



Common Frameworks Scrutiny Committee

Corrected oral evidence: Post-Brexit common frameworks

Tuesday 1 December 2020

10.15 am

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Members present: Baroness Andrews (The Chair); Lord Bruce of Bennachie; Lord Caine; Baroness Crawley; Lord Foulkes of Cumnock; Lord Garnier; Lord Hope of Craighead; Lord McInnes of Kilwinning; Lord Murphy of Torfaen; Baroness Randerson; Baroness Redfern; Baroness Ritchie of Downpatrick; Lord Thomas of Cwmgiedd.

Evidence Session No. 4

Virtual Proceeding

Questions 40 - 52

Witnesses

I: Chloe Smith MP, Minister for the Constitution and Devolution, Cabinet Office; Bruno Williams, Deputy Director, Common Frameworks, Cabinet Office; Bridget Micklem, Deputy Director, UK Internal Market Team, BEIS.

Examination of witnesses

Chloe Smith MP, Bruno Williams and Bridget Micklem.

Q40 **The Chair:** Good morning, everybody. How nice it is to see the Minister, Chloe Smith, with us. Thank you so much for coming to our fourth oral evidence session and giving us your time. We are very pleased to see you for personal reasons, too, and our best wishes are with you. It is also good to see two of your officials: Bruno Williams and Bridget Micklem. Welcome, and thank you for your hard work on the issue of the common frameworks.

I ask the Committee to declare any interests they may have. We are all here this morning, which is good in itself. The session is being broadcast on parliamentlive.tv, and we will let you have a transcript after the meeting.

Chloe, you are the Minister for the Constitution and Devolution, and we will ask questions about the common frameworks, as you know. Your coming to see us this morning is very timely, because we have reached a point in our deliberations, just eight weeks in from when we were established, where we feel that we are performing a very important scrutiny role. We have had four oral sessions and several private sessions, and we have been able to look at a series of summary and provisional frameworks.

You will know better than most that the process has not been as swift as you would have wanted. It has enabled us to detect a range of responses across different departments and difficulties that have arisen—we will refer to those in the session—and a range of responses to issues that we have raised with departments when we have questioned and interrogated certain aspects of the process and its findings. Overall, we are very impressed by the commitment that has gone in, the hard work, the outcomes, which have been very true to the principles on which the process was set up in October 2017, and the harmony, as well as the harmonisation, that is emerging through the framework process. So it is very timely that you come to see us at the point where we can say these sorts of things on the basis of evidence.

Secondly, it is timely because we are now almost at the end of Lords stage of the internal market Bill, which has been and continues to be very controversial and which is, without doubt—you will be not surprised to hear me say this—causing a lot of problems for the devolved Administrations and now, frankly, for the process of the frameworks themselves. That is emerging in evidence to us. So we are at the point where we can ask you, in all sincerity, some of these rather difficult questions about how the devolved Administrations are experiencing and anticipating the process and how those working on the frameworks are dealing with it.

The third set of issues, which again it will not surprise you to hear, is to do with Northern Ireland, which is in a unique position. Members of our Committee are extremely experienced and write about these things, and

they will want to pursue those sorts of issues.

That is where we are, essentially. I shall ask you the most basic question. How do you feel the common frameworks process is going so far? How do you view the progress that has been made over the past six months since the process began to surface?

Chloe Smith MP: Thank you for inviting me to be with you today and for setting the scene in that way. Would it be convenient if I made a few fairly general points in opening, as well as starting on that question?

The Chair: Absolutely. We would be delighted.

Chloe Smith MP: Thank you. That is very helpful. It allows me to acknowledge that the progress that we might be looking at is not only six months' but several years' worth of working together. It is important for me to acknowledge that.

The common frameworks programme, as you know, is governed by the principles that were set out as far back as 2017. It is important to recall them at this point, because they remind us that these are voluntary mechanisms, they remind us of why we are looking to have such co-operation between the Administrations of the United Kingdom, and they remind us about what we are looking to achieve with the programme.

The programme is progressing well in the sense that there is a huge amount of detail that needs to be gone through. Your Committee is starting to see the product of that, but it always retains that structure. We are looking to be able to be as transparent as possible about that, so we are submitting regular reports to the UK Parliament, as you know, and the other legislatures are also being kept up to date.

We are on track to publish the ninth statutory report on the programme later in December. We recently secured provisional agreement for the food and feed safety and hygiene framework. That brings to three the number of frameworks going through scrutiny in the devolved legislatures and the UK Parliament. We are seeking to get the vast majority of active frameworks to at least provisional framework status by the end of the transition period. To achieve that, there is a huge amount of work going on between Ministers and legislatures and, of course, at official level, and I am really pleased that Bruno and Bridget are with us this morning to reflect that.

It might be worth reflecting that we have also seen the outcome of the recent series of review and assessment panels, where officials come together to take stock of all the progress made. Most panels are telling us that the programme as a whole is on track. We think it is likely that a further seven framework areas will be reclassified as needing no further particular action, as compared to the analysis that we published in September when we envisaged that there would be 40 active frameworks. That means that we expect around 30 active frameworks to be delivered by the end of the transition period.

These are a snapshot, to an extent. They are always a snapshot, but I hope it is helpful to lay this out for the Committee, and I would be happy to go into more detail on the numbers. Bruno in particular will be able to assist with that process if need be.

We will come on to the scrutiny arrangements, but I am very pleased that the Committee is doing its work and I am grateful for what you have been able to do. Synchronising the scrutiny across several committees and several legislators at once is no small matter, so I am grateful for that. I should be clear that my role is perhaps as holder of the ring, if you like. I am very much looking forward to departments across government being able to take increasing ownership of these frameworks and for those to become normal business as departments and their counterparts in the devolved Administrations take on the work of managing these important areas of regulation.

We should also remind ourselves why we are doing this regulation: it is for the benefit of people and businesses across the UK. For me, it is a real priority to try to get that across today and to recall it with you, because we do this to ensure that there is sensible regulation for the people and businesses that need it. This is not just for fun; this is for that core purpose.

We will of course come on to the United Kingdom Internal Market Bill. The only thing other thing that I wanted to flag in my opening comments is the importance of other areas of intergovernmental relations. You will have seen that my colleague, the Chancellor of the Duchy of Lancaster, made announcements only recently about increased transparency there. We are really looking forward to being able to bring the review of intergovernmental relations—IGR—to a close, and for that to stand testament to the kind of good-quality relationships that we want to see in the service of people and businesses across all corners of the UK.

The Chair: Thank you very much, Minister. It is really interesting to have that update on the numbers—I will ask a follow-up question on that—and to pick up from you how seriously you are taking the process. I was interested in your use of the term “normal business”—that it becomes part of the normal processes of government, and therefore one has every expectation that they have time to work and that they will be encouraged to work properly. We will no doubt follow that up in different ways.

You say that you think that, in effect, only 30 frameworks will come forward and will need scrutiny, in the sense that we are now doing our scrutiny, because the remainder, the other seven, pose no issues. On what basis do you make that judgment? When you talk about the end of the transition period, what period are you actually talking about? Originally your timetable for seven, and only seven, was December this year.

Chloe Smith MP: The date question is probably the simplest: I am still referring to 31 December this year, so it is still the usual use of the phrase “transition period”. We have a clear list of the 30 frameworks that

we are talking about, and I trust that is the same list that you are working to without us having to go through the whole list. I am looking, for example, at specified quantities and packaged goods legislation, company law, various frameworks from the business department and frameworks from Defra to do with fertiliser regulation, organic farming and so on. I could go down the list. We have looked at these as the ones that have the most important impact on day one—"day one" meaning 1 January 2021—so it is those that we have prioritised.

It is fair to acknowledge up front that all the Administrations have been challenged by circumstances this year. That is nothing to be ashamed of admitting, in the sense that we have all had to focus on the coronavirus, which has meant that we have had to prioritise our work under the common frameworks programme. You will have seen that going on across all spheres of governance; hence, we are talking about the frameworks that have the most important impact on people and businesses.

Q41 Lord Murphy of Torfaen: It is great to see you, Minister. Your title is, of course, Minister for the Constitution and Devolution. We are very interested to hear about how your relationships with the devolved Administrations have evolved recently. Bearing in mind—this is very different from when I was a Minister—that all devolved Governments and the UK Government are of different political persuasions, it is not an easy job, so we would be interested in your views on that.

Secondly, again bearing in mind that you have experience as a Northern Ireland Minister, what do you think the role of the territorial departments and the territorial Secretaries of State are, if any, in this issue of common frameworks?

Chloe Smith MP: Thank you for that question. It is excellent to have your experience on this Committee, given, as you mentioned in your question, the importance of the territorial offices, several of which you have led and served in. It is incredibly valuable to have those relationships within this programme.

I take your cue that those relationships span both the territorial offices inside the Government—they are, of course, the voice of Scotland, Wales and Northern Ireland around the Cabinet Office table; that is their function—and the devolved Administrations. We all have to work together to make this a success. That is the simple fact of the matter. That is the truth of devolution in this day and age. We have a job to do here, which is to help the people and businesses of the UK to prosper and thrive. As I was at pains to point out in my opening statement, that is the point of the common frameworks programme, too: to manage divergence that might occur through the devolution settlements to the benefit of people and businesses as we have left the EU. The point of the common frameworks programme is that they are a specific subset, a historical group. They are the policy areas that related to EU law, so they are specific and meaningful in that sense.

How are we doing that? I will answer that in two ways. First, I speak regularly to my colleagues in the devolved Administrations. For example, I am looking forward to speaking to Jeremy Miles of the Welsh Government this week, and have done so very regularly. That is true across several different areas of my portfolio, not only frameworks; I am also responsible for work under the intergovernmental relations review, so again I have very frequent relationships there as well. Jeremy is but one example; obviously I also have colleagues in the Scottish Parliament and the Northern Ireland Executive. I am very lucky to have worked with many excellent people across all those Administrations over several years and in several different capacities, and I think those relationships are personally strong, which is something that I value.

To your point about the way in which political parties change, of course they change within the governance of those Administrations; that is democracy. What we should be aiming for is institutions, structures, habits and a culture that allow us to continue to do a good job for the people we all collectively represent.

The second half of your question, as you asked it, is about how we are working with colleagues in the territorial offices inside the UK Government to do this job. That is very important. It is perhaps a little less direct than departmental Ministers, because—a point that I made earlier on—these areas of regulation are owned by departments such as Defra or the business department. That is perhaps the primary relationship that I am using at the moment to try to bring these frameworks about, but that is absolutely supported by colleagues in the territorial offices, because we want to ensure that inside the UK Government at all times there is a clear and very passionate voice for Scotland, Wales and Northern Ireland, which is what the territorial offices provide.

Lord Murphy of Torfaen: That was a very full answer, thank you.

Chloe Smith MP: Would it be helpful in addition to that if either of my officials wanted to say anything about how they are working at the equivalent level with officials?

Lord Murphy of Torfaen: I would have thought so, yes, certainly.

Bruno Williams: From my perspective, I regularly take part in project board meetings with my opposite numbers from the devolved Administrations to talk about the development of the frameworks programme. That is a senior Civil Service-level forum that meets monthly and has been doing so certainly as long as I have been in the role, which is about a year. The forum is also supported at working level by a more frequent project team, which meets weekly or fortnightly depending, and is supported by colleagues on the engagement side. It is fair to say that there is quite a lot of work happening at official level in this space.

Q42 **Lord Garnier:** Thank you to all three witnesses for coming; it is very nice to see you. I entirely take the point that the Minister has just made in

response to Lord Murphy's question about the political differences between the devolved Administrations and the UK Government. That is a given, so we do not need to worry about that. I also accept that the motives of this Government are entirely proper.

However, the evidence that we have had from two Ministers, one from the Scottish Administration and one from the Welsh Administration, tends to suggest that the experience of the relationship between the Government of the UK and the devolved Administrations is a little different. Michael Russell, the Scottish Minister, whom you know, said that the relationship between the Scottish and UK Governments was poor and—I quote from his evidence to us—“It has certainly not improved in recent months; I have to say the reverse is true”. Jeremy Miles, whom you referred to a moment ago, from the Welsh Administration, said: “The UK Government’s vision for the role of the devolved Governments has been extremely narrow and inadequate. It has not worked well at all.”

Unless these relationships work well—taking into account the political differences between a Conservative Government of the UK, which I support, and the other devolved Administrations—and unless we up our game as a UK Government and to some extent empathise with the concerns of the devolved Administrations, even if we do not wholly agree with them, we will just get into a bigger and bigger mess.

I can see that your officials have been working hard on an official-to-official basis, but this takes real leadership from Ministers to achieve. I wondered whether you could tell us what engagement you and your fellow Ministers in the Cabinet Office and across the Cabinet have had with the devolved Governments. Have you taken into account, and what are you doing to address, the concerns of the two Ministers, Mr Russell and Mr Miles, which I have just cited?

Chloe Smith MP: We quite agree with the very point of your question, which is that to succeed in governing for the people we work for, we have to be able to do so in a way that is constructive, in good partnership and essentially in good order. There is an organisational answer to your question, which is that I and colleagues speak very regularly to all our colleague Ministers.

I shall give you some examples. I shall use the Cabinet Office first, but you can imagine that this is replicated across all UK government departments. Inside the Cabinet Office we have Michael Gove, the Chancellor of the Duchy of Lancaster, who leads on these relationships. As is a matter of public record, he has been spending a huge amount of time with colleagues in the devolved Administrations, often on behalf of the Prime Minister, specifically this year about coronavirus, and that has been critical to the ability to respond to the pandemic jointly wherever possible with colleagues in the devolved Administrations in order to have the best response for citizens we work for. You can imagine the sheer number of hours in the day that go into that, and I will not enumerate that any further. That is the clearest example, within the Cabinet Office.

One of my other colleagues, Penny Mordaunt, the Paymaster-General, is also supporting that through the relationships that she works to hold, very often with the same colleagues in the devolved Administrations, in respect of EU exit negotiations and the detail there. Between us in the Cabinet Office, we are making sure that across all these very important areas of subject matter we are maintaining those relationships and having the kind of sensible discussions that go into good government.

I have already referred to the subject matter that I also cover, intergovernmental relations. If you do not mind, that for me is what to emphasise in my answer. That is where we are looking to refresh the structures, culture, methods and mechanisms of the Governments being able to work together. It is core constitutional business, is it not, to be able to have those structures and those relations and to be able to make sure that they do whatever is needed from whichever other department on any other subject matter across the whole front of what citizens need in this?

As I have mentioned, we are working hard to make sure that that review is brought to a close very soon; Michael Gove has been very clear that we are aiming to do that by the end of the year. That will be important to the common frameworks programme, because you will see, within each framework, each department working with its opposite numbers in each devolved Administration to be able to take care of the particular field of regulation, and the intergovernmental relations structures will support that by providing ways for Ministers to work together. You will see that happening by department and then collectively, going all the way up to the Prime Minister and the First Ministers, as has been a feature of intergovernmental relations throughout and will continue to be.

I hope that is helpful. I have tried to give plenty of detail for you in that answer.

Lord Garnier: It is helpful, but would you agree that the Government's approach to the United Kingdom Internal Market Bill has created a controversy, shall we say, in the relationship between the devolved Administrations and the UK? It does not matter whether we as unionists agree or disagree with the devolved Administrations over their aims, but it matters if the disagreement gets in the way of good governance. Do you think that our approach from the centre, as it is seen, has been unhelpful in some respects?

Chloe Smith MP: I of course acknowledge that there has been very robust debate on the United Kingdom Internal Market Bill. Obviously we will come on to that today later in this session. However, the core point of the Bill is absolutely right, and therefore it is right that the UK Government have brought it forward and stand by its aim, which is fundamentally to make sure that people and businesses can seamlessly trade, exchange, buy, sell and have on the supermarket shelves what they want to have on the supermarket shelves across the whole of our country. As a unionist, I will never apologise for that; we have to be clear

that people and businesses need to be able to exchange and trade as one country, and that is what the Bill is about.

Common frameworks support that aim because, as the principles since 2017 have made clear, they are also about supporting the internal market of our country and indeed other principles. I therefore think that we have taken the right approach in being able to maintain the good work that has been done on the common frameworks programme, and add to that the principles that are there in the United Kingdom Internal Market Bill, because both together make sure that people and businesses across the country can get what they need, so it is good government in the service of the people.

The Chair: Thank you, Minister. It is very timely at this point to call Lord Bruce.

Q43 Lord Bruce of Bennachie: My question follows on from what you have just said. You articulated in your introductory remarks how well the common frameworks have been worked through and how fundamental the principles are. People have been working for more than three years, straining every sinew, to find agreement where possible or to agree where they can disagree, and yet in just a few months the internal market Bill, which was not trailed, discussed or consulted on, suddenly arrived.

The Government seem to be arguing that the common frameworks have a role, but in the end the United Kingdom Internal Market Bill can override them without any reference to Ministers or devolved Administrations. Baroness Randerson raised an issue with Lord True about what would happen if Wales decided that it wanted to specify single-use plastics, and Lord True acknowledged in his letter to Baroness Andrews, our Chair, that if the Welsh Government chose to legislate for single-use plastics, that would be overridden by the United Kingdom Internal Market Bill if other areas wanted to sell those plastics into the Welsh market, which completely defeats the point.

If I could finish on that, Mike Russell has said that the consequences of that demotivate people for the common frameworks and effectively cut across it. As he said, "I am not saying it is absolutely either/or, but it seems to me that the ability for the frameworks to operate, and operate well, is so massively reduced and second-guessed that they become largely useless". You might say, "He would say that, wouldn't he?", but it is not just Mike Russell; there is a general feeling that the frameworks were working well but that we now have a piece of legislation that can override them. Does that not actually make people ask, "What are we working so hard for if, even when we have agreed to disagree, it can be overridden?"?

Chloe Smith MP: That question goes to the heart of what has been discussed in this section of the Bill at all its stages. Before coming to that core question, I would just like to address the point about whether the United Kingdom Internal Market Bill or the UK internal market concept

had been trailed at all. You said it had not been, but that is not correct. If you look back at the 2017 common framework principles, you see very clear reference to them being in support of the internal market of the UK—a very clear point that we have such a thing and that it ought to be supported.

Secondly, on top of that, we have been working for some time on the UK internal market as an official workstream. It is a matter of huge regret that the Scottish Government pulled out of that. The very fact that they were able to pull out of it shows you that it existed, but, as I say, the main point is that it is regrettable that they pulled out, because we have a job to do to protect the internal market of the UK, and as a unionist I make the clear point that that is in the interests of the citizens of all our country.

Thirdly, with regard to people having been able to see clearly that we were working on the way to support the internal market, there are our manifesto commitments to unfettered access and other statements made in the House of Commons, for example by Michael Gove, about how we were going to deliver that. That is one point that I want to make: there has been a clear intention and delivery on the need for an internal market. It is a shame that the Scottish Government pulled out of that, but that perhaps says more about what they wish to do than it does us, because we are clearly in favour of being able to make sure that people and businesses can trade and exchange within our country.

On the core point about how the principles in the United Kingdom Internal Market Bill and the common frameworks programme coexist and interact, obviously my colleague Lord True has discussed this extensively with many of you and others in the House of Lords, as have we in the House of Commons. I think we have been very clear in saying that we think the two things are complementary, but we think it is important that the principles set out in the United Kingdom Internal Market Bill would apply even where there may have been areas where divergent approaches had been agreed through common frameworks.

The reason why those principles would apply is because it is important that barriers to trade are not erected inside the UK. In saying that, I am reiterating something that has been said very clearly now throughout the passage of the Bill so far. We think that both these programmes are very important to maintain. I have already set out clearly why the internal market Bill is important, but I want to emphasise one more time that the frameworks programme is also incredibly important and should be sustained, nurtured and supported from this point onwards, because it still shows how we can work together to do a job where divergence is not necessarily in the interests of people and businesses.

Lord Bruce of Bennachie: Thank you for that answer, but we have had a UK internal market for over 300 years and did not require detailed legislation to enforce it. I know we have operated under the framework with the EU for the last 40 years, but there have not been problems; indeed, that has been looser than what the United Kingdom Internal

Market Bill proposes. Ministers have tried to offer up examples of where they think such legislation would be necessary, but I think most of us have been unpersuaded by those examples, whereas the devolved Administrations have produced quite specific examples of how the current freedom to differ will be overridden.

The case does not appear to have been made. I know other colleagues in the Committee will pursue issues in detail, including the Northern Ireland dimension. Do you not acknowledge that we have reached a position where the work on the common frameworks is effectively being compromised and demotivated because those working on it feel that things can be overridden?

I will give you a final example. The White Paper talked about building regulations, yet Scotland has had different building regulations since way before we joined the EU without any problems. This Bill could actually end that.

Chloe Smith MP: The short answer is no, I do not think the common framework programme needs to be in any way devalued or for the people working on it to feel demoralised. That is the straightest answer to your question. It has huge value, and that value resides in being able to continue to work together, co-operate sensibly and manage areas of divergence.

I want to be clear once again that the areas in the programme are the historical grouping that emerged from our former membership of the EU, and we should be quite clear about where that set has come from. It is also worth being very clear—as have other witnesses to your Committee, including Mike Russell—that it has been sensible all round, from everyone's perspective, for those things in the common frameworks programme to be managed on a voluntary basis.

One of the arguments that have been run in relation to the United Kingdom Internal Market Bill—Lord Hope will probably come on to this in a second—is that frameworks ought to have been legislated for and that that would have been a better way of doing things. The core point that you see in the position of the development of the frameworks programme is that it has been agreed all round that it ought to be voluntary. That is for a good reason, because we can and should co-operate to do these things, and indeed we have a natural incentive to do so because that is just human and it is good government.

Before I finish this answer, however, I simply must take on your point about the idea that a UK internal market has not required legislation to sustain it. You are right, of course, that it has been around for 300 years, and that is a matter of pride to unionists, but it is simply not the case that it has not required legislation to sustain it. That has been enforced in recent decades by the laws of the EU. We are leaving that, which is exactly why we now need to ensure that those rules can continue, because it is simply a matter of fact that those rules fall away so there is the need to refresh what is there. Those rules, as has been amply

debated through the stages of the Bill, were not in fact looser than what is being replaced. I think the argument goes the other way.

Lord Bruce of Bennachie: I will leave you to the tender mercies of Lord Hope and Lord Thomas on those issues.

The Chair: Yes, Lord Hope, I am sure you are longing to follow that up.

Q44 **Lord Hope of Craighead:** It is a great pleasure to have you with us, Chloe, so we can discuss this problem. I hope you understand, particularly from what Lord Bruce has been saying, that we see this as a real problem that has to be sorted out somehow, because the Bill is silent about the relationship that you have described. On the one hand, we have the voluntary system through the common frameworks, which you support, but one of the crucial points that underlie that system is the phrase that was agreed to by the JMC in 2017: policy divergence. That matters a lot to the devolved Administrations, because they have to run a system themselves, look to their own regulations and so on and understand what is going on.

On the other hand, for reasons that I fully understand, the market principles themselves apply automatically. They do not require any assistance by a court; that is the last thing one would want. So they are clear-cut, absolutely firm and easy to understand. But there seems to be a collision between these two things. There is the ability of the framework system to assess the extent of a policy divergence and to consider whether it is a true barrier to trade, and maybe to come to the conclusion by agreement that the effect on trade across borders is so slight that it can be disregarded in favour of the common good, which is being searched for by the devolved Administrations. So on the one hand you have the hard-edged system that you would create in the Bill, and on the other a voluntary system that can accommodate differences.

In my amendments I have been searching for a simple way of trying to have something set out in the Bill that will solve the problem. The evidence that we have been receiving is that a problem is seen. Some say that the framework system is rendered largely useless by the Bill, while others say that the involvement of the UK Government in the frameworks is minimised because they do not have to trouble with them anymore or to be concerned about differences because they are overridden by the market principles.

That is a long preamble, I am afraid, to asking my questions. Is there a problem with my amendments? Do they really undermine the voluntary basis on which the common frameworks operate? I cannot see that. What is the problem if those common frameworks have come to the conclusion that there is a divergence that does not really operate as a barrier? Why should that not be allowed to survive without the hard edge of the principles applying and neutralising what has been agreed?

Chloe Smith MP: This discussion obviously comes in the sequence of the very long series of debates that you have had in your Chamber with my

colleague Lord True. I will merely build on what he has already said, as I know the arguments have been rehearsed in very great detail.

The core point for me is the point that I have been making about the voluntary nature of the frameworks programme. Other witnesses have said to you in this very Committee that this is an important thing, that this is how it has developed and that it is how it ought to be. I maintain that position. The nature of the frameworks programme is about being able to co-operate in areas that relate to devolved competence. I should be absolutely clear: there should be no argument about what is in devolved competence. Let us make sure that we are not even entertaining that concept.

We are clearly saying that there are areas here where we have a mutual interest in being able to manage the decisions that we make and the regulations for which we are responsible in the interests of people and businesses. In my opinion, and in the opinion of all the participants in the framework programme, that is best done on a voluntary basis. It is for that reason that they have not been given a statutory underpinning.

That is slightly separate from the elements of legislative underpinning that appear in individual frameworks, but that is a different point of detail, as you will know. I am very happy to go into any of those in the course of this discussion, should you wish, but at the general level the programme itself does not have more of an underpinning.

I could go from there into the point of principle about how we think intergovernmental relations in general ought to operate, because there is a parallel argument that often gets made that you ought to have a statutory underpinning for all governmental relations. Indeed, some would then extend that to say that we should have a written constitution. As has already been noted, with the breadth of my interest in the constitution and devolution we could go to those arguments, but to me they all come back to the same place: there is merit in the flexibility of having relationships between Governments that can deal, at a de minimis level, with the regulation that is needed to get the best outcomes without loading more on to them than that, which is what I would argue you would get if you put them all in a statutory form.

That is the answer to the first of your questions, Lord Hope, which was about my concern about your amendments. You asked a second question, which, I am terribly sorry, I have now managed to forget, because I put so much passion into answering your first.

Lord Hope of Craighead: How will the Government ensure that mutual recognition does not apply when divergence has been agreed by the four Administrations in a common framework? In other words, how can you ensure that the market principles do not eliminate the policy divergences that have been agreed? I suppose the basic question is: do you still believe in the basic principle that policy divergence should be permitted? If you do, there has to be an answer to the question, "How can that survive the carefully drafted market access principles?" That is the

conundrum that we are struggling with. My amendment, which I kept as simple as I could without asking for a legislative underpinning of the system, is simply a recognition of the system in order to try to solve that problem. That is what I have been searching for. I stress that it is a genuine problem that we are searching for an answer to, which, unless you do something in the Bill, is left in the air.

Chloe Smith MP: I acknowledge your quest for a greater understanding of that. I can restate what has already been said many times, and indeed I said it myself just a moment ago: we think that the market access principles in the Bill should apply and that there is a good reason for them to, which is that there should not be internal barriers to trade inside our one country.

That really is the essence of the position. That is what you or perhaps Lord Garnier described earlier as the hard-edged system. It is true that we are suggesting that that can coexist with the soft-edged system whereby the Administrations of the UK ought to be able to work together to collaborate on other areas of regulation. We see these things as being complementary, and we see that they will continue to exist together.

Lord Hope of Craighead: Do I take it from what you have been saying that really policy divergence is no longer permitted?

Chloe Smith MP: Not in the least. Lord True has been very clear on this point throughout the Lords stages, as we will be in the Commons next week. The two things will be able to continue, and so they should. I have already given a clear justification for why we think the market access principles should apply but, to be clear, we also continue to support policy divergence, because those are the contours of the devolution settlements, which we respect, and there should be no argument about that.

What we are revolving around here is how these two things have to come together at times. You are grappling with this, and indeed a business or a trader would have to do the same. We are not in this for some sort of academic fun; we are in it so that that trader can do business. Why must that trader do business? Because that is a job, someone's pay packet at the end of the week, rather than the eloquence of something that we might be able to discuss endlessly.

Lord Hope of Craighead: We will have to leave it there, because there are many other questions. Thank you very much.

Q45 **Lord Thomas of Cwmgiedd:** May I thank you very much for coming and for very interesting evidence so far?

May I pursue a slightly different line? Obviously a market needs strong rules, and we have always had them because traders need to be constrained. However, we also want a strong union now that we have devolution, and devolution implies divergence. You therefore have to have clear and enforceable rules but rules that also apply to permitting divergence to survive.

I will leave others to take up the example of ketchup and how you can allow a Government to ban single-use plastics, which is probably more expensive, and turn the argument to the question of state aid and subsidies, because the two components of a market are essentially standards and subsidies in the modern world. Jeremy Miles, when he came to give evidence to us, spoke about the use of a common framework to regulate: that is, permit divergence to a limited extent on subsidies while maintaining a strong market union. He subsequently wrote to the Secretary of State for Business about this. How do you see this being taken forward?

Chloe Smith MP: I think he will appreciate that I am not able to answer the Business Secretary's own letter for him for this Committee, although I looked at it just this morning before coming to speak to you.

You have your finger on one of the old chestnuts that we have had to look at time and again in the last few years. How we maintain some of the things that are valuable, such as having a unified state aid regime, is absolutely one of the facets of our exit from the EU. The UK Government's approach has been very clear. They have proposed, through the United Kingdom Internal Market Bill, that it be put beyond doubt as a reserved matter. I think that is the right thing to do, for the clear reason—you will probably be able to guess where I am going with this argument—that we have to be able to have clarity for businesses and people. It is in their best interests to have a single unified regime that provides that.

I do not think I can give you more of an answer at this point on how Jeremy Miles's proposal would be dealt with, but I am grateful to him and to others who have engaged with that question over time. My hope is that we will be able to ensure that there is a sensible and functional system, in line with what we have put in the Bill, to best serve those who need to make use of that system.

Lord Thomas of Cwmgiedd: Obviously there are two main areas of state aid. One is attracting businesses. The other is agriculture. I assume that you will allow the devolved Governments, or will consider that they should be allowed, within a margin, to have different emphases on subsidies. Therefore, how are we to regulate that without a common framework? It is very difficult to understand.

Chloe Smith MP: This is a very good example of the detail that is amply there in frameworks. I will say a word on this and then ask Bridget and Bruno to come in and explain a little more about how agriculture in particular is being dealt with through the frameworks, because, as you say, this is extremely important.

The core answer to your question is that it is there in the frameworks, so you will have seen in the list of frameworks that are coming before your Committee various ones to do with agriculture, which is where you will see that system laid out, articulated and made clear for farmers and all those who depend on them. You will also have seen announcements by

other colleagues, obviously George Eustice but also Elizabeth Truss at Trade, about the other large building blocks of how agriculture will be run in our country on leaving the EU.

If I may, I will suggest that Bruno should say a word here.

Lord Thomas of Cwmgiedd: Briefly, I hope, because quite a lot of time has gone already.

Bruno Williams: To be clear about the extent to which the frameworks programme covers areas relating to agriculture and so forth, of the 33 active framework areas that we are currently looking at, 14 are owned by Defra, and these cover a range of matters, as the Committee is probably aware, from agricultural support to organic farming, chemicals and pesticides, fisheries, food labelling and plant health. So agricultural matters are being dealt with to a very large extent through the common frameworks programme.

The Chair: Would you like to pursue that, Lord Thomas?

Lord Thomas of Cwmgiedd: I would love to pursue this, but others have questions and I would be greedy to do so.

The Chair: We would not want that. We move to a new set of questions, which Baroness Crawley will introduce with her question.

Q46 **Baroness Crawley:** Good morning, Minister, and good morning to your colleagues. It is indeed very good to see you here. I will start with a few general questions on scrutiny, and my colleagues will go into more detail.

You said earlier in our discussions this morning that you were the holder of the ring when it came to scrutiny arrangements. So what, as holder of that august position, has your impression been so far of the scrutiny process of the common frameworks? What do you think has worked well, and what do you think needs to change? As a Committee, our experience in this scrutiny process has been mixed, to be honest. Some of it has been positive, but some of it not so much. We found a case in one particular government department downright inadequate and had to raise the issue on the Floor of the House.

This question is really about whether you feel clear about the way scrutiny is currently taking place within all the devolved Administrations. We are taking evidence next week from Members of the Northern Ireland Assembly, for example. Over to you, Minister.

Chloe Smith MP: I will try to keep my answers brief. I appreciate that the Committee will want to come in on all sorts of other things, now that we have had the main fun with the United Kingdom Internal Market Bill.

I am extremely open to how we can improve the scrutiny process from here. I am keen that it works. I am keen to learn from the experience that you are having; you are the front end of this, in many ways. It is a pretty complicated undertaking. I would like it to become less complicated over time. I really would like this to be easy for the public to

follow, as much as those of us who enjoy holding the ring and the elephants, tigers, jugglers, acrobats and all that do.

We need to continue to get the first number of frameworks moving through it. You are beginning that work, and I am grateful to you for what you have done on that. We need to ensure that we can do this in a reasonably co-ordinated way with the other legislatures. As a Minister, that is not my direct responsibility; I have a liaison role between the Executive and the legislature. But I am keen that those things are well facilitated, and I will be happy to take any suggestions on that from the Committee as you begin to form those views.

Q47 Lord McInnes of Kilwinning: Good morning, Chloe. I want to ask about the timing and the delay in getting the common frameworks to the point of agreement. Obviously, this year has been very difficult in terms of unpredictable events, but if we were to look back at October 2017, we would find a lot more optimism about the ability to get agreement on them on a much quicker timetable.

As we approach the end of the transition period, are you concerned about the delay there has been? What do you think are the implications of those delays for future frameworks? Do you think those things could be quicker in future? Lastly, although I do not want to go back to a question that you have already answered, do you think that delay perhaps underlines the importance of a catch-all common-market Bill in case of delay in that framework process?

Chloe Smith MP: That is a very helpful point that draws these issues together. In short, I am not concerned about a delay to the programme because, and I made this point at the beginning, we have taken a prioritised approach here which I think is important; we have to be proportionate to the needs of those who we are doing this for. We have focused on the frameworks that have the greatest real-world impact, as I said at the start. On that basis, I think the right work is coming through, which I hope will have the right effect. Where there is other potential for divergence beyond those in other framework areas, that is more than capable of being well managed in a way that will, crucially, work for those that are regulated as well as for the Administrations who are trying to do that.

Your second point is really important. We have to look at this in the round and look at it from the perspective of, for example, a trader who is trying to sell goods between different parts of the UK. Why is it important for them to have both the common frameworks programme progressing in good time and the principles that are in the United Kingdom Internal Market Bill? It is important, because there can be a cumulative effect between these areas of regulation. As I said earlier in the session, the fields of regulation within the frameworks programme are themselves a kind of historical set, or rather a defined subset. That means, obviously, that there are things that will fall between, outside and beyond them.

In time, those effects could accumulate. I am keen to ensure that they do not accumulate in a way that would be bad for business because, as I have said pretty emphatically, that is someone's wages at the end of the week; it is the ability for people to have jobs and prosperity across our country. So we have to look for that cumulative effect, which is why we have put forward the principles in the United Kingdom Internal Market Bill. That is why we will absolutely stand by the need for both that Bill and the frameworks programme, and the need to deliver both in good time.

Q48 Baroness Redfern: Good morning, Minister Chloe Smith, Bruno and Bridget. I am really pleased that you could come to the meeting today. In some cases, there have been delays, with insufficient information in the framework summaries, which at times has hampered the scrutiny process. How could these issues be addressed and speeded up for the future scrutiny of other remaining frameworks?

The Cabinet Office has recommended 21 days maximum. In the example of a lack of information for scrutiny purposes, if there were a negotiated agreement with all parties, time could be extended so that flexibility could be built in. Is there a need for a 21 sitting days scrutiny period after the end of the year if these circumstances arise?

Chloe Smith MP: I shall say a few words, and then I would be happy for Bruno to come in on this because of the extent of the detail which the officials are dealing with here.

Baroness Redfern: Yes, I thought so.

Chloe Smith MP: We proposed 21 days, because we thought it was important to have a minimum. We wanted to show that courtesy to our Houses and to the other legislatures—that there should be enough time to do scrutiny in. We put a number on it at all because of that desire to have good scrutiny. There is no precedent for this, which is why we are all in the position of being able to reflect on how well this scrutiny has gone and then perhaps take stock in due course. I note that treaties have a 21-day scrutiny period, so if it is good enough for those it should be good enough for one of these. I am really keen to make sure that this all proceeds as smoothly as possible, and if there are points to do with the amount of time that is given, that is something that I will look at.

To your point about whether any departments have performed adequately or inadequately within that, I am also keen to work with them to make sure they have what they need. There is, of course, a tension between having a greater degree of detail and having the thing more quickly. You will have experienced that in a couple of cases so far already. May I offer Bruno to say a word?

Bruno Williams: You have made the point that I was going to make, which is that 21 days is the precedent set for international treaties. The other thing to be clear about is that this is a recommendation, not a stipulation, and of course it is perfectly possible for the committees to

negotiate a longer period with departments if they feel that that is necessary or desirable.

On the point about summaries, sharing the summaries with committees in advance is a courtesy, a way of sighting committees on how the framework is developing, but these summaries themselves are not designed to be detailed enough to allow for parliamentary scrutiny. They are more advance sight of what to expect when the provisional framework is received.

The Chair: Thank you. That was helpful to us.

Q49 **Baroness Randerson:** Both the Welsh and Scottish devolved Administrations have commented on the need for more transparency and rigour in the process of scrutiny of the common frameworks. The Scottish Government have made the comment that too much of the process is in danger of being a private process negotiated between Governments. The Welsh Government have tried to deal with that by committing to laying an annual report, or a report at least annually, before the Senedd, which would report on the progress of the common frameworks and would enable a debate. Do the Government intend to have a similar process for the UK Parliament and, if not, how will you ensure that there is appropriate scrutiny in future?

Chloe Smith MP: I am really pleased that you have put that point, because one of the strengths of this process is that, as I have been saying all morning, it is a shared process. I rebut the idea that it is all happening in private and behind closed doors. It is not. It is very much happening between publicly accountable Administrations and their legislatures, so the effect of all that together is a huge amount of information that is already out there, along with accountability for that work. It is absolutely not that something is happening in private behind closed doors.

I want to point out something else that I think is incredibly important, and again you will be able to guess where I am going with this argument because I have made it very often: it is the involvement of the real people who are being regulated. To give an example, I mentioned earlier that the food, feed safety and hygiene framework has recently come forward, and you will have begun to see that yourselves. They recently had sessions with the stakeholders involved in that area of regulation. So it is not just the Governments around the table; you also have the Food and Drink Federation, at the UK level as well as at the Wales and Scotland level, and the British Veterinary Association. These are real people on behalf of real customers on behalf of real businesses. That is all incredibly important. It is absolutely not that something has taken place in a veiled way; it is actually quite an open way of making regulation, and I hope that that continues.

To the specific point about whether we should have additional reporting and the proposal that the Welsh Government have put forward, I really value that idea because it is evidence of the way in which we are working

together and engaging with what needs to be done. That is a testament to the relationship that we often have with colleagues in the Welsh Government.

I point to the extensive reporting that is already out there and query whether we need to add more to it. As you will know, there is the annual analysis and the quarterly analysis. I am really keen that we sustain those and make them as useful as possible to the real people who are being regulated, and which should be buttressed by the work that your Committee is now doing as well as all the other committees. All told, I think that will be an extensive amount of reporting and information that I hope is helpful.

Baroness Randerson: I will resist the temptation to ask another question.

The Chair: That is so kind of you. We are running slightly over, Minister. Can you spare us a few more minutes? We have some quite important questions coming up, especially now on Northern Ireland.

Q50 **Lord Caine:** Good morning, Minister—words that I must have used to you in a previous life. Naturally enough, I am going to cover Northern Ireland. First, though, you will not be surprised to hear that I fully support the concept of common frameworks and indeed measures to strengthen the integrity of the UK internal market. Frankly, I deplore some of the political posturing and games by the nationalist-led Administration in Edinburgh and what is increasingly a cryptonationalist Administration in Cardiff.

I turn to Northern Ireland, and I apologise to colleagues for what is becoming a bit of a single transferable question. Obviously Northern Ireland remains in the UK customs territory, but under the Protocol it is for all intents and purposes part of the EU single market, subject to EU rules and regulations when it comes to goods and services. Indeed, on Friday in the Lords we considered a statutory instrument that introduced a separate labelling regime in Northern Ireland to conform to the Protocol. This has led to some of my Ulster Unionist colleagues to begin to refer to Northern Ireland as an overseas territory of the EU, with decisions taken in Brussels rather than in Westminster or Stormont.

The question is: how concerned are you that this arrangement will bring about significant divergence between Great Britain and Northern Ireland, and to what extent is it possible for that to be managed through the common frameworks process? As I have just said, Northern Ireland is almost in a position of having to accept regulations but without any representation. What is being done to ensure that Northern Ireland has a meaningful voice in the rules that will continue to govern it after the transition period ends?

Chloe Smith MP: Through the Chair, I am sure that you will not mind if I say at the start that there is a limit on what I am able to articulate fully in this section because of the ongoing nature of the final talks on the future relationship and so on. That also relates to some elements of the United

Kingdom Internal Market Bill, whose remaining stages we are all waiting for with bated breath. However, I will put forward a couple of points that I hope are helpful to the Committee.

The first is about how we have worked with the Northern Ireland Executive—the returning Executive—to have them as a full part of the process. It is obvious that in the time in which we have been working on this programme the Executive were not fully functioning, so it is welcome that they were able to return into the programme and play their part. Throughout all that time when there was no Executive, Northern Ireland Civil Service officials were working extremely hard. I pay tribute to them; I had many meetings with them and they were the soul of professionalism in very difficult circumstances. Bridget or Bruno may want to say more about that if you would find that helpful.

We therefore made sure that the officials and latterly the Ministers were able to participate fully in the frameworks programme. We certainly want that to continue and we will work hard to ensure that that is the case. There are a couple of points of detail about how to enable the Assembly then to do its scrutiny work, which again I assure the Committee we are working hard to get done.

The only other general point to make in answer to Lord Caine is about how the Northern Ireland protocol and the common frameworks programme relate together more theoretically. They are at two slightly different levels; one is a general point and one is specific. Within the frameworks programme, as I have been saying very regularly, are certain fields of regulation that sit within devolved competence, so the programme is about collaborating to sensibly manage very specific fields of potential divergence. That is more than capable of being done alongside the exigencies of the Protocol and the slightly bigger, broader situation that applies there.

Lord Caine: We await with interest the final negotiations on how the Protocol is actually implemented in practice, but thank you for that answer.

Q51 **Baroness Ritchie of Downpatrick:** I declare my interest as a member of the board of Co-operation Ireland.

I have a follow-on question about the Northern Ireland protocol. Earlier you referred to various frameworks, some of which we have looked at in their provisional state—namely, the food safety hygiene one and another one to do with electricity transmission. Both of those impact when the Northern Ireland protocol comes into play. A problem that we have identified is the lack of clarity about how the common frameworks will relate to the Northern Ireland protocol.

We would be obliged if you could provide us with more information on that question, and on the question of whether future provisional frameworks will include references to the protocol as and where appropriate.

Chloe Smith MP: The short answer is yes, and I will be very happy to work with you to try to make sure that you have the detail that you are seeking. Are you looking for more detail now about the two frameworks that you mentioned, or might we be able to provide that to you afterwards?

Baroness Ritchie of Downpatrick: It might be useful if you provided more written detail to the Chair directly, because we need to see how the intersection between the Protocol and the frameworks will work, because, as you know, there are certain areas of policy, such as agri-food, that will resort to EU rules. This goes back to the question posed by Lord Caine, although it comes from a slightly different political perspective. We would appreciate those written details, because it is quite complicated and complex for people to understand.

The Chair: Thank you, Baroness Ritchie, and thank you for your response, Minister. It would be very good if you could provide more detail. We are seeing the Northern Ireland Assembly legislative committee and the Executive next week, so information on that specific question, which goes to the heart of the process, would be very useful. In fact, I would like to follow up with other questions, in writing, much of what you have said today, if necessary, as we read the transcript.

Our last, but by no means least, question is from Lord Foulkes.

Q52 **Lord Foulkes of Cumnock:** Thank you, Minister, for your very helpful responses to the questions. You mentioned on a couple of occasions the report of the joint review on intergovernmental relations and said that it would be published before the end of the year. Can I assume that that will be before both Houses rise so that we can have the opportunity to look at it over the Recess?

There is also a report by Lord Dunlop which the Prime Minister asked him to produce. When can we expect that to be published? How do you think both reports will affect the process for common frameworks that we are currently undertaking?

Chloe Smith MP: That is a really great question to end on, because it brings together the themes that we have been speaking about all morning. I will do my utmost to get a copy of both reports under your Christmas tree if there is nothing more you would like to read on a wintry Boxing Day. I will see what we can do.

The slightly more official answer to the question about the intergovernmental relations review is that we are certainly aiming to conclude it, and obviously various things will be published as part of it. Whether it is one report is not quite the point, but we are aiming to conclude the review and the work, so there will be things there that we make public. On the Dunlop report, again, as Michael Gove has said a number of times, we are very grateful for it having been done and are keen to publish it.

On your very good wrap-up point, what is really important here is that Governments who serve all the people of the United Kingdom are able to operate in structures and in a culture and with all the material they need to be able to do a good job. That should be aside from party politics, a point that was made earlier, and from particular stresses that happen. I quite acknowledge that there has been some really robust debate recently and many things in our joint history as a country in recent years that have been extremely stressful—of course there have.

We want to have fruitful relationships that will allow for the meticulous detail that you see in the common frameworks programme—detail all the way down to the level of the field of regulation that is very specific, and back up to all the other matters of state which any department or field of public service will have to be able to deal with. We want to ensure that the future relationships governing how our Administrations are in this country together can support that and do that in the interests of the citizens of this country.

Lord Foulkes of Cumnock: I think it would help you, and us, if you undertook a wider look at the constitution. Part of your problem, and part of the difficulty, arises from the fact that the UK Government have to represent England and to hold the ring as far as the United Kingdom is concerned. That can lead to very great difficulties and conflicts. I have been writing to Michael Gove and others suggesting that you undertake that kind of review. Gordon Brown has suggested it and a number of other people are arguing for it at the moment. I hope that you as the Minister for the Constitution and Devolution can persuade your colleagues to move in that direction.

Chloe Smith MP: You are quite right: it is an important point in the constitution as it stands, and it is something that I am giving a lot of thought to.

Lord Foulkes of Cumnock: Good. Thank you.

The Chair: Thank you, Minister. You have been extremely generous with your time and in the way you have responded to our questions. It has been a very helpful, revealing and interesting session. I am grateful to you and your officials for being with us this morning. What has impressed me as Chair is your personal commitment to the frameworks, which is extremely helpful because it enables us to spread that confidence, and indeed your commitment to the principles of the union, which has come across extremely clearly. Thank you for taking seriously our concerns about the impact on devolution, on the internal market itself and on business. Quite a lot of those problems, as well as the problems the departments themselves are having, have surfaced in the evidence that we have taken.

We would like to keep in touch. Thank you very much for offering to respond in writing to the issues raised by the protocol in Northern Ireland. If we may, when we read the transcript, there may be things that we would like to follow up with you and, indeed, pray you in aid if we

come across departments that we think could be doing better.

Once again, we send you our very best wishes for the future and we look forward to staying in touch. Thank you also to Bruno and Bridget.