



# Common Frameworks Scrutiny Committee

## Corrected oral evidence: Post-Brexit common frameworks

Tuesday 6 July 2021

10.40 am

Watch the meeting

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

Evidence Session No. 12

Virtual Proceeding

Questions 139 - 153

### Witnesses

[I](#): Councillor Gail Macgregor, Convention of Scottish Local Authorities (COSLA); Ruth Marks, Chief Executive at Wales Council for Voluntary Action (WCVA).

## Examination of witnesses

Councillor Gail Macgregor and Ruth Marks.

Q139 **The Chair:** Good morning, everybody. Good morning to my colleagues and good morning to our very distinguished witnesses: Councillor Gail Macgregor, the resources spokesperson of the Convention of Scottish Local Authorities—COSLA—and Ruth Marks, the chief executive of the Wales Council for Voluntary Action. This is the 12th oral session of the Common Frameworks Scrutiny Committee, and we are extremely happy to have you with us today. This is a public broadcast and we will provide you with a transcript in due course.

It is particularly good to have you both, speaking from Wales and Scotland this morning, because this committee is concerned with the common frameworks as they are operating across the UK, and we always welcome voices and views from across the other countries. We are focusing this morning on public procurement and the common framework for public procurement, because these are issues that you, local authorities and the voluntary sector, will be very concerned with and informed about because of the work that you do.

We hope this morning that you can give us some insights, information and perspectives on how the public procurement framework is likely to operate, its strengths and potential weaknesses, and any issues that you would like to talk to us about.

Without further ado, I will kick off with what I am sure you will find a very basic question. It is a framework for our other questions. What is the perspective of your two countries and your two agencies on public procurement policy, and why does it matter to your members?

**Councillor Gail Macgregor:** Thank you very much for having me this morning, Chair. It is an absolute pleasure to be able to speak to you and, I hope, provide some useful information.

Scottish local authorities, as public authorities, are responsible for a very sizeable part of procurement activities in Scotland, individually and collectively, and via our nationwide partnership Scotland Excel, which does a tremendous job in Scotland of trying to link everybody together. As Scottish councils, we are responsible for around a third of the total Scottish devolved budgets. Consequently, there is a lot of spending power with councils; it is significant.

As COSLA resources spokesperson, I am responsible for negotiating the annual Scottish local government finance settlement with the Scottish Government. I also have employers within my brief and a responsibility for 244,000 local government employees. I am currently in the middle of pay negotiations, so within the workforce and procurement of workforce my role is fairly significant and very broad.

Equally, any UK-wide financial allocation provided by UK Ministers is, at least partially, part of my portfolio, and this includes replacement of EU funds, levelling-up, and the shared prosperity fund. We are looking at

community ownership funds now, and the allocations to Scotland from UK Ministers are increasing. Local authorities have vast experience in managing procurement operations and in the application of the 2014 EU directives, which, due to the devolution settlement, were separately transposed on a Scotland-only basis through the Scottish procurement regulations.

COSLA was previously very active at EU level in successive changes to the directives. I have sat on committees in the European Union, trying to assist and facilitate our role within various frameworks. Our position then, as now, was that local authorities should be given as much latitude as possible to decide what and how to procure, to provide a service in-house, to tender it out and to decide autonomously how and when to share services. Local authorities should be allowed to prioritise local providers with a buy local scheme, something that during UK membership of the EU procurement legislation often constrained, given the fear of abuse across the then EU internal market of 28 very different economies.

Equally, we agree that, as the EU directives encouraged, procurement is a crucial tool to promote wider societal goals: social procurement, including reserved contracts to some disadvantaged groups and collectives; sustainable procurement so that lifetime costs are included, including green vehicles; innovation; and pre-commercial procurement so that goods and services are developed by forging new partnerships between public and private sectors.

That said, there might be occasions, as we have seen during the pandemic, where lowest cost or more generally the most advantageous tender should be the key criteria in awarding a procurement contract. Local authorities, which after all are democratically accountable, should have the ability to make that judgment. If there is a Brexit dividend, it should be to remove the unnecessary constraints imposed by the EU-wide legislation and, I would hope, empower local government autonomy in all procurement policy.

We do not see this additional flexibility in the UK and Scottish context as threatening in any way the existence of a robust, evidence-based and independent procurement process, and that would be our aim. In any case, we are aware that the World Trade Organization and the continued relationship with the EU via the trade and co-operation agreement agreed last December will make future Scottish and UK procurement policies an improvement on existing rules rather than a radical departure from them. We would welcome the opportunity to contribute today to your Lords' committee evidence session on the common framework on procurement.

**The Chair:** Thank you so much, Gail. That was a very clear and very strong statement, and I am sure some of my colleagues will want to pursue the differences between Scottish procurement policy and that of the rest of the UK. Thank you very much. Ruth, can you tell us about the situation in Wales from the voluntary sector point of view?

**Ruth Marks:** Thank you very much, Chair, and good morning, everybody. I repeat Gail's thanks for the invitation to join you this morning and to give evidence.

WCVA is the national membership body for the voluntary sector in Wales. The sector comprises 49,000 voluntary organisations. Over 6,600 of these are registered charities, the majority of which are very small charities, with the remainder made up of community organisations, social enterprises, voluntary groups and community interest companies and so on. I know the committee will be very aware that the sector is incredibly diverse, from arts to the environment, from heritage to education, from international development to health and social care.

The voluntary sector is interested in procurement for four main reasons. First, procurement should enable wider social objectives, such as reinvesting in communities, supporting apprenticeships and so on, which accord with the missions of many charities and social enterprises.

Secondly, procurement should ensure that commissioned services are high quality and not motivated primarily by lowering costs and maximising profit.

Thirdly, it should ensure social enterprises and registered charities are able to bid on a level playing field, which looks at more than lowest cost and effectively accounts for social value and other community benefits.

Finally, Wales has a third-sector scheme that requires Welsh Ministers to make a scheme setting out how they propose, in the exercise of their functions, to promote the interests of relevant voluntary organisations. I am aware that several members of the committee will be aware that this scheme is made under Section 74 of the Government of Wales Act 2006.

The fact that procurement is directly addressed in the third-sector scheme underlines the sector's interests and WCVA members' interests in public procurement policy and the links and connections that Gail has made in relation to our previous partnerships with EU institutions and our desire to remain as connected as we possibly can with the organisations that we have partnered with to such great benefits for communities across Wales. Thank you very much, Chair.

**The Chair:** Thank you. That is absolutely splendid, Ruth. It is very good to have on record that statutory underpinning of the procurement requirements. It shows in each case how Wales and Scotland have both placed procurement as part of a social objective. That is something that we are very interested in. I congratulate both of you on the clarity of your statements. It is important to have that on the record.

I can turn now to my colleagues to pursue some of the questions that you have anticipated in some of what you said.

Q140 **Lord Thomas of Cwmgiedd:** Could I begin with a question to Ruth and then come to a separate one in relation to Scotland? I remember you giving evidence to the commission I chaired on justice in Wales as to how

important it was that there were relatively uniform practices for commissioning, simply because some charities are so small, particularly in Wales for example with respect to legal aid. Much of it is dependent on procurement of services from the voluntary sector. Could you explain why working together and finding common ground is so important, and how that fits into the Welsh Government's funding through the scheme that you have just mentioned?

**Ruth Marks:** I will certainly give that a go, Lord Thomas. The important aspect is the co-operative approach brought around by the common frameworks. The opportunity for an overall common framework while allowing for divergence is really important. Transparency in how the four Administrations will co-operate under the frameworks is important and is not clear to us at the moment. The opportunity for an overall common framework gives voluntary organisations the chance, if you like, to get their heads around how they can demonstrate the impact and benefit that they will apply to a particular contract or tender situation.

I am aware that I may not have given sufficient detail in answer to your question, so if it is all right with you and the Chair, I can certainly reflect on that and drop a note into the committee after this morning's session.

**Lord Thomas of Cwmgiedd:** That would be extremely helpful, because procurement of third-sector services is now such a critical part of the provision of so many social services. As you remarked, so much of the sector is small.

Gail, in the Scottish context, how important is it for the four different Administrations to work together on public procurement, and what uniformity would you be looking to?

**Councillor Gail Macgregor:** Thank you very much, Lord Thomas. It is a good question and a very poignant one.

Obviously we support the process of developing a UK-wide common framework, and it is important that we do that. As EU powers begin to return back to the UK on a UK-wide basis, it is incredibly important that we work together and that all the different Administrations work together on this.

The key thing for us as COSLA and local government in Scotland is that where local government statutory powers are intersected by any common framework, local government should not just be a consultee or a stakeholder. We need to be a partner alongside the UK Government and the Scottish Government, fully co-producing, in true partnership, with all the organisations across the rest of the UK. That will be pivotal to creating the type of framework that will work for all the involved nations and the UK in its entirety. Local government has a key role to play in that. I would like to think that we will sit as partners alongside our Welsh, Northern Irish, Scottish and UK Governments and all spheres of local government across those nations.

**The Chair:** Can I reinforce Lord Thomas's point that if you would like to

write to the committee to follow up any question, we would be absolutely delighted, because some of the questions are challenging and we are in uncertain waters in many instances with the frameworks. Please feel free to do that.

Q141 **Baroness Randerson:** Good morning to you both, it is very good to see you. You come from different but linked backgrounds and perspectives.

I want to ask about the changes that Brexit has brought to the approach to co-operation. Gail referred to being freed from EU rules, whereas Ruth talked about the desire in Wales to continue to work very closely with EU partners. I am aware that in Wales the Welsh Government and the voluntary sector had done a lot of work to undermine the perception that EU rules were a straitjacket, and that they flexed those rules and worked, as many other countries do, in a very co-operative way in order to mould them to what Wales wanted, what the Government of Wales and the voluntary sector wanted.

In your experience, what co-operation were you aware of between the four Administrations on public procurement before Brexit? How much co-operation was there, and how important do you think those EU rules were in the way in which the four Administrations interpreted those rules?

**Councillor Gail Macgregor:** It is a good question. We are in a time of significant change, and we need to be looking at what was good within the EU directives that are now being transferred fully to UK control, take the good, work with that, and then develop what I suppose would be common frameworks that are more bespoke for the four nations that we represent and the individuals and the communities within those.

Obviously, procurement in Scotland is devolved and our interaction thus far has been with the Scottish Government and the Scottish Parliament. They are in charge of legislating the Scottish procurement regulations and thus transposing the EU directives. It is how we feed into that particular process and ensure that the frameworks and the procurement processes that are being developed work for the context within Scotland can assist local government.

In parallel, we worked with EU counterparts in lobbying on EU procurement directives as they progressed through the EU pipeline, in essence to limit the scope of the directives. It is fair to say that we had only limited success with that; for example, the new rules constraining the autonomy of councils to decide if a shared service needs to go to tender or not. There is a lot of scope to develop a system that will work better for us at a very local level.

We are aware that at officer level there was significant, and it would be fair to say positive, co-operation during EU membership, and other EU policies as part of the various intergovernmental agreements. It would be for the three devolved Administrations and the UK Government to comment on that particular issue.

**Ruth Marks:** Thank you very much, and it is lovely to see you this morning. There is not an awful lot that we can say specifically about how the Administrations co-operated on procurement before Brexit, because it is not an area that we have had particular experience in. However, as far as we are aware, there were no significant issues because we were all operating from the same European legislation in this area.

It is clear that co-operation between the Administrations throughout the Brexit process was challenging at times, and we feel that the United Kingdom Internal Market Act is a good example of this. But, as we argued during the passage of that Act, the more co-operative approach brought by the common frameworks is to be welcomed.

In connection with voluntary sector interests and the points I made earlier about connectivity with EU institutions and programmes—through work connected with education exchanges, and with research programmes like Horizon and Erasmus—the sector is interested in trying to maintain those links and connections. We are hopeful that the divergence that might come through the common frameworks will enable that local decision-making and local application of things that will have the greatest impact, whether in a locality, regionally or across the whole of Wales, and in partnership with colleagues across the UK.

WCVA currently has a partnership arrangement with our sister organisation in the Republic of Ireland, for example. That has a variety of different outcomes linked to the foundation economy and to social value. In those areas of operation—working in partnership with transport companies and education institutions—it is so important to be able to understand and work within the rules, the frameworks and the legislations, but also to apply the local dynamics and local solutions that people have developed for themselves. Ideas that are co-produced by people who are directly involved in those situations are likely to have the most long-lasting and impactful results.

**Baroness Randerson:** Thank you very much for very interesting answers.

**The Chair:** I could not agree more with you, Jenny. These are very insightful and helpful answers, and the emphasis on co-production is extremely interesting to us.

Q142 **Baroness Crawley:** Good morning, Gail and Ruth. Thank you very much for your answers so far. They have been very enlightening. We are in this peculiar phase of having left the overarching regulations of the EU and not yet having frameworks that are completed and up and running on the statute book, as it were. Bar one, they are all provisional at the moment. How are you experiencing co-operation between the four Administrations on public procurement post Brexit and post the transition period? Have you any concerns, and have you experienced any real change in the role of local authorities and the third sector in delivering goods and services since the end of that transition period, or is this too early to start talking about that?

**Councillor Gail Macgregor:** Thank you, Lady Crawley. That is an excellent question. You have encapsulated the situation; we are between one position and an end position. As Ruth said earlier, I am very happy to forward to the committee any examples of challenges that we have had at local government level in Scotland. I do not have specifics in front of me, but the principle is that we support the development of a UK common framework to deal with the EU returned powers, and that will require UK-wide arrangements. How that is put together will be a challenge.

We are also aware of and indeed praise the significant work of UK and devolved civil servants in developing a raft of common frameworks. A lot of good work has been done, despite the sensitivity of the withdrawal and the negotiation process and, later, the competing demands of Covid work, which has thrown another spanner in the works. Normal business has been slowed ever so slightly in the development of work like this because of Covid. We have to be mindful of the fact that we may not be quite where we should be yet.

I believe that the repatriation of EU powers significantly alters the previous quite neat apportionment of powers at the UK level and in Scotland. This is why I think that a common framework process, particularly one that reduces intergovernmental friction, is probably of the highest institutional importance and something that we should work towards. For the same reason, we very much welcome the United Kingdom Internal Market Act 2020, as amended. It will give a statutory footing to these common frameworks.

Finally, the frameworks should not be merely about officer arrangement or political arrangement. They need to be scrutinised by the UK and the devolved Parliaments to make sure that we have something that is absolutely fit for purpose once we reach that point.

**Baroness Crawley:** Thank you very much, Gail. I am particularly interested in you talking about common frameworks reducing intergovernmental friction. We have talked a lot in this committee about that. In fact, we had a debate in the Lords last week and that came up several times: that this was a route beyond the nuts and bolts of public procurement, in this case to more intergovernmental co-operation.

**Ruth Marks:** The major concern for the voluntary sector in Wales is the understanding for and respect of devolved areas. Therefore, our reply is that it would be far better if public procurement issues were tackled by four Administrations working together. All the nations have opportunities here, but we will all want and need to apply them in flexible ways. We also anticipate that we will all want to look at the opportunities that are available to us for improving social value within procurement. Therefore, it makes sense that the common framework approach is used both for appropriate levels of regulation and for sharing best practice and expertise across the four Administrations.

The major concern is that we have a lack of transparency at the moment in how the Administrations will co-operate. There are a variety of things that are not completely clear to us at the moment. For example, who will sit on the various groups, what decision-making procedures will they use, how often will they meet, and where do they fit within the wider review of intergovernmental relations? It would be interesting and very useful if this information was available online and updated, and the governance implemented and devolved. We see this opportunity for a common framework but with local flexibility as crucial in tailoring policy to local contacts and facilitating shared learning across the four nations in this new environment, both post our membership of the EU and recovering from the pandemic.

**Baroness Crawley:** Thank you, Ruth. Those were excellent answers. Our frustrations are very much mirrored in what you said, particularly on transparency. If you will allow us, we will quote you on that particularly important issue in our future reports.

**The Chair:** We are now talking about common frameworks, so I would like to invite Lord Murphy to pursue some of those questions.

Q143 **Lord Murphy of Torfaen:** Again, a very good welcome to you both. I have two questions to ask. I will start with Gail on the first and Ruth on the second. How aware are you of the public procurement framework, and were you consulted as part of its development?

**Councillor Gail Macgregor:** Yes, COSLA has been aware of the development of the common framework since the work stream started in late 2017, and we have expressed that through various parliamentary inquiries and ministerial engagement. We have been a bit frustrated by the lack of engagement of local government until very late in the process. That is something that I have already emphasised this morning.

My feeling is that local government needs to be much more involved at much earlier stages when we are developing common frameworks. The UK Government agreed, and there were statements to the UK Parliament in March 2018, on the back of the common frameworks issue being discussed as part of the first UK withdrawal Act Bill and UK domestic policy, and that following repatriation the powers would be subject to a consultative mechanism with local government.

I do not feel, unfortunately, that such a mechanism has been fully set up by the UK Government, despite our repeated calls. We hope the UK Government will soon honour that particular commitment and engage much more constructively with local government.

The Scottish Government agreed eventually to local government consultation as part of the EU continuity Act 2020, and we expect this to be used to consult on future common frameworks. With respect to the UK procurement common framework, after repeated requests we were given the chance to comment on the finalised document, but commenting on a finalised document is barely consultation. That particular request came

unannounced on a Friday afternoon, which gave us a couple of weeks to respond and put a lot of pressure on our officers.

The team that had to manage this in COSLA is very small, and it was a very large piece of work. The timescales were inappropriate for a cross-party political organisation. The way we are structured at COSLA, we need to take reports to 32 council leaders and have them ratified by 32 council leaders, and our diary process does not allow that to happen regularly. As I say, a couple of weeks' notice is probably not quite good enough.

We were consulted as a stakeholder once the decision was drafted by the four Administrations. We felt that it ignored local government's own statutory powers on public procurement. If it is a local government power, we should be part of designing the rules, not just commenting on them once they have been drafted, as I say.

Lastly, given the context of this particular UK procurement common framework, limited consultation has been of little consequence. However, considering the various other common frameworks that are still being developed—for example, on waste, air quality and trading standards—we would urge this committee to call on the four Governments to involve local government in the drafting of these and future common frameworks, not merely as an afterthought. That is my very blunt answer. Thank you very much, Lord Murphy.

**Lord Murphy of Torfaen:** Thank you. I probably agree with every word that you said. Ruth, what are your views on that question?

**Ruth Marks:** Briefly, we were broadly aware of the common frameworks process and that procurement was identified as a policy area that would need one. We had an opportunity to respond to both the Welsh and UK Government consultations on procurement policy reform, but we were not consulted on the public procurement common framework.

Q144 **Lord Murphy of Torfaen:** There we are. That is a very straightforward answer. This has been partly dealt with before, but this is specific to the cross-Administration working groups on public procurement. Are you confident that these working groups will resolve any issues that might arise?

**Ruth Marks:** I am not too close to respond on this. However, I would just like to draw attention to the previous comments on our concerns about the levels of engagement and transparency, and to point out that the provisional framework does not appear to be particularly clear on how the working group will operate or how it relates to the liaison group that is also mentioned. We expect that this will be fleshed out in a concordat, which of course is not yet published.

The overarching concerns are about the transparency of the process and the timely publication of information, given that the framework is already in force. Briefly, the important question for us is engagement and consultation, aside from this committee of course. Thank you again to the

Chair and the committee for the invitation to be here today, because we feel that you have done an excellent job in the transparent gathering of written evidence and consulting with stakeholders, for which we are very grateful.

It is very difficult to get a complete picture of who is being consulted by the Administrations on the development of the frameworks, because this engagement process does not seem to be consistent or structured in any particular way. There is no list that we have seen that summarises which stakeholders have been consulted on which frameworks.

For a membership body such as WCVA, it is hard for us to get an insight into how well the sector as a whole is being engaged on specific frameworks. Equally, it makes it difficult for us in our usual contact with the Welsh and UK Governments to highlight any gaps in engagement that we believe there to be, because of course we are not aware of when or who might have already been consulted and, therefore, when or to whom it might be useful for us to make some suggested links and connections.

**Lord Murphy of Torfaen:** Thank you very much, first, for your kind comments about the committee but, secondly, for the very insightful comments on transparency or the lack of it.

Gail, do you have any comments on my second question about the cross-Administration working groups on public procurement and whether they will help in any way?

**Councillor Gail Macgregor:** I think Ruth has covered that particular question very comprehensively, so I will not rehearse what she has already said. I agree that a lot of it transposes into a Scottish context as well. My only comment would be that we hope that the dispute resolution mechanisms that we have seen in the common framework are put to best use to reduce this intergovernmental friction. That is probably the crucial thing, and we are quite keen that those new arrangements are built to last.

**Lord Murphy of Torfaen:** Thank you both very much for your very useful answers.

**The Chair:** Absolutely. Lord Caine, I am delighted you are still with us.

Q145 **Lord Caine:** Good morning, Gail and Ruth. Apologies in advance. I have to leave early to attend some business in the Chamber, so forgive me for that.

You might be aware that my background is in neither Scottish nor Welsh affairs but in the affairs of Northern Ireland. From your two perspectives in Scotland and Wales, have you had any specific engagement, discussion or consultation with your colleagues and counterparts and sister organisations or respective bodies in Northern Ireland on the issues that we are discussing this morning? If so, are you aware of any specific issues relevant to Northern Ireland surrounding the common frameworks process in general, and public procurement in particular, given that

Northern Ireland, under the protocol, will still be following many of the EU rules, unlike the rest of the United Kingdom?

**Ruth Marks:** The short answer is that we do not have a great deal of information at the moment, but immediately after this committee I will be able to make contact with the chief executive of the Northern Ireland Council for Voluntary Action—NICVA. We have very regular dialogue, and I am sure that he and his colleagues would be able to share some information either directly with the committee or in partnership with any further response that we send in.

Certainly, I am aware that the voluntary sectors in Northern Ireland and in the Republic of Ireland are increasingly looking at their links and connections, not just on the border but across the whole island of Ireland, and are keen to maintain their links and connections with EU institutions and some of the programmes of activity that we highlighted earlier.

**Lord Caine:** Thank you. I am delighted that you are making contact. Presumably that is with Seamus. Yes, great stuff. Gail, over to you, please.

**Councillor Gail Macgregor:** Again, I do not have any specific intel on how much engagement we are having with Northern Ireland. Within my broad portfolio we liaise with NILGA, the LGA and the Welsh Local Government Association very regularly. I assume that there is a lot of discussion going on on a lot of issues, be it finance, common frameworks or Covid. As I say, we have very active engagement with our partners across the three other devolved Administrations.

We have challenges in Scotland. Dumfries and Galloway Council, which I am a councillor in, has incredibly close links with its counterparts in Northern Ireland, and I think that that particular partnership and engagement is very constructive. We have issues with port control in Stranraer, where we are liaising with Northern Irish colleagues regularly. I am very happy to provide some examples of engagement with Northern Irish colleagues. I am sure that officers are endeavouring to engage as regularly as possible.

**Lord Caine:** I think it would be helpful to have those examples. Thank you very much.

**The Chair:** Thank you. I am conscious that we are creating lots of homework for you, but I can see that you will be an invaluable source of information, so thank you so much for what you are offering to do. I will now call Lady Redfern to develop some of the questions about engagement.

Q146 **Baroness Redfern:** Hello again to you both and thank you very much for your initial statements.

Government has stated that common frameworks are mainly for establishing and maintaining intergovernmental ways of working. What

are your initial thoughts regarding supporting a way forward to achieve an even more open and transparent way of working? Do you think that the publication of framework summaries during the initial development with a more publicised stakeholder consultation—including even more small and medium-sized enterprises, ensuring that those directly affected have their opportunity to connect—would help to address the process now and in the future? I will go to Ruth first, because I noticed you touched partly on my question when answering Lord Murphy about your concerns about lack of transparency and flexibility in engagement.

**Ruth Marks:** We are aware that the work has proceeded at a real pace and that as a result there is a sense that stakeholder engagement and transparency has not been as good as it could have been, especially in relation to the timeframe of the frameworks.

Now that they are all in force—some have been published for full scrutiny, but many have not—the UK Government have put up a page to collate the frameworks and relevant documents, but there are still gaps in the information and not all the relevant documents appear to be available yet. Overall, the Government have been making real efforts to improve transparency, but we do feel that there are still some legitimate questions hanging over this.

The important point I would like to make about transparency is how we have been consulted on procurement policy at the UK and Welsh level, for which we are very grateful, but this has taken place against a backdrop of uncertainty and far less engagement on the common framework. In essence, there is a real lack of detail, for example on the connections between the overarching review of intergovernmental relations, passages of the provisional framework still being subject to agreement between the Administrations, and relevant further documents, such as the concordat, not yet being available.

It also is still unclear to us how the relationship between the Internal Market Act and the framework process will play out on that intergovernmental level. For example, what will the process be for negotiating the inclusion of common frameworks as exclusions from the Internal Market Act's scope? I think your point about the greater involvement of small and medium-sized enterprises is to be welcomed, and I am sure it would also be welcomed by many of the charities and voluntary organisations operating in a not-for-profit sense that are seeking to bid for contracts and provide services to people and communities all over the UK. Obviously, the ones that I am most familiar with are in Wales.

**Baroness Redfern:** Yes, because they all interlink so much, absolutely.

Gail, you stated earlier that ideally you wanted to be a full partner alongside—I think those were your words—other Governments, and that it would help to reduce friction. You had concerns about the limited consultation, so I look forward to your response.

**Councillor Gail Macgregor:** Again, I think Ruth has touched on some incredibly important points. Sitting within local government, we also work very extensively across the third sector and voluntary sector, so all the matters that she has raised are incredibly pertinent.

As I said earlier, I think that resolving disputes on agreement of UK-wide common approaches on issues such as buy local are similar to the common framework itself. We need to have that level of transparency in resolving those disputes, and we need that co-operation and conversation. We would expect that, whenever the common framework is used to deal with various aspects of public procurement, it clearly intersects with local government powers and does not overrule local government powers, obviously changing existing EU-derived rules on shared services, either at a UK or Scottish level. If we can do that meaningfully and in adequate time, that is also incredibly important. We need time to consult before reaching any agreement and ensuring that we are very much part of that process.

In recent times, we have been doing work on levelling up and the community ownership fund and suchlike, engagement is absolutely improving between the UK Government and local government in Scotland. We already have very good links with the Scottish Government, but absolutely we need to look upon this as a partnership, which will ensure that we resolve disputes collaboratively as well. It is about finding a solution.

**Baroness Redfern:** Thank you very much, both of you.

Q147 **Lord Hope of Craighead:** Good morning and thank you for the quality of your answers. They are extremely helpful and the level of detail you are taking us into with this discussion is very valuable.

If the Chair will permit me, I would like to go back to an exchange that Gail had earlier with Lord Murphy about the Scottish Government's engagement in consultation. We were told in response to a question we put to the Government shortly after the publication of the Green Paper that the Scottish Government were not taking part in consultation as they had decided to align with EU rules as much as possible. I got the impression from what you were saying, Gail, that that position has changed. Am I right about that, and to what extent do you understand the Scottish Government to be engaging in discussions in the consultation process?

**Councillor Gail Macgregor:** Sorry, I am possibly slightly off-base. Our engagement with Scottish Government is good. I am not entirely sure what level or what stage they are at with engagement with the UK Government. There are frictions within that relationship, but I just feel that it is in the best interests of us all. This will happen anyway, and it is in the best interests of us all to try to work together to get the best outcomes we can.

Procurement is obviously devolved to Scotland, so it has a certain degree of autonomy over procurement regulation anyway, but I think that

common frameworks, as these rules begin to come back to us, should try to align where possible. I would say that across all the devolved nations it is in our best interests to try to find a common approach where possible, while obviously still taking cognisance of and having respect for devolution in the areas where we may need to do things slightly differently in Scotland, because it will work better than perhaps a UK-wide approach.

This is entirely about us needing to be flexible in our approach. We need to respect the individual needs of the four devolved nations, but where possible we should align and have as common a framework as possible.

**Q148 Lord Hope of Craighead:** Thank you very much for that encouraging answer. My main question, which is addressed to you both, is about the UK Government's reforms and whether they will create a meaningful divergence between the public procurement policy in the different parts of the United Kingdom. It is the opportunity to diverge that is the great strength of the framework system. Could I explore with you, Ruth, the extent to which you see the opportunity to diverge being permitted within the UK Government's proposals for reform?

**Ruth Marks:** As you mentioned, divergence is to be seen as an opportunity. We might also call it flexibility, and this flexibility should be available to public bodies at all levels—local public bodies, the four Administrations and other relevant partners. We do not anticipate being negatively impacted in any way by any potential future divergences in procurement across the four nations, particularly as they will be co-ordinated, at least to some extent, under the framework. On the contrary, I think I mentioned earlier that we believe that this process might provide a useful means of sharing knowledge gained from policy experimentation.

At this point I would like to mention briefly the crucial role that public procurement plays in meeting the well-being goals under the Well-being of Future Generations (Wales) Act that we have on the statute book in Wales, because we see this as an opportunity to strike a new balance between social values underpinned by that legislation and economic value. Divergence will give that opportunity to help meet the objectives of that ground-breaking and innovative legislation.

Divergence is to be welcomed when its aim is meaningful, such as when it is used to adapt policy to local context. We have real ambition in relation to reforming the foundational economy in Wales, which intersects heavily with procurement reform. Divergence makes that localisation possible, but we want to see that within a system of co-ordinated governance with the four Administrations working together as equals and building consensus.

We would also like to push for the co-ordination to be made as explicit and transparent as possible so that the sector and other partners can follow and engage, where appropriate, which is unfortunately unlike the frameworks that have been developed so far, although we understand

that this might be explained partially by the pace of the activity that needed to be pursued.

**Lord Hope of Craighead:** Thank you very much. Gail, could I ask you to say where you are on this one, bearing in mind that the UK Government's emphasis is very much on price and cost as criteria, whereas I believe that the Scottish Government—I am picking up the point in Ruth's answer—are much more concerned about the part that social values have to play in procurement? Am I right about that? If so, how do you see the opportunity for divergence being preserved under this framework?

**Councillor Gail Macgregor:** As I said earlier, certainly cost has been a factor over the past 16 or 17 months with Covid, which has produced additional challenges. I think there is a balance between best value and applying things through the public pound at the price that is acceptable. Then, as you say, there is also that social justice element.

The key thing for us is that the procurement Green Paper already oversees some meaningful divergence; we have buy local clauses with respect to previous EU rules. It is obviously separate Scottish regulation that still follows the EU rules. That said, I suppose we do not see different approaches across the UK as necessarily negative. That is not only the nature of devolution but the UK constitutional settlement, and since its very foundation it has had very different—often incredibly different—approaches across various jurisdictions. I touched on that in your previous question.

Divergence was not a problem during the time when many decisions were being taken in Brussels, and I suspect it should not be a problem now when decisions are made in the UK. We would be concerned if the forthcoming UK procurement Bill introduced new provisions that undermined Scottish devolved procurement powers. We would also not want to see the United Kingdom Internal Market Act non-discrimination provision used for the same purposes. I suppose that UK-wide rules, where different parts of the UK amend their own legislation in a similar way, have to be the result of consent and mutual agreement and not a unilateral decision.

Finally, the precedent of the withdrawal Act 2020 and the withdrawal agreement Act 2020, which amended the Scotland Act and gave powers to UK Ministers to change Scottish devolved legislation, should not be repeated. Unlike the time-limited withdrawal process, there is no urgency to change existing UK or Scottish procurement rules, so we have a bit of time to develop something that is not railed through at breakneck speed. That would be my final comment on that.

**Lord Hope of Craighead:** Yes, thank you very much. The Government told us that one of their principles is a principle of no surprises, which I suppose is at the heart of the kind of relationship you have been describing. I take it you would endorse that as a valuable principle.

**Councillor Gail Macgregor:** Absolutely, yes. I do not like surprises.

**Lord Hope of Craighead:** Good. Thank you both very much indeed.

Q149 **Lord Foulkes of Cumnock:** I share David Hope's view, and Ruth and others have said it too, that divergence provides an opportunity for trying new ideas and having different social values and so on. The evidence that we have been given has been very helpful in our work.

Gail, how much do you think that the Scottish Government's determination to be different from England is in reality to find some opportunities and to look at experimentation, and how much of it is just a determination to be different from England?

**Councillor Gail Macgregor:** I am not going to speak on behalf of the Scottish Government. That is slightly above my pay grade, Lord Foulkes. I do not think it is about wanting to be different. I think it is about sometimes needing to be different. We are very aware in Scotland that we have different issues. We have a much wider rural demographic; we have an ageing demographic.

Sometimes I think the policies that need to be put together in Scotland will quite rightly look completely different to policies and frameworks that are put together for the rest of the UK, in the same way that I would expect Wales and Northern Ireland to tailor-make some of their frameworks. We have to respect the devolution settlement but, as I said earlier, where possible and where it works we have to have a simple, very common framework for the whole of the UK and for the benefit of our communities. That is the approach that we should take. As I said, I would let Scottish Government speak about this.

**Lord Foulkes of Cumnock:** I know. I was asking for your views about the Scottish Government, but do the Scottish Government listen to COSLA on this kind of issue and pay attention to your views? Supposing you wanted to do something different in Dumfries and Galloway, would they allow you to do that in your procurement, or do they insist that you must abide by their diktat—sorry, their views?

**Councillor Gail Macgregor:** Views, yes. We have a very constructive working relationship with the Scottish Government. We lock horns on occasion and there are occasions when we absolutely do not agree. As with the UK Government, there are times when the Scottish Government could engage earlier with COSLA. That would also be of benefit to them, because I think we are very adept at bringing good ideas to the table. We understand our local communities better than anybody else does.

I would say that for the most part—and this is where the political structure of COSLA is incredibly helpful—if we can get unanimous agreement from 32 council leaders regardless of political colour, they have a particular view on an issue and we take that to government, the Government would be very silly not to listen to us. Again, this constructive discussion and co-operation gets us to where we need to get to.

Yes, the whole principle of local government and COSLA in Scotland is that local authorities should be able to make very bespoke, autonomous decisions closest to their communities, because, as you well know, the social care or care at home that a community in Glasgow needs will be entirely different to what a community in Jedburgh in the Borders will need. Yes, they do let us, to an extent.

**Q150 Lord Foulkes of Cumnock:** That is very helpful. Can I ask Ruth an entirely different question? You were the first Older People's Commissioner for Wales and you did a wonderful job there. Congratulations. I used to be chair of Age Scotland and we worked very closely with Age Cymru, Age Northern Ireland and, of course, Age UK, which ought to be Age England, by the way, but that is another story. However, if there are different procurement arrangements for social care in Wales and England from Scotland and Northern Ireland, would that create a problem?

**Ruth Marks:** That is interesting, because in preparing for today's session I reached out to a couple of colleagues who are active in the social care sector in Wales, working with older people and people with learning disabilities, and supporting carers and people with other long-term health conditions and so on.

The conversations that we had were largely about the opportunities for taking advantage of divergence, meeting local needs, putting the person at the centre of the situation and looking at the overall benefit to them of having services that are tailored to their needs and are co-produced—again, a phrase that we have used earlier in today's session—as much as possible and within financial constraints, but having an eye to legislation in Wales in relation to the well-being of future generations and the integration across health and social care, which is particularly important in relation to focusing on avoiding people going into hospital unnecessarily, getting somebody safely home from hospital and getting them back on their feet as soon as possible.

The promotion of social partnership is incredibly important. It is the opportunity for voluntary organisations to work in effective partnership with statutory agencies that will have that overall responsibility for children, for adults, for anybody who might be in vulnerable circumstances. It is the opportunity to work in a connected way and to play to people's strengths while always focusing on the needs of that individual, their family, their particular circumstances and how those circumstances can change just like that.

We have several examples of real, successful partnerships, especially ones that have been dialled up considerably over 2020, but using social value mechanisms. We have a variety of examples, which it would be great to be able to share with the committee after today. Thank you ever so much, Lord Foulkes.

**Lord Foulkes of Cumnock:** Thank you both. I hope that we can incorporate some of your excellent thoughts in our further work. It has

been very helpful, thank you.

**The Chair:** That is absolutely right. We are getting towards the end of the session. I hope you are not finding it tiring to be so responsive. It is very helpful to us.

Q151 **Baroness Ritchie of Downpatrick:** Lord Hope referred earlier to social value in terms of public procurement, and you provided answers to that. Interestingly, the Northern Ireland Executive yesterday produced a new policy for public procurement contracts. In that, there is the scoring of public procurement contracts, which will take effect from June next year. Ten per cent of that has to put an emphasis on social value, on trying to reach hard-to-reach communities and putting an emphasis on the living wage.

In that respect—obviously, I would say this—the common frameworks in Northern Ireland have a constant challenge in that the Northern Ireland Executive have not approved quite a number of them. That has caused problems further down the line with the Cabinet Office and us seeing these common frameworks for review, examination and scrutiny.

Notwithstanding that, how important do you think social value is to public procurement in terms of the wider issues, and taking on board the fact that local government in Northern Ireland has different, and lesser, responsibilities compared to that in Scotland and Wales?

**Ruth Marks:** I am aware from having worked with colleagues in Northern Ireland in several different roles over quite a few years that the arrangements might be different, but the value of integration across health and social care is an ambition that is held dear. I think that speaks to the opportunity to work in effective partnership across all agencies and the appropriateness of valuing social value.

I mentioned in my opening comments that in Wales we have the Third Sector Scheme and a formal relationship with Welsh Government and with Welsh Ministers. The voluntary sector has been recently invited into current work that has been in development for some considerable time across local government, trade unions and the Welsh Government to promote social partnership, and again we are very grateful for that.

The voluntary sector has a memorandum of understanding and protocol with local authorities in Wales, town and community councils in Wales and the Wales TUC. The sector is very keen to be involved in the opportunity to promote those partnerships and to get that shared understanding of what we are trying to achieve here, how we can all best work together and play to our individual strengths in a way that will have the best impact on a particular service or community of interest. It is also keen to be involved in the opportunity to promote social value and social partnership, including the living wage, and the effect of that of mutual respect, treating people like adults.

We feel that we have some very strong platforms to build on from our experience in Wales, but we are also, of course, very keen to connect

with others across the UK, learn from their experience and share ideas with them.

**Q152 Baroness Ritchie of Downpatrick:** I have a second question. Do you expect any foreseeable divergence to have any positive or negative effects?

**Ruth Marks:** No, we do not see any negative effects. I am aware of the time, and I think that some of the other conversations that we have had this morning may have made additional reference in answer to that point.

**Councillor Gail Macgregor:** I will not labour too much on this one. I do not think that we see divergence as necessarily a bad thing. For instance, we might decide in Scotland to have more ambitious sustainable procurement rules than in England, and ambition is always a good thing. I suppose regulatory differences can foster creative tensions between different parts of the UK, so that in some cases—as we have seen in the past with some Scottish rules such as minimum alcohol pricing or the living wage—I think that is seen as showing the rest of the UK how to do it and then perhaps it might follow. I think that also works in reverse. Divergence can often be seen as a positive, and we should always be looking to improve our best practices by looking to others.

**Baroness Ritchie of Downpatrick:** Thank you very much.

**Q153 The Chair:** Thank you very much. That is a very inspiring note on which to almost end, but in the absence of Lord Bruce I will ask the question that he would have asked you. Procurement is relatively unusual in that it often also has international obligations and requirements. Do you have views on the extent to which the devolved Administrations should have an involvement, or a specific degree of involvement, in the international policy discussions on public procurement to make sure that their voices are heard?

**Councillor Gail Macgregor:** It is an excellent question to end on. We are living in an international and global time and relations are changing with the UK Government, as we can see, with trade deals and suchlike. From our perspective, we have always been clear that the UK has foreign relations and that they are reserved. We completely respect that. We have a devolved Government in Parliament in Scotland, but we also have local government. It is about how we involve local government in those decisions.

No doubt, as we have seen during the withdrawal Act, the EU-UK Trade and Cooperation Agreement and the negotiation processes behind that, they are informal and sometimes quite ad hoc practices, but they tend to benefit more those that have best access to what we might call the Westminster ecosystem. We probably feel a little bit too far away from the Westminster ecosystem. The running theme for us would be that local government is not always listened to by UK or Scottish Government yet, and we are trying to improve that.

We will expect them to fulfil their previous commitments to involve local government in the formulation of national, local and international policies where local government powers are clearly concerned, particularly within statutory regulation. It is another area that will be tricky to negotiate and to discuss, but we just need to put local government at the table. We can bring lots to the table, and I think that through that we can enhance the Scottish Government's and the UK Government's vision.

**Ruth Marks:** Even though international relations are an area of reserved competence, policy in this area often requires some implementation at the local level. It is a stated objective of the frameworks generally that this co-ordination is necessary to ensure that the UK can successfully negotiate and comply with international obligations. Currently, we understand that input from the devolved Governments into international agreements is governed by a memorandum of understanding dated 2014. However, this is rather vague and it does not provide any guarantees for structured dialogue.

Therefore, we believe that the devolved Administrations should be fully involved in the development of international policy at an early stage. This is also important for the voluntary sector, because we have the institutional mechanisms that we referenced earlier, such as the Third Sector Scheme and the Third Sector Partnership Council, to engage with Welsh Government and Ministers on a variety of different areas. Our Government's involvement in international policy through the framework would therefore also facilitate consultation and co-ordination on this in our sector, which is relevant not only to international development but to education and research, environmental programmes and other areas where collaboration across the globe is really worth while.

Finally, I would highlight that we think that what is written into the provisional framework on this topic is a move in the right direction, although we note that there will be more detail in the concordat, which we have not had a chance to see just yet. Thank you very much, Chair.

**The Chair:** Well, we thank you. I have to say that you have been outstanding witnesses, and I think you will have picked that up from what my colleagues around the table have said. I also think that you are outstanding advocates for your sectors, because each of you has brought a very clear statement of the values that you work by and what you expect and the standards you expect from local government, from the third sector and from national Governments.

That, partly as a way of informing us, underpins our sense of your expectations of the frameworks and what you expect to be delivered on behalf of the communities that you represent and the relationships that you have across the UK. It has been a very important session, because not only have we had a deep dive into the sectors, but you have been able to place what you said in the very robust and clear context of national legislation and UK-wide legislation and where the frameworks must play that critical role. The depth that you have gone into, not least when it comes to the values that should underpin procurement and the

principles that should underpin the frameworks, has been very clear, detailed and helpful.

Thank you, too, for offering to do more work on our behalf, because your perspective is unique in both cases and we will draw a lot of additional value from that. I am very grateful to you, as we all are, and we look forward to hearing from you again and to you staying in touch with us. Thank you also for your kind words about the work of the committee.