



Common Frameworks Scrutiny Committee

Corrected oral evidence: Post-Brexit common frameworks

Tuesday 7 December 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 Hope of Craighead; Lord Keen of Elie; Lord Murphy of Torfaen; Baroness Randerson; Baroness Redfern; Baroness Ritchie of Downpatrick; Lord Thomas of Cwmgiedd.

Evidence Session No. 18

Heard in Public

Questions 230 - 240

Witnesses

[I](#): Angus Robertson MSP, Cabinet Secretary for the Constitution, External Affairs and Culture, Scottish Government; Nora Uhrig, UK Frameworks Team Leader, Scottish Government; Euan Page, Head of UK Frameworks, Scottish Government.

Examination of witnesses

Angus Robertson, Nora Uhrig and Euan Page.

Q230 The Chair: Good afternoon, Mr Robertson. It is a huge pleasure to see you, and welcome to your colleagues from the Scottish Government as well. We are really pleased to see you. It has been difficult to find time for a meeting, but it is pleasure deferred. We are further down the road of our committee, with more experience under our belt as well.

We have been looking forward very much indeed to talking to you and listening to your experience of the common frameworks, which, as you know, are a complex and hugely dynamic programme. It is a moving weather front in many ways, so we are very grateful to you for your time. As you know, we are into our second year. The operation has been very flexible because of the difficulties of the timetable, but we are accelerating now. We are expecting more frameworks very shortly, so it is very important to have your views and perceptions on progress and outcomes.

I am delighted to say that one of the great and very pleasurable features of this committee is that we have established such good working relationships with the devolved Administrations, both at ministerial and official level. We have become familiar with the issues raised by the other countries and the key role of the common frameworks in building a co-operative union. Much of what we want to discuss this afternoon is about how you feel that process is going.

I am going to start off with a very obvious framing question. How do you see the current state of the common frameworks programme as a whole? Are you satisfied with the progress that it is making and has made to date?

Angus Robertson: First, thank you very much for having me and my colleagues Euan Page and Nora Uhrig, who are Scottish Government civil servants who work in this area, on the call. If there are any tough questions that I am unable to answer, I will hand over to Euan and Nora, who will help elucidate the points that I want to make. Thank you for your opening question about the degree to which we as a Government in Scotland are satisfied with progress to date.

We have been and remain a committed partner in working to develop common frameworks. It is worth making the important point that progress has been made on common frameworks precisely because respect for devolution generally, which unfortunately has been in short supply from the UK Government, was part of the programme from the outset, with the principle agreed by the Joint Ministerial Committee on EU Negotiations in October 2017. Frameworks have been established to manage policy divergence on the basis of agreement. That is a good thing, and they are the correct means of managing the practical, regulatory and market implications of the United Kingdom leaving the European Union, which, it is important for us to note, the overwhelming majority of people in Scotland did not vote for.

The success or otherwise of the frameworks and the frameworks process will depend on a willingness on the part of UK Ministers to respect devolution and the democratic accountability of the Scottish Parliament, in line with the frameworks principle that was agreed at the JMC that I have mentioned. The most critical obstacle to the successful implementation of frameworks remains the interaction with the United Kingdom Internal Market Act.

A lot of noble colleagues on the committee have been very involved in this process through proceedings in the House of Lords and, frankly, know a lot of this back to front, but you will all be aware of this interaction between the United Kingdom Internal Market Act and the frameworks. The Scottish Government are clear that the Act is an unnecessary and deliberate undermining of the devolution settlements. It has been imposed by UK Ministers despite the explicit withholding of legislative consent by the Scottish Parliament and the Welsh Senedd, and its rejection by the Northern Ireland Assembly. All the devolved Administrations and Parliaments have said that this is not acceptable. Nevertheless, the UK Government have ploughed on. They now have to act to ensure that the frameworks are able to serve the purpose they were envisaged for by the Joint Ministerial Committee.

By way of an update, I chaired a meeting of constitution Ministers from the four Governments only last month where we collectively endorsed the text of a statement that UK Ministers intend to make in the House of Commons in forthcoming days. It sets out a process for acting on firm commitments made to the UK Parliament during the passage of the Bill. This will confirm that UK Ministers can use the powers conferred on them by the Act to exclude policy divergence agreed through common frameworks from the Act's effect.

While offering some potential mitigation to the damage the Act causes to devolution, it regrettably remains the case, despite the development of a process to exclude some decisions rightly made by devolved Governments within their area of competence from the Act's market access principles, that the final decision power—this is really quite important—lies with UK Ministers alone. That is fundamentally inconsistent with the principles and practice of devolution. In areas that are quite rightly and properly the responsibility of the Scottish Parliament, the Welsh Senedd or the Northern Ireland Assembly, a UK Government Minister who was not elected for this purpose, and in political terms not elected by people in Scotland, will determine what goes forward in a devolved area of competence.

It is essential that the UK Government recognise the damage caused by the Act and that, while the proposed process for excluding policy issues covered by common frameworks should be adopted, it does nothing to lessen the Scottish Government's opposition to the Act. Forgive me; I hope that was not too long an answer to your initial question, but you wanted me to lay out our position.

The Chair: No, not at all. Thank you for anticipating that statement,

which we knew about and which members of the committee may want to probe a little, albeit we completely understand that it is embargoed. I know that Lord Hope would want to follow that up.

You talked about the common frameworks being essentially about the management of divergence. We have seen and have said in our report that they can be more than the sum of their parts. They can be a positive engine for building a co-operative union. Do they have that capacity? Would you agree with us on that?

Angus Robertson: There is significant political divergence. My party, my Government and the majority in the Scottish Parliament wish to see the people of Scotland have a vote during this parliamentary term on Scotland becoming a sovereign state, and the UK Government are opposed to that. So we have fundamentally different political objectives, but that should not stand in the way of being able to manage the issues of day-to-day governance and the evolution of devolution, if I can call it that, in the context of the United Kingdom leaving the EU.

I am a relatively new Minister. I have the advantage that I served for a long time in Westminster, so, in the meetings I have been having, I have often been sitting opposite UK Government Ministers who I know personally. My instinct is that that has not been unhelpful because, since becoming Cabinet Secretary for the Constitution, External Affairs and Culture, I have been working quite closely with Chloe Smith, who you know. She gave evidence to your committee. We had an excellent relationship when dealing with what I would describe as an impasse earlier this year. I just made the point to her that I was not interested in raking over the coals of why things had not proceeded as quickly as we would like; I was interested in understanding the nub of the problem that was stopping us making the progress that we wanted to see with frameworks.

On a personal level, it counts for quite a lot that you can have co-operative, consensual and outcomes-oriented dealing with opposite numbers and trust in one another and one another's officials. That is what we did in our meeting; we said, "Please, we want to meet again shortly. We want to make progress with this". That was the personal level, which is not unimportant and certainly not irrelevant.

Having said that, the most important lesson is that the common frameworks offer a viable alternative model for regulatory co-operation to the system imposed by the internal market Act. When collaborative working, a consensual approach and respect for devolution exist, progress can most certainly be made to deliver benefits for all parties and our sometimes differing views. These principles can most certainly be applied more widely to intergovernmental relations in the UK if the willingness is there and one understands that one is speaking on the basis of equality.

However, the United Kingdom Internal Market Act is unfortunately far more representative of this Government's approach to intergovernmental

relations and devolution. Let us not forget that the current Prime Minister has described devolution as a “disaster”; that is the default position. It is quite difficult to make things work if there is no willingness to try to make them work.

In previous evidence to your committee, UK Ministers have, inaccurately as I would see it, characterised the internal market Act as a kind of insurance policy, a safety net and something only to be called on in extremis when frameworks are unable to operate as intended. Rather, the Act will in many cases undermine the effect of policy divergence agreed through a framework unless an exemption from the Act is secured. It follows that it continues to pose a significant threat to the successful operation of frameworks.

We are now in a position where we have been able to move ahead on the basis of agreement, but we will understand whether it is working only when we are able to see if and when it is working. That is not a reason not to observe that progress has been made. We are in a position of moving past “Go”, and then I hope we can see progress in action. I have to say that my concerns remain.

The Chair: Thank you so much. That was a very full answer and extremely interesting for us.

Q231 Baroness Ritchie of Downpatrick: You are very welcome, Minister. It is good to renew our acquaintance. In your programme for government agreement, you state that the internal market Act makes the successful agreement and implementation of common frameworks extremely challenging, but you will seek to agree common approaches with the other devolved Administrations, presumably to act as a counterweight to the 2020 internal market Act.

You indicated that you chaired a meeting of the constitutional Ministers from the other devolved Administrations. What have you learned from working with the other Governments as part of the frameworks process? Coming from Northern Ireland, I think that some of those frameworks intersect with the Northern Ireland protocol, which will have primacy in certain areas where the protocol has overall responsibility, and in an area where some 2021 frameworks were not signed off by the Northern Ireland Executive until sometime earlier this year when the other Administrations had already signed them off. Therefore, what have you learned from working with the other Governments as part of the frameworks process since coming into ministerial office?

Angus Robertson: I do not need to tell you very much about this, Baroness Ritchie, but it really takes something pretty momentous for the Democratic Unionist Party, the SDLP, the Alliance Party, Sinn Féin, the Welsh Labour Party, Plaid Cymru, the Scottish National Party and the Scottish Greens to all have pretty much the same position on this subject. We are not divided on the basis of anything on the operation of frameworks. We all believe that things are supposed to operate on the

basis of agreement and respect for the devolved Administrations and legislatures.

Commitments have been given, and we are told that we should accept the assurances of the UK Government that the frameworks will allow for policy divergence, which is what devolution is all about. It is about being able to make an appropriate, which by its very nature does not always mean the same, policy conclusion. I have taken part in meetings where I have listened to Ministers from Wales, Northern Ireland and Scotland, where we have all made exactly the same points. UK Government Ministers have said “noted”, “we hear you” and so on. Only recently has it been possible to make progress on this front. I am not sure how helpful it is for me to concentrate most of my comments on when things were at an impasse. They were, but we have managed to get things into a better place on the frameworks.

Having said that, my major concern remains the impact of the internal market Act on the common frameworks. The Act is incompatible with the frameworks approach. It is incompatible with devolution as it has operated since 1999; it is that fundamental. This is part of the UK Government’s wider disregard of, and attack on, the powers of the devolved legislatures. Many of us, and perhaps for slightly different reasons, fear that devolution is in real danger.

As I have already pointed out, UK Government Ministers have stated that the Act is some form of an insurance policy should gaps in coverage emerge, but this is simply not the case. The Act will overwrite in many, if not most, cases. It will undermine policy divergence agreed through the common framework unless it is expressly excluded from the market access principles. Even then, the decision on whether to make an exclusion rests with a UK Government Minister, who may or may not be minded to care tremendously about what the views of people in Northern Ireland, Wales or Scotland are.

While we have recently developed an approach to securing limited exemptions from the Act, we are going to have to see how this will be observed in practice. If frameworks are to do their job and ensure that policy divergence can be managed on the basis of agreement between equals, they cannot be subject to endless process delays or second-guessing on the part of UK Ministers whenever an exemption is required. That is what we have been elected to do, what my Government are in place to make decisions about, and what colleagues in Northern Ireland and Wales have been elected to do—not to be second-guessed by somebody who has not been elected to make these decisions. Nevertheless, we find ourselves in that position.

Sometimes, when we talk about these things, it can seem tremendously dry because it is about process. When people have a practical example of what we are talking about, it makes things much more tangible. To give an example, we are pressing ahead in Scotland with planned legislation to ban single-use plastics. We are all trying to do our best by the environment and this is a way of trying to make a difference.

Government elsewhere in the UK is not in the same place as we are for whatever reason, but that should not hinder us being able to make progress in an area that is devolved.

Discussions between officials are proceeding, but we are going to have to see an outcome with frameworks ensuring at least “equivalent flexibility for tailoring policies to the specific needs of each territory as is afforded by current EU rules”. Those are not my words; those are the principles that were endorsed by all four Governments at the Joint Ministerial Committee in October 2017. Either they will be observed and the commitments will be given, or they will not. I hope they will be.

The Chair: We had better move straight on to Lord Keen, to pick up on some of those arguments.

Q232 **Lord Keen of Elie:** Good afternoon. To begin, do you agree with me that freedom of trade is an essential component of the devolved settlements?

Angus Robertson: It is an aspect of the devolved settlement, balanced against many other considerations as well.

Lord Keen of Elie: Yes, but it lies at the heart of it. This is why Article IV of the Treaty of Union is a protected enactment pursuant to Schedule 4 of the 1998 Act, just to take one example. We have to bear that in mind when we approach not only the internal market Act but the development of the common frameworks, do we not? That is one of the underlying principles of the devolved settlement.

Angus Robertson: The underlying principles of the United Kingdom Government are as I have just outlined. The position of the UK Government was outlined in the House of Lords. Unless there is a change to that, we are still operating under the maxim that we are supposed to have at least equivalent flexibility for tailoring policies to the specific needs of each territory as is afforded by EU rules. That is the assurance that we have been given. I am not in a position to reinterpret the position of the United Kingdom Government. I just have to take their commitments at face value, and that is the commitment of the United Kingdom Government.

Lord Keen of Elie: Indeed, and underlying that is the understanding among all devolved Governments that freedom of trade is an essential component of the way in which the devolved settlements are going to operate.

Angus Robertson: I do not believe that devolution is a threat to trade across the United Kingdom, but the initial point that I was trying to acknowledge is that we are trying to balance a series of different policy areas and responsibilities. The principle of the settled will of the Scottish people was acknowledged—I will leave it to colleagues from Northern Ireland and Wales to characterise the nature of their social and political compact—in 1997 around, in our case, the Scotland Act. Things have been proceeding, to a greater or lesser extent, on the basis of mutual

respect and an understanding of the responsibility of where governance lies.

Lord Keen of Elie: Just coming in on that, can we hope to see the development of the common frameworks reflecting not only the fundamental basis of the devolved settlement, but the mutual respect you referred to? If we apply the common frameworks effectively, they should underline the very points you are making.

Angus Robertson: I agree wholeheartedly. You are absolutely right.

Lord Keen of Elie: Against that background, do you have any major concerns at present, not about the common frameworks as individual frameworks, but about the programme of the common frameworks and the way in which it is going to be implemented?

Angus Robertson: All frameworks, as far as I am aware, are making good progress, although work has started on a number of them only relatively recently. Services is one; the recognition of professional qualifications is another. They are at a less developed stage, but everybody involved in them is hopeful that quick progress can be made. We can usefully draw a distinction between frameworks covering technical policy areas, where there is limited practical scope for divergence, and those frameworks where there are more substantive considerations around the interaction with the internal market Act.

Lord Keen of Elie: Could I just ask you to give me one example of the latter?

Angus Robertson: Let me give you an example that relates to the number of foodborne illness outbreaks and deaths in Scotland associated with the consumption of raw milk. Mandatory pasteurisation of animal milk for direct sales was introduced in Scotland. There is very sound evidence to demonstrate increased consumer protection against a variety of foodborne pathogens as a result of a move such as that. The existing ban covers the Scottish market, meaning that raw milk cannot be placed for direct sale on the market from England, Wales or Northern Ireland because it predates the internal market Act and will continue to apply.

If we sought to implement a similar ban in Scotland today on legitimate health grounds, appropriate consumer protection measures could be undermined by the operation of the market access principles, exposing Scottish consumers to unnecessary and potentially severe risks. That is a very concrete example.

Lord Keen of Elie: That does not relate directly to the operation of the common frameworks programme.

Angus Robertson: I have colleagues with me who have a very long-standing engagement with the development of the frameworks process. It might be helpful for either Euan Page or Nora Uhrig to come in at this point. They would be able to elucidate your point.

Lord Keen of Elie: Could I ask Euan, perhaps more generally, if I can frame the question this way, whether he has any major concerns at present with the way in which the common frameworks programme is being implemented? I am looking not at individual frameworks, but at the programme itself.

Euan Page: Before I answer, I will just confirm that the example the Minister gave relates to the food safety framework, so it is directly pertinent as a policy matter covered by a common framework.

The four Governments have now managed to clear the remaining cross-cutting blockages to delivery of frameworks. The most notable of these, as the Minister has indicated, is agreeing an approach to managing policy divergence in a way that protects it from the effects of the internal market Act. That will take the form of a political commitment rather than a statutory requirement. I know that there were extensive debates on that matter during the passage of the Bill in the Lords.

The remaining cross-cutting blockages to delivery are removed. We will now, I hope, move on to see a tranche of frameworks published this side of Christmas. Our colleagues in the UK Government are managing the publication process, but we are in an advanced state of final checking and ministerial clearance. It will then be for the four legislatures to scrutinise frameworks and the Administrations will want to take those observations into account. But, as a matter of delivery and process, I have no concerns that would lead me to alert the committee to problems.

Q233 **Lord Murphy of Torfaen:** It is good to see you again, Minister. I am going to slightly change the emphasis on to particular frameworks. You have just mentioned your and your Government's concern about a particular framework on food safety. Are there any other frameworks you are particularly concerned about? For example, you mentioned the frameworks on services and the mutual recognition of professional qualifications. Do you have any concerns about particular frameworks?

Angus Robertson: Discussions about the services and mutual recognition of professional qualifications frameworks are ongoing. It should be emphasised that the frameworks are being taken forward separately from each other. We are supportive of the frameworks in principle as a means of managing divergence, but we have needed to understand how these frameworks could effectively operate in the context of the United Kingdom Internal Market Act.

The impacts of the cross-cutting issues on both these frameworks, while similar, will be distinct. The introduction of the Act has made already complex framework areas more so, but we have been able to make progress on understanding the scope of the frameworks. Work is taking place at official level between the four Administrations to develop framework documents. I do not know whether Euan or Nora has any more granular insight as to where things are on those framework documents.

Euan Page: On your wider point, Lord Murphy, as the Cabinet Secretary has indicated, there will be complexities and challenges around the management of frameworks where there is a strong internal market Act intersect, because there could in more instances be proposed policy divergence that will have to be discussed and agreed through the framework. Then the exclusions approach will have to be applied consistently.

On services and MRPQ, work on those frameworks slowed to an extent because they are quite diffuse policy matters. Most framework areas cover discrete, styled policy areas, whereas services and MRPQ obviously relate to a range of policy interests. There was also a lack of clarity about how these rather diffuse arrangements would operate vis-à-vis the provisions in the internal market Act on services and MRPQ.

At official level, we have now agreed a broad approach on the scope and purpose of frameworks in these areas, but resolving these matters took a little longer than other areas. However, we are confident that we will have draft frameworks that can be put to Ministers in the new year and, we hope, then to consideration by stakeholders and then legislatures in the spring.

The Chair: Euan, may I ask you a short supplementary question following that? There are huge areas of policy that are not covered by frameworks. We have recently had a document submitted to the committee giving a range of explanations why some policy areas are not covered. One of the reasons given for many of them is that divergence is not going to be anticipated or, where it exists, may be minimal.

It just occurs to me, now that we have you in front of us, to ask you whether, from a Scottish point of view, there are any areas of policy that you might have welcomed frameworks being applied to. The vast majority of policy areas inherited from Europe are not covered by frameworks. You may need notice of that question; in which case, consider yourself free to write to us.

Euan Page: I would be very happy to follow up in writing. I suppose, as a broad observation, we started this process back in 2017 with well over 100 potential areas identified as having a devolved matter with an intersect pertaining to EU law. As you say, we have narrowed the scope down to those areas where there has been agreement across the Administrations that there is a need for a common framework approach. The dynamic in which we have been having these discussions has been radically altered by the introduction of the Act, as the Cabinet Secretary has set out. Obviously, the Administrations have very differing views on the relationship between common frameworks and the Act.

The point is well made. The Cabinet Secretary hosted a very useful round table with academics recently at which the point was made that frameworks are a little siloed. They are policy specific for the most part. What happens if a policy area comes forward in a devolved area where there is no framework to manage and it diverges in the same way as you

would through resources and waste, for example? These are legitimate challenges and useful prompts as we think of how the frameworks programme, which should be a living programme and an integrated part of evolving intergovernmental relations, develops over time.

My final observation is that frameworks are limited to devolved matters. There is an interesting question about how you could apply a frameworks approach to some reserved matters where, although they are matters of exclusive competence to the UK Government, the policy effect plays out very differently in different parts of the UK. A migration policy designed for the south-east of England may not always deliver for the Highlands and Islands of Scotland, for example.

The Chair: Thank you very much. That is a really interesting observation. I am sorry; I did not mean to widen the scope of the discussion quite so much, but I am very grateful for that indeed. Minister, you have spoken about the internal market. Can I ask Lord Hope to take up the questioning on that particular set of issues?

Q234 Lord Hope of Craighead: Good afternoon, Cabinet Secretary. By coincidence, we are almost a year to the day from the breakthrough in the progress of the internal market Bill through the House of Lords. Eventually, after a great deal of argument, the Government were prepared to make the amendments to the Bill that we now see in Sections 10 and 18 of the Act. I recall rehearsing many of the arguments that you put in your introduction to try to persuade the Government that they were absolutely wrong in saying that the internal market Bill as unamended was entirely consistent with the frameworks, which they insisted on, meeting after meeting, until they eventually realised that they had to make some exception.

I am going to ask you about the process that we now have. We are still awaiting the ministerial statement, so there is a limit to the extent to which I can probe this with you. Can I first ask you about the obstacle that you said remains, which is that the final decision rests with UK Government Ministers? We have to accept, and I am using the word “we” for you and me, that that is what is in the statute. In our amendments, which were carried with massive majorities, we asked for an obligation on the Minister to grant an exemption. What we now have is a discretion given to the Minister, so we must live with that.

The process that you discussed at the meeting a month or so ago was presumably on the basis that you were working around the provisions we now have in statute. Is that right—you just have to accept that that is what the statutory formula is and we have to find a way through it?

Angus Robertson: I am now in the unusual position of not being able to break the embargo, as Baroness Andrews highlighted at the start of the session. Without giving any secrets away, the UK Government have been prepared in terms to politically acknowledge the commitments that were made in the UK Parliament—in this case, I think I am right in saying it was on the Floor of the House of Lords—going back to the start of the process. At the same time, there was an acknowledgement that the

process involving UK Government Ministers would be focused in a way that genuinely took cognisance of the views of the devolved Administrations. You will be able to judge the form of words in the statement in relation to that.

In effect, a process has been developed to ensure that policy divergence agreed in the framework is protected from the internal market Act's mutual recognition principle. Having said that, much future success in relation to this will be judged only when one sees how UK Ministers act. Do they take the position of the devolved Administrations seriously as a matter of course? After all, we have been elected to make the decisions that we have made. If they acknowledge that and sign off on the position in relation to the frameworks in the internal market Act, there is a way forward.

We are going to have to wait and see how that operates. No doubt, when we get to that stage, you, your colleagues and others in the Scottish Parliament, the Senedd and the Northern Ireland Assembly will be very keen to hear from UK Ministers about how they are approaching the position as it has been agreed in principle.

Lord Hope of Craighead: I hope that we may have an opportunity to do that before our work is over. For the time being, perhaps you would agree that very slow steps, which could be regarded as some kind of progress, are being taken. First, there was the willingness to amend the Bill to put the provision into the Act in the first place, which at least was a chink in the door.

Would it be right to describe what was reached around the table a month or so ago, as Euan Page put it just a few moments ago, as a political commitment? It is not an agreement in the sense of being written into the Bill, a contract or anything like that, but it is a political commitment that is of some value. We as a committee should recognise and put our force behind it in our report when we come to comment on the matter.

Angus Robertson: That is a very good point. The UK Government will make a statement to the UK Parliament, which we will accept in good faith and in the hope and expectation that it signposts the approach that the UK Government will take to the workings of frameworks. We are prepared to wish that good speed and a fair wind. With the appropriate scrutiny and oversight, perhaps it will help UK Government Ministers realise that it is important for this system to operate.

There is no alternative unless, of course, one thinks it is politically acceptable to drive a coach and horses through the devolution settlement. Some people may think that is a good thing; I do not. People need to understand that legislating for things that are at cross purposes with agreements, including devolution, brings consequences with it. I know a great many of you on the committee made your views about this known during debates in the House of Lords on this very subject, and chances are that I would agree with many of your contributions.

Lord Hope of Craighead: One could be at least prepared to acknowledge this: there is an indication here that the UK Government are respecting the devolution settlement. Otherwise, they would not be making that political commitment. That is something to hang on to. All I am suggesting to you is that we have an opportunity through our committee to endorse what you have been saying, and emphasise the importance of the commitment and our expectation that it will be adhered to.

Angus Robertson: Yes, I totally agree with what you are saying. That is why I used the language that I did at the start about the working relationship I established with Chloe Smith. It was as anybody might hope it would be. It was based on us realising that it was important that we could work together on issues as Governments in the UK, and that we operate in a construct of political or legal commitments about how we should work with one another that have been given in different ways.

Perhaps it was a reflection on the part of some, somewhere in UK governance, that there was a sense that the UK Government were taking a very haughty approach to their relationship with the devolved Administrations and literally laying down the law: "This is how things will be. We won't even consult. We won't even involve, and we'll certainly not respect, your views". It is not my area of expertise, but I suspect that some people may have come to a view that it probably does not look tremendously constructive and definitely does not look as if one wants devolution to work.

I am not here to second-guess other people's motivations. All I can do is take at face value that, when I sat via Teams, Zoom or however we were virtually meeting at the time over a number of meetings, and I was discussing the lack of progress and the wish to have it with Chloe Smith, we were of one mind. That is a good thing and I would wish to concentrate on that.

Lord Hope of Craighead: That is very helpful. Perhaps we could just leave it there because there are other questions.

Angus Robertson: Of course, yes.

Lord Hope of Craighead: I am very grateful. That is extremely helpful. Thank you.

Q235 **Lord Thomas of Cwmgiedd:** Good afternoon, Minister. Can I ask you about another aspect of the internal market Act? That is the position of the Office for the Internal Market in looking at the impact of frameworks. What are your views on its role? How do you see it operating?

Angus Robertson: The first thing I would say, and it is important not to lose sight of this, is that the Scottish Parliament is the legitimate locus for the scrutiny of decisions on devolved policy. That is how our system of government works. It is essential that the Office for the Internal Market is set up to operate with strict impartiality and in such a way that it reflects the democratic accountability of devolution. It is likely to face profound

challenges in that respect given the nature of the internal market regime and the Act's incompatibility with devolution.

Internal markets are inherently constitutional arrangements—I think that was Lord Keen's observation in his questioning—as they deal with the relations between different territories and their own rule-making powers. Governance and oversight are key considerations. The Office for the Internal Market will have a key role to play in providing impartial and informed oversight and governance.

However, the OIM will oversee the internal market regime ushered in by the internal market Act. From the outset, it is effectively inhibited by the Act. It is one of these areas in which we have to hope that it finds a way of working that respects the asymmetrical nature of devolution in the United Kingdom and the fact that there are different Parliaments that take it on themselves to exercise their oversight.

It is important to recognise—this point has been made repeatedly by academic commentators—that the Act is radically different from the system we enjoyed when Scotland, and the rest of the United Kingdom, was part of the European single market. The Act takes the broad legal principles of mutual recognition and non-discrimination and refashions them into what is indisputably a rigid statutory regime. The balancing principles of proportionality and subsidiarity that were so fundamental to the operation and oversight of the single European market have no place in the Act.

The challenges that the OIM will face are inherent to the way the Act was set up. There will be limits, I suspect, to the OIM's ability to mitigate these. It has a market oversight function that needs to reflect the value of devolution, the full role of the common frameworks process and in particular whether the common frameworks process can function as intended in line with the principles agreed by all Governments of the UK. It is not going to be an easy task; that is the short way of answering that question.

Lord Thomas of Cwmgiedd: I can see that, but surely an independent body must be able to balance these considerations. There may be internal contradictions. Why is that going to impede the OIM?

Angus Robertson: I am a glass half full kind of person, so I wish it well. If it goes into the process and its responsibilities with eyes wide open, it could well find a way through all this. I do not need to rehearse the same point I am making. We are dealing with a frameworks approach and an internal market Act that are inherently contradictory. Depending on how the tide moves in relation to the operation of both those things, it will make the life of the OIM either easier or much more difficult.

Lord Thomas of Cwmgiedd: One of the areas the frameworks are going to cover relates to subsidies. The internal market Act brought about a change as to the harmful effects of subsidies. Do you see a role for the OIM in relation to that?

Angus Robertson: I must confess that that is not my area of expertise.

Lord Thomas of Cwmgiedd: Then I will not pursue it.

Angus Robertson: No, I have colleagues on the call who may well be able to fill in the gaps on that. Euan or Nora, is this one of your specialist subjects?

Euan Page: I have some very broad points. Yes, the OIM will have a role in scrutinising subsidy decisions, so there is an intersection there that we will need to consider, particularly as some, but not all, frameworks replicate regimes around subsidies that pertained under EU law. I am thinking particularly of agricultural support, the fisheries framework and a replacement for the European Maritime and Fisheries Fund therein. There are some questions of oversight of spending decisions, and local accountabilities and autonomies, that are pertinent to frameworks and will require careful consideration by the OIM, the UK Administrations and the committee.

Lord Thomas of Cwmgiedd: Can I just follow that up? I assume you think an awful lot more work needs doing on how this is to interrelate with these quite sensitive political issues that relate to agricultural subsidies, by way of example.

Euan Page: Chair, I am happy to respond to that technical point.

The Chair: Yes, do, if you can keep it brief. We are rather pushed for time now, but give us a brief answer, if you could.

Euan Page: The brief answer is yes. A key task for the oversight of the operation of frameworks will be to map and understand these dependencies.

The Chair: Thank you, Euan. That was extremely helpful. Because it is such an interesting conversation, we are running a bit short on time. I ask everyone to keep their questions and answers slightly shorter.

Q236 **Baroness Crawley:** Good afternoon, Minister. It is very good to have you with us this afternoon. You have given us a lot of food for thought so far.

Looking to the future at some of the cross-cutting issues on frameworks, how do you see frameworks being updated to account for the trade and co-operation agreement and future international agreements? We had your colleague from the Scottish Parliament, Gillian Martin, in front of us back in February, speaking to us as the chair of the Environment, Climate Change and Land Reform Committee. She said that frameworks could be undermined if trade agreements “impinge on the ability of the devolved nations to make progressive changes in areas of environment”. You brought up single-use plastics earlier in our conversation.

If there is this concern, which you may well share, how do we try to continue approaching this in a positive way for the consumers and businesses across the devolved nations who want to see frameworks

work effectively?

Angus Robertson: I will bear in mind Baroness Andrews's appeal for brief answers. Feel free to follow up if I have not covered all the territory.

You are absolutely right. When looking at the likes of the trade and co-operation agreement between the UK and the EU, and future international agreements, it is really important for everybody to understand that, while international relations and the regulation of international trade are reserved matters, the implementation of international obligations is a devolved responsibility. Devolved Governments have distinct, legitimate devolved interests in reserved matters, such as trade and international relations, and in framework areas, and an ambition to proceed by agreement in addressing them.

It is important for the UK Government to recognise that changes in the UK's external relations, and for that matter, in the point you are making, in relation to international environmental agreements, can and do impact differently in devolved matters in different parts of the UK. There has been a recent example in terms of the Australia trade deal, which will hit hill farmers in Scotland and Wales much harder than it will larger agricultural operations in the south of England.

We are at the beginnings of the process of trying to make this work, and you are asking the very legitimate question of how we could reform it, should we need to. I have to say that all our efforts are currently invested in trying to make this thing fly, and then we have to try to make it work. You are absolutely right to highlight how we update things should they be suboptimal. That is two steps down the road.

It is definitely in my thinking, and it would take a willingness from others to appreciate that change would be necessary, but, as legislators, we know that things are updated all the time. If something is not working as it should, we are going to come back to it. We have tried to make progress in passing "Go", which is my focus at present. It is relevant to stress that frameworks are a living document and are designed to be updated.

If there is a profound architectural reason—I will put it that way, because I do not want to say "a framework about frameworks"—and a systemic problem with how the frameworks system operates, after we have had the commitment that we are getting in the next few days and the progress that we are hoping to make, let us start on the basis of good intent. Let us try to make it work. Let us hold everybody to account in how we are making it work. If we need to amend things along the way, let us do that. If something more fundamental is required, let us do that as well.

Baroness Crawley: Thank you very much indeed. As we need to be brief, I will leave it there.

Q237 **Lord Bruce of Bennachie:** It is good to see you in your new capacity as a Minister, Angus. You said at the beginning, I think it would be fair to

say, that the relationship between the UK Government and the devolved Administrations at the start of this process was a bit febrile. Members of this committee commented on that as well. The Dunlop review was produced, although it took a long time to be published, and it led to the intergovernmental relations set-up, which is very detailed and constructive in what it sets out to do. Do you see that very detailed framework creating the space that will enable the common frameworks to move forward in a much more positive and constructive way between the devolved Administrations and the UK Government?

As a final point, you have made a lot of the need to be able to have divergence and your concern that the internal market Act may restrict it. Do you accept that, in the other direction, the degree of co-operation across the UK is also important? It is important from Scotland's point of view because it gives us access to goods, services and expertise that you would not want to be inhibited if, for example, the Government in the UK put divergence for England at the expense of the devolved Administrations. Do you accept that the whole point of this process is that it has to be give and take?

Angus Robertson: Just like anything that involves two parties, one has to find a *modus operandi* to make things work. The point that you make is self-evident, and one does so, hopefully, on the basis of good faith. It also needs to involve meaningful interaction and respect of our various responsibilities. We are operating on the basis of a UK Government which have overridden that.

Lord Bruce of Bennachie: That was before they produced the intergovernmental relations review. I wanted to know whether you felt that was a constructive step in the right direction, as it is very detailed and seems to be sensible.

Angus Robertson: Yes, there are definitely elements in it that are a step forward. That is why progress is being made. We continue, in the conversations around that, to try to make it meaningful and workable. That is the trick. It is about how we get beyond theoretical good intentions and warm words: "Wouldn't it be nice if we could all work together?" Yes, I totally agree with you, but we have to operate in the real world, where there is a mindset in Whitehall that the UK Government are a senior partner and that everybody else, frankly, should take their cue from whatever the priorities are of that Government in the United Kingdom. But it is merely one Government in the United Kingdom; there are a number of the rest of us.

I do not want to labour the point. You asked specifically about intergovernmental relations and the review. There is progress in it, so, again, I wish that good speed. At the heart of this, I suppose I am reflecting on my personal experience. Since I was prepared to work with, in this case, Chloe Smith, and she with me, and with colleagues from Wales and Northern Ireland, we were able to identify the fact that we wanted to make progress. Then we made it happen. That is why we are

in the business of what we are doing, to try to work out how we can make things operate, and they did.

I wish the intergovernmental review process success, but I do not want us to lose sight of the fact that, if parties—one in particular, the UK Government—decide to say that everybody else should do what they see fit, it is not going to work.

Lord Bruce of Bennachie: You implied that you thought all the Governments were on equal terms. We have a devolution settlement, which gives specific powers and reserves others. You accept that we are still in a union. I know that is not where you want to be, but is there not a responsibility to try to make devolution work by all parties?

Angus Robertson: I have said it implicitly; I will say it explicitly. Where we are trying to make governance work well, because it makes sense, I am at the front of the queue, but there needs to be an awareness that the internal market Act undermines devolved policy choices. You and I will differ on this point.

There is an answer to this conundrum. Rather than subcontract our governance elsewhere, we should make all the major decisions in Scotland by a Government that we actually elect. That is better decision-making, but I suspect, Baroness Andrews, I am opening up the evidence session to a much longer discussion.

Lord Bruce of Bennachie: That is the settlement you aspire to. It is not the settlement we are in.

Angus Robertson: Yes, correct. I will be working to secure that improvement during this parliamentary term. The basic point is whether there is a willingness to work together. I have experienced that; I want to concentrate on that. I am the glass half full guy—literally, he says, drinking the glass that is half full. I want to concentrate on that, whether that is where we manage to get in the frameworks process with Chloe Smith or where we may get to with the intergovernmental review.

We all have a part to play in making all of us stick with the commitments we have given. That is why, to show a little bit of leg, as I did earlier to Lord Hope about the statement that the UK Government will be making in the next few days, we have tried to ensure that the UK Government make absolutely clear what their intentions are. If we can operate in good faith in the full glare of sunlight, you will be able to hold people to account and I will be happy to come before your committee. Although I am answerable to the Scottish Parliament, I will still be delighted to come to speak to this House of Lords committee, and you will be able to ask me about how things are operating in Scotland.

Lord Bruce of Bennachie: Enjoy reading our report.

The Chair: I am very much enjoying these exchanges, Minister.

Q238 **Baroness Randerson:** What a fascinating conversation. From the Welsh

perspective, you raise some of the frustrations that we have had. I do not share your ultimate aim, in terms of your destination, but I understand that the UK Government have a difficult role within all this. They are both judge and jury, almost, in the process. They are one of the four in decisions, but they are then the ultimate court of appeal, are they not?

Angus Robertson: Indeed, yes.

Baroness Randerson: I want to take us in a totally different direction—one that I think is not going to be controversial in anything like the same measure. That is the issue of stakeholder consultation on the development of common frameworks. There has been an uneven and disappointingly limited amount of consultation so far. That criticism can be levelled at the devolved Governments as well as the UK Government.

The committee believes that broader consultation is an important aspect of transparency, not just making the frameworks work but transparency about the development of those frameworks. We believe that the devolved Governments have been too limited in their engagement with stakeholders, just as the UK Government have been. We have had some very inconsistent lists. I know we are short on time, but I will give you one brief example: one common framework listed the Farmers' Union of Wales but not the farmers' union in Scotland. That clearly was an error.

Can you please explain to us what procedure has been followed in Scotland for ensuring that appropriate stakeholders are consulted? Going forward, when frameworks need to be reviewed, would you be supportive of broader and more open consultation with stakeholders as part of these reviews?

Angus Robertson: I am committed to transparency, parliamentary scrutiny and stakeholder engagement as the best way of framing the best legislation, clearly. They are essential for the delivery of the frameworks process. That is why we were very clear that greater clarity on the impact of the internal market Act, the frameworks and their interaction with the wider, cross-cutting issues was needed before meaningful scrutiny by legislatures and stakeholders could commence.

We remain committed to ensuring that full scrutiny of each framework can take place and that meaningful stakeholder engagement occurs. It is important to emphasise that frameworks are, of themselves, policy neutral. They are intergovernmental arrangements for managing and agreeing policy, not in themselves policy innovations. In many cases, they simply reflect existing arrangements and agreements between Governments.

I have no doubt that they are going to be scrutinised, given where we have got to now, with announcements being made in Parliament, agreements being made in principle and in practice about how we are going forward with things, and the ability to point to very specific issues and how they are being managed through the frameworks process. It is

not for me to tell you how to do your scrutiny job. You will be doing it absolutely fine, I have no doubt.

I have no doubt that I will be invited to give evidence to the Scottish Parliament committee, which I think I have already given evidence to three times since I took up office at the end of May. I have nothing to fear from scrutiny. We were very keen to get past this impasse and get things up and running. As we begin to see the application in particular policy areas, there will be lots of stakeholder engagement. There will be lots of transparency. There will be a lot of parliamentary scrutiny. We do not have anything to fear from that.

Baroness Randerson: It is not so much parliamentary scrutiny that we are concerned about. It is the involvement of people who are well beyond Parliament, those working in each of the markets that the frameworks affect.

Angus Robertson: I agree with you.

Baroness Randerson: We have taken evidence from various sources, which have indicated that there has been disappointment that key organisations have not been included in the development of frameworks. You offer the same point that the UK Government offered, which is that frameworks are about process, rather than about policy changes. Of course, process could well lead to policy change and diversity within a sector, which will be a key political point where there is a rub between the organisations.

Angus Robertson: I totally agree with you. Euan, would you like to come in very briefly on specific stakeholder engagement? I do not want to leave you with the impression that we have not been pursuing stakeholder engagement; we have. That is what Euan has been working on. Euan, is there anything you can chip in helpfully at this stage?

Euan Page: In response to Baroness Randerson, I emphasise that an essential element of the frameworks development process was technical stakeholder engagement. I was involved in some of these engagement sessions with stakeholder groups, including the farming unions in the different parts of the UK.

We would be the first to say that you can always do more stakeholder engagement. We were carrying it out at the most difficult point in the current pandemic, where we were facing significant challenges around engagement. I am sure we would have done things differently had we not faced those constraints. However, we are committed to engagement with stakeholders going forward.

As an example of what we are trying to do in Scotland, the frameworks team has been keeping up regular lines of communication with umbrella organisations such as COSLA and the SCVO to share information, keep them updated and indicate when more information will be available. The

point is well made on making sure that these are owned by organisations outside the legislatures and we will endeavour to do so.

If I can be rude enough to quickly intrude on a previous point, just as a point of clarification in respect of Lord Thomas's question, to be clear, the remit of the Office for the Internal Market extends only to the earlier sections of the Act. The OIM will not have a direct statutory role around subsidy control. However, we think the new subsidy control regime that will be introduced by the UK's Subsidy Control Bill will have complex interactions with some frameworks, which the committee will want to take an interest in.

The Chair: Thank you so much. That is extremely helpful of you. I wonder whether I can trouble you to put that in writing for us. I know that it is a very complex issue and we would appreciate your expertise on that going forward. If you had time to do that for us, that would be really helpful.

After Baroness Redfern, Lord Foulkes will have the last question today. We are going to do our final question by way of correspondence in view of the time.

Q239 **Baroness Redfern:** Welcome, Minister, Nora and Euan. Work is continuing in developing guidance regarding the format for future routine reviews of common frameworks to capitalise on what has worked well, building consensus and promoting respect across the Administrations. Taking all those things into account, going forward, how important do you think conducting a review into the efficacy of individual frameworks is, into what has worked well or not so well?

Angus Robertson: I am not aware of any plans for an official review to evaluate what has worked in the frameworks programme thus far. I am clear that the frameworks programme and in particular the JMC principles that underpin it are a valuable and important example of how the four Governments can work together on the basis of consensus and mutual respect.

I suppose I would reiterate the point I made just a few minutes ago. We are kind of at the start of this process of trying to get the frameworks to operate in some of these cross-cutting areas. You are right to highlight that, at some point, it will be worth while to see how they are working. Do I have an idea of how long that might take? The honest answer is that I do not, because we are at the beginnings of this. If it is obvious right at the start that it is really not working, we will review things pretty immediately. If things are able to proceed, we would offer it fair wind and good fortune in working, in which case we will need to look at it only in a more medium-term context.

I end before I start—sorry, I am not describing Lord Foulkes as the end. We want this to work. We think we have got to a better place than we were at before. We have to see how things work in practice. As I have said a number of times to the committee, it is dependent on something

working that we have doubts about, which is UK ministerial sign-off and how that operates in relation to the devolved Administrations.

Let me concentrate on my glass that is still metaphorically half full, although it is nearly empty. If we need to review things, that is what we do as legislators, is it not? We try to set up a system to work, we hope that it will and, if it does not, we had better change it, because it cannot carry on if it does not work. But we are literally passing "Go". You will be able to see the UK Government statement on this in the next few days. Let us welcome that and try to make it work as well as we can.

Devolution is, by its very nature, about divergence. It is about being able to make appropriate decisions for different parts of the UK in different ways. I appreciate that we need to find ways of co-operating with one another, so we are not operating at damaging cross-purposes. We are elected to do what we are doing, which is to make decisions in devolved areas. We have the powers to do that in law. We are trying to establish a system that can help that work now that the UK has, sadly, left the European Union. Let us try to make that work. If we need to come back and review it, let us of course do that.

Baroness Redfern: Minister, can I build on those comments? On one point, regarding the Scottish Government's commitment to publish ongoing reporting into common frameworks that have not been made by the UK Government, how should those responses be shared with the other Administrations, so as not to incur delays in the process and so it does not have detrimental impact on business? Could I tease that out a little bit?

Angus Robertson: That is a very sensible observation. Our relationship, both on an official level and on a ministerial level, with other devolved Administrations is first class. We speak very regularly. Our official colleagues talk with one another weekly, for exactly the reasons that you point out, and share best practice and insight on where things are at.

It is a sign of the fact that we are working so well with one another that we literally speak with one voice on these issues, regardless of the party-political differences. We are doing our homework on all this. We want to make sure that, in a suboptimal situation, we get the best out of a bad situation. We will continue to do that. I am very keen to make sure that you are as well sighted as you can be as well, because you have a very close interest in how all this is operating. My Civil Service colleagues on the line will have heard me say that to you. I will endeavour to make sure that we are sharing as much as we can with you as well.

Baroness Redfern: I appreciate that. Thank you very much.

Lord Foulkes of Cumnock: Good afternoon, Minister.

Angus Robertson: It is lovely to see you, George. We have not seen one another at Tynecastle recently.

Q240 **Lord Foulkes of Cumnock:** No, I was there recently. We are doing well.

Can I follow up on the question you have just answered and your answers to previous questions? Do you find that you face a dilemma? If you get devolution, and the common frameworks system in particular, working successfully, you might be perceived as weakening your case for independence.

Angus Robertson: Baroness Andrews has probably taken her timer out at this stage and she is really hopeful that I will give a short answer. George, as you know, I am happy at any point to talk at greater length with you, so I do not want to cut you short. I take your question at face value. Ironically, I think the opposite. Post independence, we will need to have continuing relations between the nations on these islands. At present, we have a framework of working together in the British-Irish Council. We will need to build on that, because we will continue to have the closest of relations on these islands. That will include many of the areas that we have been talking about today.

Ironically, I believe that, if we are to work together as Governments of equals, it makes the case for full decision-making powers. I know that I am not going to persuade you and you are not going to persuade me. You have every faith in the position that you hold and I know you accept that I do too. We are not going to persuade one another on this question.

I leave you with the insight that I am absolutely and totally committed, where I can, to delivering the best governance for the people I have the good fortune to represent, both as an MSP for Edinburgh Central—including Tynecastle—and as a Scottish Government Minister. Governance needs to deliver for people. We all have longer-term political aims and mine for Scotland's independence is not a tremendously long-term one. I want it to happen as soon as we can make it happen.

It makes the point that we have had to push water uphill to get pretty basic things in place to work. That makes my observation that the UK system of government is, frankly, unreformable, to put it into the Premier League, to continue my footballing descriptions, of governance. That is what all our other neighbours have.

Lord Foulkes of Cumnock: I totally accept your position and respect your integrity and honesty on that. However, if this is one of the many problems of Brexit, which you and I oppose, with the United Kingdom leaving a union after 40 years, think of the problems that would be created if Scotland left a union that had been successful for 300 years.

Angus Robertson: At this point, Baroness Andrews is about to remind me that I have decision time in the Scottish Parliament at 5 pm, which means I need to log on to another thing so I can vote.

Again, I see it through the other side of the telescope, which tells me that, unless we do something about it, we will remain in a situation where we are governed by people we do not elect, outside the biggest single market in the world, without the full range of powers that normal countries in the 21st century have.

Does constitutional change involve transition? Yes. Is it always straightforward? No. Is it still worth pursuing? Absolutely, yes, because otherwise we will continue to be governed by a party that you, I and our country have not voted for since 1955. On that point, I am going to have to leave you all so that I can vote in the Parliament that the people of Scotland have voted for.

Lord Foulkes of Cumnock: The question I was supposed to ask can be dealt with by correspondence.

The Chair: We have to let the Minister go. Do you have time for me to thank you, Minister? It has been a fabulous session. I enjoyed it thoroughly. There are many avenues we could have explored. We end on a full-blooded note. You have been frank, positive, constructive and incredibly interesting. We are very grateful to Euan and Nora for being alongside you and able to give us additional information. We will be following things up. Once again, it was such a pleasure to have you with us. Until next time, thank you very much.