



Common Frameworks Scrutiny Committee

Corrected oral evidence: Post-Brexit common frameworks

Tuesday 8 March 2022

10.30 am

Watch the meeting

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

Evidence Session No. 21

Heard in Public

Questions 269 - 281

Witnesses

[I](#): Jess Sargeant, Senior Researcher, Institute for Government; Michael Clancy, Director of Law Reform, Law Society of Scotland; Ruth Chambers, Green Alliance.

Examination of witnesses

Jess Sargeant, Michael Clancy and Ruth Chambers.

Q269 **The Chair:** Good morning and welcome to the 21st public meeting of the Common Frameworks Scrutiny Committee. It is a pleasure to see you all as ever. This morning we are joined by three very distinguished witnesses who have been alongside us as a committee before, in fact, from the beginning. Jess Sargeant, who is a senior researcher at the Institute for Government, Ruth Chambers of the Green Alliance and, in due course, we will be joined by Michael Clancy, who is the Director of Law Reform at the Law Society of Scotland. As usual, we will keep a transcript of the proceedings.

Can I welcome you very warmly and thank you for the help that you have already given us as we have gone through our interrogation of the common frameworks. We are now getting towards the end of the scrutiny process; we still have some outstanding areas to consider but we have made a good deal of progress on the frameworks. Given where we started almost two years ago in our expectations around the framework in terms of the purpose, the process and the role that they would play, we would like to hear whether you think they have lived up to expectations. What has been your experience? What are your expectations for the future?

I am going to start by asking an obvious question which is, basically, what is your assessment on the progress that has been made on the common frameworks programme? Jess, I am going to start with you because you gave us some excellent evidence at the beginning of the process, and it would be great to hear how you feel about what has happened since then.

Jess Sargeant: Thank you very much for having me back at the committee, it has been a real pleasure to follow your work over the last year or so. The first thing I would say is that progress on common frameworks has been a bit slower than perhaps we might have expected in the first instance, and I am sure that is something that the committee is all too aware of. For some cases that is for practical reasons but really there have been big political challenges that have made the agreement of frameworks a bit more difficult—thinking particularly here of the UK Internal Market Act which was opposed particularly strongly by the Scottish and Welsh governments and also developments on the Northern Ireland Protocol. All of that has made the political context a bit more difficult. Nonetheless, we are seeing that there has been good progress in agreeing them.

To come back to your earlier question about whether they have met expectations, it is fair to say that the frameworks that we see now are slightly different than what was initially envisioned. In the 2017 Joint Ministerial Committee communique in which frameworks were first agreed, there was talk of common goals, minimum/maximum standards, harmonisation, limits on action, those sorts of things. The text of the framework themselves do not contain a huge amount of policy, although

some of them commit to minimum levels in terms of maintaining the standards that were there under the EU regime; we do not necessarily see enshrining new policy goals or those sorts of things. What we have instead is more process driven documents that set out ways in which information will be shared, ways in which there will be discussions on new or proposed regulations and much more process.

That does not mean that frameworks will not be a very useful tool with which to agree common goals or approaches. Already we have seen some of them, for example, around animal health results, particularly in Scotland, Wales and England, agree a common approach on certain things like the importation of non-commercial animals and so on. They are a vehicle for those common policy agreements, but the real test will come once they have been in place for a while and we see whether they are useful in doing that or whether, despite enshrining all this process, at the end of it the four governments go in different directions. Therefore, the real test is still to come.

The Chair: Jess, that is very interesting. You actually expected them to be more policy heavy and you read that into the JMC principles and the 2017 principles?

Jess Sargeant: Yes, if you think about things like common goals, minimum/maximum standards, that does suggest that there would be some kind of policy content to them, and they have changed over time in what we have expected. It could be that that was an error in communication—maybe it looked like they would be different to what they ended up being—or perhaps what they are and what they were intended to be has slightly changed over time. It is worth noting that the people in charge of the common frameworks and the key political players have also changed over time and that has had an impact on it. I was certainly expecting, as were some of the other governments and some civil society groups, that there would be more policy content to get your teeth into.

The Chair: That is very interesting indeed, I am sure we can pursue that in different ways. Can I put the same question to you, Ruth? What about your expectations, because the bulk of the framework has been from Defra, with many different aspects across that whole spectrum of green issues that you are concerned with, what do you think has been the outcome so far?

Ruth Chambers: Thank you, Chair, and thank you to the committee for the opportunity to share some thoughts today. I very much echo what Jess has said about our expectations not having been met in full in relation to the role common frameworks have played. The common frameworks that we have looked at are more focused on process and matters such as dispute resolution than we anticipated at the beginning of this process, and most of the frameworks pay little attention to actual environmental outcomes. We believe that common frameworks are an opportunity to enable a process to facilitate active alignment and the driving up of environmental protections. Perhaps inevitably, they have

instead become more process focused, designed to deal with divergence and disputes as and when they arise. Our concern about their role going forward is that that does present some risk of a lowest common denominator approach to environmental protections and standards.

The second reflection is about the engagement and the transparency with which they have been developed. Overall, we have felt that there has been a lack of engagement. The programme has felt somewhat haphazard with external stakeholders neither well sighted nor closely involved in the process of drawing up and testing the frameworks and we highlighted that lack of engagement with the committee in our written evidence. We have also conveyed it directly to Defra and the Cabinet Office and I would say engagement has probably not improved substantially throughout the process. It feels as if the programme raises more questions than it provides answers. Clarity is needed on various matters, which we may come on to discuss, such as the interface with the UK Internal Markets Act, the scope for driving up ambition across the UK and the suitability of inter-ministerial structures to make progress on these issues.

Finally, a brief word on Northern Ireland. It is difficult to assess the progress made on frameworks due to the rushed and inadequate engagement that has happened with Northern Ireland stakeholders. Certainly, the rush to get frameworks approved in advance of the election resulted in quite a significant workload for assembly committees and stakeholders.

The Chair: Ruth, when you have been in touch with Defra and you made your case about stakeholders and engagement and so on, what sort of responses have you had?

Ruth Chambers: We have met with both policy teams and the common frameworks sponsorship team and there has been an interest to hear what stakeholders have had to say but that has not necessarily translated into any meaningful improvement on engagement. There are plenty of examples such as in the past where Defra has championed effective and innovative engagement, for example, on EU exit statutory instruments or on regulatory reform. There are many lessons that could be transferred to this part of the department's work but what has really been lacking is that whole department approach to consistent engagement on the collective body of frameworks that has been developed. As you say, Chair, there has been a lot of them.

The Chair: I can ask Lady Redfern to come in now because I think her question follows very neatly from that. Lady Redfern.

Q270 **Baroness Redfern:** Thank you. Yes, it leads me into my question. Welcome, Ruth and Jess, this morning. During our many conversations and discussions in the committee, we found it was not always clear as to why certain policy areas were categorised as not requiring a framework while others were. We have scrutinised Defra frameworks and, unfortunately, we have found many inaccuracies interspersed with

contradictions within the text. Ruth, what is your view regarding the assessment of common frameworks recently published by Defra?

Ruth Chambers: Thank you for that question. Firstly, in some cases, the Defra frameworks do offer helpful collation of the various sources of law, regulation, interagency agreements and so forth. A good example of that is the common framework on chemicals and pesticides with some useful diagrams to help make sense of what can be quite an impenetrable and complex set of policy arrangements and architectures, particularly for the public.

I would like to go back to the point I was just briefly talking about on engagement. Overall, the approach and engagement in Defra frameworks has lacked consistency. For example, most stakeholders we work with, and we do represent a coalition of environmental NGOs called Greener UK, were actually genuinely surprised to see the batch of Defra frameworks published in February as many have either not been involved in discussions on them or were simply not aware of the planned timescales. We have taken the opportunity today of speaking with the committee to look in detail at what some of the individual frameworks say on engagement. The most helpful of the ones that we looked at is on air quality. On pages 33 and 34, for the committee's reference, there is a dedicated section on stakeholder engagement and communications that is quite positive. For example, all parties agreed to share timely details of policy announcements or relevant information which may or will have an impact, including resource consequences, on other nations or their parties.

Another framework on plant varieties and seeds also has some helpful clarification on engagement. It recognises that engagement should take place with bodies such as external stakeholders, whether that is NGOs, interest groups or indeed other government departments. That can be found on page 22. Whether or not such engagement has taken place is not clear, but the inclusion of such statements in frameworks is helpful. Contrast that though with the framework, for example, on animal health and welfare, which actually says very little on engagement. It merely says that the programme board that would be established should support each party's engagement with business interests, civic organisations and other stakeholders and responses to parliamentary scrutiny, so fairly to—

Baroness Redfern: Can I just stop you there? Why do you think there has not been a better stakeholder engagement in the animal health framework, Ruth?

Ruth Chambers: Because the stakeholders that we have asked whether or not they have advice have indicated that that has been the case. The Defra common frameworks certainly provide the architecture for escalating issues. In practice, it seems that the majority of issues are going to be dealt with in day-to-day liaison between officials, so that reinforces the need for a consistent and whole department approach to how different officials from across the department engage with their different stakeholders and it is a complicated landscape that Defra has. It

has an enormous portfolio. As I mentioned, Defra has been exemplary in the past in some areas championing innovative engagements. We see this common frameworks process as an opportunity to revisit how that was done in other areas and to explore the scope for it to be done more consistently going forward.

Baroness Redfern: Regarding whether you needed a framework or not, was it very clear to you when they categorised it as not requiring a framework?

Ruth Chambers: It was not clear to us and there was not that much engagement on that process; it certainly took us some time to understand the different roles that the Cabinet Office and Defra were playing and how these decisions were made. I would say that overall that decision as to which areas needed, would not have, or potentially might have, a framework did lack transparency, especially in those early stages.

Baroness Redfern: Thank you, Ruth. Jess, do you want to quickly come in regarding my question?

Jess Sargeant: I am less of an expert on the policy detail than Ruth would be but to comment on the overarching politics of it, one of the key barriers to better engagement, particularly on these sensitive Defra frameworks, have been some of the political tensions over the Northern Ireland Protocol. The department has struggled to know exactly how to take a practical approach to managing divergence where it might arise in areas where Northern Ireland is required to align with EU law when other parts of government are not acknowledging the legal reality of what was agreed. That has been a real barrier to better engagement on that issue.

Looking at the frameworks, I do think where we have landed is quite sensible. Although this is under discussion and things might change, there is a very clear process to ensure that that legal reality, as it stands at the moment, should consider the protocol as it is written and then can perhaps update if there is a subsequent agreement. But also allowing the Northern Ireland Executive to raise concerns about divergence that might be created by the protocol and giving them a clear mechanism through the dispute resolution procedure to challenge where they think it has not adequately been considered. In my opinion, where we have landed on that is good. It is a shame, but that has been a barrier to better engagement in other areas.

Baroness Redfern: Yes, it is an important issue. Thank you very much.

The Chair: Do we have Michael Clancy available to us? Michael, welcome. I am sorry you have had technical problems; it is always very stressful. As you were not with us at the beginning, my first question was your assessment was of the progress that has been made to date on the frameworks programme. We would all be very interested in your perspective on that.

Michael Clancy: Thank you, Baroness Andrews, and thank you very much indeed for your forbearance and patience whilst we worked out a solution for me to join. I just hope we get a common framework on virtual connectivity that might be helpful in the future.

There has been fairly good progress in the creation of common frameworks. The areas highlighted in the common frameworks' pages on GOV.UK are important, complex and often technical. They comprise highly regulated areas which, as I overheard in the contributions just shortly before I started speaking, are dense, not easily read and quite impenetrable to those who are not skilled in navigating such documents, but we can test the progress by looking at the October 2017 principles and seeing what sort of things have happened in connection with those.

If you will bear with me for a moment whilst I take a look at those. The common frameworks are established where they are necessary in order to, for example, enable the functioning of the UK internal market while acknowledging policy divergence. I suppose one could highlight things like the nutritional labelling, late payment, plant varieties and the Northern Ireland Executive Agreement with the UK Government and company law as examples of how that internal market element has been satisfied by the creation of common frameworks.

Looking at the follow on which is enabling the implementation and observance of international obligations, there is the UNECE Convention on Transboundary Air Pollution and the Kyiv Protocol on the Aarhus Convention. Those are examples of implementation of that. The use of common resources, one can point to the best available techniques to reduce emissions. Administering justice is one which is missing, although I believe that the Ministry of Justice is looking at some intra-UK private international law matters to bring forward and safeguard the security of the UK. Also matters such as radioactive substances, public health protection and the common framework on hazardous substances.

From that brief skirt over the principles, one can see almost every principle having had some impact and being satisfied in some way; that is quite important evidence to bring to the committee. One objective, which is not immediately visible to me to have been satisfied, is to ensure that the UK can negotiate, enter into and implement new trade agreements and international treaties. One might say, and I dare say the Government might do that, that the totality of the common frameworks' arrangements will assist in that, but I suspect that the authors of the principles had something more precise in mind. Perhaps people on the committee will be able to point to something and say, "How about this, what do you think of that?" But the fact that one cannot point to an individual framework which relates to that principle is one area where there might be improvement.

There has also been considerable delay over the production of these frameworks. Sometimes the delay is because these are the technical, in-depth issues, which I mentioned, but I suspect sometimes the delay is caused by political issues. For example, the proposed framework on

mutual recognition of professional qualifications, which is in a holding pattern because of differences of opinion over consent to the Professional Qualifications Bill. So, delay is an issue, but some delays are avoidable, and some delays are just the way the world works at times, and we have to deal with that as best we can. I think I should probably allow other people to come in now.

The Chair: Michael, many of the issues you have very usefully identified are going to be picked up by my colleagues as we go through the morning so shall we leave it there? I will ask Lord Murphy to go back and put his question to Ruth Chambers and then we will come back to Michael and the broader political context of the frameworks.

Q271 **Lord Murphy of Torfaen:** Thank you very much indeed. This particular question is really for Ruth, and it refers to the common framework on fisheries management and support. Does that particular framework add any value to the wider United Kingdom fisheries framework? There is already quite a sophisticated architecture for administration, legislation and working together between the devolved administrations and the United Kingdom Government on fisheries. It is there already. Do we actually need this new common framework?

Ruth Chambers: That is a really good question and one we have been asking ourselves. We have spoken with some of our partners who are experts in the world of fisheries management and protection. Having had a look at the common framework and fisheries, it seems that its main role is to really point out how the wider UK fisheries management frameworks fit together and to outline the various responsibilities of Ministers and civil servants. Whilst the fisheries common framework is helpful in providing some clarity on those sorts of issues, it is certainly not clear to us, or to fisheries NGO stakeholders, about whether or how it adds value, as you said, to the wider UK fisheries management framework.

It is worth noting that the Joint Fisheries Statement Consultation document makes no mention of the common framework on fisheries management, which, again, points to a potential lack of clarity about its intended role. It does suggest that the two frameworks may have been developed in relative isolation from each other. We certainly think that the points raised in the Chair's letter to the Secretary of State on this fisheries common framework are therefore all very valid and we would agree that further clarification is needed.

Lord Murphy of Torfaen: Thank you very much indeed, that is very clear in terms of what you feel about the current situation.

The Chair: Can we move now to Lord Foulkes' question?

Q272 **Lord Foulkes of Cumnock:** I share Michael's phobia for these virtual proceedings and I had the same difficulty getting signed in earlier on, but there we are. My question, to Michael and Jess in particular, is about the intergovernmental relations review which we eventually received in

January after a long period of gestation. I wondered how you both think this will work effectively in relation to common frameworks, the three-tier system that we have under the intergovernmental system now after the review, and particularly in relation to dispute avoidance and dispute resolution. Do you think it is going to work effectively? Michael, you first.

Michael Clancy: Thank you very much indeed, Lord Foulkes; that is very kind of you for asking me rather than Jess. First and foremost, the fact that the Government have adopted this set of proposals for intergovernmental relations is a good thing. The long wait has been worth it, but it needed the time, of course, for the development and practical application. The committee heard from Angus Robertson, the Cabinet Secretary for Constitution et cetera, in December about some of the ways in which personal relationships within the context of intergovernmental relations are essential and that the development of those relationships is something which is worthwhile.

I am not convinced that intergovernmental relations have the totality of what one would want in these proposals. There is very little mention or relationship to parliamentary oversight and that is an omission which needs to be looked at in the future. There are issues about ministerial accountability, and that is fair enough, but parliamentary oversight throughout the four legislatures in the UK is something which I think is an omission which we would want to remedy because—

Lord Foulkes of Cumnock: Can I explore with you about parliamentary oversight? This is something that we are particularly interested in and we have discussed how the House of Lords in particular, as well as the Commons, could be involved with the devolved assemblies. How do you think it would work? Have you any thoughts about the system that could be developed?

Michael Clancy: I think everyone around the table was around during the Brexit days, and you will remember Lord McFall's initiative to bring together the legislatures and meetings with Members of the House of Lords and Members of the House of Commons and members of the devolved legislatures. That kind of model, which I believe is being pursued in a more vigorous fashion as a proposal, is something which I would heartily endorse. A whole of governments approach, rather than a whole of government approach, is something which is crucially important. Parliamentary accountability is a key cornerstone of our democracy. Ministerial and intergovernmental discussions, where there has to be respect for confidentiality which are built into the intergovernmental relations, is something where we will want to think exactly what sort of permissions Ministers are looking for from Parliament before they engage in such discussions, and what sort of reporting is made of the progress in those discussions. We can all see that in common frameworks where there is a product which then comes for parliamentary scrutiny, but there are other things in intergovernmental relations which do not have a product, at least not immediately. Parliament and the other legislatures have a right to oversee what the Ministers are doing and to expect accountability for those actions. With one of two noble and honourable

exceptions, the communiques that we have seen, from the JMC for example, are not, if I can say, full of detail, and therefore there is an issue there. I hope that answers your question.

Lord Foulkes of Cumnock: Yes, that is very helpful. Jess, nice to see you again. I will come to you now and I apologise for giving away my Scottish bias and asking Michael first; would you like to comment on this?

Jess Sargeant: Absolutely, nice to see you again as well. The review of intergovernmental relations is really positive. The new structures address a lot of the criticisms of the old structures in the fact that they are more jointly owned. There is a much clearer and fairer dispute resolution procedure. They have a lot of potential to help in the common framework space building on these inter-ministerial groups that are already taking place in places like Defra. Ensuring that they happen in other departments is a really positive development to ensure that Ministers keep talking at a political level. The middle level forum, the inter-ministerial Standing Committee, will be a really good place for those cross-cutting issues related to common frameworks to be discussed. I am pleased to see that group has given an explicit remit in this area. That builds on a lot of the good work that was done in the JMC (EN) in terms of bringing those Constitution Ministers together and that is actually where a lot of the heavy lifting will take place. There is a lot that is positive in there.

Although these structures give the tools for the four governments to work better together, as always there are political barriers. These structures will be really important in ensuring that conversations take place to make it very clear where issues should be escalated if there are disputes and to prevent accidental or unintentional disputes that often arise. We have seen disputes arise over the last couple of years because of poor information sharing, because of the Governments not updating each other on proposed regulatory changes that will have implications for each other and so on. The real challenge will be where, despite all those conversations, the four governments decide, or in this particular case perhaps the UK Government, decide to do something that the devolved administrations object to. If, despite having these conversations and talking these issues through, the UK government says, "Well, we have made a decision and we are going to do X", and then, although these structures can help, they certainly cannot resolve the issue. Fundamentally, there is going to need to be a change in approach from the UK Government if you want to avoid those kinds of disputes. However, they will certainly help in ensuring that those conversations take place and that there is more regular contact at all different levels of Government, and that is really positive.

Just to come in quickly on some of the inter-parliamentary issues that Michael was talking about. We made a few recommendations in our report on the UK internal market. One which I am quite keen on is to have committee chair forums that mirror these inter-ministerial groups to ensure that those structures also get scrutiny and that there is co-

ordination between the four legislatures on those. That is just one of the suggestions that we make but there is a whole range of things as well as the inter-parliamentary forum to more official level working that could also help in that respect.

Lord Foulkes of Cumnock: That is very helpful, Jess. Thank you both very much, indeed.

The Chair: That is a very creative idea, Jess. Thank you very much indeed. We will move now to Lady Mobarik and her question.

Q273 **Baroness Mobarik:** Thank you very much. Beyond the 32 areas where a common framework exists, would you say there are any further policy areas where they would be beneficial? I would be really grateful if each of our witnesses could comment on that, perhaps starting with Ruth, then Michael and then Jess.

Ruth Chambers: I have thought about this, and I would suggest that there are two areas where frameworks would seem most relevant and urgent. The first I have mentioned briefly, and it is on high level environmental ambition. Common frameworks may not be a ready fit for this given our discussions about them being very process heavy but it seems there is certainly no other place where the four nations can gather together and share and agree what high level environmental ambition they are really going to have. At one point there were suggestions of a four-nation approach on environmental principles such as "the polluter pays" and "the precautionary principle". These now seem to have petered out. If common frameworks are not the forum in which to discuss and agree shared high level environmental ambition, we would ask how else will this be done?

The second is on areas where there is an obvious transboundary or internal market issue, and the example that springs to mind is on nature protection. Whilst there are forums that exist already to enable discussions to take place on a four-country basis, such as the JNCC, it has been suggested by some of our partners that there may be merit in exploring the scope for a common framework on nature, especially given the different approaches that are starting to emerge across the UK. From where we sit, we would agree that such explorations would be very timely especially in the build up to the forthcoming International Biodiversity Summit at COP 15.

Michael Clancy: Taking us back to the original purpose of the commentary and to deal with those matters of EU law where we have left the European Union, there needs to be some form of reassessment of how they apply throughout the UK. Within that, it is quite difficult to see, given the amount of work which has been done over many years now to whittle down the areas from 156 to 32, one might, as the committee has already recommended, look back at the 120 areas where no common framework was necessary because there was a pre-existing agreement or a way of working to see if any of those merited a formal common framework arrangement. That is a possibility. There are areas where

there are political issues, and I have mentioned already this morning the common framework on mutual recognition of professional qualifications, but most of the common frameworks which deal with these varied policy areas probably captured the idea or the scope of the common frameworks already. Some people may have suggested that there could be a common framework in relation to set matters of reserved areas under the devolution arrangements. I struggle to find a way in which that would work properly.

Jess Sargeant: I would echo what Michael said and what Baroness Redfern mentioned earlier about those areas where it is currently deemed that no framework is necessary because there are either existing intergovernmental mechanisms or because it is deemed that divergence is not likely. Both those things could change. When we get going, it could be that those intergovernmental mechanisms are not seen as sufficient, and the four parties might agree that something more is needed. Or the circumstances might change and divergence in certain areas that was previously deemed unlikely might become more likely. My answer to that would be to keep those areas under review consistently and the Interministerial Standing Committee and the new IDR structures will be a good place in which the four governments could actively keep that under review and agree if there are areas where more common frameworks are necessary.

The Chair: Lord Garnier, do you want to pick this up?

Q274 **Lord Garnier:** I wonder if I could just come at the same question from a slightly different angle. Let me start by telling you something that you have already said. That is to say that the framework system was designed to translate EU competence across to the four jurisdictions in the United Kingdom and that has been whittled down, as you have pointed out, to the 32 frameworks. We have heard evidence from a number of witnesses expressing anxiety that some of the things which may happen in the future, but are not happening at the moment, may properly be dealt with by the framework system but which do not derive from EU competence. For example, we heard from academics at Queen's University Belfast who said that they worry about the divergence, perhaps, between the United Kingdom and Northern Ireland in relation to human rights and matters of equality. The human rights regime comes from the convention not from the European Union, but do you think there is any mileage or any advantage in adapting the common framework system to include those sorts of non-EU areas of controversy or areas where things need to be done in a consensual way between London, Belfast, Edinburgh and Cardiff? Or do you think that would unpick the purity, if that is the right expression, of the common framework system and also have implications for the devolution settlement?

Conversely, whereas one can think about an example like that where there is no EU origin for the ECHR Northern Ireland UK human rights question, there are certain frameworks which are governing things which are already being dealt with by devolved legislation or devolved powers, but they have been contrary to the policy being brought within the

common framework system. Essentially, what I am asking you is, do you think we ought to stick to the strict railway lines of the common framework system or should we be more thoughtful or more inventive in using the common framework system to adapt to problems which are going to throw themselves up causing internal conflict between the four jurisdictions?

Jess Sargeant: That is a really good and interesting question. I am definitely a proponent of more intergovernmental working in areas like this, but there is a question as to whether common frameworks are the best mechanism for that. Common frameworks were designed to address specific problems and there is something unique about these policy areas. Firstly, in that they were areas where there previously was some level of harmonisation under EU law and therefore that they are devolved areas but there is an expectation that there should be a common or even harmonised policy in this area. It is not particularly politically contentious to suggest that. If you try to create common frameworks for other areas, like education or health, where the pandemic might have shown there needs to be some intergovernmental working, you want to do that quite differently because they are areas where the four governments have had a huge amount of autonomy to do what they want in those areas, and rightly so. That is one key, unique feature about common frameworks.

The second is about the fact that they have implications for the UK internal market. The reason why they were held at the EU level is because they were designed to protect the EU single market and so there is a trade related aspect that also creates a need for consistency, or at least to manage divergence in these areas. On an area like human rights, it is really important, even though it is a reserved area, that there is good intergovernmental working. Similarly, the pandemic has shown the need for better intergovernmental working in areas that were entirely devolved, but I am not necessarily convinced that common frameworks are the right way of doing that. It might be that you build on the existing IDR structures, or you create new novel mechanisms that are slightly different and more tailored to the specific circumstance.

The one area where we should consider adding future common frameworks are new areas of regulation. For example, new technology that, had we stayed, might have been held at EU level; emerging areas. How exactly you identify them is a bit difficult. It would be slightly strange to make a reference to the EU if the EU adds new regulated areas to its competency considering that we have left, but hopefully it might be something that different departments or the four governments can agree through different mechanisms where there is need and there is an emerging area of regulation that fits and is quite similar to some of the areas where there are existing common frameworks and agree to add new ones there.

Lord Garnier: For example, on that last point you mentioned, there may be areas of activity which do not respect borders, like intellectual property or environmental law, where we might be able to quite sensibly borrow things which the European Union is doing but would need to

translate them across through the common framework system.

Jess Sargeant: Absolutely, those are the sorts of areas that you might want to look at and those discussions can happen either through existing common frameworks or new ones.

Michael Clancy: Thank you very much indeed, Lord Garnier, good to see you. Reflecting again on the principles, one of the legs of the principles was that frameworks would respect the devolution settlements and the democratic accountability of the devolved legislatures. That sets the tone for these common frameworks. To then take the leap to drill into devolved areas is something which, first of all, would require the agreement of all the parties involved, which may or may not be an easy thing to achieve. Secondly, it raises certain questions about exactly what would be within the scope of these new common frameworks.

For example, if one were looking at devolved matters, to what end would we include certain devolved matters in terms of common frameworks where there was no intersection with EU law? Which devolved areas are we thinking about? Would they be those relating to, for example, family law matters or something like that? Is that the common framework that one could envisage between the four jurisdictions, or the three jurisdictions, that govern such questions? These and other issues would be quite problematic. Would the grand harmonisation process be the outcome of this? In what areas? Jess has suggested ones where there are more normal problems. However, let us say the EU decided to legislate in certain areas which were novel and produce a directive or regulation which, had we still been members of the EU, one might say would have been the sort of thing we would have wanted to bring into implementation in the United Kingdom, would that mean that we would be keeping pace if we were to have a four nation new common framework on whatever that particular issue is? Let us say it is something in artificial intelligence, because that is the most normal topic which we might easily have to hand, there is an issue there.

On other things in connection with Human Rights Act matters, I would take issue with Jess' characterisation that human rights are reserved. The Human Rights Act is certainly reserved. It is a protected statute under Schedule 4 to the Scotland Act and cannot be changed by the Scottish Parliament, but the Scottish Parliament has enacted legislation in connection with human rights for many years. From the very beginning of its legislative career, the Scottish Parliament has good access in place to create human rights failings. Also, the Scottish Government have embarked upon a significant project, which will come to fruition in the next couple of years, to implement into Scots law issues connected with CEDAW, Convention on the Elimination of All Forms of Discrimination Against Women, CERD, the Convention on the Elimination of All Forms of Racial Discrimination and the UN Convention on the Rights of Persons with Disabilities.

Lord Garnier: Michael, I wonder if I could just interrupt you. As a seasoned observer of the Scottish Parliament and Scottish politics, but

from a professional body standpoint, do you see any appetite in the Scottish political firmament for further expansion of the common framework system or do you see there would be some pushback from Scotland to prevent any further, I use the term loosely, co-operation between London and Edinburgh?

The Chair: Before you answer this, I am very conscious of time. We have about six more questions to go in about 35 minutes. Could we have some short answers from now on, please? Thank you very much indeed.

Michael Clancy: I will certainly curtail myself. I have not polled members of the Scottish Parliament about the kind of question which Lord Garnier has posed me, and therefore, I am not in a position to answer it properly. The other thing is, one would have to look out for aspects of the Act and the Acts of Union in delving into common frameworks which would touch on matters of private right.

The Chair: Can I move swiftly on to Lord Keen? Can I suggest, Lord Keen, that we put this question to the IFG and to Ruth?

Q275 **Lord Keen of Elie:** Good morning. The question I have is directed to whether there is sufficient focus on the common frameworks programme and sufficient status conferred upon it within Government but, in light of the discussion that has already taken place, could I perhaps focus it more sharply in this way. Do you consider that the UK Government and the devolved governments are simply going to regard the common frameworks as a process for dispute resolution where there is divergence, or do you believe that they can use them as a mechanism for joint policy development?

Jess Sargeant: I want to be optimistic and say that they could be a very good opportunity for some form of joint policy. Actually, it is quite opaque whether the four governments are working together because they have agreed a common approach or whether they are working together because the devolution settlement is complex and certain issues might be reserved. There are some good examples of the four governments having a jointly agreed strategy. I mentioned one earlier in terms of the movement of non-commercial pets and some cracking down on things like puppy farming. There are other examples of the four governments agreeing to add folic acid to bread. There are ways in which the four governments can all see value in working together and having a common approach, because that approach is more likely to be successful if it is done on the scale of the whole of the UK or, in some cases, Great Britain.

Working very slightly between departments, I think some departments, like Defra, are much better at this kind of joint working and will use common frameworks as an opportunity to continue that and bring that out into the open a bit. Other departments perhaps need a bit more help there, but, at a political level, I am optimistic that there might not be a huge amount of lip service talked about the merits of working together and the value of having joint policies for an official level. There are many people that are convinced of the value of it and are working very hard

with their counterparts in different Governments to try and create some kind of joint strategy and common policies.

Lord Keen of Elie: Thank you, Jess. Would other witnesses like to comment on that as well?

Ruth Chambers: I would like to agree with Jess' assessment of the potential for common frameworks to be used in that way, but one of the barriers or the inhibitors to them being used in the way that we are talking about is the lack of transparency and lack of engagement. That would really help them become more than just vehicles for discussing divergence. There are some upcoming issues that would allow the common frameworks process to be tested in this way. For example, currently in Scotland, a Scottish water company is keen to instil a ban on wet wipes involving plastics. The reason is because they are an environmental hazard; they cause marine and coastal pollution, and they block our sewers. However, Scotland would not be able to take forward such a ban without the consent and the agreement of the other governments. The common framework on resources and waste potentially allows an opportunity to debate and discuss and agree those practical sorts of examples. It has not been used to do that to date, but that is just one example of how that process could lend itself to some real practical world improvements.

Lord Keen of Elie: Thank you.

The Chair: Can we move on to Lord Hope now and a slight change of emphasis?

Q276 **Lord Hope of Craighead:** Yes, it is actually a rather precise question. It brings us to the interface between common frameworks and the Internal Market Act, and the focus is on the exclusion process which was announced on 9 December last year. How important is it that the text of the exclusion process should be set out in the relevant common frameworks themselves?

I should explain that we have been trying to explore the extent to which they are being referred to and, so far, none of the frameworks contain any reference to the exclusion process at all. When we put the issue to the Minister, he said, it was "Not deemed necessary that they should do that". He said it had been agreed that they could sit, as it were, separately from the frameworks. We think there may be a more difficult political issue with the devolved administrations than he has revealed but the question really is how important do you think it is that we should press for the text to be referred to in the frameworks or contained in the frameworks themselves? Jess, could I come to you first, and I will come back to Michael after you have spoken.

Jess Sargeant: The priority, more than where the text sits, is that the exclusion process is used and is followed and, where there is a legitimate case for one, that all the four governments are open to that. As you say, a reference to that in the common framework itself could help in making it very clear that this is an option available to the four governments if

there is an instance of divergence that might be caught under the market access principles where an exclusion might be necessary or considered. I do not know if that is particularly helpful, but it is important that it is clear that that is an option.

Lord Hope of Craighead: I think the key point that troubles us is that the process has to be followed. It is quite a precise process. You have to have agreement with all the various agencies within the devolved administration itself and so on. You have to explain the position and the fear is, unless the process is followed, the little window in the Internal Market Act will not be available. That is the worry. Are you confident that it would be made to work without an express reference in the framework?

Jess Sargeant: To be honest, I am quite convinced by your argument and by your logic there. There is a risk that this process could be somewhat forgotten if it just sits somewhere in a policy paper on GOV.UK. Having said that, it is something that I know the devolved administrations are very conscious of and will want to push for. Certainly, I do see the value of including that in the common frameworks, but the most important thing is that it is used.

Lord Hope of Craighead: Make it work, you are quite right.

Michael Clancy: I am quite convinced that putting the process into the document would not only be an aide memoire but would have a positive and constructive value to the document. Matters of process are very important, particularly when dealing with four governments each with their particular political perspectives and process, as set out in the written statements from Mr O'Brien and Lord Greenhalgh on 9 December, and are essential to making sure that the interface between common frameworks and the Internal Market Act works properly. As a result of the evidence which the committee heard in December, we were given an insight into how dealing with the Internal Market Act was providing a block on moving forward and that when the statements were made, of course, the block was lifted. We have seen the result of that with several common frameworks being put out for parliamentary scrutiny and further work since December, right up until last week. It is important. It is something which will ensure that the law is complied with and that even though it is, in your words Lord Hope, "A political commitment", it is a political commitment which is always before the politicians.

Lord Hope of Craighead: Thank you very much, Michael. That is extremely helpful.

The Chair: Thank you, Lord Hope. Can I move to Baroness Randerson now?

Q277 **Baroness Randerson:** Good morning, and thank you very much, Chair. My question, which is specifically to Michael and Jess for response, please, relates to the impact of the Subsidy Control Bill on the relationships between governments and the operation of common frameworks. Common frameworks are based on a mix of equalities and

discussion. The Subsidy Control Bill makes no pretence of that and gives the UK Government all the cards basically with the ability to refer decisions made by the devolved administrations and subsidy schemes. It gives the UK Government the power to refer that to CMA and so on. What do you think the outcome will be of this for the operation of common frameworks and for the overall relationship between governments beyond, of course, that it looks very much as if devolved administrations will not be giving legislative consent for this? Does Michael want to start?

Michael Clancy: I will, thank you very much. It is an interesting question and, of course, very topical as the Subsidy Control Bill is coming up for its report stage on 22 March. You are quite right to identify that the Senedd Cymru has already withheld its consent from this in relation to this Bill. There is a mighty struggle going on in relation to legislative consent from the Scottish Parliament.

The extent to which this Bill has an impact on devolved powers is, of course, quite obvious when one looks at the Bill and also the paper by the adviser to the Constitution Committee in the Scottish Parliament, Dr Christopher McCorkindale. He has examined very closely the problems which the Bill creates, particularly in relation to the new judicial review process, which was given to those who want to attack or remove the legislation passed by the Scottish Government through the Scottish Parliament in relation to subsidy matters.

Normally there is a process for dealing with a judicial review or a devolution issue which would seek to have a declaration that Scottish Parliament legislation is outside the legislative competence of the Parliament. That process is embedded in the Scotland Act 1998, but the Subsidy Control Bill creates a new way of dealing with that which is by a judicial review to the High Court or in Scotland, the Court of Session. Dr McCorkindale presents a very persuasive case that this should be changed and that the existing arrangements for dealing with legislation which is outside the competence of the Parliament or the executive competence of Ministers under the Scotland Act should be persistently the only way to deal with that. That, of course, will cause difficulties between the governments and the Economy and Fair Work Committee in the Scottish Parliament is, it is fair to say, not happy with the position and, if you want, I can send a link to their deliberations.

Baroness Randerson: That would be helpful, thank you. Jess?

Jess Sargeant: I would start by caveating that I am not an expert in subsidy control nor the Bill itself, but I will refer to my colleague Tom Pope who has done a huge amount of work on this. What I am about to say is very much inspired by the work that he has done. Obviously, subsidy control was a contested area; it is an area that the devolved administrations thought was devolved and the UK Government argue was reserved. Then in the UK Internal Market Act there was an explicit reservation put in, so it is already quite a contested area here, which makes it difficult going forward.

The other thing is that the UK's new subsidy control regime will include things like agriculture and fishery subsidies, unlike the EU state aid regime, so that is obviously where the relevance to common frameworks comes in here. The challenge of that is that it creates an extra layer of governance set by the UK Government that is legally above the common framework, which is just a voluntary agreement as opposed to a legal statute like the Subsidy Control Bill will be.

The point you raised there about the UK Government having the powers to refer the devolved administrations to the CMA and such like, what my colleagues have recommended is actually that the CMA itself should be given more powers to make regulations, to initiate its own investigations and refer different governments to itself. I think that could be really helpful in ensuring that it is a neutral, independent body who is initiating these investigations rather than the UK Government. In order to do that well, there would have to be some changes to the structure of the CMA itself in ensuring that it is a body that equally serves the different nations within the UK. There is a strong case for that anyway now that the Office for the Internal Market will be sitting within the CMA as well. There would need to be some changes to how that operates and how that is governed, but that is potentially one of the solutions to make this area less contested and to make it function better.

Baroness Randerson: Thank you very much. Lord Thomas, would you like to follow on from that?

Q278 **Lord Thomas of Cwmgiedd:** Can I follow on quickly and, without going over that ground, ask a more specific question? How should the Bill's interaction with relevant common frameworks be managed going forward? I had particularly in mind for this the Agricultural Support Framework and possibly procurement and the lack of a framework for regional aid? Can I ask you first, Michael?

Michael Clancy: Thanks very much indeed, Lord Thomas, for that. It is not something I have focused on in my preparation, but clearly the relevant Scottish Minister, Mairi Gougeon MSP, cabinet Secretary for Rural Affairs and Islands has written to Mr Eustice, the relevant Scottish Government Minister, to explain the difficulties which the Subsidy Control Bill will cause in relation to agriculture because we have already worked on a common framework for agricultural subsidies. I do not have an answer to the question as to how this will work in practice but, clearly, it presents a significant problem which needs to be fixed. I do not have a solution, but I am sure that the UK Government and the Scottish Government, through proper negotiation on these matters, should be able to produce one.

Lord Thomas of Cwmgiedd: Jess, do you have anything to add?

Jess Sargeant: My proposal is partially, in what I said before, in the powers of the CMA and thinking about the CMA's interaction with that common framework; whether there are opportunities to have a discussion between the four governments that also involves the CMA

around those principles around subsidy control to ensure they are flexible enough to allow the four governments to reach agreement on the appropriate schemes through the common framework, and that the subsidy control regime is not a barrier to that where there is agreement on how those things will work in practice.

Lord Thomas of Cwmgiedd: Thank you both very much. I will not press it further in view of the time.

The Chair: Thank you so much. Could I call Lord Bruce next because I know Lord Bruce has a rather tight timetable this morning. Apologies to Lady Ritchie. I will come to Lady Ritchie next. Lord Bruce?

Q279 **Lord Bruce of Bennachie:** Thank you. All your answers have been extremely interesting and very informative and really helpful to the committee. There is the strange position of the Crown dependencies, which effectively the UK Government represents, that once they sign they are then bound by those treaties. Should the Crown dependencies be consulted in the process of negotiating such treaties, and indeed, to what extent do you think that is happening? We have written but have not yet had answers, and it is not clear to us whether the Crown dependencies are being involved. Given what has just been said about the devolved administrations, is there a point of concern here? It will be interesting to hear from you, Jess, what your view is on that.

Jess Sargeant: Unfortunately, I do not have particular expertise in this area, so I am not sure I really have a lot to say on that matter.

Lord Bruce of Bennachie: To be fair, the United Kingdom Crown dependencies probably do not get much attention, but there is a potential here for them to be marginalised or excluded. They are trying to find out whether or not they are being properly treated and whether they are being engaged or, alternatively, if they are being engaged, whether there is something to be learnt there as to how the devolved administrations might be treated. Maybe it is something we could ask you to come back on? Do any of the other witnesses have anything to add?

Michael Clancy: I could drop in a couple of words on this, of course. We know that the situation in Scotland—and it is like that in the other devolved areas—is set out in the Scotland Act 1998, Schedule 5, paragraph 7: “international relations are reserved to the United Kingdom,” but the implementation of those international instruments is something which the devolved administrations and parliaments have to carry through. There is an analogy to be drawn there between the position of the devolved administrations and the Crown dependencies. There is something in the name which tells you what that is. Of course, they are dependencies and dependent upon the actions of the Crown. Therefore, should they be involved? We have consistently argued that the devolved administrations should be involved in relation to those agreements which are being made which touch on devolved matters. Similarly, by extension of that position, one would argue that the Crown dependencies should also be involved where it touches on a dependency

competency. I hope that that gives you an idea of a logical progression which one can make in terms of the relationship between the Crown dependencies and the Crown when the Crown is making these international agreements.

Lord Bruce of Bennachie: It looks like a divergence between constitutional law and politics, which I think is a feature of the whole of this process. Thank you very much.

Michael Clancy: Precisely.

Lord Bruce of Bennachie: I do not think we should dwell on that too much further.

The Chair: Thank you, Michael, that was an extremely helpful answer. And thank you, Jess, actually. It is something that we would like you to continue to think about because it is certainly something that we would want to address in our report. Lady Ritchie, thank you for your patience and I now turn to you.

Q280 **Baroness Ritchie of Downpatrick:** We have been taking evidence, as you know, from a wide range of individuals and my question concerns Northern Ireland and the Republic of Ireland. We have taken evidence from Queen's University, Belfast, and from academics who have offered their evidence without us soliciting it, to say that they are concerned that in the compilation of common frameworks, officials, particularly in the DAERA Department in Stormont, are not consulting on cross-border issues with Irish Government officials. Should the UK Government prioritise and take responsibility for engaging with Irish officials on frameworks that involve a cross-border element on the island of Ireland, bearing in mind that there is a requirement to do that under Strand Two of the Good Friday Agreement in terms of North/South co-operation? Firstly, Jess and then Ruth.

Jess Sargeant: As you say, certainly the ideal scenario would be that these issues are dealt with through those North/South institutions like the North South Ministerial Council. We obviously know that there have been some political challenges to the operation of those. There are now legal challenges against some of the political challenges, as it were, to ensure that those meetings continue to happen. The ideal scenario is that the North/South dimensions are managed through these institutions. There are obviously other institutions, like the British Irish Council, where the devolved administrations can also attend that could be really useful. Perhaps the UK Government should be making efforts to ensure that discussions take place and that those meetings are initiated. That might make it politically easier to engage on these issues on a whole UK-wide and Republic of Ireland basis rather than purely on a North/South basis. Using those institutions and ensuring they meet regularly is really important.

The other thing we must also consider is post-election, if we are in a situation in which the Executive is not functioning properly, how other

parties are going to ensure that those discussions on regulatory issues that do have implications for North/South co-operation continue to happen. Obviously, it is not a place anyone would like to be, but I think it is perhaps something in which there might need to be some contingency planning to prevent problems further down the line.

Baroness Ritchie of Downpatrick: Thank you, Jess. Ruth?

Ruth Chambers: I very much agree with what Jess has said, particularly on the need for contingency planning should there be either an absent or not a fully functioning Executive and what that would mean for those engagement mechanisms.

For a matter such as the environment, which is a devolved matter and which obviously crosses boundaries, then that cross-border engagement that you mentioned, Baroness Ritchie, is really important and we believe must be prioritised. We have to start from where we are starting and I understand from Northern Ireland stakeholders that there has not been sufficient engagement with either MLAs, assembly committees or broader stakeholders on frameworks and that has, to a degree, undermined some trust in their development. Making sure that whatever forum or mechanism is used, a more inclusive approach in which Northern Ireland voices are involved in discussions on cross-border matters is really, really important, and there is a need, obviously, to reflect and respect the devolution settlement and principles. This can be done. A good example of institutional policy development in which Northern Ireland stakeholders have been effectively engaged by the UK Government is the establishment of the new oversight body, the Office for Environmental Protection. This exercise provides a number of useful lessons on how to engage stakeholders in complex, fast-moving and sensitive policy development which could perhaps be used to improve future cross-border dialogue.

The Chair: Thank you so much for excellent answers. Our final question from Lord Garnier.

Q281 **Lord Garnier:** Jess, do you think that the Cabinet Office is sufficiently staffed both to drive forward the policy, but also to get its head round the detail of the Common Frameworks Programme?

Jess Sargeant: It is something that we raised in our report on the UK internal market about the need for central co-ordination of the Common Frameworks Programme, but also its intersections with the UK internal market, the Northern Ireland protocol and new Brexit opportunities as well. At the moment I am not convinced that there is that central oversight in the Cabinet Office. We have seen the broader common frameworks team that was looking across the whole piece being wound down slightly, and so that is now much smaller. We have seen responsibilities split further now that areas like the Northern Ireland protocol is managed in the FCDO. A lot of the work on common frameworks has gone to departments. The new Brexit Opportunities Unit in the Cabinet Office perhaps does not have the capacity to consider the

devolved or common framework implications of some of the new policies that they are working on. We saw that quite clearly in the *Benefits of Brexit* paper, which made few references to areas that were devolved or the implications for common frameworks and such like.

I think there could be more done to ensure that there is capacity in the Cabinet Office to have that look across the piece. Another strong reason for that is that the Interministerial Standing Committee, under the new IGR review, will be given responsibility to oversee common frameworks. Michael Gove is essentially the IGR Minister in the UK Government and so will have responsibility for that. He needs to ensure that he has significant support at an official level to help inform him in those discussions and make those decisions, and to mirror those IGR structures. Again, there is a slightly complicated arrangement there in that he is Minister for IGR, which sits within the Cabinet Office, but his main role is in the Department for Levelling Up.

I think a lot of responsibilities are quite dispersed at the moment and I am not convinced there is anyone looking at divergence across the UK, looking at the Common Frameworks Programme as a whole and seeing how it develops, or picking out key themes and commonalities between different departments or different policy areas. We would certainly make the case that there could be more done to ensure that there is that kind of central co-ordination and oversight.

The Chair: Thank you very much, indeed, Jess. That is a reply which strikes a very strong chord with us as you can imagine, but you have expressed it very powerfully there and it is extremely helpful indeed. Can I just say on behalf of the committee, thank you to each of you? What we have learned this morning has been extremely informative, full of insight, full of experience and expressed concisely and helpfully, and of enormous benefit to us as we begin to think about our own conclusions and how we bring things together in a constructive and productive way going forward.

I am very sorry to have been such a strict head teacher about the time. We started late and I think it put us under a bit of pressure. I particularly apologise to Michael for that. Can I just say again, thank you so much. We will make very, very good use of your different perspectives and the information that you provided for us today. I am grateful for everything you have done, in fact, across the past two years to inform and communicate the work that we are doing and the significance of the common frameworks themselves. With many thanks, I can now declare that this session is now closed. Thank you very much indeed.