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– Supplementary Written submission (PBC0027)

Introduction

1. This evidence is submitted as a written response to a correspondence from Baroness Andrews, Chair of the Common Frameworks Scrutiny Committee, in which a request was made for further evidence in respect of three areas:

- *Scrutiny gaps:*
 - Any further gaps in the scrutiny work being done by the committee, and by the committees of the devolved assembly
- *North-South cooperation:*
 - Regarding lack of discussion with Irish officials: what would the practical implications be if this continues? What formal mechanism/s might be implemented by frameworks officials to manage North-South cooperation?
- *Stakeholder engagement:*
 - Specific examples within framework areas where difficulties may occur on the ground given lack of consultation with stakeholders

2. This additional evidence is being submitted before we have seen the full publication of the Common Frameworks (CF) as has been expected to occur this month. At the time of writing, only one CF is finalised and only eleven provisional Common Frameworks are publicly available, with four of those being very recently published. This compounds the difficulty of getting a sense of the practical implications of the outworking of Common Frameworks (CF), alongside implementation of the Protocol, on the continuation of North-South (N-S) cooperation and on the full functionality of devolved governance.

3. There has been some progress made since our previous submission. Notably, the Northern Ireland Executive have approved the

¹ Queen's University Belfast, but this evidence is submitted in a personal capacity and should not be read to represent the views of our employer.

frameworks agreed by the four Administrations. However, our overall analysis shows that the lack of publication of the CF to date has meant that the problems we identified in our initial evidence (with Dr Viviane Gravey, 24 September 2021) have grown in significance, most particularly with respect to scrutiny and North-South cooperation. The lack of stakeholder engagement remains of concern. However, given the lack of publication of CF to date, we decided to conduct more analysis of the consequences of a lack of stakeholder engagement in the new year, when it should be possible to have a clearer picture. We also consider one additional point that has arisen since our last submission that has particular pertinence for Northern Ireland, namely the decision not to have a CF for Equal Treatment.

Scrutiny gaps

4. A review we conducted of the Minutes of Proceedings, Minutes of Evidence and Reports from the work of seven NI Assembly Statutory Committees (Committee of the Executive Office; Agriculture, Environment and Rural Affairs; Economy; Justice; Infrastructure; Health; and Finance) shows that of these all but the Justice Committee have made some mention (albeit mostly in passing) of Common Frameworks in the period mid-September-mid-December 2021.
5. There are references to the existence of a scrutiny process of the CFs but not evidence of much of that process taking place. Most mentions of the Common Frameworks in any of the documentation examined are references to correspondence with either the Assembly EU Affairs Manager (informing the respective Committee of the development of CFs and when these will be issued), or with various UK Government departments and individuals to request (or who are requesting) further information on the matter. Altogether, it looks like most of the Committees might simply be awaiting the publication of the frameworks.
6. The one more substantive discussion of CFs (although again – limited) is found in a Minutes of Evidence report from the Committee of the Executive Office:
 - **Committee of the Executive Office, Minutes of Evidence, 29 September 2021:** Mr Kearney (Junior Minister, The Executive Office) briefed the committee that on 8 September, he had attended a ministerial meeting with representatives of the British Government and the Scottish and Welsh Administrations to discuss progress on the development of common frameworks. He described it as “a very

helpful meeting, with discussion on how to progress the frameworks, address the remaining cross-cutting issues and *ensure that all our respective legislatures are in a position to subject them to democratic scrutiny.*" [emphasis added] However no details are provided on what the process of scrutiny would look like.

- Mr Kearney also stated that at a meeting of the Executive Committee on EU exit matters in July, Ministers noted a change to the clearance process for common frameworks, removing the need for provisional confirmation by the Joint Ministerial Committee (European negotiations) Ministers in all four Administrations. This change also, he said "*allows the frameworks to progress directly to scrutiny in the relevant Assembly Committees*".
- Mr Kearney said that the first cohort of common frameworks should reach the Infrastructure, Health and Economy Committees that same week (end Sept/start Oct) "for them to begin scrutiny". He said, there was a shortfall of "something like 27 frameworks" which had been due to come back to NIA committees for scrutiny, which had been delayed (as this CF Scrutiny Committee is well aware). He said that "congestion has now been lifted, and 26 of those 27 common frameworks will arrive in Committee, starting from next week".

However it has not proven possible to find evidence of discussion or scrutiny of the CFs by the Committees since that point.

7. The most detailed published minutes are quoted below, and we make a brief comment on each:

- **Committee for Agriculture, Environment and Rural Affairs Minutes of Proceedings Thursday 23 September 2021** 'A memo from the Assembly EU Affairs Officer providing an update on the implementation of Common Frameworks and advising that all of the frameworks under AERA's remit have been given provisional approval and are expected to be referred to the Assembly in late September or early October. *The DEFRA Secretary of State has been quoted as saying that a realistic timeframe for completion of the scrutiny process is March 2022.*' [emphasis added]
 - **Comment:** this shows that the timeframe given to the NI Assembly for publication of the frameworks has been unrealistic.

That there is a difference between this and analysis from UKG ministers is telling.

- **Committee for Infrastructure Minutes of Proceedings 10 November 2021.** 'Departmental Briefing – Common Frameworks. The Departmental officials joined the meeting at 10:28 am ... *The Departmental officials provided the Committee with an oral briefing. A question and answer session followed. Agreed: The Committee agreed that the Department will provide further information on the impact of the Rail Technical Standards Framework Outline Agreement on Heritage railways in Northern Ireland*'. [emphasis added]
 - **Comment:** although the precise time of arrival of the officials, and their names and affiliations, are reported, the fact that there are no details provided at all on the briefing of CF suggests an extraordinary lack of transparency, especially for matters so apparently technical and without political sensitivity.

 - **Committee for Health OFFICIAL REPORT (Hansard) Organ and Tissue Donation (Deemed Consent) Bill: Department of Health 25 November 2021** In response to a question from the chairperson whether there are implications flowing from Brexit that could create difficulties in terms of European organ donation, Mr Ryan Wilson from the Department of Health states that: 'Those networks and pathways are well established, and, to date, we have not seen any impact of Brexit on them. Planning is going on in the Department on developing what is known as a "common framework for organs, tissues and cells". That is to set a framework for the quality and safety standards for the movement of those materials. Nothing in the Bill would have any impact on that. What will change as a result of what is proposed is the focus and emphasis of the donation conversation with the families of potential donors. *In short, we do not anticipate any impact as a direct result.*" [emphasis added]
 - **Comment:** Notably no reference is made to the fact that North-South cooperation relating to organ and tissue transplants is underpinned by EU Directive 2010/45/EU which applies under Article 5 and Annex 2 of the Protocol.
8. Most of the mentions of Common Frameworks have been in relation to correspondence and to say that there has been an update on indicative publication times.²

9. Altogether, this brief overview raises grave concerns in terms of time

2

- **Committee of the Executive Office (CEO) Minutes of Proceedings Wednesday 15th September 2021** 'The Committee noted correspondence from the House of Lords Common Frameworks Scrutiny Committee to the Executive Office inviting the First Minister and deputy First Minister to give oral evidence to the Committee on the Common Frameworks Programme'.
- **CEO Minutes of Proceedings Wednesday 22nd September 2021** 'The Committee noted correspondence from the Northern Ireland Assembly EU Affairs Manager providing an update on Common Frameworks'.
- **CEO Minutes of Proceedings Wednesday 13th October 2021** 'The Committee noted correspondence from Baroness Ritchie of Downpatrick asking for information on Common Frameworks'.
- **CEO Minutes of Proceedings 17 November 2021** 'The Committee noted correspondence from the NIA EU Affairs Manager in relation to the publication of the UK Government Report 'The European Union (Withdrawal) Act and Common Frameworks: Frameworks Analysis 2021.'
- **Committee for the Economy, Minutes of proceedings 22nd September 2021:** 'Members noted an update from the Assembly's EU Affairs Manager on Common Frameworks and the indicative dates for these to come to Committee'.
- **Committee for Agriculture, Environment and Rural Affairs Minutes of Proceedings Thursday 9 September 2021** 'Correspondence from the Department which provides additional information pertaining to the progress of Common Frameworks and legal advice that the Minister has now received in relation to how they interact with Section 36 of the Protocol';
- **Committee for Agriculture, Environment and Rural Affairs Minutes of Proceedings Thursday 21 October 2021** 'Tabled correspondence from the Department to advise that cross-cutting issues in respect of the Common Framework remain unresolved and are anticipated to be referred to devolved administrations for scrutiny; Agreed: The Committee agreed to write to the Department for clarity on which specific cross-cutting issues are outstanding'.
- **Committee for Agriculture, Environment and Rural Affairs Minutes of Proceedings Thursday 11 November 2021** 'Correspondence from the House of Lords Committee on the Protocol to DEFRA seeking clarity on the interaction between EU Regulation 2021/1280, the Protocol and the Animal Health and Welfare Common Framework';
- **Committee for Agriculture, Environment and Rural Affairs Minutes of Proceedings Thursday 11 November 2021** 'Tabled correspondence from the Department to advise that some of the cross-cutting issues precluding progress with the Common Frameworks were addressed in a meeting in September 2021 and a follow up meeting with representatives from all jurisdictions is planned for early November 2021';
- **Committee for Infrastructure Minutes of Proceedings 8 September 2021** 'Correspondence from the Minister for Infrastructure regarding the Hazardous Substances (Planning) Common Framework follow up. Agreed: The Committee agreed to note the correspondence'.
- **Committee for Infrastructure Minutes of Proceedings 29 September 2021** 'Correspondence from the Northern Ireland Assembly EU Affairs Manager providing an update on the Common Frameworks. Agreed: The Committee agreed to forward the correspondence to the Department and to ask for an update on the frameworks'.
- **Committee for Infrastructure Minutes of Proceedings 6 October 2021** 'Correspondence from the Department for Infrastructure regarding Transport Common Frameworks rail technical standards (interoperability); motor insurance; driving licensing; and commercial transport and operator licensing for road transport. Agreed: The Committee agreed to note the correspondence and a briefing has been scheduled for 3 November 2021'.
- **Committee for Infrastructure Minutes of Proceedings 24 November 2021** 'Copy correspondence from Letter from Baroness Andrews to Chris Heaton-Harris MP - Common Frameworks recommendations on Transport, Driving Licences, Commercial Transport and Operators Licencing, Motor Insurance and Rail Technical Standards. Agreed: The Committee agreed to forward the correspondence to the Department for Infrastructure for information and comment'.
- **Committee for Finance minutes of Proceedings, 22 September 2021** 'The Committee noted an update from the Assembly EU Manager on the development of Common Frameworks. The Committee noted that a revised Procurement Framework is to be issued by end of October 2021'.
- **Committee for Health Minutes of Proceedings Thursday 23 September 2021** 'The Committee noted correspondence from the NI Assembly EU Affairs Manager providing an update on the status of the Common Frameworks and the indicative times for these to come to Committees'.

available for scrutiny by Committees in the NI Assembly. It is also indicative of failed time scales and of a gross lack of transparency.

10. These issues are further exposed by the fact that we only learn of significant decisions being made on the Common Frameworks as they relate to NI and the Protocol via correspondence to other devolved administrations.

- For example, in a letter (2 December 2021) providing an update on the Common Frameworks programme to the chair of the relevant Committee in the Scottish Parliament, Angus Robertson, the Cabinet Secretary for Constitution, External Affairs and Culture, we learn that a recent 'ministerial quadrilateral' meeting "approved text in relation to the NI Protocol."³

North-South Cooperation

11. It is possible to identify those CF areas that are likely to pose challenges or complexities for North-South cooperation through a cross-reading of the UK government's most recent 'Frameworks Analysis' and the content of a 'North-South Mapping Exercise' carried out jointly by UK and EU negotiators in 2017 as part of the UK withdrawal process.

Overlaps with Common Framework areas

12. There are both indirect and direct overlaps between CF areas and N-S cooperation:

- 19 of the 29 Category Two Common Framework areas (i.e. those with no associated primary legislation) overlap directly with an area of existing North-South cooperation⁴
- 6 of the 29 overlap indirectly⁵
- 1 of the 3 Category Three Common Framework areas (with associated primary legislation) overlap directly with an area of existing North-South cooperation⁶
- 2 of the 3 overlap indirectly⁷

³ Letter available from: <https://www.parliament.scot/chamber-and-committees/committees/current-and-previous-committees/session-6-constitution-europe-external-affairs-and-culture-committee/correspondence/2021/common-frameworks>

⁴ Mutual Recognition of Professional Qualifications (MRPQ); Radioactive Substances; Public Procurement; Chemicals and Pesticides; Food Compositional Standards and Labelling; Plant Health Plant Varieties and Seeds; Resources and Waste; Commercial Transport and Operator Licensing; Rail Technical Standards (interoperability); Driver Licensing; Roads – Motor Insurance; Nutrition Labelling, Composition and Standards; Organs, Tissues and Cells (apart from embryos and gametes); Public Health Protection and Health Security; Hazardous Substances (planning); Food and Feed Safety and Hygiene Law

⁵ Services Directive; Specified Quantities and Packaged Goods Legislation; Agriculture – Fertiliser Regulations; Agriculture – Organic Production; Agriculture – Zootech; Best available techniques

⁶ Fisheries Management and Support

- Neither of the 2 reserved policy areas that are subject to ongoing discussion between the UK government and devolved administrations (Food and Drink Geographical Indicators; Data Sharing – Eurodac) are mentioned in the North-South Mapping Exercise document.
13. So far, published Common Frameworks have noted the “specific circumstances of Northern Ireland” and include set language referring to “the provisions of the Belfast Agreement (including the North/South dimension highlighted in Strand 2 of that Agreement)” and/or the “economic and social linkages between Northern Ireland and Ireland”.
14. They also contain a note that these will be “respected” or “adhered to”. But there does not seem to have been substantive engagement with what this might mean for the design of relevant frameworks.
- For example the provisional CFs on ‘Food Compositional Standards and Labelling’ and ‘Food and Feed Safety and Hygiene’ do not mention of the Food Safety Promotion Board (Safe Food) that meets under the auspices of Strand Two of 1998 Agreement and whose work is relevant for the operation of these CFs.
 - Another example is the provisional CF on ‘Organs, Tissues and Cells’ and ‘Blood Safety and Quality Provision’ set out the unique position of NI under the Protocol but not the importance of cross-border healthcare delivery in, for example, work of All-Island Congenital Heart Disease Network or North-South Living Donor Exchange Kidney Transplant Service both of which meet under the auspices of Strand Two of 1998 Agreement and whose work is relevant for the operation of these CFs.

Recommendations on better management of CFs alongside N-S cooperation

15. To manage the operation of CFs alongside continued N-S cooperation and avoid negative governance outcomes, frameworks officials could set up semi-regular meetings with officials involved in the NSMC sectoral working groups; these cover agriculture, environment, transport, health, education, and tourism (the latter two being of less relevance).
16. A similar initiative could be taken forward with representatives from the N-S Bodies – formal/informal networks could usefully be established between officials where the work of implementation bodies intersects with the operation of common frameworks.

⁷ Agricultural Support; Emissions Trading Scheme (ETC);

17. In pursuit of greater scrutiny, the CF Committee could invite officials/representations from the NSMC and N-S Bodies to give evidence on a semi-regular basis about the development of N-S cooperation in areas relevant to the development of frameworks.

Stakeholder engagement

18. In our previous submission we made the point that stakeholder consultation and engagement is vitally important because they are, in many ways, the ones who will be most affected by – and give most effect to – a Common Framework.

19. The lack of transparency that we have noted above exacerbates the challenge for stakeholders, even if some officials are careful to engage at some points with some of them. A large problem here is the lack of general awareness of the CF even before we are able to consider the details of them.

20. In stakeholder workshops conducted for the Post-Brexit Governance NI project in Queen's University Belfast,⁸ we have seen an oft-repeated concern about the legal uncertainties for Northern Ireland in many areas beyond trade. Some participants from the community and voluntary sector described the inadequacies in the development of UK Common Frameworks as being more problematic for Northern Ireland than uncertainties around the implementation of the Protocol. This is partly because of the inevitability of GB-NI divergence as a result of the Protocol and partly because the scope of the CF goes beyond those relating to trade.

21. Furthermore, there are quite a few areas classified as 'no framework required' do not seem to have factored in the particularity of NI, not least as relates to North-South cooperation and the Protocol, for example biodiversity, water quality, marine environment, energy markets). Stakeholder engagement will likely be necessary to get a full picture of the negative governance risks here beyond the scope of the CF.

Further concern: No Common Framework for Equal Treatment Legislation

⁸ ESRC-funded project on Governance for 'a place between': the Multilevel Dynamics of Implementing the Protocol on Ireland/Northern Ireland, see: <https://www.qub.ac.uk/sites/post-brexit-governance-ni/>

22. We note that the Government has assessed that a UK Common Framework for Equal Treatment Legislation with Northern Ireland to be 'not currently required'.
23. In correspondence to the Chair of the Women and Equalities Select Committee, Caroline Nokes, (19 November 2021), the Minister for Levelling Up Communities and Equalities, Kemi Badenoch, says that this is "due to the shared international obligations that Great Britain and Northern Ireland are subject to in this area and the consequential limit that this places on any scope for significant divergence".
24. The UK Frameworks Analysis of 2021 (p38) states that "GB-wide equality law already covers most of the policy area that would fall under a Framework, and in the remainder, the risk of regulatory divergence is assessed to be very low... Should these circumstances change, this assessment can be revisited." It notes that previous EU law "requires the existence of an equalities monitoring body, such as EHRC."⁹
25. We would wish to briefly raise two points of concern here. The first is that the scope for divergence does exist and, moreover, that it looks likely to happen imminently:
- Article 2 of the Protocol commits the UK Government to ensuring that there is 'no diminution' of rights, safeguards and equality of opportunity in Northern Ireland as set out in the 1998 Good Friday/Belfast Agreement.
 - One such safeguard is the ECHR. The "complete incorporation into Northern Ireland law of the European Convention on Human Rights (ECHR), with direct access to the courts, and remedies for breach of the Convention" is a core element of the 1998 Agreement.
 - Under the 1998 Agreement, key decisions and legislation applying in Northern Ireland are proofed to ensure that they do not infringe the ECHR.
 - It is of direct relevance, therefore that UK Government is intending to 'imminently' bring forward a review of the Human Rights Act and the European Convention on Human Rights. This was stated by Minister of State in the Home Office, Tom Pursglove, in the House of Commons debate on the Nationality and Borders Bill (7 December 2021):
 - "I can therefore confirm that the Government have imminent plans to consult on substantial reform of the Human Rights Act, which will be announced imminently in Parliament.

⁹ Available from:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1031808/UK_Common_Frameworks_Analysis_2021.pdf

- The Home Secretary also recognises my right hon. and hon. Friends' concerns about aspects of the ECHR and other international agreements. I can therefore confirm that we are committed to reviewing and resolving these issues with the urgency that the situation warrants."¹⁰
- As such 'the international obligations' to which Minister Kemi Badenoch refers are not as set in stone as might be implied in the letter.

26. The second concern is the lack of engagement with the Northern Ireland Executive.

- In the letter, the Minister states "This reflects the opinion of the Government *but does not indicate that any formal agreement with the NIE has been reached.*" [emphasis added]
- The Minister states that "This assessment can of course be revisited at any time, if needed, the NIE will continue to assess this policy area."
- However there is cause to doubt that the assessment of the NIE will have any impact given that the agreement of the NI Executive was not secured prior to the decision not to have a CF on Equal Treatment Legislation.

We would question the grounds and wisdom of the decision not to have a CF in this important area.

9th December 2021

¹⁰ Column 322; Available from: <https://hansard.parliament.uk/Commons/2021-12-07/debates/E3398434-EA4E-4717-9BF5-92B8962F82D1/NationalityAndBordersBill>