supplementary LCM** on the **Agriculture Bill** do not make reference to the common frameworks programme.

However, the Bill does make provision in a number of areas where common frameworks are expected. These include agricultural support (schedule 5); animal health and traceability (clause 32); organic products (clauses 36-37); and fertiliser regulations (clause 31). The Welsh Government has also reached a **Bilateral Agreement** on powers in clauses 40-42 of the Bill on compliance with the WTO Agreement on Agriculture (see below, section 4.4). More information on these provisions can be found in the **Senedd Research Bill briefing**.

In its **report on the LCM**, the Senedd's LJC Committee observed that the LCM did not say whether the Bill constitutes a common framework or part of one. The Committee recommended that the portfolio minister should explain the extent to which the Bill relates to any common framework and, if appropriate, clearly identify the provisions that are necessary to achieve that framework.

The **Scottish Government's legislative consent memorandum** states:

In relation to organic products and fertilisers, non-statutory frameworks have been proposed, with clauses 31, 36 and 37 providing any required statutory underpinning. 33. Part 6 (WTO Agreement on Agriculture) establishes a statutory framework.

The **Scottish minister Fergus Ewing has indicated** that the Scottish Government wants to see a requirement for consent from the devolved government when the Secretary of State makes regulations on organic products, 'so that the non-statutory framework setting out working arrangements can be progressed.'

4.3.b The Fisheries Bill

The Welsh Government states in its **legislative consent memorandum** that the **Fisheries Bill** creates the primary legislative elements of the fisheries management and support framework. Clause 1 of the UK Bill sets out the UK's 'fisheries objectives' for the UK Government and the devolved administrations. The fisheries policy authorities (FPAs) (which include the Welsh ministers) must set out policies for achieving, or contributing to the achievement of, these objectives within a joint fisheries statement (JFS) (clause 2).

The Welsh Government also intends to reach an intergovernmental agreement on the Secretary of State's powers to determine fishing opportunities (see below, section 4.4).

In its **report on the LCM**, the Senedd's LJC Committee recommends that the Welsh Government should 'clarify and confirm which specific provisions in the Bill are necessary for the purpose of achieving the desired aim of a UK-wide legislative common framework for fisheries'.

4.3.c The Environment Bill

The Welsh Government does not clarify in its **legislative consent memorandum** whether the **Environment Bill** relates to any framework. However, the Bill includes provision in a number of areas where common frameworks are expected. These include provisions on natural environment and biodiversity (Part 1); waste (Part 3); chemicals and chemicals regulation (clause 125); and hazardous substances (clause 57).

In its report on the **Scottish Government's LCM**, the **Scottish Parliament Environment Committee concludes that** 'to undertake effective scrutiny it is vital that Parliament has full information on the governance arrangements covered by the relevant, proposed common frameworks alongside the legislative proposals' and that no such information had been provided.

4.3.d The Trade Bill

The **Trade Bill** includes powers to implement the Agreement on Government Procurement (clause 1). Previously, the UK was party to this agreement as an EU Member State. Procurement is an area where a framework is planned.

4.3.e The Healthcare (EEA and Switzerland Arrangements) Act 2019

The **Welsh Government confirmed** in a letter to the Health, Social Care and Sport Committee in September 2019 that the Healthcare **(EEA and Switzerland Arrangements) Act** would 'be brought together with an underpinning MoU to eventually form the reciprocal healthcare framework.'. The UK and Welsh Governments also reached an intergovernmental agreement on the use of powers in the Act (see below, section 4.4).

4.4. The use of intergovernmental agreements

The Welsh Government has chosen to use intergovernmental agreements to accompany UK primary legislation in a number of cases. In evidence to the LJC Committee on 15 June, the **Counsel General said** that 'there would be

circumstances under which we wouldn't agree to a framework—for example, if we didn't think the devolution boundary was being properly respected, if you like, or properly reflected.' Intergovernmental agreements have been used several times as a way of resolving disputes over what is devolved.

- **The Intergovernmental Agreement on the EU (Withdrawal) Act 2018** was negotiated when the UK and Welsh Governments disagreed over the freezing powers in the Bill. The agreement provides that the UK Parliament will not normally be asked to approve freezing regulations under section 12 of the Act without the consent of the devolved legislatures, as well as providing for the establishment of common frameworks.
- **The Bilateral Agreement on the Agriculture Bill** was negotiated when the UK and Welsh Government disagreed over whether powers in the Bill on compliance with the WTO Agreement on Agriculture were devolved or reserved (current clauses 40-42). The agreement provides that the UK Government will commit in the House of Commons to consult the devolved governments before making regulations under this power with the aim of securing agreement. If agreement is not reached, an exchange of letters between the UK Government and the Welsh Government will be made available to Parliament. Disputes on the ongoing operation of the regulations will normally be referred to an expert panel and the Secretary of State will make the final decision.
- **The Memorandum of Understanding on the Healthcare (EEA and Switzerland) Act** was negotiated because the Welsh Government was concerned that the Bill did not require the consent of Welsh ministers to the making of regulations which will implement the detail of new healthcare agreements, even though these would place obligations on the Welsh NHS. The MoU provides that the Welsh Government will be consulted on the negotiation of new healthcare agreements; the development and drafting of regulations under the Bill to implement such agreements; agreements which apply to or have implications for Wales; and on regulations giving effect to those agreements.
- **The proposed agreement on the Fisheries Bill** is being negotiated because the UK and Welsh Governments disagree over whether the power for the Secretary of State to determine fishing opportunities (current clauses 23-24) is devolved or reserved. It is not clear what the provisions of the agreement will be.

In his letter to the Senedd's LJC Committee on 11 June, the **First Minister said** that the Welsh Government 'would prefer not' to resort to intergovernmental agreements on the use of powers in legislation. He said that:

[...] where the UK Government is not prepared to agree the inclusion of such provisions on the face of its Bills, the Welsh Government faces a difficult choice. On the one hand, we could recommend that the Senedd does not consent to a UK Bill, with the clear risk that the UK Government will invite Parliament to ignore the withholding of consent, thus further undermining the inadequate Sewel convention. On the other, we could look to non-legislative solutions, such as an intergovernmental agreement to enable a recommendation that the Senedd consents to the Bill. In the current constitutional and political circumstances, with a Government with a large majority in the House of Commons and facing significant policy and legislative challenges arising from the UK's departure from the EU, there are likely to be some occasions when we favour the latter option.

The First Minister said that intergovernmental agreements on legislation did not have 'helpful features' like the common frameworks programme, with 'compressed timescales' and 'competing negotiating positions'. He said that the Welsh Government would provide 'early notification' on the need for negotiations and their priorities where possible and would 'always aim' to provide the finalised agreement to inform the legislative consent decision.