Select Committee on Common Frameworks Scrutiny

Corrected oral evidence: Post-Brexit common frameworks

Tuesday 26 January 2021

10.30 am

Watch the meeting

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 Murphy of Torfaen; Baroness Randerson; Baroness Redfern; Baroness Ritchie of Downpatrick; Lord Thomas of Cwmgiedd.

Evidence Session No. 5 Virtual Proceeding Questions 53 - 66

Witnesses

I: Professor Michael Keating, Professor of Politics, University of Aberdeen; Dr Hugh Rawlings, Honorary Professor, Cardiff University; Ms Jess Sargeant, Senior Researcher, Institute for Government.

Examination of witnesses

Professor Michael Keating, Dr Hugh Rawlings and Ms Jess Sargeant.

Q53 **The Chair:** Good morning, everybody. Good morning to my colleagues on the committee, and a particular good morning and welcome to our very distinguished witnesses this morning. We have apologies from Lord McInnes. Otherwise, we are complete as a committee.

This is our fifth oral evidence session of the Common Frameworks Scrutiny Committee. I am delighted that we have been able to welcome three very distinguished contributors this morning: Professor Michael Keating, who is a Professor of Politics at the University Aberdeen; Dr Hugh Rawlings, who has done very many things as an adviser to the Welsh Government for many years as a civil servant and at the moment is Honorary Professor, Cardiff University; and Ms Jess Sargeant, who is the Senior Researcher at the Institute for Government. It is Jess's second appearance at the committee. You came, Jess, for that first meeting when we were setting out our terms of reference. You were extremely

helpful then and we look forward to hearing what you have reflected on. We are very grateful to the three of you for helping us at this stage of our committee.

As you know, this is a parliamentlive.tv appearance of the committee. A full and proper transcript will be produced, which you will be sent and can correct if there are any errors.

It has been quite a rollercoaster for this committee. We were set up in September with a blank canvas, because common frameworks were an unknown quantity and had been a minority interest. So, to an extent, we have learned as we have gone on, both in our inquiry into the theory and practice of the common frameworks and as we have reviewed and interrogated the frameworks that have come to us in summary or eventually as a full transcript. We have found all manner of interest, shall we say, in the expression and management of divergence and the expression of harmony, and much else besides—much about process but a lot about politics as well.

We are still very much at the beginning of the frameworks, because, as you know, there are over 30, and I think we have seen seven or eight in some form, so we have quite a lot of work to do, but we have done enough to make some judgments, and we will produce a short report by Easter, in which your evidence will feature.

Early on in the autumn, when we were setting out our own processes, the internal market Bill emerged, which occupied us for most of the autumn both in its passage through the House and in the way it impacted on, and threatened to impact on, the purpose and principles of the frameworks, as well as their operation. Therefore, along with a question about what you have made of the processes so far is a question about your own appreciation of that Act, as it is now, and its impact on the frameworks and on the devolved Administrations in general. As we go through our questions, which I know you will have seen, and elaborate on them, please feel free to tell us things and answer questions that we have not asked.

That is where we are at the moment. I will start, if I may, by asking our three witnesses, as close and unique observers of this process from these different standpoints, what have you made of it so far—a big question—and what, from your own professional perspectives, you think the constitutional impacts have been or are likely to be.

I will start with Jess Sargeant and then go to Hugh Rawlings and Michael Keating, because this is your second appearance, Jess, and you will probably have been watching it from a genuinely independent perspective as well as someone who knows the House of Lords rather well. Can you give us your second impressions, please?

Ms Jess Sargeant: Overall, the common frameworks process has gone well in that there is still good working on it from all Governments, despite some of the political challenges that have been created by the United Kingdom Internal Market Act. Although there is perhaps less good co-

operation on the specific piece of work, on common frameworks work on that is ongoing, and we should not underestimate the importance of that.

In terms of progress on agreeing frameworks, that has been somewhat delayed throughout the year, as you say, first by Brexit and then by coronavirus, and there have been constraints on the capacity of the devolved Administrations, which I think has been a limiting factor on being able to make progress on agreeing the outline frameworks. However, as you say, they are now starting to trickle in. Certainly from my perspective as a researcher, being able to see what a framework would look like makes it a lot easier to consider the implications of them, because for the past two years we have been talking about them in the abstract, to a certain extent. Now the real work starts, seeing the detail.

As you say, there have been a few developments throughout the common frameworks programme—notably, first, the agreement of the Northern Ireland Protocol, in which Northern Ireland has a lot of obligations to continue to apply EU law in a huge number of areas where there is quite a significant intersection between those areas and common frameworks and, secondly, in the publication and the passing of the United Kingdom Internal Market Act.

Those market access principles of mutual recognition and non-discrimination will apply in a lot of those common framework areas. Up to now, it has been quite difficult to come to definitive answers about how common framework programmes should be managed, because there have been a lot of outstanding questions about what the implications of the UK internal market and the Northern Ireland Protocol will be. This committee has already started work on, and is in a very good position to consider, those kinds of cross-cutting programmes of work.

Going forward, the questions I will be particularly interested in are how to manage these three different programmes of work, which have significant implications for each other, and how the UK Government organise themselves to be able to manage those different programmes of work. We know that common frameworks will be led primarily out of individual policy departments and that sometimes there might be intersection with other departments, but, broadly speaking, those will be managed in specific departments. Defra has responsibility for a lot of programmes.

The United Kingdom Internal Market Act and discussions about new exclusions or how that framework might be tweaked are likely to take place in BEIS. The Northern Ireland Protocol may be run out of the Cabinet Office. There may be a role for the Northern Ireland Office. We are still not clear on that.

There is a lot of different work going on in government and, to be honest, I do not think the Government have yet come together to think about a coherent strategy for managing those different programmes of work to make sure that they all work together. Going forward, that is the important challenge. Obviously the devolved Administrations will also

face that challenge, but being smaller Administrations they are better, to some extent, at joining up and considering this kind of joint working.

So, yes, the big challenge will be thinking about how the programmes work together and how that should be scrutinised, and I think the committee can have an important role to play in that.

The Chair: Thank you very much indeed, Jess. That is extremely helpful and articulates some of the things that we have been wrestling with ourselves, particularly in recent weeks. Thank you very much. Hugh, what is your perspective on this?

Dr Hugh Rawlings: I agree with everything that Jess has said, but I look at this from a slightly broader perspective, in that for me the common frameworks programme is an illustration of a more fundamental proposition about how the UK should be governed.

I am sure the committee is familiar with the broadly two views of devolution. One view is that devolution was established as a set of special governmental arrangements for the various devolved territories but had relatively little implication, it was said, for the governance of the UK as a whole.

The second view, which I think is the one that has come more into prominence in recent times, is that the UK as a result of devolution needs to depend on a basis of shared governance between the four Administrations. The common framework programme, it seems to me, would, if it was successful, be a very good illustration of that, because of course it involves, or should involve, agreeing rules for particular areas of public policy and maintaining oversight of them by the four Governments operating on the basis of consensus. This is a very important potential illustration of the shared governance aspect of devolution, which goes alongside what you might call the self-rule aspect of devolution within the various territories.

The Chair: We will pick up on aspects of what you say in some detail as we go through the questions. That is a very clear statement of position on that point. Michael, what are your views on these very general questions?

Professor Michael Keating: The frameworks programme seems to have gone quite well at a technical level, and it is a good way of trying to get agreement where there are common problems and common approaches to them. We still do not know what will happen where there is conflict. We still do not know about the disputes resolutions mechanisms. But I agree with Hugh that this is reliant on, and draws on, a system of intergovernmental relations, which itself is profoundly unsatisfactory: the Joint Ministerial Committee and everything surrounding it.

The frameworks themselves are, I find, going in different directions, because they seem to be done one at a time and they become extremely complex and very difficult to read. I have read a few of them with very little understanding of what it is all about, partly because some of them

are on areas where there will be consensus and others are on more sensitive areas. It is very important that they should continue to be voluntary and not imposed. If they are to be legislative, that gives rise to the question of consent and what that consent means. We have a problem in our system of intergovernmental relations with what consent means now.

Something that has not come up in the papers I have read so far is how this fits into the level playing field measures in the Trade and Co-operation Agreement with the EU about non-regression, rebalancing and so on, because the UK is still involved in European regulations. It does not have to obey them, but if it does not follow or keep up with them, there is a cost. The Scottish Government say that they want to keep pace with European regulations; we do not know how that will work out. There are a lot of difficult questions there that can make matters extremely complicated.

As I say, the fundamental problem is that we are starting with the detail of frameworks when we should be starting with a general philosophy of intergovernmental relations, and the detail should follow from that.

The Chair: That is absolutely right. We agree with that. I will ask Lord Thomas to come now, not least because of some of the issues you raise on dispute resolution but also because of the wider issues of policy that cuts across the frameworks.

Q54 **Lord Thomas of Cwmgiedd:** I want to ask you to focus in particular on some of the more detailed matters. My first question, and I will ask both questions at the same time, is: are there any areas that you are concerned about? Obviously, one area, which is very important to everyone, are the frameworks covered by Defra, but none have been published yet. Does that concern you? Are there any other areas you are concerned about?

My second question is about the interrelationship between the framework on public procurement and the paper that has been published, which forecasts possibly UK-wide legislation on public procurement and how that will work. Will we see another issue like the one we faced with the internal market Bill? I will go in reverse order and start with Michael.

Professor Michael Keating: The most difficult and possibly politically sensitive ones might be in the area of agriculture, agricultural support, and rural policy. I am thinking about agricultural support measures and whether support for agriculture would come under the new subsidies and competition policy or not, and how existing differences in support regimes, which have existed even under EU membership, would work out, how they would be acceptable, and how they would play into the internal market Bill as well. That is untested.

I am also thinking about issues such as the regulation of GM crops and so on and how would this relate to future trade deals with countries where agricultural trade would be part of a deal and therefore access would have to be given to products that would benefit from the internal market

Bill once they came into England. That could be important. It could also be extremely politically sensitive.

I do not know as much about public procurement, but I do know that it could also become very sensitive, given the importance of public procurement for regional policies. There are a number of issues in Scotland concerning subsidies and public procurement that could become sensitive. Once again, that relates not just to a UK-wide public procurement regime, but to the level playing field provisions in the new agreement with the EU.

Lord Thomas of Cwmgiedd: Jess, could I come to you next on those two very general and specific questions?

Ms Jess Sargeant: Absolutely. I would be most concerned about the frameworks where these various programmes of work—the United Kingdom Internal Market Act, and the Northern Ireland Protocol—intersect, and about areas where we know that the UK Government are likely to want to diverge.

Michael mentioned GMO as one example. Defra is consulting on proposals in this area to change the definition of a genetically modified organism. It is also an area where Northern Ireland is bound to continue to comply with EU law under the Protocol, so if England, or the UK Government for England, were to change the definition, it could create a barrier within the UK internal market. It is also an area that is covered by the market access principles, particularly mutual recognition, so, as Michael said, there is a risk that if that was accepted for England, products with that different definition of a genetically modified organism would be able to be sold across Scotland and Wales, which could create political friction.

Those are the sorts of areas. That is just one example, but I think we will see more as time comes along where divergence is not just theoretically possible but perhaps likely. There are very foreseeable issues that could arise, and likely political disputes that will arise, if the UK Government go ahead and change regulations in those areas.

The procurement question is not something that I have much expertise in. I know that they were considering including procurement in the United Kingdom Internal Market Act, but it was decided that that was not the best course of action. The fact that it is flagged as a common framework area suggests an acknowledgement that aspects of it at least are devolved, which perhaps contrasts with the subsidy control provisions, which were always an area of disputed competence and which we have now seen the UK Government legislate for.

It could be a case, perhaps, of certain officials responsible for preparing consultation materials not necessarily being as devolution-sensitive as they want, if you want to be charitable. It could just be that they are overlooking it. Certainly, if we go on the basis of the approach that the UK Government have taken in other areas, I think there is legitimate cause for concern, and we will have to see how that develops.

Dr Hugh Rawlings: It is very interesting to me that the Defra frameworks have not emerged, because the intergovernmental working relationship between Defra and the other Administrations over the last two or three years was generally thought to be in advance of the others. Certainly when Mr Gove was Secretary of State for the Environment, Food and Rural Affairs, he was very well aware of the need for collaborative working between the four Administrations.

As a result, some close-working and well-established institutions were put in place, and one would have thought that the frameworks from Defra would emerge fairly well in advance of some others from other parts of Whitehall. So it is surprising that they have not emerged, and there must be some reason for that.

Like Jess, I am not particularly familiar with the procurement issue, but I pick up her point, which I think is absolutely right, that there are parts of Whitehall, and I think procurement may be one of them, that are rather less devolution-aware than others. I would also place BEIS in that league, as it were, because my recollection is that, from the outset of devolution, the predecessors to BEIS, such as the DTI, had considerable difficulty with devolution as a concept, and they are the people who, in their current manifestation, produced the internal market Bill.

One of the things that I have learned from working on this over the last 20 years is that it is extraordinarily difficult for the UK Government as a whole to have a broad perspective on devolution. There are pockets of very good practice and good understanding, and Defra was certainly one of them, but there are other parts that certainly were not, and the emergence of the new proposals on procurement, which might well cut across the work on the framework on procurement, is an illustration of that.

Lord Thomas of Cwmgiedd: Thank you all very much indeed for those very perceptive and detailed answers.

Q55 **Lord Bruce of Bennachie:** As these things emerge, I am wondering what a good common framework will look like. For example, we have seen the emergence of the transport framework, which looks as if was half-baked, half-hearted, and not taken seriously, and we have seen serious work being done on others, but they all look as if they might be different. What would be common? How would you judge a good one? What would the dynamics be once a framework is agreed? You have a dispute resolution mechanism in the original process, but, as time goes on, other issues may arise and how they will accommodate these dynamics.

There is one other issue that may not be relevant. I do not know. Do you see another issue with the lack of devolution within England and the fact that Wales, Northern Ireland or Scotland might agree something that some of the regions of England might also want but do not have a way of expressing their views on? Is that relevant to the process?

Dr Hugh Rawlings: What should a good framework look like? I suppose one would hope to see agreed rules for the regulation of a particular aspect of social and economic activity, including, crucially I suppose, the scope and permissible extent of different regulatory approaches in the different territories. I would hope that each would provide for shared machinery for keeping the operation of these rules under review and amending them by agreement as necessary.

You also mentioned the dispute resolution area. This would play into the wider IGR review, because if that is going to be successful it will have to have an agreed system for resolving disputes. I would hope that the various frameworks would play into that framework, if and when it is agreed, so that there is a coherent way of dealing with disputes between the Governments and across all Governments.

Professor Michael Keating: I go along with Hugh. The first thing about frameworks is that they should be simple. The ones I have read seem to be incredibly complicated and far too detailed. You cannot anticipate everything that might come up, and trying to do so is just futile. There should be a clear procedure, and it should be standardised across these agreements.

With dispute resolution, the agreements quite rightly try to avoid things getting into dispute at the political level and try to resolve things at a technical level, which is fine, but where things are a matter of political difference and dispute we need a safe place for them to be resolved somewhere within our intergovernmental relations—a safe place having some kind of neutral arbiter or facilitator—rather than simply being fought out by the politicians.

Also, and perhaps we will talk about this later, we need some place in our intergovernmental relations where the homework, the research work, can be done by somebody who is not dependent on either level of government to do it.

Lord Bruce of Bennachie: Thank you. "Keep it simple" is also good guidance for the committee. Jess?

Ms Jess Sargeant: I echo everything Hugh and Michael have said there.

It is also important that there is a clear and consistent application of the common frameworks principles that were agreed at the beginning of the process. It is important that they are applied to each framework so that we know on what basis decisions will be made and discussions will take place.

Some level of transparency is also important when frameworks are agreed. Governments might come to decisions to allow divergence in some areas and not others, and the basis on which such decisions are made and the way disputes, if there were any, are to be resolved needs to be very clear. That would be very helpful in assessing how well a particular framework is working. That would also roll into the dispute

resolution procedure that we hope to see on conclusion of the IGR review. I hope there will be some enhanced transparency procedures so that we can know the outcome of any dispute that was raised, and it can be judged by relevant legislatures and interested parties so that they understand why any particular decision was reached.

Q56 **Lord Bruce of Bennachie:** I have one supplementary question. It is early days in terms of what is emerging, but can you identify what looks good and what does not look good from what we have seen so far, or is it too early to say? Perhaps all of you could comment on that.

Ms Jess Sargeant: I have only seen the frameworks that have been finalised and published. The committee will probably have been party to some agreements that I have not seen.

We have seen good practice in some of the frameworks. Some of them outline those principles and explain how they intend to apply them in each circumstance. That has been very helpful. In other areas, I agree with Michael that sometimes it is a bit hard to get your head around some of them if you do not have a particular area of policy expertise. It would be useful to see more frameworks in order to be able to compare what is better and what is worse before making a judgment, so I would reserve judgment until I have seen a few more.

Lord Bruce of Bennachie: I do not know whether Hugh or Michael have anything to add to that or if they think it is too early to say. No. Okay, thank you very much.

The Chair: I can assure all of you that the emphasis you are putting on consistency of process and transparency and the need for a template is manna to our ears. We have some information coming back from the Cabinet Office that they are listening to this, so we will know more.

We now move to Lord Hope and his question.

Q57 **Lord Hope of Craighead:** I would like each of you to focus on the powers that we now have in the internal market Act to exempt the common frameworks from the market access principles. The background to my question is that, for a long time, as the Bill was passing through the House of Lords, the Government were strongly resistant to having any mention at all to common frameworks in the legislation.

A series of questions was put to us in the course of our receipt of comments on the frameworks as to how these two systems could live side by side, the market access principles on the one hand and the common frameworks on the other. In the end, the Government were prepared to take powers, which are now set out in the Act. They were not prepared to be persuaded to have a duty to give effect to an agreed framework, but at least the powers are there, and I suppose the question in my mind is whether what we have now will make a difference.

Could I focus the point precisely this way? How can we best take advantage of the powers that now exist in moving the common frameworks process forward? Michael, perhaps I could start with you, to

have a slightly different order this time.

Professor Michael Keating: I found the amendment that you proposed very useful, because it links the internal market Act to the frameworks. A lot of people have been criticising these for being two separate processes going in different directions. It brings the devolved Administrations into some kind of dialogue about this, and therefore opens up the room for debate.

However, as came out of the final Act, the UK Government are still master of the game. There is yet another consent provision that looks a little bit different from all the other consent provisions in there, but again consent is not necessarily required, because after a period the UK Secretary of State can proceed anyway. Although changes in this list of exemptions are subject to consent, the initial list was not. In fact, the initial list in the form of the Bill itself did not receive legislative consent across the devolveds, so that is still problematic. Nor does it meet my reservations generally about the internal market Act, which are much wider than this.

I think there is a difference between the frameworks that operate within the assumptions of the original devolution settlement—that is, that the devolved Governments have full regulatory authority except where there is an exemption—and the internal market Act, which reverses the presumption and says that non-discrimination and mutual recognition apply generally unless they are exempted.

They rest upon two different philosophies of what devolution is about: the original philosophy that everything is devolved unless it is reserved, versus the philosophy that everything is reserved unless it is devolved, which was the philosophy of the 1978 Act. The internal market Act follows the latter philosophy.

These are broad, transversal provisions that will apply and can be taken up by private individuals, companies and courts, unless there is a specific exemption to that. I still find that very problematic.

Lord Hope of Craighead: Is there a way in which the frameworks can, as I put it earlier, take advantage of what we have now? Should we be trying to find some sort of mechanism in the frameworks that would do that?

Professor Michael Keating: Yes. The Bill now says that the UK Government can, subject to consent, change these lists and that the frameworks might be the sort of thing they take into account when doing that. That obviously gives an opening here to work on the frameworks and make sure that properly constructed and clear frameworks can be used effectively to roll back some of the overreach of the internal market Act.

Lord Hope of Craighead: Thank you. Hugh, what views do you have on this?

Dr Hugh Rawlings: I agree very much with Michael. Although the amendment that you have successfully pressed is extremely useful as having a moderating effect on the market principles, it leaves the market principles in the primary position and the products of frameworks where implemented as exceptional.

The question as to how the frameworks' power will be exercised goes to the relative importance of the market access principles on the one hand and the products of the common frameworks process on the other. I am hoping for a generous application of those order-making powers, because if you believe, as I do, that the UK Governments ought to proceed together on the basis of collaborative and co-operative working rather than there being a directive lead from the centre, you would want regulation by agreement to displace the market access principles wherever possible. I rather doubt that that will be the case, but that is what I hope for.

Lord Hope of Craighead: Thank you very much. Jess, how have you seen this issue?

Ms Jess Sargeant: I agree with everything that has been said. As Michael mentioned, there are consent provisions in the use of those powers, but the greater risk is that those powers will not be used despite the devolved Administrations making the case. The UK Government have been clear that even though these powers now exist, the intention is that they should be used very rarely, if at all. I do not think that is necessarily the right position. The United Kingdom Internal Market Act, from White Paper to legislation, was passed very quickly. There was not enough of an exploration of its impact on specific policy sectors. Common frameworks will be doing all the detailed work, so they are best placed to consider where exclusions might be appropriate and necessary.

As well as the constitutional reasons that Hugh mentioned for why the UK Government should be open to new exclusions, there are also practical policy reasons that mean that they should be open to new exclusions. There is a need to establish very clear protocols on how these new powers would be used, which should be on the basis of agreement between all four nations. There need to be clear criteria on which particular issues should be considered for an exclusion and which might not be.

There is also the question of how common frameworks discussions will feed into the mechanisms by which new exclusions will be decided. BEIS has committed to holding annual intergovernmental meetings to consult the devolved Administrations on new exclusions. There is a question about how particular policy expertise from common frameworks or evidence or information should feed into those discussions. That will be a big programme of work, and a big challenge for all four Governments will be to gain a shared understanding and agreement about when these powers should be used.

It is also important that the UK Government are open to that to make this framework work effectively in future. If they are not open to that, we will see further disputes down the line where the devolved Administrations think there is a case for these powers to be used and the UK Government continue to take the stance that they should not be.

Lord Hope of Craighead: Thank you all very much indeed for those very interesting answers.

The Chair: We move now to questions on Northern Ireland.

Q58 **Lord Caine:** My questions are principally directed at Jess, but if Michael or Hugh want to chip, please feel free.

Jess, to some extent you have already touched on my first question. Could you comment on the relationship between the common frameworks and the Protocol? Could you comment slightly more specifically on what role common frameworks could or should play in considering any new rules that are introduced through the Protocol? If I can be slightly more provocative, how do you react to the assertion made by some of my Ulster Unionist colleagues that the effects of the Protocol, rather than establishing common UK frameworks, essentially turn Northern Ireland into little more than a colony of the EU?

Ms Jess Sargeant: To reiterate my earlier point, there is quite a significant intersection between common framework areas and the Protocol. My most recent analysis suggests that about 15 of the 18 legislative frameworks are covered by the Northern Ireland Protocol, and obviously those are considered to be very important areas.

Common frameworks will be a really important forum through which changes to EU law that will be applicable in Northern Ireland should be considered. They will need to be considered slightly differently from a legislative proposal from somewhere in Great Britain, because Northern Ireland will not have discretion about whether or not to adopt that EU regulation or directive. In the case of directives, it might have the opportunity to determine how it applies that particular EU Act, and common frameworks could be a good forum to discuss how that could be applied in a way that creates the least friction in the UK internal market.

They should also be a forum for GB to think about how it might need to respond in its regulations to changes at an EU level. The UK Government have made it very clear that their intention is to ensure the integrity of the internal market, and, if they are serious about that, that might require, in some circumstances, making changes to their own regulation to prevent friction that could be created by Northern Ireland applying EU law. That should definitely be an option.

I do not want to comment specifically on the slightly political questions about the Protocol, but if protecting the internal market is to be a key aim of the UK Government, they need to be open to responding to EU law in a way that could minimise friction, even if sometimes it might prevent

them from doing something that they might want to do. Common frameworks are particularly important for discussing that.

Something that touches on a question that you might be asking shortly is how information about new EU Acts that have relevance to the Protocol will feed into common framework discussions. The Joint Consultative Working Group, which is one of the bodies established by the Withdrawal Agreement, is foreseen as the primary forum through which the UK and the EU will exchange that information. It is not quite clear who in UK Government will have responsibility for that, but there needs to be a mechanism to make sure that any information that is passed to the UK Government through that feeds into common frameworks and discussion at that level.

The UK Government have not yet quite grappled with how they will consider changes to EU law with specific relevance to the Protocol but also more widely. Michael raised the point earlier that that might have implications for what the UK wants to do on its own regulation. There are a lot of unanswered questions here about exactly how that will work, but the common frameworks provide a good opportunity to look at it in specific policy areas.

Lord Caine: Is not one of the other unanswered questions how the Northern Ireland Executive will feed directly into the joint consultative committee?

Ms Jess Sargeant: Yes, absolutely. That is another very important question. In common framework areas mostly concerning devolved areas, it will be the Northern Ireland Executive who will have responsibility for transposing that particular regulation or such like, so it is very important that they are involved in those discussions.

But the UK Government will also have a role to play, not only in areas where it is applying EU law in reserved areas with respect to Northern Ireland but in supporting the Northern Ireland Executive to some extent. There is concern in the Northern Ireland Executive that there is not the capacity to be able to consider some of these changes to EU law in quite technical areas that the UK Government, as an EU member, often took the lead on. It is very important that the Northern Ireland Executive are there at those discussions, but also that they are supported to be able to consider the implications of those discussions and changes to EU law for Northern Ireland.

The Chair: I should say to all members of the committee that given the time, not every witness need be invited if there is an appropriate choice.

Q59 **Baroness Ritchie of Downpatrick:** Based on what has been written in the various submissions, this is a question about the Protocol and it is directed at Jess.

The House of Lords is going to establish a sub-committee of the EU Select Committee on the Northern Ireland Protocol, and presumably there will be intersection between the work of that committee and the work that we

are doing currently. Where relevant, how should common frameworks make use of the bodies for British-Irish co-operation and north-south co-operation on the island of Ireland established under the Good Friday Agreement?

Jess, in your submission, you state with regard to regulatory provisions that the parties to each common framework should explore alternative mechanisms for considering the potential economic impact of divergence between Northern Ireland and GB created by changes to EU law. You have already referred to the issue of capacity. Do you think there is capacity within the Cabinet Office, the Northern Ireland Office and the devolved Administrations, particularly the Northern Ireland Executive, to do this body of work and to act upon it, particularly when this body of work will cause fissures and division in the Northern Ireland Executive because of the constitutional issues and issues to do with political identity?

Ms Jess Sargeant: You have raised a lot of interesting questions and points. I think there are opportunities for the bodies established by the Good Friday Agreement to aid the work on common frameworks. Where it is a north-south body, it is appropriate only for the Northern Ireland Executive to be involved in it from the UK side.

That could be a particularly important forum for potentially attempting to influence EU law that will apply to Northern Ireland. Obviously Northern Ireland will no longer be part of a member state, but the Republic of Ireland will remain a member state. Using that as a forum for discussions of potential changes to EU law will have implications for both, and where they have a common and shared interest will be really important.

In common frameworks more widely, the British-Irish Council, in which the devolved Administrations and Crown dependencies sit, will be a really useful opportunity to discuss regulation where there might be shared interests across the UK and the Republic of Ireland. Although it might not be appropriate for those to be formally part of a specific common framework process, there are informal opportunities to use that as a forum to discuss some of the issues that are being considered in common frameworks.

On your specific point about capacity for assessing the economic impact of the Protocol, that particular point was in reference to the role of the Office for the Internal Market, which is established by the United Kingdom Internal Market Act. From my understanding of the Act, any regulation or legislative provision that gives effect to the Northern Ireland Protocol is explicitly excluded from the remit of the office for the internal market, which is foreseen to play a very important role in establishing the economic impact of regulatory divergence.

I think the biggest potential for an economic impact of regulatory divergence is through the Northern Ireland Protocol. It is a shame that it has been explicitly excluded from that remit. There are obvious reasons for doing that, such as the UK Government not wanting to make this

independent office the ultimatum arbiter of whether or not the Northern Ireland Protocol is working. Having said that, there is still the need for that evidence to be considered in discussions through common frameworks and elsewhere, and there is the need to consider alternative mechanisms for doing that.

I think there are concerns about the capacity to conduct that research and the political sensitivities, particularly, as you say, in Northern Ireland. There is a risk that the UK Government and the Northern Ireland Executive, because of the political sensitivities, do not undertake the work to assess the consequences of the Northern Ireland Protocol because it is too politically difficult. That would be a real problem, because it could create issues that have implications for the Northern Ireland economy and are not being addressed if that analysis has not been done. It is really important that that happens somewhere.

As well as common frameworks providing an opportunity for it, there are discussions between the UK and the EU, primarily through the joint committee and, as I mentioned earlier, the Joint Consultative Working Group, to consider those aspects. There is a risk with the Northern Ireland Protocol that people slightly bury their heads in the sand, and that will not make it work effectively. It is really important that the Northern Ireland Protocol works as effectively as it can. Considering ways in which common frameworks could play a role in that analysis is really important.

The Chair: We now move to the intergovernmental relations questions.

Q60 **Lord Murphy of Torfaen:** My first question is to all three of you. How would you describe the current state of intergovernmental relations in the United Kingdom? I have two points to make on that question. The first is that the current Covid situation has meant that the public in all parts of the United Kingdom are much more aware of devolution than they were before, because it has really thrown up the fact that we live in a country that has devolved Administrations.

My second point refers to what Hugh said earlier. The concept of shared governance—with which I have a lot of sympathy, by the way—will be much more significantly talked about in the future. My fear, though, is whether a United Kingdom Government, of whatever political colour, would ever really agree to equality with Scotland, Wales and Northern Ireland. Perhaps the best we can hope for is first among equals, but who knows.

The current pandemic, and the current crisis, has shown this question in a totally different light, and I would be very grateful for your brief comments on where you think we are with intergovernmental relations.

Dr Hugh Rawlings: I do not think it will surprise the committee that my impression of the current state of intergovernmental relations is that they are poor. They are operating in a low trust environment. We can talk further about that if you like, but I want to add a nuance.

It is always important to remember the official-to-official discussions that carry on regularly between Administrations, regardless of what is happening in the political domain—well, not "regardless", but they happening almost separately from what is happening in the political domain. Officials talk to each other regularly. They quite often know each other and they can have discussions, and perhaps fly kites and ease some of the difficulties between Administrations in that way.

As a special example, and taking the point you made, Lord Murphy, about Covid, the working relations between the Chief Medical Officers of the four Administrations have been exceptionally close throughout the Covid experience. While there have no doubt been bumpy experiences at the political level, there is always this undertow of official and professional relationships that help the intergovernmental relationship to work. But things are operating on a very low-trust basis at the political level now.

One reflection I have is that this is not inevitable. It was extremely noticeable during the time of Mrs May's Government when Sir David Lidington was given responsibility for the management of intergovernmental relations how those improved enormously at a personal level over a relatively short period because of the obvious effort and commitment that he put into making those relationships work, seeing it very much as part of the way the UK as a whole should be governed. This is not inevitable. There will always be political disagreements, everyone has to understand and accept that, but the personal element can be forgotten about, and it is quite important.

Lord Murphy of Torfaen: Thank you very much indeed, and I entirely endorse what you say about David Lidington. The individual commitment to devolution by Ministers is significant, but so are their personalities. I absolutely agree with that. Michael, can you add your views on where you think we are?

Professor Michael Keating: As Hugh said, for obvious political reasons, relationships at the political level are not good at the moment, and the Brexit process is showing how problematic they have become. There is a lot of constant working at the official level, but attention in Whitehall for some of the departments is sporadic. They just forget about Scotland, Wales and Northern Ireland. It is not that they are trying to do the devolveds down; they just forget that they are there.

Between 1977 and 1979, I used to teach devolution at the Civil Service College in London—I used to fly down there—because it was important for the civil servants to know what devolution was about. That did not happen the next time around, although I go down there from time to time and talk to Whitehall officials. The leadership in Whitehall is conscious of the need to do that, but other things seem to get in the way.

On shared governance, yes, absolutely. We have only a few minutes, so I will not go into detail about all the ideas that we have been putting forward. I am very interested in the philosophy of the Welsh Government in recent years in developing the idea of shared government and co-

operation, although I have to say that the Welsh tend to put more emphasis on shared government and the Scottish Government tend to put more emphasis on doing things themselves autonomously. They are not incompatible, but there is a difference in emphasis there that must be respected.

Finally, we have all these ad hoc measures in intergovernmental relations, and I mentioned before that we have about six consent mechanisms with the Sewel Convention: the transfer of powers to the devolveds is at Section 30 in the Scotland Act, the EU withdrawal Act has another one, the internal market Act has another one, and now we have the Competition and Markets Authority appointments. They all have different consent mechanisms. I think that reflects the absence of philosophy about intergovernmental relations, the role of the devolveds and how far the devolveds should be required to go along with this common policy.

The underlying principle of the whole system is that at the end of the day the UK Government always have the last word. They do not always exercise that last word, and they do not always overrule of course—not at all. But the very fact that they have the last word has an effect on the entire process. Negotiations are conducted in the shadow of this hierarchical relationship and we know that one side can have its own way if it comes to a conflict.

Lord Murphy of Torfaen: Thank you very much indeed. Jess, how do you see this perhaps from a Northern Ireland perspective?

Ms Jess Sargeant: I agree with everything that was said, and with you, Lord Murphy. Also, coronavirus raising the profile of devolution among the public has also raised awareness among UK Ministers, who I think in some cases were a bit surprised when the different devolved Administrations started taking their own approach for example to lockdown restrictions.

On your question about shared governance and whether that is feasible from a UK Government perspective, to some extent they have had a bit of a wakeup call in that they should realise now, when we are talking about devolved areas, that if the UK Government want a UK-wide consistency it has to be on the basis of agreement and consensus between the four Governments. They cannot just simply do what they were intending to do and hope that the devolved Administrations will follow along.

There is a distinction to be made here about areas that are reserved where the UK Government hold the decision-making powers and areas where they are acting only for England. I think we need to bring out that distinction a bit more and that the UK Government need to recognise that in some areas they are acting only for England, and that any UK-wide decisions must take place on the basis of consensus.

Lord Murphy of Torfaen: Thank you very much indeed. I think Lord

Foulkes is likely to say something about the English side of things. Thank you very much indeed, all three of you.

Q61 **Lord Garnier:** I apologise if what I am about to say repeats what has already been said. I had to step out of the room for about 20 minutes.

I am interested in your responses to the questions from Lord Murphy and I was particularly fascinated by the point that you made that, at official level, discussions are going on in an altogether more constructive fashion than they are at political level. It strikes me at the political level—and this is reflected in the evidence we had from two Ministers, one from Wales and one from Scotland— that before the enactment of the United Kingdom Internal Market Act, relations were very bad indeed, and I think you have underlined that.

We look as though we are listening to a dialogue of the deaf, politically. All four people are talking at each other in different languages. I do not know whether the internal market Act is simply emblematic of that or whether it added a catalyst for aggravation and argument independently of the existing background. Do you think this is curable, or do you think that the problems we had over the internal market Act will cement the dissent between the four parts of the United Kingdom, by which I mean the UK and England almost as one thing and the three devolved Administrations as another, or do you think that, as we get into the election period in May for example, it will just get worse and worse and that, despite the hard work of officials, the union of the United Kingdom, of Great Britain and Northern Ireland, is about to fall apart? Jess, perhaps you could go first.

Ms Jess Sargeant: That is an interesting question, and I think there are questions about whether official-level working on the United Kingdom Internal Market Act specifically is going well. Unfortunately, it is probably not.

Obviously, the UK Government are very concerned about the future of the union, and their approach to that has to some extent been to compete with the devolved Administrations rather than to co-operate with them. This is in part where we see some of the problems arise.

Obviously the United Kingdom Internal Market Act was passed without the consent of the Scottish Government or the Welsh Government—or, I should say, of the legislatures, because it is a parliamentary process. Certainly, there were big objections from the Scottish and the Welsh Governments. The UK Government could argue that the Scottish Government do not have much incentive to agree, because if it creates a problem that could further their ultimate aim of achieving independence. I do not think you could say the same about the Welsh Government. The Welsh Government never opposed the principle of legislation on the internal market.

I am sure Hugh could tell us more about this, but a compromise could probably have been reached if the UK Government were willing to make concessions, but they were not. The speed at which they introduced the

White Paper and then the legislation suggested that they were not particularly open to having a discussion about this to try to find a solution that suited all parties. They would use the blunt mechanism of UK parliamentary sovereignty to pass what they thought was the best solution. Unless there is a change of approach on the part of the UK Government, I think we are likely to see this kind of dynamic again, so I think there is a problem.

I would also question whether the UK's competitive strategy of saving the union is necessarily a good one, because fundamentally devolution is popular in Scotland, in Wales and in Northern Ireland. No matter what your constitutional preference, there is a lot of support for having a devolved Government within the United Kingdom at least. Certainly, the Prime Minister's comments about devolution, compounded with some of the actions taken for example in the United Kingdom Internal Market Bill, have perhaps quite rightly created concern about whether the UK Government are trying to roll back devolution. Unless we see a change of approach, it is difficult to see how intergovernmental relations could get better at this point.

Dr Hugh Rawlings: I very much agree with what Jess has said. The internal market Act has exacerbated problems. It has added to difficulties that were already there with Brexit, and it did so obviously by being brought forward with the minimum of consultation with the devolved Administrations.

In the classic distinction that one always asks about government, was it cock-up or conspiracy? My initial thought was that the internal market Bill was the result of a lack of coherence within the UK Government as to what their devolution policy was. Now, if one looks at the Act that resulted from the parliamentary process and sets it alongside the decision to centralise the strategic Prosperity Fund and to take those powers away from the devolved Administrations, one begins to see the makings of what looks like an attack on devolution. That, of course, is not going to make the conduct of intergovernmental relations any easier.

The Welsh Government are in a particularly difficult position in this respect, because, of course, they are simultaneously strongly devolutionist and strongly unionist. They want the union to be maintained, but they want a strong devolution settlement. Therefore, they find the position extremely difficult when there appear to be attacks on the idea of devolution as contained in giving priority to the internal market principles and the centralisation of funding.

We have now reached the point, as I am sure Lord Thomas, and possibly Lord Hope, is aware, that the Counsel General is making an application for judicial review to seek declaratory relief as to exactly what the internal market Act does to devolve legislative competence and what limitations, if any, there are of a constitutional character on the use of the secondary legislative powers in that Act.

The fact that there has to be recourse to the courts on something like this, brought by a unionist Government, shows the depths to which we have fallen in this sort of dialogue of the deaf.

Lord Garnier: We have form for this, as I know from my own experience with the prorogation case. It will set up another battle between the Executive and the judiciary that will play out, and not to anybody's advantage I fear. Michael next, please.

Professor Michael Keating: Yes, of course, devolution was always a compromise between different views of the constitution and the nature of the union. That is just a fact. The Scottish Government have one position and the UK Government have a different position. The Welsh Government have a different position, and so on. It does not mean that the constitution cannot work. It is a situation that has to be resolved and we have to live with. It has become much more confrontational, partly because of the dynamics of devolution but partly because of the UK Government's failure to understand what devolution is really about. I am not just referring to this particular Government. Hugh has given some examples of that. Jess mentioned this competitive notion of devolution, with each side trying to gain political credit, political territory, and we have seen this in the Covid crisis as well.

The new powers which the UK Government have taken to spend in the devolved areas are clearly part of that—to show that they can do things, to provide things to Scotland, Wales and Northern Ireland that they say would not otherwise be there. I find that quite unhelpful. Not only is it unhelpful politically, but it is also quite dangerous in that it creates waste and duplication in spending of one sort or another. I noticed in the internal market White Paper that the Government said, "The UK has a unitary state, therefore … ", and I thought, "Hold on. That's not agreed. We're a devolved state. We're a union". The language is quite indicative of that.

We have to find ways in which we can live with these different perspectives, which are all legitimate. After all, in Northern Ireland we have extremely different positions on parties that have to come in to govern together. We respect these different understandings, so it is a matter of respecting the perspective of the other side from which a lot else follows.

We have not had time to get on to the institutions this morning, but there are some institutional mechanisms that would help by eliminating elements of hierarchy and providing neutral spaces and institutions that do not depend on either Government and that can broker and mediate these different provisions of the constitution.

The Chair: Thank you very much indeed for your fascinating answers. They are very helpful to us. Can I urge the committee and witnesses to be slightly more brief as we go through the next series? I will have to ask for about 10 minutes extra of your time, if you do not mind?

Q62 **Lord Thomas of Cwmgiedd:** Can I come back to the subject of intergovernmental relations? In particular, what would you see as the practical changes necessary to try to make things work better? Should you replace the JMC with a formal Council of Ministers? Jess, this is a vast subject, but can you be brief, please?

Jess Sargeant: Yes, absolutely. I have certainly not done as much research into this as other witnesses have, so I will be particularly brief. I would emphasise perhaps the need for mechanisms or forums that facilitate modern working on the issues of the day for the four Governments. In particular, as I mentioned right at the beginning, there are these different programmes of work on the internal market and no coherent structure through which they can be managed, so from my perspective I would be particularly interested to see coming out of the intergovernmental review some awareness of those cross-cutting challenges and appropriate forums to facilitate discussion on those.

Lord Thomas of Cwmgiedd: Thank you very much. Hugh?

Dr Hugh Rawlings: I would hope to see two things coming out of the intergovernmental review. The first is a change of culture based on a recognition that the effective conduct of intergovernmental relations is part of business-as-usual governance. This is not exceptional. We have four Governments with a relatively high degree of interdependence. We need to put machinery in place to enable that discussion to take place and for it to be done is recognised as a perfectly normal piece of governmental action. I would associate with that the need for a dispute resolution mechanism that all Governments have signed up to and are happy to operate. As Michael suggested earlier, that will probably involve some third-party assistance on occasion to enable the parties to reach a conclusion.

On the council of Ministers point, this would not just be a change of name, of course, but a change of function. It would be transforming the present JMC from a largely consultative body to a decision-making body, perhaps with majority voting, and, frankly, picking up the theme that we discussed previously at this stage, given the low levels of trust between the Governments I think it is probably a step too far at the moment. It could happen down the track, if only the culture and the levels of trust could be improved.

Lord Thomas of Cwmgiedd: Thank you very much. Michael?

Professor Michael Keating: Yes, I like the idea of a council of Ministers. It is more than the joint ministerial council we have at the moment—with parity of esteem, as they say in Northern Ireland. It is not a vertical but a horizontal meeting of different Governments bringing their own responsibilities together.

Yes, maybe there could be some voting mechanism. There are precedents. Spain has a weighted voting mechanism. Belgium has voting mechanisms. It probably would not be used very often, but as a backstop

it would be useful to say that the UK Government cannot necessarily get their way in all circumstances. We have to think about how England and English regions would fit into that, because it is not satisfactory that the UK Government should represent England and the UK—hold the ring as the UK, as it were—but at the same time represent England.

I would like to see some capacity in these mechanisms for research and assessing the impact of various mechanisms, rather than having the Governments just bringing their own evidence together. Again, there are precedents for having international organisations and then a better mediation and dispute resolution mechanism. If you have that in place and you have the certainty of those instruments, that feeds back into the entire process, because it would ensure that, all the way from the official level to the ministerial level, if you are dealing with policy matters you know that all Governments have to be treated with respect and their powers and competencies taken seriously.

The Chair: Thank you. Lord Foulkes has a rather big question, but I hope we can deal with it fairly swiftly.

Q63 **Lord Foulkes of Cumnock:** Thanks. Michael has already touched on it. I make no excuses for the fact that there are people in Whitehall who do not understand devolution, and that has been a problem with all Governments. Equally, the SNP does not believe in devolution. It wants something completely different, and if devolution does not work it benefits them.

Hugh and others have referred to four Governments, but, as Michael just said, one of the biggest problems is that the UK Government have to represent England and then have to hold the ring as representing the United Kingdom. That is a very difficult thing to do. Is that not one of the major problems, and how would we resolve it? Would you agree with Gordon Brown who, in his article in the *Telegraph* yesterday, put forward a solution, which is to look at the constitution of the United Kingdom and complete devolution, particularly now in relation to England. Perhaps Hugh should start.

Dr Hugh Rawlings: Yes, thank you. In some ways, the conflation of the UK Government as representing both England and the whole of the UK is less of a problem for the devolved Administrations. We would look to negotiate with whom we were faced with across the table. It is more of a problem for the UK Government themselves, because there is considerable confusion, and frankly a certain unwillingness on the part of at least some Ministers to acknowledge the territorial limitations of their powers. I think you see that very clearly in the Covid press conferences, where it is very often unclear whether Ministers are speaking on new measures for England or for the UK.

I do understand how difficult it is. I was thinking about the position of the Chancellor of the Exchequer, who in the same speech had to announce furlough arrangements for the whole of the UK and yet, perfectly sensibly because it was all part of the same package, went on to talk about a

rates holiday. Of course, rates are part of the local government settlement and are devolved. Understandably, he did not talk about a rates holiday in England.

Therefore, there is a problem, but I think there is a certain unwillingness in Whitehall to recognise it, as there is of course with the national press. Given the symbiotic relationship between the national press and the Whitehall Government, the national press is distinctly unwilling to recognise the realities of the distribution of power within the UK and always talks about government as if what is said by Whitehall covers everywhere.

As to what you could do about it, of course you could do a badging exercise and identify certain departments as specifically related to England, but that is just a thought. It might be useful, but it is very limited.

I suspect that the reality of the matter—and this goes back to your point about Gordon Brown—is that you can only differentiate between the responsibilities in respect of England and in respect of the UK if you have two different Governments: in other words, if you have a fully federal system with a federal Government for the UK and a Government in England. Of course, that represents a most radical set of constitutional proposals, which might be necessary but is very, very difficult.

Lord Foulkes of Cumnock: Even more radical is the break-up of the United Kingdom, which is on its way unless the United Kingdom Government do something about it. Maybe Michael Keating would agree and come up with a solution for saving the United Kingdom.

Professor Michael Keating: We go back a long way on this, George. We are not going to get a solution to the English question until the English decide what the question is, let alone the answer. There are multiple ways. There is an English question, a regional question and so on. There is no consensus. There is no appetite in England for federalism. We insisted on devolution for Scotland because we wanted it. We cannot thrust a solution on to the English just to suit the convenience of the devolved. That debate has to take place in England. Maybe it will, and in due course we may be able to talk about it.

I am sceptical about a big bang constitutional convention and a written constitution, simply because we do not have consensus. We would just be explaining for ever. Devolution will proceed incrementally. There have already been big changes in Scotland and even more dramatically in Wales, considering where they started from. The interest in England is about regional mayors, the regional agenda, city regions and other things, rather than where England fits into the union. That is a political fact, and we cannot get past that simply in order to have some kind of neat symmetry in the system, so we have to work around that.

I suggest that something like a UK council of Ministers has to be done for England. It will not be an English Government. It may be a UK Minister

speaking for England. There may be something else. There may be an English regional presence, but there is something missing there that is important. There is no neat solution, and until somebody tells me what federalism will mean for England I cannot see where federalism is going to come into this solution.

Lord Foulkes of Cumnock: Thank you very much. We are still anxiously waiting for the Dunlop intergovernmental report. Maybe that will help us.

The Chair: I think we might move on to our last set of questions now, if you do not mind, Jess. Lady Crawley, Lady Redfern and Lady Randerson have questions. I ask them to be brief, and likewise our witnesses. I apologise for putting pressure on you at the end of the meeting. Thank you.

Q64 **Baroness Crawley:** I want to ask about scrutiny. How important is parliamentary scrutiny of common frameworks, and is there a trade-off between effective intergovernmental processes and effective scrutiny? Our committee has been able to measure the success or otherwise of our scrutiny when it comes to our dealings with Ministers and government departments.

However, that measurement is a lot more tenuous when it comes to our dealings with the devolved Administrations. I know that they are appreciative of the work we are doing on common frameworks. Some of that work is useful to them in their lobbying of their own executives, but does it matter that we cannot measure this in detail because of the nature of intergovernmental working on common frameworks?

Dr Hugh Rawlings: It is important as a matter of principle that there should be parliamentary scrutiny of common frameworks in all four legislatures. It needs to be limited in scope for influencing the detailed content of frameworks, because those are a matter of some quite detailed and sometimes difficult intergovernmental negotiation. Even if a particular Parliament comes up with a bright idea for improving the frameworks in some respect, it would be very difficult to get all four Governments to agree.

I would have said that scrutiny, which is important, should focus on how the frameworks are working, and, in that respect, if you had a requirement for the publication of annual reviews or something like that, to facilitate scrutiny of how the frameworks are working, I think that would be a very useful addition.

Baroness Crawley: Thank you. I am happy to pass on to Liz next.

Q65 **Baroness Redfern:** I can address my questions to you, first, Hugh, because you touched on collaboration and co-operation.

How should individual frameworks facilitate ongoing scrutiny by relevant Select committees for the programme as a whole, and should they be scrutinised holistically from a UK-wide perspective, which would show greater co-operation between the UK and the devolved legislatures? Finally, should common frameworks be encouraged to publish annual

reviews?

Dr Hugh Rawlings: It is important that the operation of individual frameworks should be the subject of scrutiny, but it does need to be the subject of holistic oversight as well. We talked earlier about the lack of consistency in the frameworks and the need for a template and a more consistent approach across the common frameworks. If you only had the operation of individual frameworks subject to scrutiny, you would lose the possibility of having an overall look at the common frameworks programme, with a view to maintaining consistency across the board so far as that is appropriate. It will not be absolutely appropriate. You cannot have a one-size-fits-all for these frameworks, but there does need to be an overview of how the frameworks programme as a whole is working out.

Jess Sargeant: I would completely agree. As well as scrutiny, there needs to be as much transparency as possible around common frameworks and to make sure that the kinds of documents that are published in the name of transparency are accessible, particularly to people from outside Parliament who might have a particular interest in this.

I noticed over Christmas that the UK Government published just one page when they published all those common frameworks—a very simple thing but a very useful development. As well as thinking about scrutiny and transparency, more can perhaps be done to help interested stakeholders or individuals to follow the development of certain common frameworks to ensure that they do not miss opportunities to feed in where they are presented with them.

Baroness Redfern: Thank you, Jess. Michael, you have mentioned standardise as well in some of your comments, so please come in here.

Professor Michael Keating: We know that when things are taken into intergovernmental arenas it becomes much more difficult for Parliaments to scrutinise them, because these negotiations are very often confidential. The burden of scrutiny is increasing all the time with the Brexit legislation and the complications of devolution, and this is a problem for the House of Commons, for your own House, and for the devolved legislatures. It will be very important to prioritise things, because you cannot try to look at everything in detail, given the detail of some of these frameworks.

It will be important to encourage frameworks to be simpler rather than complex and trying to cover everything. Not only does that make for a better policy but it also makes for easier scrutiny and for focusing on the really important things.

Finally, it is important to encourage interparliamentary discussions—discussions between Westminster and the devolved legislatures. There is a lot of potential there and a lot of good will to try to do that—to spread the burden and to share things. While you have cross-UK or cross-GB

frameworks, the various Parliaments could come together to discuss that and see what the real issues are.

The Chair: Finally, but absolutely not least, I come to Lady Randerson and her question.

Q66 **Baroness Randerson:** Thank you very much. At this very late stage in the meeting, can I declare an interest? I am Chancellor of Cardiff University and Dr Hugh Rawlings is an Honorary Professor there.

I will take up Michael's final point about interparliamentary co-operation, and start by asking Hugh and Jess, and then let Michael come in if he wants to add anything. Do you think there should be formal interparliamentary co-operation? There was an interparliamentary forum on Brexit, which seems to have fallen into disuse. Do you think there should be a formal structure or an informal structure for the way the parliamentary institutions treat and deal with common frameworks? Finally, do you think that the House of Lords has a particular role? You do not have to say yes to that.

Dr Hugh Rawlings: Yes, I do think the House of Lords could have a convening role for scrutiny. Whether there need to be formal or informal interparliamentary arrangements depends to a very large extent on how the common frameworks programme develops. Some of us are still very worried that the United Kingdom Internal Market Act may result ultimately in the common frameworks programme losing focus and momentum. There is not much point setting up formal arrangements to scrutinise something like that. Assuming that the frameworks programme does progress and succeed, I think formal arrangements would be a good thing.

I have noted that the Interparliamentary Forum on Brexit fell into disuse. It would probably be interesting for the committee to find out why that was and what lessons can be learned from that, because until about September 2019 it seemed to be going really very well and all of a sudden it came to a halt.

Baroness Randerson: I am not sure what happened there.

Jess Sargeant: Interparliamentary co-operation is very important, because ultimately the best chance of influencing intergovernmental processes comes if there is interparliamentary agreement on specific recommendations.

My only reservation about formal mechanisms for interparliamentary working would be some of the political and procedural challenges of potentially working with the Northern Ireland Assembly specifically. That would need to be considered. It would be a problem if we ended up with interparliamentary fora that did not include Northern Ireland representatives, considering how important it is for their views to feed into this process, so that would be my one reservation.

There is a lot that can be done with informal opportunities, even something as simple as one of the letters that came out of the

Interparliamentary Forum on Brexit that just highlighted where different committees had made common recommendations. Something as simple as that can be impactful. So I think this would all need to be considered, but some form of interparliamentary working will be really important in this space.

Professor Michael Keating: I do think that interparliamentary working is important. It should be at committee level, where we have specific remits, and focus on particular issues, otherwise these things become talking shops. If they are formalised, they just become purely formal and they feel that they have to meet every six months or so.

Working with committees of the House of Lords, the House of Commons, the Scottish Parliament and the Welsh Senate, I think there is a big appetite for that. Members really want to do this. It sounds like extra work, but in fact you could economise on a lot of work, because instead of doing these things separately they could pool their understandings and agree on a common position, so that would be an extremely useful initiative to take.

The Chair: Thank you all very much indeed. It has been an outstanding session. You have shared with us a tremendous depth of expertise and a very broad and insightful understanding of some of the very challenging issues that we are facing across the UK in relation to devolution and constitutional change. It has been a very impressive session indeed, and I thank you on behalf of the committee for your time. With that, I can now declare this formal committee now closed. Thank you very much indeed.