



# Common Frameworks Scrutiny Committee

## Corrected oral evidence: Post-Brexit common frameworks

Monday 6 September 2021

3.30 pm

Watch the meeting

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

Evidence Session No. 14

Virtual Proceeding

Questions 165 - 179

### Witness

[I](#): Mick Antoniw MS, Counsel General and Minister for the Constitution, Welsh Government.

## Examination of witness

Mick Antoniw.

Q165 **The Chair:** Good afternoon, everybody. It is lovely to see you all again after the Recess. A very warm welcome to our witness this afternoon, Mr Mick Antoniw, from the Government of Wales. We are absolutely delighted to see you, Mick. Very sadly, we are not able to pair you this afternoon with Angus Robertson, your equivalent from Scotland, who is unable to be with us. I am sure we will have the pleasure of seeing him again, but in the meantime I really want to welcome you on behalf of the committee, and to say how much we have appreciated, as the Common Frameworks Scrutiny Committee, being able to talk to your colleagues in Wales and the rest of the devolved Administrations about the processes and the operations of the common frameworks programme.

This is our 14th public session and anything you say will be recorded. As you know from your previous experience of talking to the Constitution Committee, we are very much here as colleagues and friends to have a conversation, to listen closely to your experiences in Wales, and to share our own thoughts with you. It has been very significant that one of the outcomes of the Common Frameworks Scrutiny Committee since its existence has been the unique opportunity to share with the devolved Administrations the work that the four Governments are doing to make the common frameworks a reality, and to make them as productive and as useful a part of the constitutional settlement as possible. We feel we are in a privileged position in our committee because we can have those conversations.

Today, we will be talking to you about where you are in Wales, essentially, how you believe the common frameworks process is going, and what your expectations are. We want to address some of the issues that are challenging in different ways. I will start with a very broad framing question, which is to be expected in a way: how do you view the current state of the common frameworks programme at this point in time? To put it bluntly, are you satisfied with the progress that it has made to date?

**Mick Antoniw:** It is an interesting question. I have been in the position of Counsel General and Minister for the Constitution since May, so I have been pulling together information on a process that has gone on for quite some time. It is a very complex process.

The background, as we all know, is that, having left the European Union, we all want to see a successful internal market within the UK, one that works. I suppose it is worth me reiterating some of the principles on which those discussions actually started. They are important because they facilitated the agreement from the Welsh Government to the intergovernmental agreement on the EU withdrawal Bill. They were based very much on principles of co-operation and agreement between the four nations.

I think I can say that not only has a lot of work been undertaken, but there has been considerable progress and co-operation between a very

wide range of Ministers and portfolios across the UK. It is probably one of the most intensely complicated processes to put together by agreement. I have to say that it has not been easy because there have been some cross-cutting issues, which I am sure we will come to later, that have been an obstacle, such as the internal market Act. I will happily deal with that. I will need to mention perhaps, if we go into that later, that there is a legal challenge from the Welsh Government, which is due to be heard in the Court of Appeal in January next year.

It is fair to say that the feedback I have had from all the departments and the Ministers I have been engaged with is that a lot of progress has been made, and that provisional agreements have been reached in a large number of the frameworks.

There are still a number of obstacles. The timetable that has been set is certainly very challenging. I think there was an intention to try to reach a conclusion, or the delivery of the final frameworks, by the end of 2021, and that they would have been able to go to scrutiny by the various Parliaments. I think that is, to use the word, challenging, which means very difficult to achieve, but certainly everyone is working hard to conclude the process as quickly as possible.

We do not want to sacrifice, first, the need for agreement between the four Governments and, secondly, the desire for a strong and substantial scrutiny process leading to that. Thirdly, in the desire to move as quickly as possible, we do not want to sacrifice the quality of the work that has been undertaken.

I think that probably summarises where we are. The devil in all this is in the detail. You may find that I say that quite a number of times because there is so much work in progress. In fact, I have a quadrilateral meeting with the UK Government Minister later this week, when hopefully we will be able to assess further progress that might be being made in the various discussions between the four Governments.

**The Chair:** Thank you very much indeed. You are absolutely right: it is a very complicated challenge, at every level. Where are you in Wales, given that it is a relatively new Government, in setting up your own scrutiny committee?

**Mick Antoniw:** I think the scrutiny committees will come when we have been able to resolve the cross-cutting issues, particularly the issues around the internal market Act. Obviously, provisional frameworks have been agreed, but those and the underlying documents that back those agreements are not yet public. They are not yet in a position to be scrutinised. I think the collective position is that we want to have all the frameworks together at one stage, to be able to be ready for publication, and then go through the scrutiny process of the committees. That is a very substantial amount of work. If I had to say that there was one obstacle, it is an obstacle on which I understand that there may be progress being made and is in relation to cross-cutting: the impact of the

internal market Act, issues around the EU agreement, and the concerns that we have about international trade agreements.

Essentially, the approaches that we have been adopting have been that where agreements can be reached—and I think it is likely that, overwhelmingly, the framework agreements can be reached—those should be excluded from the impact of the internal market Act. The original intention was always to achieve co-operative agreement between the four Governments, on the basis of the common interest that there is, and it would be only where agreement could not be reached that there would need to be a mechanism to resolve that disagreement. Unfortunately, the internal market Act has driven a coach and horses through that.

Recently, I have written to my counterparts in the UK Governments and in the UK Government themselves, putting forward the way for reaching agreement and having some form of dispute mechanism actually to resolve those agreements, but, basically, to exclude areas where we have reached agreement on common frameworks from the impact of the internal market Act.

**The Chair:** Thank you very much. We will certainly come back to that in a moment or two. I will come back to your meeting with the Minister at the end when I wrap up. May I ask my colleague Baroness Ritchie to take on the questioning? Margaret, are you with us?

Q166 **Baroness Ritchie of Downpatrick:** I am here just on sound and I apologise for that. I am based in my office in the House of Lords.

Minister, how did the lack of sign-off from the Northern Ireland Executive affect the programme in the first half of this year? We were aware from the Cabinet Office Minister Chloe Smith that about 21 frameworks, which had been signed off by Westminster, Scotland and Wales, had not yet been signed off by the Northern Ireland Executive. We have been in discussions with the appropriate Assembly committee in the Northern Ireland Assembly and have been making overtures to the Northern Ireland Executive regarding the matter. Could you advise us on how you think that that lack of sign-off by the Northern Ireland Executive affected the programme?

**Mick Antoniw:** Thank you for that. It is obviously an issue that has been considered in the range of discussions between the four nations, part of the reason being that there has been an agreement from the beginning that there would be collective working to agree the frameworks as a whole. We appreciate the scale of the difficulties faced by Ministers of the Northern Ireland Executive, and the challenges of that.

Overall, I do not think that in itself has been responsible for the delays because we have reached provisional agreements on frameworks across the other three nations. The situation in Northern Ireland with the Northern Ireland Executive has been that they have been co-operative throughout the process of developing the frameworks. Even though there could not be a four-Government sign-off for most of the provisional

frameworks at the end of last year, we were able to take the frameworks programme to a provisional status, with a set of working-level agreements, which I have been informed functioned well over the last nine months or so.

**The Chair:** Margaret, do you want to follow that up or shall we move on?

**Baroness Ritchie of Downpatrick:** We can move on at this stage. Maybe I could come back at a later stage, if that is okay.

**The Chair:** Absolutely, of course, and that goes for any Member who wants to put a supplementary question. May I move to Lord Keen, a new member of our committee whom I warmly welcome? Could you take the questioning on, Richard?

Q167 **Lord Keen of Elie:** Thank you, Chair, and good afternoon, Minister.

**Mick Antoniw:** Good afternoon.

**Lord Keen of Elie:** You referred to a timetable that you regarded as challenging. You touched on the issue of the Northern Ireland sign-off and how that has been accommodated. You also referred to what you perceived to be issues with regard to the United Kingdom Internal Market Act in the context of international trade agreements. Could you break down your observation about a challenging timetable and perhaps identify your principal concerns with regard to the future of the common frameworks programme, given the need to try to bring four nations together to achieve a resolution?

**Mick Antoniw:** First, the complexity of dealing with such a wide-ranging number of frameworks has been an enormous challenge. It has also been very resource driven, at a time when, with Covid and so on, the nature of working has been extremely complicated. The biggest obstacle, and this has been raised in quadrilateral meetings, has been that it is very difficult to make progress on the publication of the provisional frameworks and the supporting documents, and to start the scrutiny process, until we have actually resolved the wording on the cross-cutting issues. That is with the internal market Act, and, more broadly, with international agreements and the impact there.

The collective position I think is this: as far as possible, we want agreements to be reached collaboratively, with a mechanism to resolve disputes. The internal market Act came as a sort of juggernaut through the process, which had been based on a series of principles and agreements and on a collaborative way of working. There has always been the belief, which I think is now being proved to be the case, that agreement in most of these areas would be reached—there was so much common interest—but the internal market Act actually shifted the balance of power within that process in a very unilateral way.

The intention was that by September we would be in a position, hopefully, to publish the frameworks and to start the scrutiny process. Until now, we had not reached agreement on the wording for cross-

cutting issues. There were a number of discussions and drafts. There were meetings only earlier this week, and I am waiting for details of those, but I understand that there has been progress, and that we are moving closer to a form of wording that may help to resolve the cross-cutting issues. It will depend on that, and again the devil is in the detail, as to how quickly we can move on the publication of the frameworks.

The scrutiny process will obviously take time. The conclusion of final agreements would then have to go to the Joint Ministerial Committee (EU Negotiations) to be signed off. All this cross-cuts as well, to some extent, with the reform of intergovernmental relations. Resolving the new mechanism for intergovernmental relations is part and parcel of being able to conclude this process. Again, as I understand it, progress has been made very recently, and discussions are under way. The devil is in the detail.

The other issue is the scale of resources required. Scrutiny, if it is carried out properly, cannot be rushed through. There will be very considerable demands on that, so whereas there was a hope that we might be able to conclude these matters by the end of the year, that is challenging, and there is concern that we do not want to rush it through at the expense of the quality of the agreement and the package as a whole.

Another issue is that there have been some proposals on central co-ordination through the Cabinet committee and the resources that are available. I understand that there is progress, and discussions are under way on that as well. I think there is a desire to move ahead quickly. Progress is being made. We are not quite there yet, but it will be challenging to complete the process by the end of the year.

**Lord Keen of Elie:** May I come back on one or two points that you raised, Minister? We may have different perceptions of how the UK internal market Act should operate and will operate, but I think we are at one in believing that the primary route towards resolution of the common frameworks is by way of consensus between Westminster and the devolved Administrations. Consequently, the perceptions that people have of the resolution process and the Act should not interfere with that process of consensus. It is only there as a backstop in the event that consensus cannot be achieved. Would you agree that that of itself, and the perceptions of that resolution process, should not inhibit or delay the primary route towards dealing with the programme of common frameworks?

**Mick Antoniw:** I agree with that entirely. These are views that the Welsh Government have made, my predecessor has made, and I have made as well in correspondence. This is based on consensus, but the consensus is very much there. It is fair to say, and certainly this is my perception looking at pulling much of this information together over the past couple of months, that there has been quite a remarkable feat of achievement as regards the consensus that has been agreed across the UK. The process will only succeed on the basis of consensus. Dispute resolution is a sort of last resort but, hopefully, one that is never required

to be used because the common interest normally enables parties to achieve consensus. That was the basis from the start of this process. It is where we are now and, in fact, the cross-cutting issues I referred to are really attempting to overcome a deviation in that process.

**Lord Keen of Elie:** At the end of the day, we should not allow perceptions of the resolution process and the Act to interrupt the progress of the initial discussions to achieve consensus on these common frameworks.

**Mick Antoniw:** The problem is that achieving consensus is dependent on at least resolving the issue of, for example, the internal market Act. The way that has been suggested is that, if agreement is reached, there is provision in the internal market Act to exclude the common frameworks where that agreement is reached, and that would seem a sensible way forward. I think there is an aspiration that that situation will be reached, but it will be dependent on the devil in the detail of the wording around that. Certainly from my perception, and from the advice that I receive, we are moving forward, there is progress, and there are some grounds for optimism that consensus will be achieved.

**Lord Keen of Elie:** I have just one further point, if I may. Scrutiny is a very resource-intensive programme, if I can put it that way. Is it necessary for all the common frameworks to be agreed before the process of scrutiny can begin, or can it be done on, as it were, a rolling basis?

**Mick Antoniw:** I think the consensual view is that we need to have the package of frameworks agreed before that process can start, and that has been a position from early on. For some of the frameworks, the degree of scrutiny will be relatively straightforward. There are certain frameworks that involve a much greater degree of complexity; in fact, there were certain policy areas where it was felt that it was not necessary to have a framework at all. Again, there will be certain areas that are much more complex. Those will be around issues that involve things such as international trade and international trade agreements, which have to be implemented. It will be those areas where there is concern about, essentially, an overriding of devolved responsibilities.

Again, as I think you summed up yourself, consensus is the driving force, but I do not think it is likely that we will be able to proceed to the full scrutiny process until the cross-cutting issues have been resolved and we have the wording on that. That was the most likely cause of delay, but, as I say, there are moves, there are discussions under way, and there is progress, and, hopefully, that will be resolved.

**The Chair:** Those were very comprehensive exchanges. Thank you very much indeed. May I move to Lord Hope to drive a bit further down into the internal market Act?

Q168 **Lord Hope of Craighead:** Minister, I think you will recall that when the Bill was going through Parliament, until almost the very last stage there

was no recognition of the common frameworks at all, and therefore it was accurate at that stage, so long as an amendment was not made to deal with that, to say, as you did earlier in your presentation, that the Bill was driving a coach and horses through the process. Strictly speaking, that is not accurate any more, because there is a power in respect of both goods and services for the Secretary of State to exclude an agreed common framework from the operation of the internal market Act.

The recognition is there, and the question that I want to put to you is this: how can we take best advantage of the process that is available, given that what we are dealing with is a framework that has been agreed by common consent and co-operation between all four nations? What is the process to be to achieve the exemption that the Secretary of State has power to give?

**Mick Antoniw:** Thank you for that. May I take it in two parts? I probably ought to say at this stage, early on, that, as I mentioned earlier, there is a legal challenge under way. The position of the Welsh Government on the Act is that it impliedly repeals part of the Government of Wales Act 2006 and diminishes their legislative competence. There are also issues with the Henry VIII powers, which again could be used by UK Government Ministers to substantively amend the Government of Wales Act. We have carried on discussion and negotiation on a without prejudice basis. We have made it very clear that we do not want to hold up discussions, but, equally, we have some matters of constitutional principle, and, while those discussions continue, they are without prejudice to the arguments that we will present in January.

With regards to the Act itself and the exclusions, I think that is the way forward to achieve real progress. If agreement can be reached, what purpose does the internal market Act have if we stand by the original principles that we would work to achieve consensus and work to achieve agreement? There was a common interest. It was the underlying principle behind the intergovernmental agreement on the EU withdrawal Bill. It is one of the things that has been specifically put forward as a mechanism for resolving this particular issue. There is the power in the Act to do so. That power could be exercised to achieve it, and would facilitate progress.

**Lord Hope of Craighead:** One would have thought, if the framework had been agreed across all four nations, that the exercise of the power would be quite straightforward. The Government were not prepared to go so far as to put an absolute exclusion, so there would be a process of discussion, I imagine, in which the devolved nations would have to be very closely engaged. Would that be right?

**Mick Antoniw:** That is right. The discussions have very much been around the wording of how powers might be used if agreement could not be reached—the emphasis being on the fact that, where agreement was reached, it was unnecessary to resolve the matter. I suppose, to speed up the conclusion of the discussions, the exclusion was seen to be the natural course. The power was there: why not use it? Obviously, this

comes into the areas where there are political disagreements rather than agreements on the work that has been under way for so long.

**Q169 Lord Hope of Craighead:** May I move to a slightly different topic that again arises from the Act? That is the role of the Competition and Markets Authority, the new body that is to have oversight of the working of the Act, and to provide a report every so often on its working, including any interaction with the common framework agreements. Do you have any view as to how that process is likely to work? Are you, in general, in favour of making use of it?

**Mick Antoniw:** We are in favour of making use of it. We would have liked specific representation on the panel. What we have is input into the panel that appoints the panel, so I suppose it is half way there, which is some progress.

It is very much an advisory body and the proof of the pudding will be in how it actually operates. There will be a challenge to it. It will be advisory. It will be able to make reports. It will be able to take up issues that arise. The challenge will be how you determine internal market issues in a fair way between the four nations when there are differing interests, and particularly, where one of the nations within that consists of 85% of the population—I suppose what you call the traditional English question. It is due to begin its activities later this month, I think, sometime in September. Probably the best I can do is say that it is too early to say how its role in monitoring and reporting on the common frameworks will be developed, but we will work with it and collaborate with it, and we want to see it succeed.

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

**The Chair:** On that point, Mr Antoniw, if you have questions that we can put to the incoming chief executive, who is coming to see us in a few weeks' time, we would very much welcome them. In the meantime, may I move on to Lord Murphy, and a more detailed question about outcomes?

**Q170 Lord Murphy of Torfaen:** Yes, of course. It is good to see you, Mick. What progress has there been in agreeing the common frameworks on services and mutual recognition of professional qualifications? Can you give us a sense of where disagreement lies in those areas and to what extent it depends on resolving the role of what we have been talking about—the internal market Act?

**Mick Antoniw:** This is an area that is not only very complex but complicated further by the fact that there is now a UK Government Professional Qualifications Bill, which also impacts and which we have concerns with. A number of options have been considered on the framework. It entitles the recognition of professional qualifications going back to, I think, June 2021. The arrangements to facilitate the recognition of professional qualifications and reciprocal arrangements are really to facilitate the mutual recognition of qualifications that can be put

in place between regulators and that can also be delivered through the framework of the UK-EU trade and co-operation agreement.

The Bill that has been presented by the UK Government to deal with mutual recognition is one that we are not likely to consent to at the current stage, because there are real issues over definitions within it, such as the definitions of "appropriate national authority". It also contains Henry VIII powers to modify Senedd legislation. There are issues that we are raising in our legislative consent memorandum. The UK Government have told us that they do not intend to use the concurrent powers in areas of devolved competence without the agreement of devolved Administrations, but the problem is that the legislation actually does not reflect that. We have concerns about that. It may be that there are mechanisms whereby amendments to that legislation will resolve that. It also imposes limits on the powers of Welsh Ministers.

I suppose the Welsh Government's real concern is that there is lack of clarity over the definition and scope. There are some financial issues that arise in it as well, but, again, this is one of the areas where discussions are under way. We have indicated, I think, the areas where we can work, which are very much through the framework of the EU-UK trade and co-operation agreement. It is unclear, and because of the plethora of organisations that are involved in the qualification mechanisms, I think we are hoping that we see a draft of the framework this month, and to explore that further, to see where the common ground is in that, and whether agreement can be reached.

We need to reach agreement. One of the areas of potential concern would be on standards, for example, because the qualifications Bill, or the framework, if agreement cannot be reached, might actually be more likely to lower standards than to maintain or to improve standards, particularly when qualifications and mutual recognition are tied to broader trade agreements. There is a complex dialectic of issues. Again, I come back to the phrase I keep using: the devil will be in the detail. We are waiting to see a first draft of the framework imminently, and I think we will form a view on it then.

**Lord Murphy of Torfaen:** Mick, that is very comprehensive and extremely useful. Thank you very much indeed.

**The Chair:** Christine, can we hear you now?

Q171 **Baroness Crawley:** Thank you, Chair. Thank you and good afternoon, Mr Antoniwi. It is very helpful to hear the views of the Welsh Government this afternoon. I am afraid that, as well as the devil being in the detail on common frameworks, it is in the detail of the audio facility on my computer this afternoon. If I fade out, it is certainly not through lack of interest.

According to the Cabinet Office, 20 frameworks would need to be updated to account for the trade and co-operation agreement between the EU and the UK, and 20 would need additional language to be agreed on the

relationship between the frameworks and international agreements that you have referred to previously. How would you like to see that updating work go ahead, and what would you like to see written into the frameworks on future international agreements?

**Mick Antoniw:** That is an important and a very complex question. I do not know that I have all the answers—not in a short space of time. The starting point on international agreements is that somehow they have to be able to replicate what used to exist within the EU, where there was almost a subnational recognition of the role of devolved Governments. If you have an international agreement, that is a reserved matter for the UK Government, but the implementation of it is as upheld and endorsed by the Supreme Court in the Scottish continuity Bill judgment; devolved responsibilities exist and have to be implemented. That is where there is potential for conflict or disagreement, and the crux of it is early engagement with the Governments.

Funnily enough, I raised this question a little while back, just to get some clarity on how it was operating, and there has been good co-operation and good engagement. Of course, the crux of it is what drives the trade agreement and what ultimately ends up in the trade agreement—as long as there is recognition that an international trade agreement will involve areas where the UK Government may be acting as a UK Government in terms of the reserved power to make the trade agreement, but that in many areas, in the implementation of it, the UK Government will act as an English Government, just as the Welsh Government will act as a Welsh Government because of devolved responsibilities.

That is particularly the case in agricultural and some environmental areas, and with fisheries. It is a process that has to be engaging, and recognising and respectful of the division of devolved powers and responsibilities that Parliament has given. The trade agreements should be driven by that collaborative and consensual approach. If that does not happen, it is a recipe for constitutional issues and conflict.

**The Chair:** Christine may have faded out, so I thank you on her behalf.

**Baroness Crawley:** I am still here.

**The Chair:** Do you want to ask a follow-up?

Q172 **Baroness Crawley:** If I could, Chair. Mr Antoniw, do you feel confident that you will get the early engagement that you have talked about? We have had several draft trade agreements as far as the Government are concerned. Has there been any engagement with any of those draft international agreements—so far, anyway?

**Mick Antoniw:** My understanding is that there have been quite a number of agreements. Of course, a lot of agreements are called new trade agreements, but they are, effectively, replications of either trade agreements with the EU or trade and co-operation agreements. I sat in on the presentation of the trade agreement with Ukraine, and it was very

much reflective of the trade and co-operation agreement that existed with the EU.

There have been a number of them where there have not been great challenges, and areas where not a lot of trade has been impacted. The Australian trade agreement obviously causes considerable concern, because, although there has been engagement, there is lack of certainty about the precise details of it, and the extent to which it might impact on the agricultural economy within Wales. The lack of detail about what those trade agreements actually amount to is where the proof will be in the pudding.

When we get to some of the more substantive trade agreements, whether it be with the US or other countries, those are the areas where I think there has to be very solid engagement, because they are the areas where we know there is concern. There was concern when, for example, negotiations were under way as part of the trade and co-operation discussions that have taken place with the EU. They are the ones most likely to impact in devolved areas. That is where I think there needs to be engagement.

As to whether it will happen or not, I am ever the optimist and hopeful that engagement will take place, but it has to go beyond engagement in the early discussions. The trade agreements also have to be reflective of the way in which the power is exercised within the UK, where responsibilities are divided, rather than seeking to override them.

**Baroness Crawley:** Thank you very much indeed. That was very interesting.

**The Chair:** May I bring in Lord Bruce on the constitutional issues?

Q173 **Lord Bruce of Bennachie:** Following on from that, when we started looking at the common frameworks, I think many of us were quite ignorant, to be honest, as to what they were all about. What we have found is that there was a real recognition of common interest and a real desire to try to work through it in a constructive way, and find ways of resolving disputes. We have not got to the end of the process, so we do not know how well it will work.

Then we have the intergovernmental review, which appears to set out quite detailed processes that derive from common frameworks. What is your take on that? Do you feel that they have informed each other, or can inform each other? Should the common frameworks approach just be replicated? Is there anything in the intergovernmental review that is better or worse? You have repeated several times cross-cutting issues, the trade agreements, and the internal market Act. How much of it, in the end, will depend on communication, trust and good will, rather than frameworks and formulae that have been agreed? In practice, will that be the bottom line?

**Mick Antoniw:** With a largely unwritten constitution, trust and good will are almost the core, are they not, of operation? That is why so much of

our governmental engagement across the UK is based on conventions, which again are predominantly based on trust and good will. It is not unfair to say that trust and good will have been severely stretched from time to time. You heard the First Minister of Wales, when he gave evidence to House of Lords committees, and to others, basically saying that he felt the unity of the United Kingdom, or the integrity of the United Kingdom, has never been more under threat at any time in his lifetime. I think that represents a very serious concern about the reality of trust and good will.

A number of proposals have been put forward over the years for trying to resolve ways of engagement. The Welsh Government recently published their own updated paper on reforming the UK, which put forward a number of proposals. The most long-standing one is that the Joint Ministerial Committee should effectively become a council of Ministers. It should be properly staffed and resourced. There should be proper meetings and proper preparation for meetings. There would also be a mechanism, where agreement cannot be reached, for actually resolving that.

The intergovernmental review has been going through a process, perhaps a somewhat tortuous process, as I understand it, but progress is being made. There are now proposals to create a top-tier forum. I do not think it is being called a council of Ministers or a JMC council of Ministers, but I think the heads of the four Governments would be there, and below that would be a forum or standing committee, which would have sections that dealt with the various areas of engagement. There would be a standing secretariat.

One of the things that has been asked for for a long time is that there be some substance to this. There has to be proper consideration and preparation for the issues as they emerge in order to develop ways of doing it. It has to be a proper governmental structure. I do not think it is a structure that would resolve the longer-term constitutional issues, but it follows on from enabling us to resolve and manage the internal market issues, and some of the issues that will flow from that, and perhaps provides a basis for a longer-term process of constitutional reform.

**Lord Bruce of Bennachie:** You welcome the proposal for a separate secretariat for the standing committee. That is a step forward, is it not, in a way?

**Mick Antoniw:** I think it would be a significant step forward. Again, as I keep saying, and I hate to keep using this phrase, the devil is in the detail, but it is also very dependent on having a structure and a proper set of rules, so that it is not a sort of football match where one team owns the ball and can change the size of the pitch and the rules of the game as it goes along. It has to be seen to be fair and even-handed.

**Lord Bruce of Bennachie:** Do you sense that there has been any change of tone? I get the impression that it was really bad last year, and that, if I put it bluntly, the UK Government realised that it had got really

bad, and there was the Dunlop review. I get the feeling that maybe we have to be a little more accommodating. This is all about mood, and you are taking them to court, so perhaps you do not feel that, but do you sense any kind of shift or recognition that perhaps we have to try to work this out more constructively?

**Mick Antoniw:** There is probably recognition that something needs to be done to resolve it. I do not think it was helped by some of the actions. Perhaps at some levels of UK government there is quite a high degree of co-operation and progress, but it is at the higher echelons of government that we end up with a number of things that seem to be quite provocative, whether it be the internal market Act, the overriding of financial resource—former EU resources—coming to the Welsh Government, and so on.

Those areas have been extremely provocative, and the complete bypassing of the Welsh Government in the replacement funding for European Union social funding has been very damaging. Anything that enables the four Governments to work better together in a more strategic way will be to the benefit of everyone. Whether that happens or not, as you say, is dependent on good will and trust, and whether this is a genuine process.

There is still quite a lot of work to be done on the detail of how it might work. The Welsh Government's position has always been that Wales's interests are best served in a reformed United Kingdom: one that respects the shared sovereignty of the United Kingdom with the four Parliaments. There is the possibility of that progress, but it is too early to say.

**Lord Bruce of Bennachie:** That is very helpful. Thank you very much. It is unfortunate that we do not have the Scottish dimension because their approach is different, as you know. It is interesting. If we want to reform the United Kingdom, we have the separatists on the one hand and frustrated unionists on the other side, so somehow we have to resolve that. Your evidence is really helpful, and it is good to hear it.

**The Chair:** Thank you, Lord Bruce, for pursuing those issues.

**Mick Antoniw:** It is worth saying that, as you may be aware, the nature of the trust issue and the constitutional issues that arise have led us to a position where the Welsh Government are setting up their own commission to engage with the people of Wales over the nature of what our relationship should be, and what might happen if there were significant changes within that. We have been debating that, and a commission is in the process of being set up. That is recognition of the fact that the UK constitutionally is at a precipice. The progress that is needed is more than just tinkering and wording. There really needs to be very substantive action and reform.

**Lord Foulkes of Cumnock:** May I ask a supplementary question to Malcolm's question, Chair?

**The Chair:** Yes, do, George.

Q174 **Lord Foulkes of Cumnock:** Mick, as you know, I am not a supporter of the present UK Government, but, from what you say, I think you understand the problem the UK Government have in representing the interests of England on areas that are devolved, and the United Kingdom as a whole, and looking at it as a UK Government. They have a double role there. You accept that, do you not?

**Mick Antoniw:** I do, and I think one of the great challenges that has to be resolved is the reform of Westminster: what the role of the UK Government is and the role of Westminster is. I always felt from the beginning that English votes for English laws would never work, but it is a question of the recognition that, at times, the UK Government are acting as an English Government.

That is important to recognise, because it means that when you talk about things such as internal trade, even-handedness or level playing fields there is recognition of conflict as between one interest and others. Managing those interests when one party is 85% of the arrangement is a significant challenge, but it is not a challenge that cannot be overcome.

In many ways, the reforming the UK paper which Welsh Government published recently is not a provocative paper. It is a paper that says, "Look, we have a problem, we need to resolve that problem, and these are the ways in which we think the problems can be addressed and resolved". We are still waiting for a positive response to that from the UK Government. I am not optimistic that we will get one, which is unfortunate if that is the case.

**The Chair:** Thank you, George. I am reluctant to tell the committee this, as we are having such an interesting discussion, but we are well over half way through and we have five questions to go. I turn to Baroness Randerson now for her two questions.

Q175 **Baroness Randerson:** My first question was originally for Lord Caine to ask, but I will recast it slightly, to avoid repetition. Mick, you have several times used the word challenging in relation to the ambition to approve all common frameworks by the end of this year. Our own report reflected the Government's concerns at the slow progress on common frameworks. In one instance, I believe you may have implied that the idea of finishing it all by the end of this year was unrealistic. Was I right to draw that conclusion, and, if so, what do you think would be a realistic timetable?

**Mick Antoniw:** I suppose the answer to the first part of your question, the substantive part, is yes, you are correct. I say challenging, and I suppose we are used to using the word challenging to mean that it will be pretty damn difficult to achieve. We imply also that we want to achieve as much progress as quickly as possible. Perhaps the mistake is to be over-tied to a timetable, so the timetable dictates and overtakes things such as proper scrutiny, common agreement and the quality of what we are achieving. I think that will be challenging.

As to how quickly progress can be speeded up within the next couple of months, if agreement on the cross-cutting issues can be achieved relatively quickly, it may be that only a number of additional months would be needed. It is dependent, obviously, on a number of factors, and it is dependent on the resources as well.

I do not think we are talking about massive extensions of time. This will not be going on interminably. It is a process that will be continually under review because of the way in which our economy and our societies operate, and the changing engagement internationally and domestically. The answer to how much longer it might take, I do not really know, but I do not think we are talking about massive additional time; it is just that by December will be very difficult.

**Baroness Randerson:** Do you think there are any outliers among the common frameworks? You might achieve agreement on the vast majority, but there might be one or two where there is a real serious problem.

**Mick Antoniw:** Probably the most serious will be in respect of matters that relate to international trade, to some of the environmental issues, and some of the standards issues there, because those are the areas where there is more likely to be a differential or a divergence, or a desire to have a divergence. The classic one that is raised, and I think it is referred to in the Institute for Government's own report, is that we have a mandate to introduce legislation in respect of single-use plastics. The UK Government's approach is different, and that may create challenges. That may be referred to when we go to the Court of Appeal on how the internal market Act operates. It will be within those areas.

The other point is that the impression I get now from looking back over all the past discussions is that there is a desire not to have this broken down into individual units and pieces, because that really will begin to undermine the need for a collective programme that operates as a whole. I am reasonably confident that, with the right wording, we can reach those agreements.

The other issue is that the frameworks have to go through the scrutiny process and they have to be approved by the respective Parliaments. That is not necessarily an issue, but if the scrutiny process operates properly, as it should within a democratic society, it may take longer than we thought. It should not be rushed within a narrow timescale. That is why I think this December is challenging in the context within which you have referred to it, but progress after that could be within a matter of months. I do not want to be held to ransom for that last comment.

Q176 **Baroness Randerson:** Thank you very much, Minister. May I move on to a totally different topic? We have spent a lot of time on the timing, and delays and so on, but this is the issue of transparency. There has been criticism from some witnesses that the common frameworks programme has lacked transparency. This committee has, on a number of occasions, delved into the issue of how wide the public consultation has been and

how selective not just the UK Government but the devolved Administrations have been as regards consultation with stakeholders. What are your views on that, and would you be opposed to the concept of more open public consultation as part of the frameworks reviews?

**Mick Antoniw:** It is very important that it is open, that people are aware of what it is and have an understanding of the issues so that they can be properly scrutinised, and that various interests can be properly engaged in that. My understanding is that engagement with stakeholders has been difficult. I suspect part of it is that until you have something substantive and finalised where you can say, "This is what it will be in practice", it is a little esoteric as to how you are actually engaging with stakeholders. My understanding is that reaching out to various stakeholders in the various areas has been quite a difficult process of engagement, from both sides: first, about what you are engaging on and, secondly, being able to participate in that.

The issue of transparency comes once we are in a position to actually publish the frameworks and the supporting documents. Once the scrutiny process starts in open public in the various parliamentary scrutiny sessions, it will trigger far greater openness. Of course, collectively, they then have to go to the new intergovernmental body that will oversee this for conclusion because, subject to scrutiny, changes may well need to be made and there may be issues.

That again may be one of the issues that you have to take account of by not rushing or trying to tie it to a timetable. Scrutiny has to have the capacity to lead to change, and, when that scrutiny takes place, those who have vested interests in a particular framework may well have recommendations and suggestions themselves over things that need to change within it.

I think you are right. It is not a deliberate lack of transparency but a product of the difficulty of the process—but that will open up. If agreement on the cross-cutting wordings can be finalised, I think the whole process will open out, and it will open out across the UK both at Westminster level, and in Scotland, Northern Ireland and in the Senedd itself.

**Baroness Randerson:** Thank you very much, Minister. That is a very interesting answer.

**The Chair:** Indeed that was interesting. Lord Garnier.

Q177 **Lord Garnier:** Thank you very much for coming, Minister. In January 2020, the Welsh Government committed to providing a report to the Senedd at least annually, which would provide an assessment of the functions of each of the common frameworks. Did that commitment cross the election in May, and does the new post-May Welsh Government adhere to it?

**Mick Antoniw:** I intend to issue a statement to the Senedd when the first batch of annual reports from the common framework areas is issued

at the end of this year, or early next year, providing an overview of the programme to date. Obviously, the full extent of those annual reports will depend upon the progress that is actually made, but I think they are important. There is a commitment to do that, and I will certainly be giving that commitment on those annual reports, which no doubt will also be debated in the Senedd itself.

**Lord Garnier:** Are you able to tell us what sort of detail the reports will contain? Are you envisaging just one annual report that will contain a compendium of your views on the frameworks, or will there be a separate report in relation to each department, or in relation to each framework that is produced?

**Mick Antoniw:** The answer to that is that I do not know at this stage. I am not certain. I envisage there being a number of stages. Certainly there will need to be an overview that will explain the background, the progress that has been made, and the issues that have caused difficulties or delay. I think it will also need to identify where perhaps some of the bottleneck issues are—the issues that are most difficult to resolve.

**The Chair:** I am awfully sorry, but I shall have to pause you. A Division has been called, my Lords, and we have to adjourn the committee for five minutes. I apologise for having to interrupt you.

**Mick Antoniw:** No problem for me. I will happily wait here for you.

**Lord Garnier:** If you have more to say on that, please come back to me.

**Mick Antoniw:** I shall carry on. I will hold my place.

*The Committee suspended for a Division in the House.*

**The Chair:** Good afternoon again, committee, and welcome back following the Division. Lord Garnier, you were in the middle of your question. Do you want to follow up on anything?

**Lord Garnier:** Briefly, if I may. It may be that the noise I was hearing from this room interfered with what the Minister was telling me. Presumably, the content of the report that you promise on the frameworks will very much depend on the content of the frameworks. Will it be sufficiently tailored or will it be a high level, "This is a good thing generally", or, "We wish we could do it better", or whatever?

**Mick Antoniw:** I think it has to be more detailed than that. Members of the Senedd will expect more substantive detail, as will the various scrutiny committees. I had started saying that, although I have not formulated what the structure will be, it certainly seems to me that there has to be a narrative that sets out the work that has gone on, the challenges that there are, and the issues that will be of particular concern to the Senedd, which may be in relation to devolved areas of responsibility, the cross-cutting issues, and so on. There has to be a very clear narrative that outlines those, even though some of them may have

been obvious from statements and so on that will have been issued during the governmental process.

It then has to identify, or certainly list, the frameworks. A number of them will be relatively uncontroversial, but there will be a number that are far more controversial, and some that may have interaction with UK Government legislation. We mentioned professional qualifications, for example. Certainly there will be issues as regards international trade and services. It is important that they identify the state of agreement and potential issues that arise from that, so that the report can be scrutinised in its own right, and set the scene for the challenges government faces over the coming months, et cetera, and to look at ways in which issues and problems can actually be resolved.

**Lord Garnier:** Thank you very much indeed.

**The Chair:** Thank you. We look forward to that. Baroness Redfern.

Q178 **Baroness Redfern:** Thank you, Minister, for speaking with us today and giving evidence. Do you plan to conduct a review to evaluate what has worked in the frameworks programme at some point in the future? If so, how would you envisage carrying out that review to determine a more meaningful, more consensual approach? Would you prefer a single combined review conducted by all four Administrations, or for each Administration to conduct their own review?

**Mick Antoniw:** I suppose the answer is that it is very difficult to say, because it has to anticipate what the nature of the problem might be, and the extent to which it impacts across the UK, or may impact on one particular part of the UK, one of the particular Parliaments of the UK or Governments of the UK.

The starting point on anything like this is that, first, there has to be ongoing review. Just as we want ongoing review of legislation to see how it works, and whether it actually delivers, we need to be satisfied that the frameworks are working. There may be input from parties, from businesses, and from those with vested interests in the economy, as to how things are working, just as we are reviewing now the EU trade and co-operation agreement and all the issues that have emerged from that. I think ongoing review is an essential part of good governance.

As to the scale of it, and the way in which it is carried out, I imagine that through the intergovernmental process there will be ongoing review. I think there will also potentially be ongoing reviews in the individual Parliaments, particularly on specific aspects that will impact them. I suspect the ones where we will engage in the early stages, some of the most common issues, will be on things such as international trade agreements and services. I see that as being a major area of difficulty, for all the reasons I am sure we understand.

**Baroness Redfern:** But I think you would agree with me that the importance of the frameworks going forward is that they are to be strengthened, and that is really important for those trade deals.

**Mick Antoniw:** Listen, absolutely, we need international trade and we need trade deals, but we need trade deals that actually work and that encompass the principles on which the discussions and frameworks have been agreed—respect for the devolution settlements and recognition.

This moves into that constitutional area. I think what will emerge from it very clearly is the issue as to when a UK Government Minister is acting as an English Minister as opposed to a UK Government Minister, and it will be the same in respect of the respective Parliaments: the stage at which, effectively, the UK Government are acting as an English Government. I think there is recognition of that. I suspect that may emerge from the product of the frameworks and the negotiations, as it has a little bit through the Covid experience. Thinking ahead and trying to predict how these things might develop is obviously very difficult to do.

**Baroness Redfern:** Thank you very much, Minister.

**The Chair:** Our final question is from Lord Foulkes.

Q179 **Lord Foulkes of Cumnock:** My scheduled question is about Chloe Smith, who in evidence in July told us that the Cabinet Office is going to devolve responsibilities for management of the frameworks to individual departments, and that the Cabinet Office will just have an oversight role. She said you were probably grappling with the same kinds of issues. Will you do something similar?

**Mick Antoniw:** First, I think that is probably a mistake. It would certainly be a mistake to do it too soon. We need common agreement on the frameworks, and they need some time to bed in, before any such decision is made.

The frameworks are all based on a set of common principles, and the actual working of the whole structure is dependent on the upholding of those. It seems that has to be done centrally, so although much of the work on the frameworks and the carry-through on those frameworks, once agreed, will be with the departments, the various Ministers and the various portfolios, I think there is a considerable advantage in each of the nations of the UK retaining a central oversight.

I think that at UK Government Cabinet level oversight is also important. That may well emerge if we can conclude the intergovernmental review and create the top-tier forum and the standing committee below that. That would be one of the functions that might well facilitate that and enable it all to work. I hate to finish the end of my evidence session by saying this again, but the devil is in the detail, is it not?

**Lord Foulkes of Cumnock:** That is very helpful. It is a cautionary note about not rushing too soon to get it down to the departments. It is probably something we should take up with the Cabinet Office and with Chloe when we speak to her again. Thank you very much, Minister. That is very helpful.

**The Chair:** May I follow that up? I know, Mick, from what you said, that

you expect to see the Minister in a quadrilateral meeting in the coming week. Is that something you would want to raise with her as a cautionary note? What are the messages that you will be giving out? I do not want you to break confidence or pre-empt anything, but could you say something about that?

**Mick Antoniw:** Obviously, the issue of progress is very important, as is resolving the cross-cutting issues and the progress that is made on that in the intergovernmental review. If we can remain reasonably optimistic through that process, it will have been a success. I do not think any single quadrilateral meeting will resolve any of those particular issues, but they all contribute to advancement, do they not? There are signs of coming closer together on some of the wording. Quite close collaboration has taken place between officials in the respective Governments, and that is an encouraging sign, but, again, ultimately it has to deliver, does it not?

**The Chair:** Absolutely, and it is a message we have received from officials, from the DAs and from the lead Minister herself; there has been conspicuous collaboration, which everybody has enjoyed and profited from, and that is the most optimistic aspect of the process. It leads on to other things.

Thank you for your time and your willingness to engage with great frankness, and your comprehensive answers. We have had a deep dive into Wales, even though we have not spoken much Welsh this afternoon. I think we understand more both about where you are optimistic and about where you see work has to be done and knots have to be untied, especially in relation to the external legislation and the cross-cutting work that still has to be done. It is indeed very challenging, but it is very encouraging to hear the extent to which you have high expectations that this can work and can be made to work better.

Thank you again. It is the beginning rather than the end of a conversation, so I look forward to us getting together again some months down the line, whatever condition we may all be in by then. Thank you very much indeed.

**Mick Antoniw:** Thank you very much for inviting me. Diolch yn fawr.

**The Chair:** Diolch yn fawr i ti. That is the end of the public session today. Thank you very much indeed, colleagues.