

# Public Administration and Constitutional Affairs Committee

Oral evidence: [Common Frameworks, HC 1138](#)

Tuesday 22 March 2022

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Members present: Mr William Wragg (Chair); Ronnie Cowan; Jackie Doyle-Price; John McDonnell; David Mundell; Lloyd Russell-Moyle; Karin Smyth; John Stevenson.

Questions 1-115

## Witnesses

I: Rt Hon Mr Jacob Rees-Mogg MP, Minister of State for Brexit Opportunities and Government Efficiency, Cabinet Office, and Neil O'Brien MP, Parliamentary Under-Secretary of State (Minister for Levelling Up, the Union and Constitution), Department for Levelling Up, Housing and Communities.

## Examination of witnesses

Witnesses: Rt Hon Mr Jacob Rees-Mogg MP and Neil O'Brien MP.

Q1 **Chair:** Good morning and welcome to the Public Administration and Constitutional Affairs Committee. This morning the Committee will be inquiring into common frameworks, a tool developed to align policy between the UK Government and the devolved Administrations in several areas following the UK's departure from the European Union. We will ask questions on the common frameworks programme as a whole, look at cross-cutting issues that are relevant to most, if not all, common frameworks, and look specifically at the Public Procurement Common Framework ahead of the procurement reform Bill currently being developed in the Cabinet Office.

Our witnesses today are Jacob Rees-Mogg, the Minister for Brexit Opportunities and Government Efficiency at the Cabinet Office, and Neil O'Brien, the Minister for Levelling Up, the Union and Constitution at the Department for Levelling Up, Housing and Communities. Good morning to both of you. Will you introduce yourselves for the record, starting with Jacob?



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**Mr Rees-Mogg:** I am Jacob Rees-Mogg, Member of Parliament for North East Somerset and, as you said, the Minister for Brexit Opportunities and Government Efficiency.

**Neil O'Brien:** I am Neil O'Brien, MP for Harborough. One of my roles is the central co-ordination of common frameworks.

Q2 **Chair:** The first question is for Mr O'Brien. When the common frameworks were first announced in 2017, it was stated that they would set "common goals, minimum or maximum standards, harmonisation, limits on action, or mutual recognition". How many of the common frameworks contain that kind of information and policy detail?

**Neil O'Brien:** The core of the common frameworks is about managing the processes of divergence and creating processes for the different Governments of the UK to talk together in an orderly way so that we can allow the desired benefits of devolution, which are that there should be divergences between different places if that is what different Governments want to do, but that that should be done in an orderly way where we avoid unnecessary surprises and the difficulties that that creates, and where we avoid the different Governments not acting in a joined-up way, so you do not have one Department saying yes to something and then discovering later that another Department within that Government does not agree. So the core of what they are about is managing in an orderly, civilised, sensible and grown-up way the processes of working in areas where the powers that have returned from the EU intersect with the devolved competence. That is the core of what they are about.

They are all slightly different, depending on what the subject is, and they are ultimately owned by the Department that is responsible. Our role at the centre is to try to make sure that we are quality assuring them, doing things in a reasonably consistent way, and going through the same processes of scrutiny and public consultation for all of them. Each of them sets out different things depending on what the subject is, but they all have those contents, and they say who is doing what, what the processes are, how things are escalated and resolved if there is a dispute, and whether you will agree to this and so on and so forth. They all contain that kind of information. That is the core of what they are about.

Q3 **Chair:** You mentioned an orderly way. Is that about the relationships between the devolved Administrations and the UK Government? Is that a fair way to characterise it?

**Neil O'Brien:** That is not an unfair characterisation.

Q4 **Chair:** The original stated ambition seems to have been more prescriptive, perhaps, than the frameworks have become. I am not being unkind in describing them as perhaps a little vague, but is that deliberate vagueness so that they will fit, whether or not the relationships are good or bad at any particular time?

**Neil O'Brien:** I would not say that they are vague. They are specific, but what they do not attempt to do is resolve every possible issue in the

future. They are setting up the process to resolve the issues. One reason why some people look at common frameworks and say that it is a bit of a dry issue is that they are setting out the framework through which issues, which might in the future be controversial or very important to different Governments, will themselves be resolved. It is when you start to put things through the frameworks and operate on all these different issues that you start to get to more specific, more political types of questions, if I can characterise it that way.

**Q5 Chair:** Mr Rees-Mogg, if someone wanted, for whatever reason, to understand the current policy, processes and standards for public procurement across the United Kingdom, how useful would reading the Public Procurement Common Framework be?

**Mr Rees-Mogg:** The common framework in and of itself has been useful because, as the process has been worked through, Wales and Northern Ireland have decided that they would like to continue with the procurement proposals of Her Majesty's Government rather than developing their own, which they are now entitled to do. To Mr O'Brien's point, having these discussions helps to inform policy and decision making without being unduly prescriptive.

**Q6 Chair:** Do you have any examples? Obviously, you have only recently started in your role. Other than the Northern Ireland example you have given, is there anything that has struck you as showing it taking effect?

**Mr Rees-Mogg:** As I said, both Wales and Northern Ireland have decided to join in the public procurement with HMG rather than doing it separately. Scotland has decided to do it separately. That came up through the discussions within the framework.

**Q7 Chair:** Mr O'Brien, it has been suggested that the common frameworks have essentially become process documents setting out how information might be shared and what discussion will take place. Would you agree with that assessment?

**Neil O'Brien:** They certainly all do set out clear processes.

**Q8 Chair:** Do you think that the common frameworks have been downgraded?

**Neil O'Brien:** It is a very ambitious programme, and I think it is quite a good example of the Governments managing to work together in a grown-up way. It is clear that what all of our common constituents want is to see their Governments working together in the mutual interest in a sensible way. Along the way to creating the common frameworks, there have been some potentially quite contentious issues that we have been working on about how they interact with the Northern Ireland protocol and the trade and co-operation agreement, and how we handle international agreements more generally, the interactions with UKIM and so on.

Despite the fact that these are quite political issues, we have managed to secure agreement on those cross-cutting types of issues, which we published in November last year. I think it has been quite an ambitious



thing, just in terms of the sheer scale of cross-departmental effort in all the different Governments to create these things, to take them through an extensive process of stakeholder engagement and parliamentary scrutiny, and to resolve quite political issues. I think it has been quite an ambitious programme that has been a success.

**Q9 Chair:** I think a danger of a session on these topics is that it can be seen as esoteric, to say the least, but if we are going to try to home in on the relevance and importance of these frameworks, is there anything that you would say that could tell business and individuals how the UK-wide economy will function and develop post our leaving the European Union, with reference to these common frameworks? That is a question for either of you. We are eight minutes into the session and it is fair to say that my questions and the answers that have come have been perfectly satisfactory, but we can get lost in process, so what is the overarching vision, perhaps?

**Mr Rees-Mogg:** The frameworks are process; they are not visionary. A visionary framework would be quite risky, I think, and not necessarily beneficial. What is the vision in terms of Brexit opportunities? It is that we should have an economy that is more efficient, that we should have the supply-side reforms, and that we should get rid of the unnecessary and often gold-plated regulation that the European Union imposed upon us. Very often we were outvoted in the Council of Ministers and we had things that came through by qualified majority voting, or that we abstained on because we knew we would lose at that stage. It is about freeing up the economy and then working with the devolved authorities, who have choice in these areas. They will be able to make different choices according to the competences they have. There is a wonderful flow of power from Brussels not just to Westminster, but also to Edinburgh, Cardiff and Belfast.

**Q10 John Stevenson:** Mr Rees-Mogg, the Public Procurement Common Framework was identified as being necessary in 2017, but it did not happen until 2022. Why was that?

**Mr Rees-Mogg:** There were all sorts of things. There was a change of Government in 2019, there was no majority at that point, there was a general election, again, in 2019, and then there was covid. For all sorts of reasons this took time. The procurement Bill, which will be coming forward, if parliamentary time allows, in the next Session, was essentially the focus of minds to try to ensure that the common framework was completed with regard to that. As I mentioned, Wales and Northern Ireland decided in the process of the common framework's development that they would join in with that Bill.

**Q11 John Stevenson:** Mr O'Brien, similarly, the common frameworks programme was identified as being important when the UK left the EU in 2020, but it has not been finalised until now. Again, you would have thought it would have been ready for our departure.

**Neil O'Brien:** In addition to the points that Jacob just made, as well as those cross-cutting political issues that needed to be resolved that I have already alluded to, on the TCA and the protocol and the internal market



Act, various other things were going on at the same time. There was the intergovernmental relations review. Northern Ireland's initial involvement in the programme was limited to providing factual information and analytical input until June 2020. It was not until then that the Northern Ireland Executive was able to formally endorse the programme.

There are lots of structural factors, and then there is the sheer business of creating these frameworks and then agreeing them across all four Governments. They go through a process of initial creation. There is a revision—you go around all the Governments. You then have a process of stakeholder engagement and further improvement. You then go through the process of parliamentary scrutiny. When you read each of them, they are quite long documents and there is a process. When you are trying to get something right and make sure that everyone is happy with them, across all the four Governments and not just one Department in each of those Governments, inevitably, there is something about the process that is going to take some time to do, but I think we have made really good progress and we are coming towards the end of establishing all these frameworks now.

**Q12 John Stevenson:** I have a series of administrative and practical questions for you, Mr O'Brien. Who co-ordinated all that which you have just set out?

**Neil O'Brien:** In terms of the UK Government, there was a central unit in the Cabinet Office. That central unit will continue to exist. It reports in the first instance to me and then to my Secretary of State, Michael Gove. That unit effectively held the ring to help each of the different Departments—each of these frameworks is owned by its Department—to take part in a process that involved all four of the Governments. That central unit in the Cabinet Office was, from the UK Government point of view, doing the co-ordination.

**Q13 John Stevenson:** So the UK Government co-ordinated. Was a particular civil servant responsible?

**Neil O'Brien:** There was a whole team of people. It was about 12 people, I think. It will now be a unit of about five people in steady state, because once we are no longer creating the frameworks but monitoring, evaluating and maintaining them, we will need a smaller amount of resource.

I will use this opportunity to pay tribute to my predecessor, Chloe Smith, in her role as Minister for the Constitution, and to that civil service team. It has been a monumental undertaking on their part within the UK Government and, indeed, on the part of their colleagues in all the devolved Administrations—there has been a huge amount of input. I also pay tribute to my equivalent Ministers in the devolved Governments. We have had a very civilised and sensible working relationship.

**Q14 John Stevenson:** Going forward, which Department will have responsibility for co-ordination and for the monitoring of the common frameworks?



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**Neil O'Brien:** The central function will be with DLUHC and that team will continue to sit in the Cabinet Office. The reason for that is that you then have the benefit of them being able to join up with other cross-Whitehall co-ordination processes in the Cabinet Office, but also ultimate responsibility into us, as Michael is the Minister for Intergovernmental Relations. What that team responsible to me and to Michael is doing is helping each Department to make sure it is on top of and continuing to maintain these frameworks.

Q15 **John Stevenson:** Which Minister will be primarily responsible?

**Neil O'Brien:** In the first instance me.

Q16 **John Stevenson:** Who will represent at Cabinet?

**Neil O'Brien:** Michael Gove.

Q17 **John Stevenson:** Looking ahead, given the complications that you have referred to in terms of co-ordinating everything, what lessons can be learned from the future working of this common framework and the co-ordination between the devolved Governments and central Government?

**Neil O'Brien:** That is a really good question. I take some quite positive lessons from it. In the context of the intergovernmental relations review, it has shown the benefits of taking the time to ensure that we do not surprise one another, as well as having an orderly process of trying to do as much as possible at working level, going to senior official level and then junior ministerial level if we need to. I would take from it quite positive lessons about the possibility of orderly co-operation between the UK Government and the devolved Administrations, and the benefits of giving people time to ensure that everyone within those Governments has the chance to have their say. For example, in Northern Ireland that is obviously quite a sensitive process; you have the Deputy First Minister and the First Minister, who need to sign it off. You need to have everybody happy with these things. The lesson I take is about giving ourselves the time to do these things well.

Q18 **John Stevenson:** You have partly explained the complexity of it all, but do you think the common frameworks were produced in a timely manner?

**Neil O'Brien:** I do not see that there was some sort of shortcut that we could have pursued that would have left everyone feeling that they had had their chance to have their say on these things. As I say, there was a lot of politics, as well as a lot of administration, in the formation of the programme—it is not complete yet—but I do not think there was an obvious thing we could have done that would have made everything happen overnight.

Q19 **John McDonnell:** I apologise to you both; I am going to ask a couple of questions and then I will have to leave due to a prior engagement—it won't be a reflection on your answers.

Mr O'Brien, I was wondering about the current status of the common frameworks. If I have got it right, 26 common frameworks have been



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provisionally approved by Ministers and published for parliamentary scrutiny. There are six remaining. Can you update us on where we are at with that? Also, are there any issues with the six that still have not been finalised that are delaying them? When do you expect to see them published, and when will they be available for scrutiny?

**Neil O'Brien:** To take a step back, we originally identified 152 policy areas where things were coming back potentially intersecting with devolved competence. We agreed, across all four Governments, that 120 of those did not need a common framework. You can see in the frameworks report, which we published in November, a list of exactly why we all agreed that we did not need those things.

So we needed 32 frameworks. Of those, 30 are in operation, 29 of them on a provisional basis. One, on hazardous substances planning, has received final confirmation and been completely implemented. Of the 29 frameworks that have been provisionally agreed, 26 have been published for scrutiny. The majority of them are still undergoing parliamentary scrutiny; I think six of them have completed scrutiny. That leaves us with two final frameworks that are undergoing development, prior to provisional confirmation. Those are the frameworks on the mutual recognition of professional qualifications and on the services directive.

Q20 **John McDonnell:** Which is the most important?

**Neil O'Brien:** All these things, in their field, are hugely important. Rail technical standards are very important if you are running a railway. Plant health is very important. It is not that there are some that I would identify as low stakes.

Q21 **John McDonnell:** Let me turn to the public procurement framework, Mr Rees-Mogg. It sets out that the Government have not diverged significantly on this issue since leaving the EU. The UK Government are currently drawing up legislation on public procurement. Do you think that will increase divergence? If so, what sort of divergence do you think will occur?

**Mr Rees-Mogg:** Yes, I think it will increase divergence. It will increase divergence to make procurement simpler and less costly and to encourage small and medium-sized enterprises to be involved in the process. That is the aim of the Bill that will be brought forward, parliamentary time allowing, in the next Session.

Q22 **John McDonnell:** Where do you think the divergence will be? What sort of elements?

**Mr Rees-Mogg:** The EU rules are extremely prescriptive, and the advertising of the rules and the whole process of applying favours larger companies. We want to get to a simpler system that will make it easier for smaller companies to apply. We also want to have a very clear pipeline, because if people know what the pipeline is, they will know whether they have the resources necessary to make a bid.

Q23 **John McDonnell:** It is our understanding that UK, Welsh and Northern



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Irish Governments have co-ordinated this in producing a Bill. How is that process working?

**Mr Rees-Mogg:** That process is working well. Draft clauses for about half the Bill have been produced so far; there is another half of it to be produced in draft. The instructions to the Office of the Parliamentary Council have mainly but not entirely been sent. There are two or three outstanding.

Q24 **John McDonnell:** So, for the devolved areas, will you legislate through a consent motion or devolved Bills?

**Mr Rees-Mogg:** When it comes forward, the Bill will be covered by the Sewel convention in relation to LCMs. LCMs will be asked for where appropriate; obviously, that depends on the final wording of the Bill. Yes, I would expect LCMs to be requested.

Q25 **John McDonnell:** Right, okay. What consequence will that have for the common framework?

**Mr Rees-Mogg:** As I said, an interesting thing about the common framework was that that was one of the reasons why Wales and Northern Ireland wanted to join HMG—because, in the discussions, they were sympathetic to the overall aim of HMG. It will be within the common framework. The common framework continues to provide a forum for discussion if there are divergences, so that people know. That knowledge is very important. The procurement Bill will take the normal time to get through Parliament, and there will then be six months before its provisions come in, because people obviously need to plan and prepare; procurements that have started under the old system will continue under the old system. That allows you to have plenty of time for any conversations you may need under the common framework.

Q26 **Karin Smyth:** Staying with you, Mr Rees-Mogg: in your new role as Brexit Opportunities Minister, one of those tasks is to put forward suggestions for removing huge swathes of retained EU law from the domestic statute books. We understand that the Cabinet Office is currently preparing legislation to do that. Can you confirm that?

**Mr Rees-Mogg:** Yes, that is correct.

Q27 **Karin Smyth:** What procurement-related regulations have you identified for removal?

**Mr Rees-Mogg:** The two Bills are different. There is the procurement Bill, which will set out our own UK-style procurement legislation, and there is the retained EU law Bill, which will look at the total of EU law within our system. We have so far identified just under 1,500 pieces of law—be they primary or secondary legislation, directives or regulations. The Bill will look at those, how they take effect in UK law and how they may be amended in UK law as a separate process from procurement. There will be a new procurement scheme for the whole of the United Kingdom. I can't announce today precisely what the Bill will contain, but it will be our own system.





**Q28 Karin Smyth:** Would you expect the removal of that legislation to have an impact on the framework, when it comes forward? Can you give us a bit more on that?

**Mr Rees-Mogg:** Not really, because it has been discussed in the framework. The framework has discussed procurement. That is part of the benefit of the framework—having those early discussions about what the proposals are. It is about information and keeping people informed as to what they can reasonably expect.

**Q29 Karin Smyth:** And by “people”, you mean the devolved Administrations.

**Mr Rees-Mogg:** Yes.

**Q30 Karin Smyth:** Do they have any role in the future of this bonfire of regulations and that discussion?

**Mr Rees-Mogg:** It depends on the regulations in question. That is the separate Bill—that retained EU law Bill. It depends on whether the regulations are devolved or retained. Obviously, on any devolved regulations, the devolved authorities will have authority over them and be able to make choices; in retained ones, HMG will make decisions in the normal way.

**Q31 Karin Smyth:** Just for clarity of the record, who will make the decision on which regulations will be devolved and which will not?

**Mr Rees-Mogg:** It is by and large a matter of law.

**Q32 Karin Smyth:** At UK Government level?

**Mr Rees-Mogg:** No, it is a matter of our own domestic law as to whether something is devolved or reserved.

**Karin Smyth:** But with all respect, we are in a different situation, with so many regulations coming back from Europe, for that discussion. I would imagine that there are some discussions going on with the devolved Administrations as to their view of that and perhaps the UK Government’s view. Is that a correct assumption?

**Mr Rees-Mogg:** There will be where they are under relevant frameworks. That is what the frameworks are there for.

**Q33 Karin Smyth:** Okay; we might come back to that. Mr O’Brien, on the areas of the common frameworks that have already been produced, how much divergence has there been?

**Neil O’Brien:** The frameworks are relatively new. A lot of them are still going through scrutiny, as I mentioned earlier. One example that I might draw your attention to is single-use plastics. We recently had our first instance of a situation where one of the Governments—in this case, the Scottish Government—wanted to use an exclusion under the UKIM Act as part of the framework. That came up through the processes set out in the frameworks and is currently going through the works. The UK Government has written to them to say that we would be happy to make that



exclusion, which enables them to do, in fairness, broadly similar sorts of things, in terms of reducing single-use plastics, to what the UK Government intend to do. That is a clear instance of a framework being used, using the process that we set up for exclusions from the UKIM Act. From our point of view, the UK Government has signed off on it and it now needs to be agreed by all four Governments, at which point it would become an exclusion and they would be able to go ahead.

**Q34 Karin Smyth:** Is there a process whereby that might be a reversed two-way street, so that the UK Government think that rather than have the divergence that is coming from one of the devolved Administrations, we can perhaps move towards the suggestion?

**Neil O'Brien:** There is a lot in your question. Any of the Governments can suggest an exclusion of that kind, and I think all will be conscious when they make decisions on agreeing or not agreeing to those exclusions that they may want to do something similar, either in a related or unrelated field, in the future. They will have that on their minds as they make decisions about those things, yet part of the discussion in all four Governments will surely be about whether we are looking at a process of divergence over time that is problematic.

Looking at the case of single-use plastics, different Governments wanted to do fundamentally very similar things at slightly different times. It might be that, in some cases, you would see requests that would lead to divergence, but we might take a relaxed view of such divergences. Certainly, when all four of us collectively went through the list of 152 areas that I mentioned earlier—they are all identified and highlighted in the common frameworks analysis paper from November that I mentioned—the reason we decided that another framework was needed for quite a few of them was not that there was already a good process for working together, which was the case for some of the areas that we chose not to create a framework in, but that there would be divergence and we could take a relaxed view of it.

There are lots of considerations of the kind that your questions tee up. Yes, it may be that in a case where one of the Governments are seeking to do some kind of exclusion like that, one of the other Governments will say, "We're thinking of doing something similar and we should crack on with it." Or it will make them think about what their position is on that issue, which is inevitable when you have those kinds of dialogues between the different Administrations.

**Q35 Karin Smyth:** Thank you. That is a very helpful and full answer, but I think it goes back to the heart of our original questions. This is not just about process, is it? It is separating process from policy—the desired policy from both the UK Government point of view and that of the devolved Administration. It is very hard to distinguish. Will you accept that it is hard for us to be able to distinguish that?

**Neil O'Brien:** I took your question to be trying to get at: now that you have created these frameworks, give us examples of policy issues that are



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starting to flow through them and a specific example of where divergence would be agreed through them. I think there is a clear separation between the kind of process that they set up—the frameworks, literally, that they set up—and the decisions that you make as part of those frameworks, which are inevitably the more political bits of the conversation.

**Q36** **Lloyd Russell-Moyle:** Mr Rees-Mogg, the public procurement framework document says that an exchange of letters will formalise the arrangements. Has that exchange happened with all the Administrations?

**Mr Rees-Mogg:** I do not actually know whether that has happened at this stage.

**Neil O'Brien:** If you mean on the frameworks programme more generally, as they are published, they appear on gov.uk. Instead of being formal letters, you can see what the framework is. Normally, as part of that being published, you will see any concordat that is part of the framework published alongside it, on a single webpage. Where they are published, they are on gov.uk.

**Q37** **Lloyd Russell-Moyle:** If it is agreed, it will be on gov.uk, so on the Public Procurement Common Framework, which I do not think is on gov.uk, I assume that there has been no exchange of letters. Is that correct?

**Neil O'Brien:** Just to pick up on a small point, some of the frameworks have been agreed and are operational, but they are not yet published for parliamentary scrutiny. To spell out which ones those are—

**Lloyd Russell-Moyle:** Why not?

**Neil O'Brien:** To spell out what those are, they are the ones on resources and waste, agriculture or zotech, specified quantities and packaged goods legislation, and emissions trading systems. The reason why they are in that state is that, although one wants to get ways of working together up and running as soon as possible, they require final sign-off by all four Governments, and in the case of the Northern Ireland Executive we will require the Executive to be fully up and running, with a First Minister and a Deputy First Minister, before some of those things can happen. So, I am hoping that as soon as Northern Ireland purdah is up and out of the way, we will get to the point of them being published and, as soon as the Executive is re-formed, we will be able to agree them fully.

**Q38** **Lloyd Russell-Moyle:** So, you do not publish them until the letters have been received from all the Administrations.

**Neil O'Brien:** Everyone needs to agree.

**Q39** **Lloyd Russell-Moyle:** Okay. So, that is the hold-up with any new ones coming forward.

**Neil O'Brien:** Typically, where there is a hold-up, it will be because one of the Governments have not cleared it yet.

**Q40** **Lloyd Russell-Moyle:** If you are saying that you are waiting for Northern Ireland and that Northern Ireland is in a situation of stasis, no more can



be agreed.

**Neil O'Brien:** That will be a hold-up for the remaining ones, yes.

Q41 **Lloyd Russell-Moyle:** May I confirm again, on the Public Procurement Common Framework, where are we?

**Mr Rees-Mogg:** Well, I have not signed a letter since I have been in post, but the provisional framework is agreed and published, and parliamentary scrutiny is taking place, of which this is an example.

Q42 **Lloyd Russell-Moyle:** The provisional has been published, but the formalisation of the agreement has not yet happened.

**Mr Rees-Mogg:** That is correct.

Q43 **Lloyd Russell-Moyle:** The Public Procurement Common Framework says that each Government will develop their own policies for procurement, and that the framework provides the vehicle for discussion of those policies. However, a public common procurement policy seems to be being developed outside the framework, between all the Administrations minus Scotland, as you said. That will be crystallised in the Bill. Does that indicate that the common framework is not really as functional as a serious piece of co-ordination?

**Mr Rees-Mogg:** No, I do not think that is a fair view of it. The framework is there to discuss what people are intending to do; it is not intended to limit what people can do. It is not intended to be a straitjacket on policy development, but you cannot discuss a policy within a framework until you have some idea of what the policy will be, so you have to have considered it beforehand, before you then discuss it with the other Administrations within the framework.

Q44 **Lloyd Russell-Moyle:** Scotland has indicated it would like to remain aligned to the EU, as is its sensible right, but my understanding is that now the discussions on the Bill continue outwith the common framework, so Scotland is excluded from hearing those arguments, discussions and rationales that might still be useful in the Scottish Administration coming to views on how it would want to interlink with a Bill. Is that a correct analysis of how the Bill is being developed?

**Neil O'Brien:** I do not think that is right. If this is a helpful way of framing it, there is a distinction between a single piece of legislation, which potentially has the Welsh and Northern Ireland Governments as part of it, and a common framework, which has a wider ambit and would also include the Scottish Government.

To your key point, there is absolutely no desire to exclude Scotland from any discussions or information about what we are doing—indeed, as part of the process of legislation, that would be just impossible. Maybe that is the way I would frame it: there is actual legislation, in this case combining the Welsh Government and Northern Ireland Executive as well, and then that framework, which provides a wider group and a wider forum for us to discuss matters of common interest on public agreement. Is that helpful?



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**Q45 Lloyd Russell-Moyle:** So are you using that wider forum to discuss with the Scottish Government the creation of the Bill?

**Mr Rees-Mogg:** The Scottish Government are aware that the Bill is being created.

**Q46 Lloyd Russell-Moyle:** Yes, everyone is aware of that. I am aware of it as well. Detail?

**Mr Rees-Mogg:** It has decided not to be part of it. It has decided that it wishes, as you said—although I would quibble over the word “sensibly”—to maintain the EU proposal for procurement, but the framework meets monthly to have discussions that it wishes to have and is able to discuss all these matters. It is an open discussion about policy development, but it is about keeping people informed so that they know what is going on.

**Q47 Lloyd Russell-Moyle:** So have the Scottish Government been kept informed about the detail of what is going on within the common framework?

**Mr Rees-Mogg:** I do not attend the framework meetings, but the framework meetings are there to have a broad discussion as to how procurement is developing, so it would be surprising if they were not discussing these matters.

**Q48 Lloyd Russell-Moyle:** I think that is one of the accusations that we get from other devolved Administrations. We have yet to go and meet Edinburgh, but I am sure they will say something similar: that very often, things are sprung upon them from Westminster after there have been closed discussions. While it is laudable that Northern Ireland and Wales are part of the discussion, I am just trying to make sure that Scotland and the Scottish Government will not have this put upon them.

**Mr Rees-Mogg:** Nothing will be sprung upon anybody at all, because of the process of legislating and the six months it will then take to develop it, but the Scottish Government have already made a decision not to be part of this Bill, so that is decided.

**Q49 Lloyd Russell-Moyle:** They made a decision not to sign up to it, but just like the US Government made decisions not to sign up to climate change agreements, they still remained part of the discussions and therefore were able to join at later stages when they saw it was agreeable to them. In negotiations, you continue to include other partners, so that they can see that.

**Mr Rees-Mogg:** And the framework meetings take place.

**Q50 Lloyd Russell-Moyle:** Is there any other framework where there is a dual process—where we have legislation only including some, and a framework that includes all?

**Neil O'Brien:** I am trying to think of whether there is a good analogous thing that has happened since—

**Q51 Lloyd Russell-Moyle:** Or is this kind of a sui generis, one-of-its-kind



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situation?

**Neil O'Brien:** I am trying to think of examples.

**Chair:** If one does not come readily to mind, you are welcome to write to us.

**Mr Rees-Mogg:** I think it is a more fundamental question about how we are going to develop in the return of competences to the UK as a whole, some of which are then devolved. We would expect to see divergence, because that is a consequence of Brexit, and these will be discussed within the frameworks. You would naturally expect there to be more divergence, and this is a positive thing, because it shows devolution working, but it also shows the benefits—the fruits, the dividend—of Brexit.

**Lloyd Russell-Moyle:** I am not arguing the pros and cons of divergence.

**Mr Rees-Mogg:** But you would expect it to happen, to answer your question.

Q52 **Lloyd Russell-Moyle:** What I am asking is whether there are other areas where there is a parallel process.

**Mr Rees-Mogg:** But you would expect that to happen. Even if it is not happening now, you would expect it to happen as there is divergence, but people will—

Q53 **Lloyd Russell-Moyle:** So are you saying you would expect the common frameworks to be places where devolved Administrations might club together and say, "Let's do something jointly," but not include one of them?

**Mr Rees-Mogg:** I think you would certainly expect different levels of devolved activity, absolutely, and that is what we have seen since the establishment of the devolved Parliaments in areas where they already have competence. You have even seen it in some elements of taxation within Scotland. You will see divergence through devolution, and you will see more divergence because there are now more powers within the auspices of the UK Government.

Q54 **Lloyd Russell-Moyle:** I need to hand back to the Chair, but in this situation, we have Wales, Northern Ireland and the UK Government. Do you envisage that there could be a situation in which Northern Ireland, Scotland and Wales got together and said, "We want to create joint legislation," and the UK Government—

**Mr Rees-Mogg:** But they don't create joint legislation; they legislate individually for their areas. Only the UK Parliament legislates for the country as a whole.

Q55 **Lloyd Russell-Moyle:** So they couldn't co-ordinate a piece of work themselves?



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**Mr Rees-Mogg:** If it doesn't involve Her Majesty's Government, but they could of course co-ordinate their policies and the frameworks will provide a framework for doing that.

**Chair:** A welcome uptick in our conversation there, so bonus points for questions and answers con brio, as ever.

Q56 **Ronnie Cowan:** The messaging of the common frameworks is that they allow the UK and devolved Governments to work harmoniously, to agree common approaches and to allow divergence. I am wondering, Mr Rees-Mogg, whether working harmoniously was on your mind when you described the Scottish Government as "hopeless".

**Mr Rees-Mogg:** There is a clear difference between the political discussion that we have between Conservatives and Scottish nationalists, and the working at an official level. You see this every Wednesday when your exceptionally charming leader pretends that he is very fierce and rude, so—

Q57 **Ronnie Cowan:** But you are getting away from the point. If you are going to work in an organisation—if you are going to work as part of this common framework and work harmoniously—surely, at least in public, you can pretend to be respectful of the Scottish Government.

**Mr Rees-Mogg:** No, because it is led by an SNP Administration that I think is not in the interests of the people of Scotland. I think you do damage to the Scottish economy. I think you have harmed education, and the health service results in Scotland are much worse than those in England. I think poor people in Scotland would be much better off with a Conservative Government, ditto Wales. Of course I think that, but that doesn't mean that on whether we have a procurement policy that helps small and medium-sized enterprises or not, we can't have a rational discussion. I have never thought it was difficult to differentiate between administrative matters and the facts of political life.

Q58 **Ronnie Cowan:** But that goes back to the point that if you are going to work with people long term to come to a common framework where people can work together harmoniously, I would have thought that you would have at least bought into the principle that being civil with each other would aid that process, rather than being, as you are now, aggressive and divisive about it.

**Mr Rees-Mogg:** Of course I am going to be clear about the failures of the SNP. Are you saying that Nicola Sturgeon is going to stand up and say that Boris Johnson is the greatest leader?

**Ronnie Cowan:** The point being—

**Mr Rees-Mogg:** When Mrs Sturgeon says that Boris Johnson is the greatest leader this country has ever had, I will start saying nice things about the Scottish Government.

Q59 **Ronnie Cowan:** The point being, you have to work together.



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**Mr Rees-Mogg:** It takes two to tango, old bean. Come on, come on!

**Ronnie Cowan:** No.

**Mr Rees-Mogg:** This is ridiculous.

**Chair:** Righty ho! Veering back to our questions.

Q60 **Ronnie Cowan:** This is important, the point being that you have to work with what you've got in front of you. You don't like the SNP Government, but you are not going to get a Conservative Government—Scotland hasn't voted for one since 1955—and neither you nor I is going to be around by that time.

**Mr Rees-Mogg:** Who knows? The Scottish Conservative party goes from strength to strength.

**Chair:** I am regretting my hesitation—

Q61 **Ronnie Cowan:** So we work with what we've got in front of us, and I'm suggesting that if you work harmoniously you are going to get further.

**Mr Rees-Mogg:** Let's see. As I said, it takes two to tango. When the SNP starts saying how marvellous the Conservative Government at Westminster is, and how brilliantly led it is, and how inspired it is, we might have a different tone, but actually, the common frameworks work extremely well because they are official led—they come to Ministers at a much later stage—and they are dealing with technical things. This is all perfectly reasonable, and actually, to go back to your leader in Westminster, he—

**Ronnie Cowan:** We are not talking about PMQs and we're not talking about the SNP leader.

**Mr Rees-Mogg:** It is quite relevant.

**Ronnie Cowan:** Mr O'Brien—

**Chair:** Order, please.

**Mr Rees-Mogg:** I am going to answer the question. The SNP leader in Westminster gets briefings on Privy Counsellor terms, so he knows about security matters. He has been very supportive about Ukraine. It is very easy to differentiate between normal political life and administrative matters, and matters of national security. Therefore, you and I will continue disputing on matters of party politics.

**Chair:** Thank you—

Q62 **Ronnie Cowan:** For answering that question that wasn't answered.

Mr O'Brien, we know what was said about common approaches and allowing divergence. However, the UK Government has pressed ahead with legislation in areas covered by frameworks—for instance, on mutual recognition of professional qualifications—despite legislative consent being





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withheld, so where is the common framework?

**Neil O'Brien:** We never want to legislate without consent lightly; it's not something we would ever do lightly. We always—

Q63 **Ronnie Cowan:** You wouldn't do it lightly, but you would do it. Whether you do it lightly or not doesn't actually matter.

**Neil O'Brien:** It is not something we would ever do lightly. We always will make the effort to do our utmost to get to a position where we can all agree on things, even when that means reshaping policy quite substantially. I can think of lots of things that we are even working on now where there would be the case.

Ultimately, the UK Government has to, in some cases, do things where the interests of everybody—people across the UK—requires us to legislate. It's not something that we ever ideally want to do, but occasionally it is essential. That is the short answer to your question.

Q64 **Ronnie Cowan:** So we are allowed to diverge up until the point where you don't want us to diverge.

**Neil O'Brien:** At the start of this process on UKIM, I heard people saying, "Oh, this supposed process for agreeing exclusions—it will never be used. They won't allow real divergence." On the first test of it—the only test so far—we have, as the UK Government, agreed to allow divergence and to put the rights of a devolved Administration to get on with the things that it wants to do as a top priority, even though that potentially creates issues about the single UK market.

I can think of lots of ways—we always aim to try to, even if it involves substantial changes to policy, come to a landing. I have spent the last eight years of my life creating new devolved authorities within England. I do believe in devolution; I believe that the UK is a highly centralised state. And I do think that, in a mature democracy, creating the ability of different people to do things differently in different parts of the UK, so that they can have things the way that suits them, is a really important thing. Occasionally there needs to be—

Q65 **Ronnie Cowan:** Let's go back to my question if we can. What you are basically saying is, "You can diverge this far but no further."

**Neil O'Brien:** No, that is not what I'm saying. I am not creating any arbitrary or fixed limit on divergence. All these things depend on the subject that we are talking about and a balance of interests. We respect and take seriously the important interest of the Scottish Government in sometimes being able to diverge, but at the same time—we have to take the national interest of the UK as a whole into account sometimes, on other occasions, as well.

Q66 **Ronnie Cowan:** The common frameworks have been stripped of policy content since their inception, to allow the UK Government to set the policy that it wants first and discuss common approaches afterwards. Do you agree with that statement?



**Neil O'Brien:** The common frameworks reflect what all the Governments, including the Scottish Government, want them to be. I don't think that there is a desire from the Scottish Government or any of the other Governments to try to prejudge or guess, far into the future, our answer to every conceivable policy question. It seems to me just completely impossible to do that, and I don't think the Scottish Government has a different view. So they are things that we have all agreed, and they are in the form that they are in because we have all agreed that that is the way we want to proceed. I just don't see how you could have a document that tells you the answer to every conceivable future question.

Q67 **Ronnie Cowan:** Have any of the bodies that exist in the Public Procurement Common Framework—the working group, the liaison group—been used on the issue of the UK Government's Bill?

**Neil O'Brien:** I will defer to Jacob in terms of—

**Mr Rees-Mogg:** Sorry, which—

**Ronnie Cowan:** The liaison group and the working group. How are they being used?

**Mr Rees-Mogg:** I do not know which specific groups have been used, but we have worked through the framework. I do not know which levels the discussion have been held at, but I can certainly find that out for you.

Q68 **Ronnie Cowan:** The Public Procurement Common Framework says all four Governments will act on a no-surprises basis. What does that mean in practice?

**Mr Rees-Mogg:** That is what I was saying in earlier answers. That is the point of the common framework—so that people are kept informed and that they have time to know what is going on and what the policies of the other parties are.

Q69 **Ronnie Cowan:** Is there a framework around what they will be informed of and other things outwith that framework?

**Mr Rees-Mogg:** No. As I understand it, it will include keeping people informed of what the policies will be. It is a discussion forum. Nothing is going to be held back in terms of what the plans are. I am repeating myself, but it is important: it was through these discussions that Northern Ireland and Wales decided to be part of HMG's proposals. It is in the interests of people to discuss things pretty frankly so there is full understanding, and then no surprises.

Q70 **Ronnie Cowan:** How do you think the common framework will operate in practice with regards to international negotiations and agreements?

**Mr Rees-Mogg:** The common framework is on procurement. The most important part of procurement within trade deals is adding countries to the list of countries from which we can procure, rather than changing our procurement laws to suit those trade deals—that is very unusual. There may well be necessary Bills to add Australia and New Zealand to our



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procurement lists, but that will not be changing our procurement rules to meet the requirements of a trade deal. If that happens, as you know, any trade deal that has domestic legal consequences has to be brought into law domestically.

**Q71 Ronnie Cowan:** At what level will the devolved powers be involved in these discussions?

**Mr Rees-Mogg:** If it is a common framework from a trade deal that affects procurement, I imagine there would be a discussion coming from the Department for International Trade to inform the Cabinet Office that this was being discussed, so that it could be fed into the common framework.

**Q72 Ronnie Cowan:** In the current situation with Russia, would that be a common decision made by all four devolved powers?

**Mr Rees-Mogg:** I think Russia is not really about procurement; it is about sanctions.

**Ronnie Cowan:** You obviously have procurement deals.

**Mr Rees-Mogg:** There is procurement that flows from it, but procurement is not the fundamental issue with Russia. It is a sub-issue.

**Q73 Ronnie Cowan:** The nub of the question is: would all devolved powers be involved in that discussion or not?

**Mr Rees-Mogg:** If it is a sanctions issue, and that leads to consequences for procurement, that is a sanctions issue and a national security matter that applies UK-wide. The common frameworks are not there to have incidental discussions on the follow-through effects of a major national security issue. That is not their purpose.

**Q74 Ronnie Cowan:** We are talking about procurement here. If you were to change the rules so that the UK cannot be procuring from Russia, the question stands: would the devolved powers be involved in that discussion or not?

**Mr Rees-Mogg:** If a devolved power is procuring from a Russian company that has been sanctioned, and it is now not allowed, under different law, to pay that company because the sanctions prohibit payments to that company, that has an effect on procurement but it is not really a matter that has come from procurement. It is a consequence.

**Q75 Ronnie Cowan:** What would happen if there was a disagreement?

**Mr Rees-Mogg:** In the sanctions issue, that is a reserved matter.

**Ronnie Cowan:** Procurement.

**Mr Rees-Mogg:** This is a knock-on consequence.

**Q76 Ronnie Cowan:** Forget Russia. In general, what would happen?



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**Mr Rees-Mogg:** But it is important, because it illustrates the overall point, but sanctions are a reserved matter. If sanctions have a consequence, that is not something that a common framework will have a long time to discuss. The point of no surprises is about the routine and the normal. It is not about emergency provisions.

Q77 **Ronnie Cowan:** What would happen if there was a disagreement between the UK Government and a devolved Administration? What should be agreed at international level for an issue of devolved competence?

**Mr Rees-Mogg:** There are different levels of reserved and devolved powers. Trade deals are a reserved power. Procurement is devolved. The consequences of what is reserved then come down to the devolved, so you are able to make procurement powers in Scotland as you choose. They have to be within the ambit of the international agreements that the UK has made as a whole, and those are discussed in the common frameworks—they already have been. Indeed, some of the requirements in our procurement legislation do come from the Trade and Co-operation Agreement with the European Union.

Q78 **Ronnie Cowan:** We could be here all day, so I shall press on. The common framework says that the UK will engage as fully as possible, meaning that you envisage a situation where you would not engage fully.

**Mr Rees-Mogg:** We were talking about sanctions, which I think is completely different.

Q79 **Ronnie Cowan:** Let's forget sanctions for a moment. The common framework says that you—the UK—will engage as fully as possible.

**Mr Rees-Mogg:** Yes.

Q80 **Ronnie Cowan:** At what stage would you not fully engage?

**Mr Rees-Mogg:** We will fully engage. How many angels can you put on a pinhead? I think this is a semantic discussion.

Q81 **Ronnie Cowan:** "As fully as possible" in my head gives a get-out here: "We will do this as fully as possible, but I reserve the right not to engage when I don't want to."

**Mr Rees-Mogg:** I think you are assuming that the normal use of language is being used abnormally. I don't think that is correct.

Q82 **Ronnie Cowan:** That's fine; okay.

Mr O'Brien, more generally, common frameworks operate in relation to international agreements for a number of Departments. We have heard that many Departments will enter memorandums of understanding with other countries, without even notifying other Departments. How will we ensure in such cases that devolved Administrations will be consulted?

**Neil O'Brien:** That is the core business of frameworks. If you are going to do something like that, which would have implications for the areas covered by a common framework, that is exactly the sort of thing that you should be highlighting at working level.



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The purpose of the framework is also to avoid anything where one Department within a Government—be it the UK Government or Scottish Government, whatever—does something or communicates to other Governments a position that is not internally agreed. It is to avoid those misunderstandings or unnecessary problems being created.

**Q83 Ronnie Cowan:** Do you think it is right that they should be entering into memorandums of understanding?

**Neil O'Brien:** I don't know if there is a particular example that you are thinking of that you are concerned about.

**Q84 Ronnie Cowan:** It's just in general. It is something that happens. We find in this Committee over time that if we talk about conventions and memorandums of understanding, they are all done almost on a gentlemen's type of agreement. If it doesn't suit people, they all fall apart, because no one knows exactly what they can be held to do. A Department with a memorandum of understanding to me leaves it open to that abuse.

**Neil O'Brien:** I think it is something where I would encourage the application of common sense. It depends what you mean by a memorandum of understanding. If it is going to be of significance, it is exactly the sort of thing you would expect to be picked up through a framework. If it is something of significance.

**Q85 Ronnie Cowan:** You will be glad to know that this is my last question, Mr Rees-Mogg. A record of decisions made through the common frameworks will be kept through minutes of the meetings of the officials working group and liaison group, but we don't seem to know how engaged the working group and liaison group have been. Will those be published, or at least reported to the four legislatures, so that they can monitor the operations of the Public Procurement Common Framework?

**Mr Rees-Mogg:** The minutes will obviously be made available to the parties involved, and it will be a decision for the parties whether to publish those minutes.

**Q86 Ronnie Cowan:** Mr O'Brien, is that across other frameworks as well—the entire frameworks?

**Neil O'Brien:** Yes. Each of the Parliaments is responsible for its own scrutiny arrangement of how the frameworks are working out. In terms of the process of creating the programme, I pay tribute to this Committee for playing the sweeper role in ensuring that all things get scrutinised.

Although it is primarily the responsibility in the UK Parliament of each departmental Select Committee to scrutinise how a Department is operating, at the very least it does no harm, and is a positive benefit, if that can be reinforced by this Committee. That is the main vehicle for ongoing scrutiny for how the frameworks are working within this Parliament.

Each Parliament will want to do things slightly differently. My colleague in the Welsh Government, Mick Antoniw, kindly offered to create a paper



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when we had our quadrilateral meeting in November on what we are all doing and how we can potentially learn from one another, which I strongly welcome. It should be useful.

**Chair:** Thank you for that tribute, Mr O'Brien, on our sweeper role. I have no idea why departmental Select Committees do not want to give this subject matter the attention it deserves. David Mundell is next.

Q87 **David Mundell:** Thank you, Chair. I think a helpful part of the Committee's proposed visit to Edinburgh will be to peruse the *Official Report* of the Scottish Parliament where, surprisingly, Members might find that Scottish Government Ministers routinely abuse the UK Government, but they still find themselves able to work closely with UK Ministers on matters of common interest.

Mr Rees-Mogg, the Public Procurement Common Framework document sets out that there will be a review after one year and then a review every three years of the common framework. As it stands, the framework is just the arrangement for things like a review, so will a more policy-rich document be produced in due course?

**Mr Rees-Mogg:** It will obviously depend on the Bill coming forward. I think the no surprises bit is very important because of the non-discrimination expectations. It is important that everybody knows how procurement is going on in the different parts. Even if people do not choose to have the system, and if Scotland did not choose to have the system that the rest of the UK has, it will be happy, and vice versa we will be happy, that procurement is done on a non-discriminatory and cost-effective basis. I imagine that that will be where the reviews go to ensure that people are broadly content and properly informed about what the proposals continue to be—both those first introduced and how they develop and evolve.

Q88 **David Mundell:** Are you saying it will be a process review rather than a policy review?

**Mr Rees-Mogg:** Yes, because the frameworks are not there to stop divergence. They are there so that people know that divergence is happening and understand where the divergence is going, and, in many ways—perhaps this is most important—to maintain confidence in what is being done.

Q89 **David Mundell:** Will this Committee be party to that review when it takes place?

**Mr Rees-Mogg:** It would not be for me to try to restrict the remit of Committees. I think that, with your Chairman, if you decide to review it, it will be reviewed. As you may know, I am a great supporter of the Select Committee system and the powers it has to send for persons and papers, and I have always thought that they should be used. Indeed, I have discussed with your Chairman on the Procedure Committee how you use your powers; and what you want to scrutinise, you will scrutinise.

Q90 **David Mundell:** Mr O'Brien, if a dispute arises over common frameworks,



is the dispute process going to be the one that is set out in the new IGR arrangements?

**Neil O'Brien:** The IGR arrangements are typically quite similar to the departmental or portfolio-driven frameworks. The IGR arrangements are for everything. They are for matters of cross-cutting concern. They might touch on lots of different sectors or Departments, and then there is a specific process within each of the frameworks. But you will have seen that there is a great similarity between these processes of escalation up front, from junior official level to senior official, to junior Minister, to senior Minister and, ultimately, to First Ministers and Prime Ministers. If something has come up within a framework within a specific Department or sector but it engages wider considerations that might apply in a bunch of different Departments, that is why some of the IGR arrangements might kick in and we could discuss those and think about them strategically across a number of areas.

Q91 **David Mundell:** Would that be the same approach to all common frameworks?

**Neil O'Brien:** Broadly speaking, yes.

Q92 **David Mundell:** Okay. And do you agree that, like the new IGR arrangements, the success of common frameworks is indeed premised on the political intent of all the parties involved?

**Neil O'Brien:** Definitely. Although they sound dry, I think these are pieces of essential constitutional wiring. Although the spur, in the case of the frameworks, is the legislation and powers that are returning from the EU, the IGR is creating ways of working together that are, in a sense, responding to 1998 and the devolution settlements as they mature. There is absolutely the intent to work together in a sensible way on behalf of our mutual constituents. That is the key to everything. I have to say that, through the frameworks programme, I have found working with my equivalents in other Governments extremely good and a positive experience, and it is clear that that is always our policy intent.

Q93 **David Mundell:** Ultimately, the new dispute avoidance and resolution mechanism can still end without a resolution. Do you think this is an adequate process to ensure that common frameworks continue to operate despite a significant disagreement on an issue?

**Neil O'Brien:** Yes, I think that is correct, and that is the way it has to be. Obviously, you hope that you reach an agreement. I do not see an alternative to what a number of them have; ultimately, you could end up agreeing to disagree, but there are a lot of steps before you get there. They have been set up to avoid surprises.

Q94 **David Mundell:** But even if there is disagreement, because there is visibility of the respective positions—

**Neil O'Brien:** And understanding.

**David Mundell:** And understanding—then other mechanisms can be put



in place to at least mitigate or accommodate that.

**Neil O'Brien:** Exactly. That is the point of the exercise.

Q95 **Jackie Doyle-Price:** My questions are for Jacob Rees-Mogg on the issues regarding the forthcoming Bill and public procurement. As you have already mentioned, the Bill will extend to England, Wales and Northern Ireland but not to Scotland. Have there been any assessments of the costs that might occur as a result of that divergence of approach?

**Mr Rees-Mogg:** Not that I am aware of, no. On the scale of the procurement, from memory, £300 billion is for HMG, £12 billion for the Scottish Government, £6 billion for Wales, and £3 billion for Northern Ireland. The overwhelming bulk of procurement is HMG.

Q96 **Jackie Doyle-Price:** Would there be any thought to giving an assessment of cost of divergence before we consider the Bill?

**Mr Rees-Mogg:** There will be an impact assessment produced with the Bill in the normal way, which will consider the costs. They will be slightly different costs. They will not be particularly the costs of divergence; they will be the costs of the new scheme. Their driver ought to be net savings rather than net costs.

Q97 **Jackie Doyle-Price:** But that should enable us to give some context to it.

**Mr Rees-Mogg:** It may be that by maintaining the European system, the Scottish Government is imposing higher costs on Scottish businesses. I hope we will have those figures with the impact assessment that comes with the Bill.

Q98 **Jackie Doyle-Price:** Thank you. The Government have already published a national procurement policy statement. Was that subject to any intergovernmental discussions?

**Mr Rees-Mogg:** It would have been discussed with the Common Framework for Public Procurement. Again, the important division is that the frameworks discuss what is happening, but they do not determine what is happening. HMG would set out what it was going to do, but it would have discussed it first.

Q99 **Jackie Doyle-Price:** On the basis of that answer, does that allow for local priorities and local divergences?

**Mr Rees-Mogg:** Yes. Discussions can change things. There was a question from Karin Smyth at the beginning about how you differentiate between policy and process. If you are discussing something and notifying somebody, saying, "This is what we are going to do," and then they point out to you that there is some big mistake you are making, you don't then say, "This is our new process, so we are not going to take any notice." If they were to look at what you are doing and think, "That will work well, but you have only told us the process manner, and therefore we are not going to take it," that is not how one would want Government to work. However, the principle underpinning the frameworks is that they are





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dealing with the process and the conversation, rather than trying to restrict anybody's policy decisions.

**Q100 Jackie Doyle-Price:** To take forward your initial comments—"This is how to talk in an orderly way"—talking in an orderly way actually just enables functional relationships to be managed through a process. Ultimately, this is going to come down to sensible discussions between all the players.

**Mr Rees-Mogg:** That is absolutely right. To go to Ronnie Cowan's point, this is why it is very sensible that most of these discussions are done at official level. I think everyone knows that the relationships at official level between the devolved authorities are very good, then there is inevitably the politics on top of that that comes at a later stage.

**Q101 Jackie Doyle-Price:** The Government have indicated that the procurement Bill will include provisions for statutory powers for the relevant UK Minister to investigate alleged breaches of the new procurement policy. Will that allow the Government in Westminster to investigate practices in Northern Ireland and Wales? How do you envisage that that will interact with the common framework?

**Mr Rees-Mogg:** From memory, and if this is wrong I will confirm it with you, those powers will be delegated to the Ministers in Wales and Northern Ireland to do it, rather than HMG doing it on their behalf. If that answer is wrong, I will write to the Committee.

**Q102 Jackie Doyle-Price:** That would be consistent with the devolved approach, but with HMG setting the overall—

**Mr Rees-Mogg:** That's right.

**Q103 Chair:** A question from me to Mr Rees-Mogg concerning essentially what was Lord Hope's amendment to the United Kingdom Internal Market Act, which the Government accepted. The guidance on the process for considering UKIM Act exclusions in common framework areas states that where a party wants to propose an exception, the "consideration of the proposal, associated evidence and potential impact should be taken forward consistent with the established processes as set out in the relevant Common Framework". Is that set out in the Public Procurement Common Framework?

**Mr Rees-Mogg:** Sorry, I am not quite following your question.

**Chair:** Is Lord Hope's amendment to the United Kingdom Internal Market Act taken account of in any way in the Public Procurement Common Framework?

**Mr Rees-Mogg:** The common framework will take account of the law—of course it will. The Government are in the habit of obeying the law.

**Chair:** Indeed. It might be worth checking, if you would do so. That is not intended to catch you out at all.

**Mr Rees-Mogg:** No, no. But the Government are following the law in terms of the Public Procurement Common Framework.



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Q104 **Chair:** Okay. Mr O'Brien, why is this process not set out in every common framework as the Government's own guidance indicates it should be? Is that an oversight?

**Neil O'Brien:** Which process do you mean?

**Chair:** Lord Hope's amendment.

**Neil O'Brien:** Do you mean about agreeing exclusions from the internal market?

**Chair:** Yes, indeed.

**Neil O'Brien:** The shape of all the frameworks reflects what all the Governments were prepared to agree, ultimately. It may be that one of the Governments, or more than one of the Governments, did not want to do that, so the frameworks reflect what could be agreed between all four Governments.

Q105 **Chair:** Okay, so you cannot commit, I presume, to including this in the final version of all common frameworks.

**Neil O'Brien:** I can potentially write to you about that. I want to make sure that I understand your question properly before giving you an answer, which could be wrong.

**Chair:** I understand. You are welcome to write to us. A couple of final questions from Lloyd Russell-Moyle, please.

Q106 **Lloyd Russell-Moyle:** Mr O'Brien, how will Parliament be consulted on the operation, review and amendment of common frameworks in the longer term, once the current phase is complete?

**Neil O'Brien:** I hope that we will have a combination of subject-specific Select Committee working and further sessions like this one if there are broader changes that are cross-cutting, issues emerging within a framework or things that deserve wider consideration. That will be the arrangement for this Parliament and, as I mentioned earlier, there will be similar arrangements in the other Parliaments. We are, as a group of Ministers, comparing notes on how scrutiny arrangements are going to work, and we are happy to learn from how things are done elsewhere.

Q107 **Lloyd Russell-Moyle:** We have re-established the Interparliamentary Forum, so parliamentarians can exchange notes on these matters as well.

**Neil O'Brien:** Yes, and I attended the other day. I thought it was a very useful session

Q108 **Lloyd Russell-Moyle:** Yes, thank you very much for that. I hope that some of that will be solidified in the coming months and years. Michael Gove told us that the UK Government were happy to make information available on the decisions of all four Governments, but Jacob, I think you have indicated that the decision to publish the minutes is the responsibility of all the four Governments. Ignoring the other three, will this Government publish the minutes that it holds—as it is entitled to do, as



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you have just indicated, without asking permission of the other Governments, as that is irrelevant? It is your decision alone. Will you decide to publish the minutes of those meetings?

**Neil O'Brien:** I do not think we can ignore the other Governments.

Q109 **Lloyd Russell-Moyle:** Well, Michael Gove has said, and you just said, that it is the decision of individual Governments. Either it is the decision of individual Governments or it is a collective decision of all the Governments. Which is it?

**Neil O'Brien:** I would be uncomfortable if the suggestion were that Ministers from other Governments would discuss things in good faith and speak honestly and frankly, and then, without consultation with them, their private, unvarnished or candid assessments of things would appear in the public domain. I do not think that would be conducive to sensible working between—

Q110 **Lloyd Russell-Moyle:** I see that argument. Are we then saying that the publication of minutes is contingent on all four Governments agreeing every time?

**Neil O'Brien:** We probably need to look at it on a case-by-case basis.

**Lloyd Russell-Moyle:** I am not sure that that is good enough.

**Neil O'Brien:** To be clear, a unilateral decision to publish the minutes of meetings to which Ministers present from other Governments may have contributed, without their understanding or consent that their comments would be published, does not feel reasonable on the face of it.

Q111 **Lloyd Russell-Moyle:** If the Welsh Government wanted to publish the minutes of the meeting, would you expect them not to do so unless you had given agreement?

**Neil O'Brien:** In general, our orientation should be to have maximum transparency and publish as much as possible—to do all these things.

Q112 **Lloyd Russell-Moyle:** Yes, we all have that agreement. I am trying to be specific about the publication of minutes and who needs to give sign-off. Is it a unilateral or multilateral decision?

**Neil O'Brien:** If we are going to have a general policy of publishing the minutes in each of these frameworks, I think doing so by consent, if we can all agree that, is great.

Q113 **Lloyd Russell-Moyle:** When is that discussed? What I mean is, if it is by consent, when is that consent sought—before or after?

**Neil O'Brien:** I would be nervous about doing it retrospectively. The minutes of these frameworks meetings will already have happened, and going back and publishing them—

**Lloyd Russell-Moyle:** Going forward now—



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**Neil O'Brien:** I think that within the framework, if it is possible to agree that, in general, we publish the minutes, that is excellent.

Q114 **Lloyd Russell-Moyle:** Is that something that you are proposing to amend in the framework? You are saying that it would be excellent.

**Neil O'Brien:** I would encourage—and we have been encouraging—all these things to happen in a maximally transparent way. I am afraid that I will have to write to you on exactly what current practice is and where we have got to in each of the 32 different areas.

Q115 **Lloyd Russell-Moyle:** It would be good to know which areas have had their minutes published. If, as I suspect, it is very few or none, it would be good to know what you are doing—more than just this broad encouragement.

Finally, in the letter that you have just promised to write, it would be good to know formally what you expect the process to be in seeking agreement to get minutes published. I am easy on whether you have to seek the agreement of all or whether one can do it bilaterally, but there needs to be a clear process; otherwise no one is the wiser, are they?

**Neil O'Brien:** I am very happy to undertake to do that.

**Chair:** Thank you. Certainly after that session, we are all the wiser on this topic. I am very grateful indeed to our two ministerial witnesses. I thank them for their time and for undertaking to write to us to furnish the Committee with additional answers to some outstanding questions. On behalf of the Committee, thank you very much indeed.