



Northern Ireland
Assembly

Committee for Agriculture, Environment and
Rural Affairs

OFFICIAL REPORT (Hansard)

EU Exit Legislation and Delivery: DAERA
Briefing

10 September 2020

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mr Declan McAleer (Chairperson)
Mr Philip McGuigan (Deputy Chairperson)
Ms Clare Bailey
Mrs Rosemary Barton
Mr John Blair
Mr Maurice Bradley
Mr Harry Harvey
Mr William Irwin
Mr Patsy McGlone

Witnesses:

Dr Rosemary Agnew	Department of Agriculture, Environment and Rural Affairs
Dr Julie-Ann Moorhead	Department of Agriculture, Environment and Rural Affairs
Mr Kevin Murphy	Department of Agriculture, Environment and Rural Affairs

The Chairperson (Mr McAleer): I welcome the witnesses. We have Rosemary Agnew, Brexit director in the Department, Kevin Murphy and Julie-Ann Moorhead. We may have only two witnesses at the moment. We will await the third.

Dr Rosemary Agnew (Department of Agriculture, Environment and Rural Affairs): Thank you very much. We have all had great difficulty this morning accessing your system. We will have to take that offline and look at it. I am currently on the telephone. I understand that Kevin Murphy, from my Brexit secondary legislation team, is also on a call. Can you confirm that you are there, Kevin?

Mr Kevin Murphy (Department of Agriculture, Environment and Rural Affairs): Yes, I am here.

Dr Agnew: Julie-Ann Moorhead, from my common frameworks team, are you on the line?

Dr Julie-Ann Moorhead (Department of Agriculture, Environment and Rural Affairs): Yes, Rosemary, I am here.

Dr Agnew: Chair, we are all on the phone. I apologise that, of course, we cannot see each other, but, with your forbearance, we will try to take you through a number of issues this morning. With your agreement, I would like to give a short 10- or 12-minute presentation, and I am happy to take questions afterwards.

The Chairperson (Mr McAleer): Yes, dead on, Rosemary.

Dr Agnew: I very much thank you for the opportunity to discuss with the Committee the plans for very important issues in the EU exit programme for the Department, the Assembly and Northern Ireland. We are at a huge and critical stage, as you will all be aware. At the outset, I acknowledge that the Department has been late in providing EU exit papers to the Committee over the last two weeks. That has been due to internal processes and to senior staff and the Minister being on leave. I assure the Committee that I am working hard with our Assembly support office to address the future timeliness of the provision of papers, and I have had discussions directly with the Committee Clerk. I ask for your forbearance over the next few days while we resolve all those issues and provide those papers in a more timely fashion. I assure the Committee that I will do all in my power to get the information to the Committee in the appropriate timescales, acknowledging that, as with everything with EU exit, I do not have control over all the issues. Like all Northern Ireland Civil Service Departments, DAERA is very much dependent on decisions being taken in Whitehall, and that influences the timescales that we need to work to.

On future engagement with the Committee on EU exit, I propose that we make some adjustments to the programme, after the meeting on 24 September, to address the need to focus on the legislative programme. Today, I propose that we provide you with an update on related thematic areas. For example, when we come to talk to you about waste, we will do that in conjunction with the legislation that needs to be made on waste and which you need to consider and scrutinise. I have alerted the Committee Clerk to this, and we will write to you formally to seek those changes. The objective is to provide a more cohesive and comprehensible way for us all to understand the issues as EU exit progresses. The issues do not sit neatly in the Department's current group structure, so we will seek your agreement to bring those forward in a more cohesive way. It will also allow the Committee to receive an update at each of its meetings, and I and other members of the senior team are available at any stage to brief the Committee as it so wishes.

I am also proposing to you verbally today that, at least for the next short period and perhaps until the end of October — we will need to keep this under continual review — we will provide a fortnightly written update. At the minute, EU exit is ever-changing, and there are so many unknowns that it is very difficult to provide a written update that is current. This proposal does not affect any issues that will need to be brought to the Committee for urgent attention or, indeed, any issues that the Committee specifically requests information on. Again, we will write to you to formally request that change.

With that set out for context and as an introduction, I will say a few words about our secondary legislation programme and a little bit about our common frameworks programme. We had a very positive and constructive discussion with the Committee Clerk last week, and we issued in your papers a set of slides that I would like to talk through quickly to ensure that the Committee fully understands the legislation that we are bringing forward and the processes that might be involved. I know that you will wish to consider that, so if you can bear with me, Chair and members, I would like to quickly run through that presentation.

The aim is to work through the slides and to provide you with an overview of DAERA's preparation for drafting and laying the necessary secondary legislation at Westminster and in the Assembly; to briefly outline the key elements of the secondary legislation planning; to highlight the significant volume of legislation that we all need to progress, deal with or consider; the key dates for the processes that could be adopted with your agreement; and to ensure that our Minister can offer consent to Whitehall Departments to the UK-wide statutory instruments (SIs) with devolved consent to Northern Ireland, if that is the position that we arrive at following your scrutiny and his consideration.

I advise that my team is involved in the coordination, reporting and monitoring of all the legislation planning, and, in due course, the Committee will interact with the various policy teams and business areas on the detail of each piece of secondary legislation.

It is also important to flag to you, Chair, and to all members that any figures that we quote and the figures in the tables on the secondary legislation programme are correct today, but everything remains very fluid, as does everything that is related to the EU exit or Brexit. Changes are regularly occurring due to pressures on parliamentary time, decisions that are being made in Whitehall or decisions that will jointly be made between the UK Government and the EU. There is also need to try to minimise the number of pieces of legislation and to maximise the legislative changes, because it is a huge task.

I will quickly run through the slides with you. The aim of our secondary legislation programme is to ensure that DAERA has a fully functioning rule book, with some degree of risk, with clear oversight of all the secondary legislation that is required to address operability issues and deficiencies as a consequence of the UK's exit from the EU. We are all aware that the deadline to achieve a fully functioning rule book by the end of the transition period is 31 December. There is a huge number of identified risks, such as the volume of legislation that is required, the pressures that are on parliamentary time and the need for Westminster Departments to draft and share final copies of planned SIs with the devolved Administrations (DA) in a timely way. We are trying to manage such risks through constant engagement with Whitehall officials and you, and that includes our Minister and other devolved Administration Ministers considering that at their inter-ministerial group, the next meeting of which is this coming Monday.

Looking through the overall secondary legislation context, we can see that the legislation that is required encompasses categories that include inoperability fixes; legislation that was made previously for a no-deal scenario; legislation that is required to maintain pace with the EU during the transition period; legislation on the implementation of the withdrawal agreement, including aspects of the Ireland/Northern Ireland protocol; and legislation that is required as a consequence of the UK/EU negotiations. In my team, there are two secondary legislation work streams aimed at addressing the overall context: one relates to UK-wide statutory instruments or SIs with devolved content, and the second relates to the Executive's own legislative programme of statutory rules (SRs) that need to be brought forward. In each of those, the Committee will have a critical role.

With your forbearance, Chair, I will say a little bit about the SI programme and then the SR programme. I have given you a slide with timelines for the DEFRA SI plan. It is not my intention to go through that in any detail. I will just say that, to ensure completion of that SI programme, DEFRA recently appointed Minister Prentis as the SI Minister. That Minister holds collective and bilateral meetings with all the DA Ministers to monitor the progress of the SI programme and to take corrective actions where necessary.

It is important to spend a little time on this next area, and I am sure that the Committee will have questions on it. In respect of all the UK SIs with devolved content, it is critical to ensure that all respective DA Ministers can offer consent or agreement, in advance of the laying of those SIs in Westminster. I have given a definition of consent in one of the slides, and I want to work through the priorities that have been proposed across the Northern Ireland Civil Service for dealings around those consent processes.

As per the correspondence earlier in the summer, from our Minister to you, Chair, we need to engage constructively to agree an overall approach to the scrutiny role that the Committee might wish to undertake for each SI. I have gone through this in some detail with the Clerk, so, hopefully, you will have an opportunity to consider this later today.

We recognise that effective scrutiny of SIs is essential to give local democratic accountability, but this is set against a very limited period in which we can bring forward legislation. Northern Ireland Civil Service Departments are trying to ensure, subject to the Committee's agreement, varying levels of engagement, depending on the content of the proposed SI. Three categories of SI will be brought forward at this stage: category 1, category 2 and category 3.

Category 1 SIs will make non-controversial, technical amendments only, not policy changes. Those are likely to be the classic, negative procedure EU exit SIs, made under section 8 of the European Union (Withdrawal) Act 2018. For those SIs, the AERA Minister proposes that we give consent directly and then notify the Assembly Committee that we have done so.

Category 2 SIs will make policy changes but are not, of themselves, likely to be controversial. Obviously, that is a bit of a grey area. We are working to identify which SIs fall into the category 2 area, and we will obviously be guided by the Committee's views.

Category 3 SIs are deemed controversial. The most obvious ones that I can select as examples are Northern Ireland protocol affirmative SIs that will be brought forward in Whitehall, for which the Committee will very much seek to have a scrutiny role. For those particular SIs, the Minister will write to the Committee offering a presentation, before he decides what he will do. He will seek significant input from the Committee. However, I stress that, while this flexible three-tier approach will provide the Committee and, indeed, the Assembly with a role and opportunity for scrutiny, it is within a constrained timeline, and we will need to work collectively to achieve that.

I recognise the need to move on, but I will say something quickly about the numbers involved. There are 27 UK-wide SIs with devolved content to Northern Ireland, which Whitehall intends to lay in Westminster, between now and 31 December. Provisionally, there are 27, 25 of which require consent. One requires agreement, and we are still waiting for confirmation about an additional one, giving the total of 27. The split between negative and affirmative is that 19 are draft affirmative SIs, seven are negative and one is an Order in Council.

On initial consideration, we believe that eight of those require a category 3 consent, four need a category 2 consent and eight require a category 1 consent. Again, we will work through all those, and we are providing detailed information to the Committee for its consideration. I will not go through the eight statutory instruments that require a category 3 consent, but we can perhaps pick that up in questions.

We also have 13 reserved SIs to be laid between September to December that Northern Ireland may have an interest in, but DA Ministers are not required to offer consent. DAERA might have an interest in those that impact Northern Ireland. The reserved SIs will also be shared with the Committee, and the Committee will be provided with an opportunity to consider and brief if so required.

I will move on to the statutory rules that will be brought forward between September and December. At the minute, recognising the fluidity of the situation, 26 Northern Ireland SRs will be brought forward for the Committee's scrutiny, and those are on top of the SIs. Those are split into 22 negative SRs and four affirmative SRs.

As you can see, there is a huge legislative programme. We need to work collectively to try to achieve that.

Chair, do you want me to stop at legislation and then go on to frameworks, or do you want me to say a little bit about frameworks and finish? I will be guided by you.

The Chairperson (Mr McAleer): The frameworks information is fresh as we have only just got it. However, if the Committee does not mind, we can touch on the frameworks and cover those and the legislation in one go. Is that OK?

Dr Agnew: Yes, that is fine. It is not a difficulty at all. Recognising that you have just received a lot of the information on frameworks, I will give you a quick overview.

The common framework programme seeks to develop UK-wide arrangements for those powers that will be repatriated from the EU and that fall within areas of devolved competence. Development of frameworks is guided by the principles that were agreed by the Joint Ministerial Council (JMC) in October 2017 and by the Northern Ireland Executive in June 2020. The principles set out that frameworks will be established where necessary to enable the functioning of the UK internal market while acknowledging policy divergence and ensuring compliance with international obligations and the management of our common resources. Frameworks will also respect the differing devolution settlements that exist across the regions of the United Kingdom.

DAERA has been engaging with counterparts in DEFRA, BEIS and in other devolved Administrations in order to develop future common frameworks following a five-phase process that was designed by the Cabinet Office. The detail of all that is in your papers. DAERA is the lead Northern Ireland Department for the development of legislative frameworks in 15 policy areas and of non-legislative frameworks in seven policy areas. Two others fall within the BEIS space, and those are the EU emissions trading scheme and the radioactive substances scheme. You may be considering a paper later on the radioactive substances framework. There are well-established intergovernmental structures in place to ensure a consistency of approach across the portfolio of frameworks, including the inter-ministerial group and various meetings between senior officials across the four Administrations.

Since the original classification of frameworks was published by the UK Government in 2018, policy positions have evolved and a reclassification exercise is nearing conclusion. That is likely to amalgamate some policy areas, split others and reassign some to no further action. The expected result — this is positive given the programme of work that is facing us — will be a reduction in the number of DAERA-led frameworks.

Further recategorisation of the legislative and non-legislative frameworks will be reviewed in October at the inter-ministerial group when there may be further clarity on outstanding issues around the

Northern Ireland protocol, potential free trade agreements and the internal market. It is recognised that it will not be possible to deliver the full programme of frameworks by the end of the transition period on 31 December 2020. Therefore, key priority frameworks, that is, those that are critical for day one, have been identified. The DAERA-led priority frameworks are animal health and welfare; chemicals and pesticides; resources and waste; plant health; plant varieties and seeds; fisheries management; the EU emissions trading scheme; and agricultural support. Those have been agreed by the Executive.

We are working across the UK on a revised delivery plan. There is now the expectation that all frameworks should reach provisional status by the end of December 2020. That means that each framework should have an outline agreement and accompanying ministerial concordat provisionally confirmed by Ministers at portfolio and JMC level by the end of 2020. Having a provisional framework should ensure that there is at least a minimally operable framework that can be used from 1 January 2021. That timeline is hugely challenging, and where resourcing becomes an issue, the focus will be on the priority framework areas that I identified.

As you will appreciate, some elements have huge wider dependencies, such as the internal market, the protocol, the future partnership with the EU, funding and the intergovernmental relations review. It is recognised that those issues may not be resolved by the end of December. For the majority of the DAERA frameworks, parliamentary scrutiny by you and the Executive, ongoing reappraisal of the cross-cutting issues and development of the full framework for implementation will happen in 2021. It will not happen before the end of 2020.

Chair, I apologise for taking so long with my introduction. I hope that you found it useful and that it provided you and members with a better understanding of the challenges that we all face if we are to successfully deliver the legislation and frameworks programme. We very much wish to work with the Committee on the forward planning of this significant work, and our teams are fully committed to that.

Thank you for your time, Chair and members, I am happy to take any questions that you may have.

The Chairperson (Mr McAleer): Thank you very much for that, Rosemary.

Mr Blair: I appreciate that officials have not been asked to prepare answers to questions on the Internal Market Bill, but what impact might the controversy of recent days have had on officials' current plans and what will be the possible outworkings if that uncertainty carries forward?

In addition, can you provide clarification on the categorisation of the SIs and how it is determined whether something should be a category 2 or 3? The specifics that I am looking for include this: who decides whether something is or is not controversial? Is it a panel, an individual, an official making a decision in their business area or is it a collective decision?

Dr Agnew: I might have missed a bit of that, but I will try my best, so come back to me if I do not answer all your questions.

I recognise that there has been a lot of information in the press over the last few days as well as a lot of controversy. That has not influenced DAERA's planning. DAERA is maintaining its current planning until it receives clarity on some of the issues. So, we are planning as outlined. I know that the senior responsible officer (SRO) for the overall EU exit programme, Denis McMahon, our permanent secretary, has agreed to give you an update on our overall planning at the meeting on 24 September. However, to date, our planning has not altered as a result of the controversy over this last number of weeks. We are waiting to see how that falls out, and the permanent secretary will give you an update at the meeting on 24 September, when we have seen how some of those things play out.

Your next question was about who decides on the categorisation of the SIs. Initially, that will be a decision for the business areas, the senior team at DAERA and the AERA Minister. The Minister will write to you indicating the categorisation that he believes it to be. However, should the Committee have a view, that will be something that we will need to work our way through. Collectively, we are in this together, and we need to work together to achieve it. Initially, it will be for the business areas and the Minister to do that categorisation, and we will write, on the basis of that categorisation, to the Committee on how we would like to bring forward the presentation.

Quite obviously, if the Committee decides, even for a category 1 SI, that it would like to receive a presentation, it has every right to make that request. However, I stress that it is a huge legislative programme, and we will have to work collectively to achieve it.

Mr Blair: I thank Rosemary for that. That is helpful, and it clarifies that, if the Committee has concerns, we will be able to make an appropriate response.

The Chairperson (Mr McAleer): Is DAERA's proposed approach consistent with TEO's guidance on managing the EU exit?

Dr Agnew: Yes. The guidance that was issued by TEO outlines the approach that all Departments are to take with their respective Committees. Hopefully, if you speak to other Committees, you will find that a similar approach is being taken across them. We are trying to apply a consistent approach across the Northern Ireland Civil Service and the Northern Ireland Executive.

The Chairperson (Mr McAleer): Will the Minister or the Department consult the Committee before the issues are categorised? We have an important statutory scrutiny role here. If we were not content with the categorisation or, indeed, if consent was given for a category 1 SI and we were not content with that, it would be too late for us to fulfil our statutory remit.

Dr Agnew: As I said in my answer to the previous question, it will be for the Department to provide an initial scrutiny role. We will share with you what we believe that categorisation to be. In advance of our doing that, and in advance of the Minister writing, you will already have sight of how the Department intends to categorise each of the SIs. If, at that stage, you have any concerns, that gives you the opportunity to present that challenge function back to the Department. You will be advised in advance of the categorisation of those SIs. Sometimes, I have to say, it will be done without full information on the detail of what is in the SIs, because we are doing some of this without having had sight of the full SIs from DEFRA. Nevertheless, there will be an opportunity for the Committee to exercise its challenge function. I think that the Committee Clerk will agree that, from the papers that you have, you already have an idea of what will be categorised where. We will continue to do that.

I do not know whether that completely answers your question, but we will strive to ensure that the Committee has its full role in ensuring that the categorisation is complete. However, we also need to be pragmatic, because there is a risk that, even if we go through all of that categorisation and the various consent processes, the UK Government will lay those SIs anyway, without receiving a response from our Minister. That can be good or bad. On the negative side, it could bring things into the statute book that Northern Ireland might not wish to see, and then we will have to take corrective action by bringing forward legislation to correct that, or it could be positive, in that the legislation that we wish to happen comes into force.

The Chairperson (Mr McAleer): It is important that we have that scrutiny role and that it is properly executed. By your definition, Rosemary, category 2 is deemed to be non-controversial, but that definition is subjective. What the Department might deem to be non-controversial, Committee members might see as controversial, so it is very important that we have our role in this process.

Dr Agnew: Absolutely. That is part of the reason why I am here today. Whilst it is difficult by telephone, I am here today to try to give as much assurance to the Committee as I can. Part of my role is to ensure that you have that scrutiny role and that I work with you and your Committee Clerk to ensure that you are as up to date with the fluidity of the situation as we can be to enable you to do that. All I can do is to give you an assurance that our overall objective is to ensure that you have your scrutiny role in all this legislation.

The Chairperson (Mr McAleer): That is great. I am sure that members have many questions to ask.

Mr Irwin: Thank you, Rosemary, for your presentation. As we all know, negotiations between the UK Government and the EU are fluid. Will there be changes to this? We do not know what the outcome will be. I am an optimist in life, and I hope that there is an agreement, but if there is a no-deal scenario, will that change the situation for us in relation to what we have to do?

Dr Agnew: The simple answer to that is yes. The situation is fluid because there are so many unknowns. The timeline that has been agreed in Westminster is very challenging. If many of the decisions are at the last minute, which they could well be, that will push the legislation further down the track and reduce the time available to scrutinise it. So, it has significant implications for the Committee in the timing of its work.

Mr Irwin: In your eyes — maybe it is a political question — could those negotiations go on for another two months or is there a definite deadline for their conclusion?

Dr Agnew: That is probably a political question, but I can give you what I know. My current understanding is that there will be Joint Committee meetings. As you will know, the EU-UK Joint Committee is there to agree the aspects of the implementation of the Northern Ireland protocol. There could be meetings of that Committee right to the end of November or early December. So, there could be decisions in late November or early December that will require legislation to be passed in order to enact them. However, as you said, it is in the political arena at the minute, and I cannot really comment any further.

Mr Irwin: OK. We might not have much time after Christmas then.

Mr McGuigan: I had a couple of specific questions, but, between you and John, you have asked them. It is important to make the point that this is a very unsatisfactory approach to dealing with important issues, particularly for the scrutiny role that this Committee has. I know that I am making this a political point. The information that we have got today has been useful, if not entirely making us happy.

Rosemary, did I pick you up correctly when you were answering a question from the Chair? Did you say that the Minister at DEFRA can push this stuff through, which will affect the North, even without the consent of our AERA Minister?

Dr Agnew: Chair, I could not hear that question. The sound was breaking up. Could someone repeat that question for me?

Mr McGuigan: I may have picked you up incorrectly when you were responding to the Chair earlier, but I thought that I picked you up as saying that the Minister in DEFRA can go ahead with this, even though some of it will affect the North, without the consent of the AERA Minister.

Dr Agnew: Philip, I heard you say at the beginning that the whole thing is quite unsatisfactory. All I can say to you is that I totally recognise that that is how the Committee feels. It is also very difficult for officials in DAERA to move to the timeline that we are now facing and to follow everything that we need to do. The whole thing is quite an unsatisfactory timeline, and every day matters. What is critical, I think, is that, as far as possible — the Minister is doing this — we ask for and seek from DEFRA early sight of the detail of these SIs to enable the scrutiny to happen and to enable the Committee to have its scrutiny role. Our Minister is already committed to doing that and has already written, asking for early sight of those SIs to enable both himself and the Committee to carry out their functions and role.

You are right, Philip, that I did say that there is a risk that, if we delay consent or responding to consent too late, DEFRA, as the UK Government, could go ahead and lay the UK-wide SI. That risk exists. Remember that you are there with the Scottish and the Welsh as well, so it is about the three devolved Administrations giving consent. I know that one of your slides talks about the Scottish Government having 28 days, so it seems that there is an opportunity collectively for scrutiny of each of the SIs. However, the risk remains that, if we do not respond in the timeline available, the UK Government could go ahead and make the SIs without consent. They have not formally told us that, but I believe that that is a risk, hence my saying that today to you.

The Chairperson (Mr McAleer): Rosemary, is that the same with the SRs?

Dr Agnew: No, not at all. The SRs are totally within the Northern Ireland Assembly's control. They are local pieces of legislation. They are totally within your role as a Committee and then whether or not you wish to take them onto the Floor of the House. It is only the case with the SIs. The SRs are totally within your control.

Mr McGlone: Thanks very much indeed, Rosemary. There is a bit of an anomaly or a difficulty that I have, as we know that what could be deemed as one person's controversial could be deemed to be eminently sensible by another. The difficulty that I have with that is that I think, Rosemary, you said that some of these SIs might be coming to us without the full detail. If they are coming to us without the full detail, we cannot make a proper call on whether they are controversial, non-controversial, quasi-controversial or not controversial at all. That is more than a bit of an anomaly that I see there. Do you have anything in particular to say about that? I know that you are being foisted at the moment

with a whole lot of stuff with this European Union (Withdrawal Agreement) Act 2020 that is creating a lot of difficulties. I will maybe come to that in a minute, too, but please just answer that first question.

Dr Agnew: Patsy, that is a very valid point. It is a very difficult balancing act because, at official level, Whitehall will share draft SIs with us. They may be incomplete, and we may have to make some sort of a judgement based on what we have. It is a balancing act as to when we share them with the Committee. You are asking for as early sight as possible, and we may not be able to give you all the information if we give you that early sight. That is where I am coming from. We will need to work together in a constructive way to try to get you the sight of these SIs that you require, but also to try push DEFRA to share the full detail of the SIs as quickly as possible. I probably do not have an answer for you, Patsy. It is an anomaly. All we can do is try to work our way through it.

Mr McGlone: Now to, maybe, a bigger anomaly: has the Department taken any legal advice yet about the implications of the United Kingdom Internal Market Bill and how that might impact on what you and we are trying to do at the moment?

Dr Agnew: The simple answer is no. Like everyone, our first sight of the Bill was when it was published yesterday. That work is ongoing.

Mr McGlone: So will the Department do that? I presume that it will.

Dr Agnew: Yes. The Department —.

Mr McGlone: That is —.

Dr Agnew: Sorry, Patsy; we are talking across each other. Apologies for that. The Department will be looking at the implications of the Bill, including a legal assessment. The Department will take that forward.

Mr McGlone: I have a final point that has just come in to my head. Is work continuing to prepare for checks at ports, or has that been stopped or put on hold?

Dr Agnew: A significant amount of work continues to be done around preparing for what we believe is required for portal infrastructure. At the minute, we are going through a number of internal processes. The permanent secretary will update the Committee on that in quite a lot of detail when he comes in a couple of weeks' time. By that stage, we should have completed all our internal processes.

Mr McGlone: Can you give me some sort of an indication as to what those internal processes are about or what the impetus for them is?

Dr Agnew: I can outline what the internal processes are. Some of them are internal issues around going to procurement and working out how we can do that, working out the planning implications, developing plans, and then, obviously, seeking the Minister's agreement to all of that. Everything is at various stages. There is also the development of a business case to justify the necessary funding to meet mandatory requirements. All of that work is progressing. As I said, internal processes are ongoing. I am just not in a position to say any more at this stage until those internal processes have completed.

Mr McGlone: Maybe this is not immediately within your brief, but when do you anticipate those internal processes being completed? I know a wee bit about tendering from other projects that I have been involved in. Tendering, procurement, all those sorts of things that have to be gone through — adherence to standards, planning permission if required. Is there a certain time frame that the Department is working to around those issues?

Dr Agnew: I am not completely sighted on it, and I think that you will appreciate that, because it is not my work area. However, the Department is very alert to the number of days, the timelines and the tightness of it all. When the permanent secretary comes on 24 September to address the Committee, the focus of his presentation will be on updating you on where everything is. There will be a paper with you in advance of that. I know that that sounds as though it is two weeks away, but, in reality, it is not, given that we are trying to have better timeliness when it comes to your papers. That is probably all that I can say to you, Patsy, at this stage.

Mr McGlone: That is grand. Thanks for that, Rosemary.

Mrs Barton: Thank you, Rosemary, for your presentation.

The Chairperson (Mr McAleer): Two Rosemarys in the room now.

Mrs Barton: What do you envisage the turnaround time being with the category 3 SIs so that, for example, you get them to our Committee and we look at them etc?

Dr Agnew: I am going to ask Kevin, if he is still on the line. Kevin, can you quickly outline that timeline, just to be clear on what it absolutely is?

Mr Murphy: As you said earlier, Rosemary, when you are looking at the categories, our DAERA staff have tried to categorise those as best they can with the information available. We also sought input from DEFRA on that, to see whether it is in agreement. As you said, Rosemary, what will happen first is that we and the other devolved Administrations will stress daily to DEFRA the need to give us early sight of those SIs. Whenever we get sight of them, our policy and legal teams will have to go through them and draw conclusions on those. That then enables us to advise the Minister. The key thing around laying dates, which we will do, and which you said earlier, is that we now have to go through a process of identifying the individual laying date for each SI, and then work back through those stages. We need a wee bit of time to do that, but as soon as we get that, we can share it.

Mrs Barton: Right. So you do not have anything like a seven-day deadline or anything like that for the category 3s?

Dr Agnew: I cannot promise, Rosemary, that we will not have, but we will strive to give the Committee as long as we possibly can to do that. I know that it is also a concern for the Scottish and Welsh Parliaments on how long they will have to scrutinise the category 3 SIs.

Mrs Barton: That will be seven working days, I presume?

Dr Agnew: I presume so, yes.

Mrs Barton: At the very end, you said that we might have to have an even more reduced timetable to scrutinise. What would you envisage our timeline then to be for those category 3s?

Dr Agnew: I have already mentioned this in discussions with the Clerk, but we may ask the Committee to meet additional times in order to meet the requirements. We will strive, as far as possible, to give the Committee as long as we can, but the impact on the Committee may be that we will ask you to hold a few additional meetings in order to work your way through those. Obviously that is a decision for the Committee, but I think that my proposal for handling those constrained timelines will be to ask the Committee to carve out additional meeting times to deal with them.

Mrs Barton: One last question, then, on the framework programmes. You talked about a provisional framework and then you talked about a priority framework. Is one contained within the other, or are they two separate frameworks?

Dr Agnew: They are linked, and you are right to say that. Basically, there will be a provisional framework, hopefully across all areas, but, on that provisional list, a number have been identified as priority. If resourcing or issues take over and we run out of time, we will focus on the priority frameworks. I think that I gave you the names of the priority frameworks.

Mrs Barton: Yes.

Dr Agnew: Animal health and welfare, chemicals and pesticides, resources and waste, plant health, plant varieties and seeds, fisheries management, EU emissions trading scheme and agricultural support will be the priorities. There is a provisional list, as it were, but there are priorities within that. "Provisional" is the initial stage of development for all of them, and we will prioritise six or seven. Certainly, from a departmental point of view, I see us having to focus on those priority frameworks, because we will be unable, from a resourcing point of view, to progress all of them.

The Chairperson (Mr McAleer): When it is likely that we will get sight of the first SI?

Dr Agnew: I am not absolutely clear, Chair, when you will get sight of the first one, but it might be as soon as next week. Kevin, are you able to add any detail to that?

Mr Murphy: Two SIs will be laid towards the end of December, and then they will start to peak around —.

Dr Agnew: October, Kevin.

Mr Murphy: Yes. Around October and November. As I said earlier, we are agreeing laying dates for each of the SIs with DEFRA, and we can list the SIs and provide individual target-laying dates for them.

The Chairperson (Mr McAleer): Thank you, Kevin.

Ms Bailey: Thanks, Rosemary. There are concerns over the notion of the principle of consent with Westminster and how that is applied. Westminster has ignored us before, particularly in the European Union (Withdrawal) Act. Scrutiny, oversight and accountability are the big issues here, as well as the speed at which we have to get through the workload. Those are the key concerns for everybody, I imagine. There are implications for us as a Committee. I raise this point because I am mindful of the fact that we are coming to this on the back of the renewable heat incentive scandal and what that brought about, as well as other issues that may arise in the future. Where will responsibility lie for the various pieces of legislation that are passed? Category 1 will be technical, we have been told, while category 2 will be with the Minister's consent. There will be different levels. *[Inaudible]* Westminster will *[Inaudible.]* What safeguards will the Committee, or even the Assembly or Executive, have? Are discussions happening about who will be accountable and about where responsibility will lie?

Dr Agnew: Clearly, Whitehall will ask the relevant Minister for consent. I would say that absolute responsibility for whether we give consent lies with the Minister, and, in many cases, it is our Minister, the AERA Minister. He is required to consider your views in arriving at a decision, because of that overall responsibility. The absolute responsibility rests with EFRA Minister Prentis, because these are UK SIs, not Northern Ireland SIs. The overall responsibility for giving consent to them rests with the AERA Minister, however.

Ms Bailey: Overall responsibility therefore lies at Westminster.

Dr Agnew: Yes.

Ms Bailey: We know that we are not being given enough scrutiny or oversight time and that the SIs will be rushed through. That is quite clear.

The Committee and the Department have a lot of UK frameworks to look at. Are discussions taking place about island-wide frameworks, by which I mean North/South frameworks?

Dr Agnew: Not at this stage, Clare, but you will be aware that there is an all-island animal health and welfare strategy etc. The purpose of the framework discussion is to look at how the four regions of the UK will operate once we leave the EU, in order to ensure that we can manage any disputes etc. It relates to any repatriated powers coming from the EU back to the UK. At the minute, work is ongoing around UK frameworks only. We are not looking at all-island work as part of the exercise, but that does not mean that it is not important. I particularly highlight the animal health and welfare strategy, which is an all-island strategy, given the need to protect biosecurity on the island.

Ms Bailey: My final question relates to the common frameworks and our priorities. Concerns have been raised with the Committee about the environment, sustainability and various other issues not being included. There are concerns that they are down the Department's list of priorities. The birds directive and the habitats directive are low priority, for instance, but we know that we are not in good shape with them currently. That raises concerns for me. You say that the priority list has been agreed by the Executive and by Ministers. Did the Department have any input into that? Have you concerns that our environment, habitats and biodiversity are at a low level of priority?

Dr Agnew: I will take each of your questions in turn. First, the prioritisation list was agreed across the UK. The main reason for those areas being prioritised is that they have an influence on trade. There is a link to trade. Of absolute criticality on day one, day two, day 10 or day 30 is trade.

It is recognised that we need to progress as many frameworks as possible in the timeline. There are a number of environmental frameworks, as you will see on the list, and that information will be in the papers that we have provided to you. Those have not been prioritised as critical priority ones at this stage, however. There is very much a recognition that they need to be progressed, and if they can be progressed in the time available at the same rate as the priority ones, they should be. That was agreed at ministerial level across the four Administrations with our Minister, the UK Secretary of State for Environment, Food and Rural Affairs, the Scottish Minister and the Welsh Minister. The prioritisation was then agreed through the Cabinet Office and signed off at Northern Ireland Executive level.

Although we have had some input, that input was through a number of different approval mechanisms to reach the priority list, and it was, as I said, agreed by the Northern Ireland Executive. Clare, I recognise your point, but we are where we are. It is critical that we progress all those environment-related frameworks as quickly as possible, either in parallel with the priority ones or as soon as possible thereafter.

Ms Bailey: For those that are rated by the Department as being low priority, have you got any indication of how long it will be before they are progressed and of what the time frame is for progressing them, or is that not something that you can give me at the minute?

Dr Agnew: I cannot give you that at the minute, Clare. It is something that we are trying to work our way through, in order to provide the information to Stella and her team, because she has asked us for that type of information. I will provide you with it, but it may not be provided in the next week or 10 days. It has taken us quite some time to work through it, because we also have to work with the other Administrations.

Ms Bailey: OK. Thank you.

The Chairperson (Mr McAleer): Rosemary, before I move on to other members, I want to ask about something that I had noted previously when I was going through the papers. Is it the case that Scotland has procedures in place whereby it can scrutinise SIs but that we do not have such procedures here? Is that correct? What procedures does Scotland have?

Dr Agnew: I will be honest, Chair: I am not completely sure. I know that it has a requirement of 28 days, while Welsh Committees have a 21-day requirement, but I am not clear on all of that detail and all the differences.

The Chairperson (Mr McAleer): That is OK, Rosemary. I will bring in Maurice.

Mr M Bradley: Thank you, Chair. Thank you, Rosemary, Kevin and Julie-Ann. My question is on category 3 items. There are category 3 items listed in the pack, with a laying date of October. From 30 September to 20 October, which is a four-week period, there are something like seven SIs listed. Considering that the Committee is not permitted to meet on plenary sitting days, how is it supposed to scrutinise so many SIs in such a short time frame?

Dr Agnew: Thank you, Maurice. Again, the line was breaking up a little bit. I will attempt to answer what I think you were asking me, but, please, come back in if I am not clear.

I fully recognise the timeline. As I said in response to, I think, Rosemary's question earlier about how the Committee will have the time to scrutinise the SIs, we will be asking the Committee perhaps to hold additional meetings and take additional time to help us through this.

It is difficult for the business and policy areas as well, because those SIs have not been shared with any of the teams yet, so they will be coming at the very last minute. They will have to be assessed and examined from a legal perspective in the Department and then brought to you for scrutiny. In many ways, we are in this together. We will be asking whether it is possible to have additional meetings in order to help us achieve these very tight timelines. I appreciate that it is far from ideal, but a lot of it is outwith any control that DAERA has.

Mr M Bradley: OK, Rosemary. Thank you very much. I just wanted to get that clarification, Chair.

Mr McGuigan: Rosemary may not appreciate my asking this question, but it is important. Patsy triggered it in my memory, and I am probably going to be more direct than he was in asking it.

There was some speculation the other day about disagreements in the Department between officials and the Minister on ongoing protocol work on the harbours. Given all the preparation work before us, and the timelines, it is important that necessary work be going on. Is there harmony and synchronisation of effort in the Department, or is there disagreement between officials and the Minister in taking forward certain aspects of work on the protocol?

Dr Agnew: As I said to Patsy, Philip, that is not an area that I am closely involved in. I reiterate what I said to Patsy, however, which is that departmental officials are working extremely hard on all aspects of that, and we are going through a number of internal processes. I am not sure that some of the recent press coverage has been terribly helpful for us as we try to progress a huge workload against a very tight timeline. That is probably as much as I can say, other than again to say that the permanent secretary has committed to coming to the Committee on 24 September to give you a full update on all of that area of work.

Mr McGuigan: OK. Fair enough.

The Chairperson (Mr McAleer): I thank Rosemary, Kevin and Julie-Ann for their contributions.

The Committee Clerk: The questions that have not been asked can be sent to them in writing.

The Chairperson (Mr McAleer): Do you mean the questions that have not been answered?

The Committee Clerk: Yes.

The Chairperson (Mr McAleer): If there are any of the questions that have not been answered, perhaps you can forward answers in writing, Rosemary.

Dr Agnew: Yes. That is no problem at all. I hope to agree that we will try to deal with any of your EU exit questions as quickly as we can, and, as far as possible, quicker than the two-week timeline that is normal. Any questions that have not been answered can therefore be forwarded in writing, as can any other questions that the Committee has after it has had time to consider some of what I have said and presented. I am happy to answer any questions that the Committee may have at any stage.

The Chairperson (Mr McAleer): That is great. Thank you Rosemary, Kevin and Julie-Ann.