



Northern Ireland
Assembly

Committee for Agriculture, Environment and
Rural Affairs

OFFICIAL REPORT (Hansard)

Transition Programme and United Kingdom
Internal Market Bill: Department of
Agriculture, Environment and Rural Affairs

24 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)
Mrs Rosemary Barton
Mr John Blair
Mr Maurice Bradley
Mr Harry Harvey
Mr William Irwin
Mr Patsy McGlone

Witnesses:

Mr Norman Fulton	Department of Agriculture, Environment and Rural Affairs
Mr Robert Huey	Department of Agriculture, Environment and Rural Affairs
Mr Mark Livingstone	Department of Agriculture, Environment and Rural Affairs
Dr Denis McMahon	Department of Agriculture, Environment and Rural Affairs

The Chairperson (Mr McAleer): I welcome the permanent secretary, Denis McMahon, and the Chief Veterinary Officer (CVO), Robert Huey. Via StarLeaf, we have Norman Fulton, head of the food and farming group, and Mark Livingstone, director of operational readiness and food supply security. Denis, I invite you to commence the briefing.

Dr Denis McMahon (Department of Agriculture, Environment and Rural Affairs): Thank you very much, Chair. I appreciate your invitation to come to the Committee today. As, I am sure, you will be aware from the media reports and other sources, post-Brexit trade issues have gained a significant profile in recent weeks and months. That is entirely to be expected, given the proximity to the end of the transition period.

On 4 June, I provided an update on the sanitary and phytosanitary (SPS) operational delivery programme. It is my intention to provide a further update on that element of the overall transition programme today but set in the context of a broader debate. In doing so, I recognise that colleagues have been providing you with verbal and written evidence on various aspects of the programme. I do not intend to replicate those regular updates.

I put on record my thanks to the Committee for its support and challenge. This is an unprecedented programme of work, in scale and complexity, and I am conscious of the pressures that it places on the AERA Committee, as it does on the Department.

I had highlighted previously the importance of the UK and the EU working together to support delivery. Although we have had a great deal of support from counterparts in Whitehall, particularly in the Department for Environment, Food and Rural Affairs, it is important to say that we still lack a great deal of clarity on key issues that are central to our ability to deliver an effective outcome for the people of Northern Ireland. To some extent, that is to be expected in the midst of international negotiations, but it is important to put on record that the lack of clarity is having, and will have, real consequences on the ground. I will come back to that point as we progress through the issues. With your agreement, I will focus my opening remarks on the issues in which, I expect, you will be most interested, specifically the overall programme delivery assessment, the trade negotiations and the UK Internal Market Bill, as well as the SPS operational delivery programme.

On 4 June, I informed the Committee of my intention, as senior responsible owner (SRO), to take forward an independent gateway review of the Department's transition programme. At that time, I committed to coming back to the Committee with the outcome of the review. The gateway, which, in this case, is a project assessment review (PAR), looked at the DAERA transition programme. It made recommendations on delivering a minimum viable product and on how to focus efforts in the very short time available. The review also included a delivery confidence assessment. The PAR ran remotely over four days, from 25 August to 28 August 2020. It was carried out by an external review team, which conducted 17 interviews with a range of people, including me as SRO, the DAERA Brexit and SPS transitional operational readiness directors, DAERA senior management and external stakeholders.

The gateway team has now reported, and I can confirm that the delivery confidence assessment is red, meaning that successful delivery of the programme appears to be unachievable. Delivery of transition requirements is unachievable through that delivery vehicle. Urgent intervention is required to ensure that contingency arrangements are mobilised and are adequate to deliver the intended outcome. You will recall that, when I spoke to you on 4 June, I said that my delivery confidence assessment at that stage was red/amber. That reflected the incredible time pressures associated with the programme, the lack of clarity on key issues of relevance to the programme owing to the ongoing trade negotiations, and the political and operational complexities.

I have sent you a summary of the review, including the recommendations, but it is worth covering them briefly, with your agreement. There are seven recommendations. Recommendation 1 is to:

"thoroughly re-examine the current planning assumptions, testing their accuracy"

and

"define a detailed Minimum ACHIEVABLE product (MAP)",

as opposed to a viable product, for 1 January 2021. Contingency plans also need:

"to be immediately developed and implemented."

We are doing that.

Recommendation 2 is to:

"urgently seek an agreed definition of 'unfettered access' and NI Qualifying Goods and Businesses"

with the UK Government.

Recommendation 3 is to:

"'front load' resources into the policy and legislation drafting teams in order to effectively tackle the large volume of work which needs to be conducted at pace".

Recommendation 3 also states that, as SRO, I should:

"explore ... the opportunities for introducing additional time in the Assembly for legislative scrutiny."

We have begun engagement with you on that.

Recommendation 4 is to:

"develop a Trader Readiness communications campaign with DfE, Defra and HMRC."

Recommendation 5 is to:

"review and update No Trade Deal contingency plans."

Recommendation 6 is to:

"produce a decision and approval matrix aligned with the critical path."

Recommendation 7 is to:

"review and update the risk register and mitigation plans in line with the revised scope of the MAP."

In addition to the recommendations, the review team noted a number of positives, including highly committed leadership; the hard work being carried out by the DAERA team against pressures of time and within constraints imposed by the uncertain outcome of the trade talks with the EU and considerable challenges, including COVID-19 and the broader political complexities; and the hard work and integrity of the team in the approach to communication and engagement.

In summary, the gateway team felt that we should do what we can do in the very limited time available, so work has begun on implementing the recommendations with immediate effect. The Department will be happy to provide you with further updates on that in the next few weeks. I will move on to some of the other areas. You have received a separate written update on the UK Internal Market Bill. Clearly, the Bill has not made its way through all its stages in Parliament. We will have to await the version that passes into law before the precise impact on the Northern Ireland protocol can be assessed. It is important to say that this is being led not by us but by DEFRA and the UK Government. We are watching with great interest, as much as everybody else is. It is important to state that the relevant clauses in the Bill do not actually change the Northern Ireland protocol; rather, they give discretionary power to the Secretary of State for Business, Energy and Industrial Strategy (BEIS) to bring forward regulations to make changes. Whether any such regulations will be brought forward, precisely what they would change and whether they would be approved by Parliament remains to be seen.

I have no doubt that you have seen media reports of the progress of the UK-EU trade negotiations. The eighth round of the negotiations concluded on 11 September 2020, and both sides met again last week in Brussels. Your interpretation of that is as good as mine, but it appears that significant differences remain, particularly around fisheries and how to maintain a level playing field, although I understand that some good engagement is going on. It is important to be aware that, unless you are in the negotiations, there is a limit to how much you can really interpret from the public messages.

The issue of unfettered market access for Northern Ireland to Great Britain is hugely important for the agri-food industry, the wider business sector and wider society. Accordingly, the Minister continues to make all possible representations to the UK Government to ensure that Northern Ireland achieves the best possible outcome on market access to GB; that is, completely unfettered access, which would not only allow status quo trade to continue but enable our businesses to build market share in GB in the future and, crucially, make sure that they are able to differentiate their products so that we do not have problems with the market being undermined.

I will not attempt to improve on Rosemary Agnew's excellent updates on issues around legislation, common frameworks and communications. The only point that I will make is that we now need to move into an intensive period of communication with all stakeholders. It is very important that we receive further clarifications from the UK Government as we approach the end of the transition period. Rosemary Agnew will provide a further update on the secondary legislation programme later this morning.

That brings me on to the SPS operational delivery programme. There has been some media coverage of it in recent weeks, and I am very happy to answer any questions that you may have on it today, but, first, it might be worth setting out the context in order to help you understand what is happening. It is always useful to start by reminding ourselves of the basis of any programme. The legislative basis for the SPS operational delivery programme is the Official Controls Regulation (OCR). The requirements

as set out in the OCR are part of domestic law as a result of paragraph 4 of article 5 of the Northern Ireland protocol and section 7A of the European Union (Withdrawal) Act 2018. Under the OCR, DAERA is responsible for sanitary and phytosanitary checks on certain goods coming into Northern Ireland. Robert will be happy to talk about that in more detail in a moment.

Following the UK Government's Command Paper on the protocol, dated 20 May 2020, I was appointed as senior responsible owner for the programme on 26 May 2020. That meant that we had seven months to deliver the people, processes, IT and facilities at Northern Ireland points of entry necessary to provide SPS checks in compliance with our legal responsibilities, which, in turn, meant having point-of-entry facilities designated by the European Union at Belfast, Larne, Warrenpoint and Foyle ports and at the Northern Ireland airports, along with the necessary processes, IT capabilities and personnel. The purpose of that is to enable the continued importation of animal and plant products, plants and live animals; to protect public, animal and plant health; and to support businesses bringing food, animal and plant products into Northern Ireland from GB.

Having seven months to deliver all of that has been a monumental challenge. In operational terms, there are a range of issues that, from the beginning, have had the potential to derail the schedule. One example is physical constraints at the sites. Even without those kinds of delays, the deadline was almost impossible to meet. I pay tribute to my colleagues on the programme team — Mark is here today, and Robert's team has been working really closely with Mark — who have been working extremely long hours to meet those significant demands.

Importantly, there are very significant issues to be addressed through political processes. The Minister's position has been clear from the beginning: the Northern Ireland protocol needs to be implemented in a way that minimises any frictions on the flow of agri-food trade and that works for our businesses and citizens. He is also clear about the need for a legally binding framework that ensures continued unfettered access for Northern Ireland businesses to their key market in Great Britain. However, it is important to say that the Minister is clearly opposed to the programme moving ahead, however, and we will talk about some of the reasons for that. There are bigger political reasons that I will not go into here — they speak for themselves — but there are also some practical issues.

In operational terms, the approach that the Minister has taken to this going ahead is to minimise the need for physical checks and therefore reduce the scale of some of the facilities required. The Minister's position on minimising friction is shared by the UK Government, as set out in their Command Paper published on 20 May 2020. The Minister has been engaging with the UK Government on those issues, particularly on food retail movements, the need for a risk-based approach to checks and the need to avoid costs that would be incurred by businesses and consumers. To put that into context, a supermarket lorry travelling today without any facilitations could have 400 products that would need to be certified. In that context, we can implement what we like, but, without help from the UK and the EU to simplify the processes involved, we will not be able to deliver the level of frictionless trade that we have today. Those and other UK and EU policy matters continue to be addressed through our colleagues in DEFRA. We are doing that work. The Minister is keen that we do the minimisation work, but that does not remove his fundamental opposition to the issue. Resolving such policy issues will be absolutely essential to the design and running of the points of entry.

There are two further significant unresolved issues, namely the status of third-country listing to enable GB agri-food products to be moved into Northern Ireland and the status of information technology needed to support checks. Robert and Mark can talk about those in a minute. It is entirely justifiable for the Minister to seek to secure clarity on those and other issues through political processes; indeed, in normal circumstances, we would have far more time than we have been granted to provide the space for the Minister to do that. In this case, however, for reasons outside the control of DAERA, none of us has been granted the time necessary to build in the outcome of the negotiations. We are still not there. We still have not got the outcome of those negotiations.

Notwithstanding that lack of clarity in the wider political negotiation landscape, work has continued at pace since we last updated you. To secure and commit expenditure from HM Treasury, we needed to prepare an outline business case. Our preferred option — negotiated minimisation — is to procure facilities for physical checks, ensuring that the capacity of such facilities reflects our Minister's wishes and the UK Government's policy to minimise checks, in the spirit of the Northern Ireland protocol. Those plans take into account facilitations that would reduce the need for documentary and ID checks of goods to be carried out at points of entry. That means, for example, that we do not have plans for parking areas that are necessary to undertake those checks. The plans could, however, be amended to reflect the outcome of the discussions between the UK and the EU.

I am pleased to note that approval to spend on the basis of the business case was achieved on 10 August 2020 from HM Treasury and the Department of Finance. That is subject to normal approval conditions and reflects the fact that further iterations of the business case will be required as the programme moves forward; indeed, the costs reflect that. Current costs for the preferred option are approximately £45 million, with £38 million required for upfront capital expenditure. Around £6 million of revenue will be required for recruiting, employing and training additional personnel and for programme implementation costs. The option that we have chosen, which is consistent with the Minister's approach, would save £14 million per annum from the maximum. It is important to say, however, that we will not be able to finalise those costs more effectively until we have contractors appointed.

One of the most significant aspects of the programme has been to identify suitable site locations for point-of-entry facilities. There are key drivers for site selection. For example, sites must be within the port and customs boundary, their size must meet the needs of the DAERA operating model and, to be successful, they have to align with the port's operating model. There has been detailed engagement with port authorities and airports to assess current site infrastructure, identify any additional infrastructure required and agree in principle suitable locations.

I am nearly finished, Chair. Forgive me, but I think that it is worth giving the Committee additional briefing on this. After a period of intensive work, specific sites have now been identified, and a programme team is in negotiation with the ports through Land and Property Services (LPS) and the commercial and property division of the Departmental Solicitor's Office (DSO) to secure the relevant lease agreements. Proposed facilities will, of course, need to have the relevant planning consents to proceed. We believe that the proposals can be considered as permitted development by the programme team. However, legal advice has been that DAERA should confirm that with local planning authorities. On 15 September 2020, certificates of lawful use or development (CLUDs) were submitted to the relevant councils. On 17 September 2020, a tender was issued for the design and build of facilities.

To process IT and people work streams, we have undertaken the development of proposals to support the negotiated minimisation, and we are seeking to resolve those work streams through negotiations with DEFRA. It will be crucial, for example, to minimise the impact on food retailers. We will present further details on those matters in due course. I am sure that you will understand that they are subject to negotiations.

On the provision of IT, the EU Commission has indicated that the previously acceptable approach of using the UK national import of products, animals, food and feed system (IPAFFS) for supporting the SPS regime will not, now, be acceptable. We are working very closely on alternatives. DAERA is currently developing an approach with DEFRA colleagues using the existing EU trade control and expert system new technology (TRACES NT) system, supported by DAERA colleagues. Further details will be provided on that in the coming weeks. Whilst recruitment exercises are in place, the challenging time frame means that we are looking at redeployment of existing staff in order to make that happen.

On other work, the programme team has completed the point-of-entry applications for Belfast City Airport and Belfast International Airport and provided the additional points of clarification that were requested by the EU chief veterinary officer on the original applications that were previously made by DEFRA on 30 June. Those are to be sent to the EU Commission via DEFRA shortly.

You will be glad to know that I am coming to the end. My message to you is that, despite monumental efforts by the team, not everything will be in place by 1 January 2021. The Minister is opposed, for political reasons, to what we are doing and has some legitimate concerns about operational issues. We now need the UK Government, with the EU, to help us to make this work for the benefit of everyone who lives and works in Northern Ireland. In the meantime, we are happy to answer any questions that you may have.

The Chairperson (Mr McAleer): Thank you, Denis, for that very comprehensive briefing. Members have some questions. I have a couple of points. One of the last items that you mentioned was ports. My question relates to leadership in the Department. I note the Minister's response to a question on the ports from my colleague Sinéad Ennis on Tuesday:

"That is not a matter that I am taking forward. The senior responsible officer is looking after it. I do not wish to see any further point-of-entry developments at Warrenpoint port."

— [Official Report (Hansard), 22 September 2020, p41, col 2].

That relates to Warrenpoint port in particular. With regard to the leadership of the Department, the Minister says that he is not bringing that forward; it is the SRO. Do you have executive authority for that in the Department, rather than the Minister? Is there no ministerial oversight? What is the situation?

Dr McMahon: To date, the way in which it has worked is that, as I said in my opening statement, there are two elements to it. The Minister is opposed to it. He has made his position clear on that. As we have developed that in the Department, obviously, we have sought to take any view that we can from the Minister on how, if the protocol is implemented, to minimise the damage, from his perspective, to businesses and potentially to people from having to pay more. He has given us those views. We have taken them on board.

Ultimately, it is not that abnormal to have a situation in which a senior official takes over as SRO. If we were simply building some facilities that had nothing to do with the wider political context, it would not be that unusual for an SRO to be appointed and for that SRO to take forward the programme of work and take on board various views as they went through it. That would be a normal position.

What is different in this case is that the Minister has got to a point where he believes that he has not got clarity from the UK Government and the EU, and that, in that situation, he feels that it would not be the right thing to do to move ahead and complete that. If we were looking at this three years ago, I would have thought that that was absolutely the right approach. There are very significant issues, which we would like to be able to deal with in better time. I said that the last time we were here.

The challenge, then, is really around the legality of this, because we now know that we are not going to have everything in place on 1 January 2021. We also know that we need to comply with domestic law, and the UK needs to comply with international law. We just need to; there is no question about that. That is my duty, as an official, and it is the duty of officials in the Department. We are proceeding with the work on that basis. I suppose that the Minister recognises that there is a legal position and that nothing that can be done about that, other than to comply with the law.

The Chairperson (Mr McAleer): I just want to clarify. The Minister said yesterday that they have given very clear expectations to the senior civil servant who is taking this forward. Are you reporting to George Eustice or Edwin Poots?

Dr McMahon: I am absolutely clear that I am working to the Minister. I am under the direction and control of Ministers. That is absolutely —.

The Chairperson (Mr McAleer): Even though he says that he is not taking forward the project.

Dr McMahon: In this case, he does not wish to take forward the project, but we are complying with the law.

The Chairperson (Mr McAleer): So he is effectively taking forward the project and you are accountable to him: is that fair to say, Denis?

Dr McMahon: I am accountable to —?

The Chairperson (Mr McAleer): Minister Poots.

Dr McMahon: I am accountable to the Minister generally, but, in this case, I am acting against the Minister's wishes.

The Chairperson (Mr McAleer): Yes. OK.

Dr McMahon: Sorry. I will be honest with you. Obviously, what you are getting at is the fact that we are caught in an impossible position. That impossible position is that we work to Ministers. I absolutely believe in the democratic principle of working to Ministers. It is not just something that I do as a day job: I absolutely believe in it. However, I am also absolutely required to comply with the law. What we have found is, because we have been put in an impossible situation as a result of the wider politics

around this, we are having to navigate our way through this process. That is what we are doing. In fairness, it may not look pretty, but we have been open and honest about where we have been, and we have done it in a very clear way. That is the best I can tell you about where we are.

Mr Blair: Before I go to matters of serious concern — they are matters that I have raised before, and officials and Committee members know that — I want to take a second or two, Chair, if I may, to once again thank the officials who have been doing a huge volume of work around these issues in an ever-changing landscape. I know that their task has not been an easy one, and I fully recognise it. Political processes have sometimes overtaken what is expected. There are three areas that I want to address: the Internal Market Bill and all the uncertainties around it; the programme assurance review; and veterinary controls and arrangements.

On the Internal Market Bill, is it not the case that this has simply introduced another series of really rather grave unknowns? For example, we are talking today about complying with domestic law. The process of the Internal Market Bill means that we do not know, at this stage, what that domestic law will be. Can you give some indication of the additional workload that that Internal Market Bill preparation has introduced for the Department, and whether it has impacted on other EU exit preparations?

The programme assurance review, unfortunately, tells us that the targets have moved from red/amber to red absolute. That is a matter of absolute concern. I ask, very pointedly, what impact did any stalling of ministerial decisions around infrastructure or ports impact on that change of grade in preparation for EU exit? What additional workload has been attributed to that? It seems that a DEFRA directive moved things on, and prior to that, things were not moving as they might have done. If that contributed to the move from red/amber to red, I think that the Committee should know.

On the veterinary issues, there are preparations in place for a common veterinary area that would assist in the control of disease, trade in animals and the import of animals from third countries. My assumption is that, in the absence of a trade deal, those current preparations would fall. There would therefore have to be extensive and time-consuming checks on animals. Could we be given some information around those planning processes?

Dr McMahon: OK. I will deal with the red one first, the gateway. I will maybe bring in some of my colleagues to talk in a bit more detail about the impacts.

It is worth saying that we are doing a seven-month project that should normally be done over a period of years. There have been two sets of interventions by the Minister during that time. One of which was around reducing the scale of the physical facilities. Again, that was a perfectly legitimate thing to do, but that, in itself, would not have created a delay because we were still doing the business case alongside that. More recently, the interventions would have, maybe, added a week or so onto the process, but, because we moved very quickly into a situation where the Executive was discussing this and moved into the political sphere, it did not cause a very long delay. Any delay is a problem; there is no doubt about that. That is where we are. The other side of that is that we do need to make this work. There is no point in us building the facilities if we are not getting the help that we need from the UK and the EU.

There are a number of things, for example, that the Minister had absolutely nothing to do with, such as the wider negotiations and how we get third-country status approved and there are issues around IT that we are having to resolve. It would be unfair for me to say that the interventions themselves have led to the red status. To be fair to everybody — and I said this on 4 June — it was red/amber status but that we would keep it under very close review. Frankly, everything would have had to have worked perfectly over that space of time, and clearly, that has not been the case.

It is important to say that ministerial interventions add time. That is absolutely normal in any process, and that is the way it should be. We need that help to make sure that what we are doing is in the appropriate context. I could not say that this was all down to the Minister.

Norman may want to add a few words and to talk about the specific work involved in the UK Internal Market Bill as he will have been closer to that.

Mr Norman Fulton (Department of Agriculture, Environment and Rural Affairs): Thank you, Denis. I hope that you can hear me OK.

Dr McMahon: Yes.

Mr Fulton: The question was whether the Bill creates additional workload or unknowns in moving forward. We need to go back to the purpose of the Internal Market Bill. The UK leaves the regulatory regime of the EU at the end of this year. Powers revert to the UK and to the devolved Administrations. The purpose of the Internal Market Bill is to start to provide clarity on how the UK market will function. It is important that it functions properly, and so it starts to provide that clarity. There are important principles in the Bill on the mutual recognition of goods and services across the regions of the UK and on non-discrimination. These are important issues, and the Bill provides a welcome clarification on those matters.

It also, very importantly for Northern Ireland, provides additional clarification on unfettered access and starts to provide the legislative basis that was discussed in the Command Paper earlier this year. It makes clear that there should be no new checks or controls on qualifying goods moving from Northern Ireland to GB. It also provides some additional information powers, reserving the powers to control potentially distorting or harmful subsidies, and it makes it clear that it is for the UK Parliament to have exclusive ability to legislate for subsidy control. Those are all important matters for the functioning of the UK's internal market. It starts to give the clarity that, going forward, we really need. It is not a case of adding to the workload; rather, it is about starting to put in place the pieces of the jigsaw, if you like, for how the internal market will work and how we all function within that.

Dr McMahon: Robert, do you want to come in on the last question?

Mr Robert Huey (Department of Agriculture, Environment and Rural Affairs): Yes, John. As you say, the protocol creates an SPS zone on the island of Ireland. The function of that, as you are aware, is to ensure that no checks have to be carried out on the border between Northern Ireland and the South and, therefore, to allow free movement within that single market of animals, plants and foods and, by extension, to protect the European internal market from what is seen as a threat from a third country, which is GB. The EU takes the controls at the points of entry into the EU, into the island of Ireland, very seriously. That is why it is codified in such detail in the official control regulations and why it is an issue of such import.

This was always going to be difficult. Your question is about the range of options available to us now. The review of the preparations has said that it is unachievable, so, as well as undertaking to deliver our plan A, which is to get on and deliver the facilities, we now need to develop contingencies. The contingencies replace brand-new facilities: for example, if the IT is not ready, the contingency is paper and people. If there is no further agreement between the EU and the UK on SPS, we will have to implement full World Trade Organization (WTO) checks throughout the island of Ireland at the points of entry, as laid out in the legislation. I do not like saying that anything is impossible, but that is getting close to it. One container of supermarket product can contain 400 consignments requiring 400 certs. We are talking about 400 containers of different consignments a day, so you can see the volumes of product coming into Northern Ireland that need to be checked. With only a contingency system to do that, it will be, at best, very difficult. We still hope, with some reason, that there will be some arrangements using the EU's principles, which are based on risk, to minimise the checks required. Of course, the risk on 1 January will not have changed very much from that on 31 December, so there would be logic in permitting flexibilities in the rules to allow a minimisation or a reduction in the checks required on the island of Ireland, not just in Northern Ireland, of material coming from GB, while still being able to protect the internal market and the SPS status of the island of Ireland.

My short summary of my long answer, John, is that, where we are now means that, if there is no agreement, I cannot deliver the checks that will be needed. With minimisation, with a contingency plan and with the cooperation of all parties involved — the UK, the EU and us, through the work that we are doing — it is still possible that we will be able to deliver sufficient checks to keep products moving.

Mr Blair: Chair, I wish to come back briefly on the last point, but, before I do so, I have a comment that relates to the earlier replies, for which I thank Denis: there is a certain irony in the fact that someone who, in terms of a ministerial direction, was reluctant to implement the infrastructure required for EU exit might have, in effect, justified another reason for an extension to the deadline, because, if the state of preparedness is not good, there would, of course, be a further argument to extend.

Robert, on the business of veterinary issues — thank you for that detail — will additional resource be required in the scenario described, which is that, as I understand it, there will be have to be checks at

the entry to either the EU or Northern Ireland in the absence of an agreement? That would have an impact on businesses, the agri-food industry, other individuals and, of course, animal welfare.

Mr Huey: The plans that we submitted to the Commission for its approval — everything that we do has to be approved by the Commission as far as facilities, practices and processes are involved — were for around 100 additional inspectors. The implementation of a contingency would require more than that. Let us be clear: although I am recruiting vets and technical officers, all those staff will, initially, have to come from within my own staff resource: I will, initially, have to rob Peter to pay Paul until we get additional staff in. We will bring in some agency staff, of course, to help with that as well, but the majority of the veterinary staff will come from within my staff. They will come off the TB programme and other programmes. That is inevitable. Hopefully, that will be for the short term. As I say, I am still hopeful that a way can be found to minimise the checks that will have to be carried out.

Mr Irwin: Thank you for your presentation. When it comes to unfettered access, do we have a definition of what the qualifying goods and qualifying businesses will be?

Dr McMahon: There is no definitive definition as yet. We are seeking clarity on that. I do not know whether Norman has heard anything since. He might want to come in on that.

Mr Fulton: Those discussions are continuing. It is a very particular issue for the agri-food sector, which wishes to have assurance of unfettered access to the GB market but also wants to protect Northern Ireland's reputation as a source of high-quality food of good provenance. Therefore, it does not want Northern Ireland to be seen as an open back door. There is a delicate balance to be struck here. We are having ongoing discussions with the food sector in Northern Ireland and our counterparts in Whitehall.

Mr Irwin: On the question of checks on goods coming into Northern Ireland and the issue that Robert mentioned, is it not a fact that the vast majority of those goods are coming into Northern Ireland to remain here, and only a small percentage would go on to the Irish Republic? I would have thought that that was the case. You will know better than me. That being the case, can most of those checks not be done through the paperwork? Could retailers bring stuff in from the mainland through their own distribution process? Surely, a system could easily be put in place to identify quickly that there is no need for checks on those goods.

Mr Huey: I will take the members of the Committee back a little and remind them that there are three levels of check: documentary, identity and physical. Everything needs a documentary check and an identity check, but only a proportion of goods usually need a physical check. Live animals need 100% checks. William brought up the issue of retail group goods, to which, if you apply a risk assessment, you will find very little risk, particularly to the internal market and particularly if those goods are going to supermarkets in Northern Ireland. Those are the arguments on flexibilities that are being put to the Commission: those goods may need certification or a very rudimentary identity check, but they should be allowed into Northern Ireland without any physical checks at all. From a professional veterinary point of view, I can see no reason why that should not be allowed. That is subject to negotiations. Until it happens, I cannot assume that it will happen. Not allowing that would cause real difficulties. About half of the consignments that come in are in supermarket lorries, and, without that flexibility, it will be difficult because we will be swamped with everything else.

Mr Irwin: It seems a logical and common-sense thing to do. You would have thought that anything else would be crazy.

Mr Huey: I would like you to go to the Commission and tell it that *[Laughter.]* Common sense does not always apply in negotiations.

The Chairperson (Mr McAleer): Before we move on, I was looking through some notes. The Bill proposes to disapply the state aid rules, but, immediately post transition, WTO rules will come in, which set no limits on the blue box and the green box levels of subsidies. Will that not have the potential to create a huge distortion between here and Britain and leave a very uneven playing field between the farmers in the North of Ireland and the farmers in Britain?

Dr McMahon: I will call on Norman again on that one. The only point that I will make is that, obviously, the Government are taking the powers, but whether they intend to use them is a different matter.

Obviously, negotiations are going on. Norman, do you want to say something about the potential impacts of a scenario such as the one that Declan talked about?

Mr Fulton: Yes. The UK has not yet set its internal state aid or subsidy regime, so that remains an unknown at this stage. Under the protocol, Northern Ireland will be subject to EU state aid rules, and, within that, there is a carve out of state aid specifically for agriculture in that there is an overall limit on the level of support that can be provided outside of normal state aid controls for agriculture. A proportion of that must be green-box-compliant, in WTO parlance. That is what we are working towards. Yes, it is a concern from a Northern Ireland perspective that we do not yet know what the regime will be in GB, and, yes, there is the potential that there could be an unlevel playing field when it comes to agri-food if there were to be a more generous subsidy regime operating in GB compared with Northern Ireland. Obviously, that would be of concern to us. At this stage, we have no line of sight on what that might be.

We have, of course, in another arena, an understanding that the level of support going to agriculture will be maintained at current levels. That was a manifesto commitment, and, therefore, that gives us some line of sight to what the overall level of support might be across the UK. Of course, we do not know what the form of that support might take in other regions, and that, obviously, could be a concern if it were to be a distortive form of support. Again, the Internal Market Bill does talk about the UK Parliament having the exclusive ability to legislate for the regulation of distortive or harmful subsidies. Quite a complex framework exists in here, and we do not yet have a complete line of sight on how all of that will shake out over the coming months.

The Chairperson (Mr McAleer): Norman, is that connected to clause 48 of the Bill, which proposes to unilaterally amend the NI Act, which is the legislative basis of the place that we are in, on the regulation of the impact of what they deem "Distortive or harmful subsidies"? Is that connected to the future regime in Britain, and is the terminology "Distortive or harmful subsidies" loaded language to make it look as if they are doing us a favour by depriving us of deciding what distortive and harmful subsidies might be?

Mr Fulton: I think that you have to look at it through two lenses. You can look at it through the lens of what state aid and subsidy controls might prevent you from doing, but you also have to look at it in the context of the protections that it provides. This extends all across the UK, and we could be suffering from the effects of distortive or harmful subsidies that might be introduced in other parts of the UK, so this also provides us with protections. That is an important point to remember. Under the Internal Market Bill, we can ask, for example, the proposed Office for the Internal Market to look at regimes that are introduced elsewhere if we believe that they are creating harmful or distortive effects. It is as much about protection as it is about preventing us doing things that we might otherwise want to do. There are checks and balances in here.

Dr McMahon: The only thing that I want to add to that is that this relates to some of the briefing and so on that we have been asked for. The Committee asked us for briefing on this, and we have given briefing. The briefing is based on the sort of operational or technical issues that Norman has outlined. There are bigger political issues in all this, and, to be clear, our advice, as you would expect from officials, is simply on the technical side. I do not want our position to be in any way misinterpreted as a political view, one way or the other, about the rights or wrongs of those bigger issues. It is important that we draw that line. As good officials, people like Norman and Rosemary will, quite correctly, answer a technical question in technical terms. I just want to clarify that point because you were asking that question of me anyway. I wanted to make that clear.

The Chairperson (Mr McAleer): OK. Thanks.

Mr McGuigan: Denis, notwithstanding the hard work of you, your team and the Department, that was a very bleak, stark and probably depressing assessment of where we are. That is just from a Committee member's point of view. If I was a businessman listening to that, I would think that it was a very scary assessment, so close to 1 January.

Your briefing has opened up a pile of questions. Some weeks ago, we received a briefing from the UFU and a number of businesses. I am probably way off the mark, but, my memory is that they said that they had asked 67 or 69 questions but only one or two of them had been answered, give or take. It does not seem that we are any further forward. In fact, it seems that there are probably more questions that need to be answered.

I want to delve a wee bit further into some of the points that John and the Chair made about the Minister. In answering John's question, you said that it would be normal practice for Ministers to ask questions and interfere in the process. From my perspective, this does not seem to be normal and the Minister's approach does not seem to be normal. We have had a number of debates in the Assembly about the Internal Market Bill, with which the British Government are determined to break international law. From my interpretation, it seems that we have a Minister overseeing the Department who is determined not to implement the law. I may not be wording that properly, but he does not seem to be fully enthusiastic about implementing the law. That is having an impact on the work of the Department and is having a bigger impact on businesses and the community as they prepare for Brexit. That is a totally unsatisfactory situation. I know that we are in the midst of a pandemic, but Brexit may be the issue of this generation and this Assembly, and we have a Minister who seems to be interfering or not allowing the Department that he is supposed to oversee to do the work. I just want to make that point. From where I am sitting, it is very serious and will have a serious negative impact on our business community.

From what you said in your briefing, some of the outworkings and impacts are that not everything will be in place, that we are lacking clarity and that the delivery programme is red. We have talked through an awful lot of technical jargon today, but, in simple terms, if it is not ready — it will not be ready — what will be the impact for businesses? What impact will that have on our economy? How should they look at your briefing?

Dr McMahon: I will bring Robert in at the end. I think that there are probably a couple of points that are worth touching on.

It is fair to say that this is a very unusual situation. It is also fair to say that there have been some very mixed signals from the beginning, particularly about unfettered access. Again, that is the nature of political debate and things come out and so on, but that has definitely set the context. Notably, the Command Paper published by the UK Government on 20 May was, in my view and that of the Executive, the first solid setting out of the UK's position, and that led to me being appointed as the SRO for the project. We have to take that into account. The other thing is that the Minister has been open about it. He has advised us, his officials, that he has always been strongly opposed to additional checks and requirements on goods moving in the UK internal market. However, he has acknowledged the commitments in the protocol and the need to ensure that goods legally enter Northern Ireland on 1 January. He has done that, and I just have to put that on the record, to be fair.

I agree with you about the stark assessment. One of the things that we have tried to do in this process is to apply project-management practice and to be very open about things. Whatever issues there are, we have to get them out there; there is no point in not doing that. The stark bit is that we will not have everything ready for 1 January. We have a procurement under way, and that procurement is working apace. We have a business case for a £45 million option agreed through both our Department of Finance and HM Treasury from the start of that project to 10 August. I have not measured it, but I suspect that that is pretty much a record. It is fantastic to have got to that point. Everybody is working together, and I have to give credit to colleagues in DEFRA, the Treasury and so on who are working on this. We have the procurement well under way. We will have the physical checks that Robert talked about; buildings will be there to enable those to happen; we will have a form of IT there; and we will have people there. As Robert said, we will have to borrow from Peter to pay Paul.

The issue, then, is what our contingency arrangements look like, and Robert can talk a bit about that. However, I want to reassure people that we are not saying, "This has gone wrong. We are giving up". The reason that gateway teams will assess a project as red is not to say, "Stop. Give up". It is actually to say, "Stop. What you are doing will not deliver the way that you want it to. Now you need to realign". It is important that we do not get too despondent. The thing that gives me confidence as SRO is the team and what it has done in an unbelievably short period. Again, that was nobody's fault. There would be very practical consequences if we did not have these measures in place. Frankly, it would add friction and cost, and that would have an impact on business and consumers.

The challenge with this is that, even if we thought that we would get everything in place by 1 January, without clarity we would still be in trouble on those two things. We need help to get it to happen. For example, people use the term "border control posts"; we use the term "points of entry". That is not just because there is political debate about that or anything like that; it is to reflect the fact that these are ports within a state. That has practical implications, because you just cannot have a situation where, for example, a retail lorry has 400 certificates and you have to start issuing certificates for each product.

Robert, I do not know if you want to add anything about the consequences.

Mr Huey: A bit perhaps. Philip, your question was, "How well prepared are you?". My glib answer could be, "For what?", because there is uncertainty. Denis talked about clarity. It is uncertainty that is causing a huge difficulty. We hope that there is clarity. The EU has talked about the middle of October being the end of negotiations. By then, we should at least know what it is that we are preparing for. Unfortunately, that is not far away; it is close.

As for contingencies, I must emphasise that we continue to work on plan A: to get the facilities in place as quickly as we can. Plan B is about contingencies. We are looking for buildings to repurpose. We are looking for additional land on which to put up temporary buildings in which checks could be carried out. We will continue doing the training in any case. As an aside, the EU has offered to assist us with some of that training through the Better Training for Safer Food project; it will lay on the training and pay for it. So, it is not that we are not talking to each other about what can be done.

On the ICT side, just yesterday there were informal contacts between officials, and that has resulted in the EU's technical people talking to our technical people about how we can use TRACES NT with our IT to build a slick system. Until we see the problems again, we do not know the size of that problem, but that could really help to move the systems through. The IT system has to talk to the HMRC system, to our own system and to the EU system. However, I am optimistic that that is doable.

We are out at all the points of entry, we are looking for facilities to repurpose, and we are getting on with training staff in any case because we will need them no matter what on 1 January, so there is a capability to carry out a level of checks. The pessimistic piece is that, for some, the volume of checks makes this virtually impossible to do according to third-country trade criteria. Therefore, the flexibilities are absolutely paramount for us for us to deliver a system that will fit business in Northern Ireland.

If I were a business in Northern Ireland, I would keep a watching brief until we find out, at the end of the negotiations, what it is that we are dealing with. That would be a more sensible time to start making contingencies and preparations for how to continue to trade and bring goods into Northern Ireland. That is because they may have to change their processes. On the container with 400 different goods that delivers straight from a pick-up centre in Leicester into a supermarket in Northern Ireland, they may have to think about how they can put the same sorts of goods in one container so there is less chance of it having to be checked. So, there may be a need for the haulage industry, and for industry in general, to change its operating procedures to fit in with an efficient checks system. However, until we know the nature of the checks system, it is very hard for me to advise industry on that, other than to say that they should keep a watching brief and that we will talk to you when we have clarity as to how we should take this forward.

Denis mentioned the importance of communication, and we are getting close to the stage where communication with industry is absolutely paramount because we can only get through this together. It is almost too late to stand on hilltops shouting at each other; we have to get on with fixing this.

Mr McGuigan: Who decides what is a qualifying good for the North, with regard to trade between here and GB?

Dr McMahan: That will be a matter for the Joint Committee.

Sorry, I do not want to hold you up, but at some point I would like bring Mark in to a talk a bit about the project, but that is OK.

The Chairperson (Mr McAleer): On the qualifying goods, was that mentioned in the context of the finance Bill or something like that?

Dr McMahan: Do you have anything on that, Norman, with regard to the qualifying goods in the Finance Bill?

Mr Fulton: Yes. Qualifying goods are a unilateral issue for the UK Government; it is not something that will come from the Joint Committee. There will be subordinate legislation, at some point, to define a qualifying good. I think, Chair, that you might have been thinking about the finance Bill in the context of defining goods that are at risk, that is goods coming from GB to Northern Ireland. Therefore, qualifying goods are relations from Northern Ireland to GB under unfettered access arrangements, and unfettered access is a unilateral UK issue.

The Chairperson (Mr McAleer): Even the Internal Market Bill does not prohibit checks on what goods qualify and what goods do not qualify. On the ports issue, again, when you are mapping out and planning the shape of your ports, you said that you were not planning parking areas, so how can you make a robust plan for ports if we do not know what will be required for the checks for what is and what is not a qualifying good? Has the Department been in conversations with DEFRA or the JC on this? A lot of the agri-food products in the North do not emanate solely from the North. I made the point yesterday that, up until August this year, we imported 41,000 cattle from the South and 350,000 pigs are imported every year from the South. Will the pork or beef products that emanate from all of those imports be considered as qualifying goods because they did not emanate in the North of Ireland? I presume that that is the sort of conversation that DAERA will be having with DEFRA and others around the unique island-wide production lines that we have in Ireland.

Dr McMahon: Apologies, because I was thinking about NI to GB movements when I answered, so thank you to Norman for correcting me on that. I will touch on the issue of documentary and ID checks first. The reason for what I call parking areas — we call them triage areas, really — would be to do the documentary and ID checks on the products coming in, and then a certain percentage of those would be selected for physical checks. We will be looking to see if there are ways of reducing the number of checks on, say, retail. Other options would be about where you do those checks. For example, would it be possible to do checks across on the other side of the Irish Sea? Those are the kind of things that need to be resolved because, if you did those documentary and ID checks before they got on the boat, then sealed them and moved them across, you would not actually need the triage areas. However, if that is not agreed or there is no way to get that to happen and be approved, then we are back to needing triage areas and we will have to look at that option again. We have left it open if needs be. Robert, do you want to add anything?

Mr Huey: What you are talking about is some paint on the ground and tollbooths with the right ICT in them; it is not a big build. Finding the right area, of course, is always the issue, and we have identified areas where they could be put if we have to do them. Building them now, when you have no idea of the number of booth areas you will need and the amount of parking space, might end up in nugatory work. The question about how you decide on the size —. You are trying not to build too big, so as to have a white elephant, and not to build too small so that people will have to wait unnecessary time. You need to have a plan that will allow segregation of different goods. For example, you cannot have fish in the same area as plants because of contamination, so you have to have different areas for different quantities of goods. Those plans I am very content with and think are fit for purpose under the majority of likely scenarios, but could be extended. It is a big long building, and you could extend if you had to. As a day-one facility, I am very content that what we are building will be fit for purpose, neither too big nor too small. You will probably come back and shout at me about that later.

Dr McMahon: The other point was about integration. I do not have any disagreement there. There are hugely integrated supply chains North and South, and it is really important that those are maintained and enhanced. Likewise, there are really integrated supply lines east and west, and that is on the island of Ireland generally. We are trying to work our way through a conundrum here. It is the situation that we are in. We are trying to find ways to make sure that we are not introducing unexpected consequences by taking one action to ease one direction and then finding that it is going to create problems in another. We are trying to create as little friction North/South and east-west as we possibly can.

Mr McGlone: Thanks very much to the officials. Denis and Robert will know that, in many ways, this sounds very much like Groundhog Day over the stuff that we have met on in Ballykelly repeatedly over the past couple of years.

I will move through the issues; some of them have been touched on and expanded on. First, I would like to ask Denis what legal advice has been sought around the potential for conflict. You were very clear, and you repeated a couple of times, that your function is to comply with the law. The query is obviously whether that is compliance with the law à la Westminster through the withdrawal Act, or with the law à la the internationally binding agreement. Has the Department sought any legal opinion on that? I would be very surprised if it has not sought that, either from the Departmental Solicitor's Office or the Attorney General.

I am trying to work my way through this; it is an unenviable task that you and many others have. The second issue is the implications of what we are working through at the moment. Robert has always been very good on the practicalities, but there is potentially a situation where we will either have a clash with international law or we will have no agreement. At the moment, you do not have planning

permission for the facilities that you need, you do not have enough buildings — the parking space seems to be the least of your problems — you do not have enough staff to deal with that and the ICT is still being worked through. What are the contingencies in both scenarios? That is, first, an agreement and putting all that infrastructure in place in the time frame for that and, secondly, no agreement and the implications of that.

Following on from that, Philip touched on this. Yes, we certainly want to make sure that there are no stumbling blocks for any business as it moves from the island of Ireland into GB, but, similarly, we want to make sure that there are no stumbling blocks within the island of Ireland, which has become, to all intents and purposes, one economic unit for major aspects of the agri-food sector and other sectors. Do you see any pitfalls there? I would also like you to expand on the contingencies that are in place for either of those scenarios.

Finally, Norman, you have probably been watching — I heard you refer to it — the state aid situation, where the implications of what GB might do and what we are doing here could be negative for us. You have probably watched the trade deal evolving with Japan, and it seems that Britain has moved to a position, in its trade deal with Japan, of being in a more stringent situation as regards state aid than it would have been as part of the EU. The implications and consequentials of that for leaving it in a very weak negotiating position on state aid with the EU bloc are another thing. We may well wind up in a beneficial position as a consequence of that. I am interested to hear about those aspects.

I have covered quite a bit, but I wanted to get it all in rather than just staging one question after another and delaying proceedings.

Dr McMahon: Thank you for those questions. On the legal advice, it is worth saying that there is both a domestic law issue and —. If you do not mind, I will read a little bit of this out. I am always wary, when reading from legal text, to make sure that I get it right. The Official Controls Regulation — I think I said this in my opening statement, but I will just say it again. The Official Controls Regulation requirements are part of domestic law as a result of article 5(4) of the Northern Ireland protocol and section 7A of the European Union (Withdrawal) Act 2018. The key point about that is that there are international obligations that apply to the UK but, in addition, in this specific case, there are domestic legal obligations. That is where it really hits our Department very directly. It is not just that the UK as a whole needs to do this, but that, to comply with law that applies directly to us, we need to do that.

We have talked about the fact that, under the OCR, we are responsible for sanitary and phytosanitary checks, and if a Minister were to make a decision not to take actions required to implement a legal obligation, that would be an unlawful decision. The Minister has not given us a direction or made that decision, but, hypothetically, were a Minister to make such a decision, it would be in breach of commitments made under the ministerial code to uphold and support the rule of law. An unlawful act is void and of no effect if it is obvious to an onlooker that it is unlawful. In this case, it is clear that we are already in an impossible position with the timetable. Basically, that makes the position very clear. I suppose the other thing is that the consequences of an unlawful decision by the Department would be a judicial review, or a claim for damages by affected parties. Furthermore, I suppose, failure to implement the Northern Ireland protocol might result in penalties under the withdrawal agreement, to which the UK Government might require the Department to contribute. Those are the sorts of consequences.

Just for your information, to draw out my own role a little bit, permanent secretaries are obliged to act lawfully at all times, apart from the general responsibility on public authorities to obey the law and observe the rule of law and the doctrine of ultra vires that renders certain acts invalid. This obligation arises from a number of sources. As the most senior officer leading and deciding how a Department must act, under the NICS code of ethics, a civil servant is expected to carry out his or her role with a commitment to stated Civil Service core values. Finally, 'Managing Public Money Northern Ireland' requires, at paragraph 3.1.1 that an:

"Accounting Officer takes personal responsibility for ensuring that the organisation he or she manages delivers the standards in box 1.1."

So, if it was stark earlier, you can imagine that experience from my point of view. It makes very clear where I stand.

Mr McGlone: Denis, that compliance relates to binding international law as well?

Dr McMahon: It is international law. At an international level, the UK as a whole is required to comply with international law, but in this case the international requirements are built into UK domestic law, and therefore that is where it really bites for us. I am not saying that there is not an international law dimension; what I am saying is that that translates into domestic law and impacts directly on DAERA and how we fulfil our responsibilities. Does that make sense?

Mr McGlone: Well, have you sought legal advice —

Dr McMahon: Yes.

Mr McGlone: — either you as a permanent secretary or the Department, either from the Attorney General or the DSO, specifically around this issue, where there is potential for conflict between the withdrawal Bill and the withdrawal agreement that has already been signed as a binding agreement between the UK Government and the EU?

Dr McMahon: Sorry, I was simply talking about our current legal position; I was not talking about this. If you do not mind me saying so, it sounds like you are moving more towards the impact of the Internal Market Bill: is that right?

Mr McGlone: [*Inaudible*] that is where I started, to see if —.

Dr McMahon: Sorry. Apologies. OK, I was describing the current position.

Mr McGlone: [*Inaudible*] what you have told me in between times, which is pretty clear in terms of your compliance and the Department's compliance with law. The question I had asked was whether legal advice had been sought either by you, as head of the Department, the accounting officer of the Department, either from the DSO or if the Department had sought advice, or indeed, through the Executive, had sought advice from the Attorney General on these matters and their potential outcome. You appreciate that, already, the Lord Chief Justice has flagged this up, so I would be surprised if someone at the Department had not.

Dr McMahon: I defer to Norman as to whether any legal advice has been sought. I have not sought legal advice on this to date, because this is a Westminster Bill. We do not know what the position is going to be at the end of it. It is about to enter into the Committee scrutiny phase. We will need to understand what the implications for us are, but we are not responsible for the Bill or for promoting it. We will simply be the recipients of what comes out of that process. Again, I am happy, as you know, for Norman to correct me if I have got any of that incorrect, and, if there is additional, advice that we have sought, Norman might want to clarify that point.

Mr Fulton: No, Denis. As far as I am aware, there is no additional legal advice sought on that matter.

Mr McGlone: I find it unusual — indeed, shocking — that that has not been done. Are you aware of any legal advice has been sought at Executive level?

Dr McMahon: I am not aware of anything being sought at Executive level, but I can certainly make enquiries.

Mr McGlone: If you would, please, because this is pretty crucial where we are leading to. OK, we can move on to the other issues, please.

Dr McMahon: OK. Do you want to talk a bit more about contingencies?

Mr Huey: Maybe that is a chance for Mark to come in.

Dr McMahon: That is a good point. Mark, do you want to say a bit about the contingencies? That would be helpful.

Mr Mark Livingstone (Department of Agriculture, Environment and Rural Affairs): Good morning, everyone. Can you hear me OK?

The Chairperson (Mr McAleer): Yes, Mark.

Mr Livingstone: We are undertaking contingency planning for three scenarios: what needs to be in place by 31 December; the negotiated minimisation, which is the plan A to which Robert referred; and the failure of an agreement being put in place. We are also planning for three key aspects: the process and the IT, which are closely linked but slightly different for all the scenarios; the infrastructure, which, again, is slightly different for all the scenarios; and the key part, which is the staff, and, again, that will be slightly different for all the scenarios. I would also introduce a fourth key point: communication. We are very keen to get first-stage communication analysis going very quickly for the programme, but, as you can imagine, the picture lacks clarity and is developing clarity. We are, however, very keen to get out there.

On the contingency arrangements for 31 December, we are sorting IT and process as we speak. As Denis mentioned, the problem with the IT process was that the EU rejected the national IPAFFS system. The EU Commission also did not consider that the data separation between GB and NI/EU was satisfactory. We have now been pushed into a position in which DAERA has taken control of linking into the EU's national system, TRACES NT. There is a real positive to that because we now have control of our own destiny in Northern Ireland, and we have a great dedicated IT team under Paul McGurnaghan that is working at pace to develop key aspects of that. We are, for example, seeking to automate documentary checks, which will make that process flow quite quickly. We believe that we will have that process in place by December. We are working closely with HMRC on other bits and pieces to make sure that we can align our systems for checking and the automated systems that we are developing with its systems. That is also a point of contention because those systems are also in development. If you can imagine, I am developing two scenarios for the IT system. One is the manual system that Robert mentioned, which is paper-based and people-intensive. That will be problematic and will cause friction with trade. That is IT and process.

On the infrastructure side, we have clear plans in place for both the negotiated minimisation and the no-agreement phase. If you are content, Chair, I can provide a written update on that in detail as we go through. It is detailed, and the details and complexity have been decided and discussed with Robert's teams. We are very clear on what exactly we need; it is just a complex building programme. As you can imagine, the complexities arise as it will cost £35 million and needs to be developed in months. As the permanent secretary mentioned, that will not be done by Christmas. It is likely to be months after Christmas, but we are not talking about years. We are working on that at pace and, again, I will have fuller details when we go to tender later this week. The tenders are already out and will be finalised this week, with contractors appointed the week after. That is how quickly we are working on that project. Again, I can provide you with full details on that. The final construction dates will become clear only when the contractors have had their hands on the detailed plans that we wish to deliver. We are working at pace to pull those together, and I will update you as we go through.

We are also developing contingency plans with each of the ports. We have been working at pace over the past two weeks, specifically with Warrenpoint, Belfast and Larne ports, because that is where the complexities lie. We have identified specific buildings that we can use for the delivery of enhanced physical checks. It is not all doom and gloom, and we can be very optimistic. We are already doing a lot of status quo checks, as we call them, and are checking live animals as they come into Northern Ireland through Larne, although that is not designated as a point-of-entry facility. The vets are undertaking lots of good work there so that we can sustain businesses. To give you a simple example of the contingencies that have been put in place at Belfast port: there are no point-of-entry designations for day-old chicks. We are developing contingency plans to ensure that they can move quickly through the ports with the relevant SPS and veterinary checks and ensure that we do not impact trade and keep that trade going. It is a very difficult and complex picture, but I am optimistic that we will have a good set of contingency plans in place before 31 December. It is important that, when we get those plans in place, we communicate them to our retailers and trading bodies. We will start that work shortly.

The Chairperson (Mr McAleer): Mark, an issue was raised at topical questions this Tuesday about the potential expansion of Warrenpoint port for the SPS checks and the fact that there is an area of special scientific interest (ASSI) in the vicinity of the port. The issue was raised by my colleague Sinéad Ennis. Are you across the detail of that?

Mr Livingstone: Yes, Declan. We have carried out the assessment that the facilities at Warrenpoint allow us to permit a development. You know my background. I am from the Environment Agency, so I am fully aware of the need to carry out habitats regulations assessments and screening, for instance. We are working sensitively with the certificate of lawful use for development applications to ensure that we do not have an impact on the ASSI or on any of the environmental issues there. I am aware of the fact that any buildings that we put in place will have to be extremely sensitive to the area, as we

have discussed with David Holmes, the chief executive of the port. We will ensure, for example, that there is proper tree planting and a grassed roof on the building. We have also talked to David Holmes about getting the details of those plans out to the local communities so that they can see them at an early stage and are fully aware of what we are trying to do. However, I cannot do that until we have had a detailed consideration of the site and take forward the design and build. We spent the past week doing the necessary initial groundworks and environmental assessments at the Warrenpoint site so that we can do a desktop analysis, followed up by a detailed groundwork assessment. That report will come to me shortly and will indicate whether there are any issues. Of course, I am more than happy to share that with you, Declan, as we progress.

The Chairperson (Mr McAleer): Thank you very much. Sorry, Patsy, if I cut across you.

Mr McGlone: You are OK. You were elaborating on the point. Is there a potential for any difficulties on the all-island basis? I have one other issue, if you bear with me. The movement of goods was raised earlier, but it was mainly about retail goods. Robert will recall that I have raised with him previously the issue of pharma goods, medications and veterinary produce, some of which is produced in different places. There can be an input from three or four countries — on the European mainland and domestically. Will he comment on the implications for those and the all-island economy?

Mr Huey: I will comment on the all-island economy part of the SPS checks. The whole point of the SPS regime at the points of entry is to allow freedom of movement. I am not making any plans for any additional controls on the island of Ireland. The protocol takes care of that.

I have a strand of work under my SPS programme that looks specifically at veterinary medicines. I have not come up against any showstopping issues yet, Patsy, that are concerning me on veterinary medicines, but I am keeping an eye on it. I will ensure that you get an update. Even if there is nothing more to tell you, I will let you know that there is nothing more to tell you, but, at the moment, I have no grave concerns. To elaborate, there are two issues: veterinarians having continued access to the medicines that they need, with the right authorisations; and the manufacturers in Northern Ireland and their ability to access markets. There are, therefore, two sides to it. There is the veterinary end of it and the manufacturing side. I am keeping an eye on both. It is at the periphery. I will make sure that no issues have come up recently.

Mr McGlone: Thanks very much, Chair and Robert.

Mrs Barton: Thank you, gentlemen, for your answers so far. There are still many unanswered questions. I want to delve more into the haulage industry. All our goods are transported back and forth by our haulage industry. Has there been much communication and working with them on the movement of goods?

Dr McMahon: There has. Mark can talk about that. He has been doing quite a bit of work with the haulage industry. That will heat up over the coming weeks.

Mr Livingstone: Haulage is a key part of this. I am also in charge of security of food supply. There are three critical parts to that: the haulage industry, the ports and the ferries. In March, there was the food shortage issue and panic-buying, which you might have seen again in the UK press at the weekend.

I have a team that has been engaging regularly with the haulage industry since March, taking on board its comments and concerns. Even as recently as yesterday, when we noted signs of panic-buying, we asked the industry whether everything was OK. We were testing the market with key retailers such as Spar and the Henderson Group, and the local haulier associations, to make sure that things were still OK in terms of Northern Ireland's food security supply.

We played a key role in ensuring that the Department for Infrastructure and the Department for Transport took forward the intervention package for ferries earlier this year, and we provided support to the haulage industry and evidence on the impacts. We are closely linked to the industry and will continue to be so, through the delivery of the SPS programme and, in the longer term, on food security supply.

Mrs Barton: You spoke a lot about IT systems. What agreement is there between the IT systems in Northern Ireland, those in DEFRA and the EU IT systems? If one of the three strands pulled out — for

example, if the EU said, "We are not happy with your systems" — how much would that set you back? How confident are you that that will all be ready to go on 1 January?

Dr McMahon: The key thing is that we have access to the EU TRACES NT system. The question is: how do we get that to join up with the customs and our own systems?

Mr Huey: We got approval last night for the IT people to talk to one another. It is all about the techie detail around the architecture of each party's system, the language that they use and how information moves from one table to another within the ICT structure.

Until the techies talk about that, I really do not have a good grasp of the size of the problem. Mark is confident — more importantly, the ICT people are confident — that this is achievable by 1 January. It is another unknown until those conversations have taken place. We can then provide more confidence that it can be done.

Mr Livingstone: That is a good question, Rosemary. Until a couple of weeks ago, we were fairly committed to the delivery of our IT system using a system called IPAFFS — the UK system. That was, in effect, a copy of the TRACES NT system, which is itself a new system. "NT" is just a fancy way of saying "new technology". To be fair, it is quite old technology.

We need to keep abreast of a couple of systems. We need to keep abreast of the HMRC customs system, because it allows goods to come into Northern Ireland. That will link directly to our IT system, which will then link into TRACES NT. It is a complex picture of pulling data from those systems, making sure that we have what we need and then putting it back into TRACES NT when customs can release that.

All three systems are a key part of that. We are convinced that we can deliver our automated systems to allow a lot of those things to happen. Our discussions relate to automated documentary checks. In the old days, that lorry carrying 400 consignments would need 400 bits of paper. We are trying to automate those bits of paper on the system to make things easier for traders, vets and the port staff in Northern Ireland, and we believe that we will have that done by Christmas. We just need to add things such as electronic signatures because, believe it or not, Europe allows only electronic signatures to be used during the COVID pandemic. That is the normal business and the normal way of the world at the minute. We are trying to get that taken forward, and we believe that it will be ready shortly after January.

We will also have to develop systems to allow automated risk profiling: for example, as a consignment travels from GB to Northern Ireland, it will be assigned a risk, and that risk will determine whether the vehicle is stopped for a physical check. We hope that that, too, will be in place shortly after Christmas.

We remain positive that we can deliver a significant proportion of the IT systems required, and we are content that we can access the European systems to allow us to do so. We no longer need access to IPAFFS because we have selected the European system, TRACES NT, to allow us to move forward with 100% certainty.

Mr M Bradley: As far as I am aware, the negotiations between the UK Government and the EU have not arrived at a situation where GB is listed as a third-country trader with the European Union. If this does not happen, what is the legal position of food entering Northern Ireland? It is my understanding that, if there is no agreement between the UK and the EU, food cannot legally enter Northern Ireland. What is your response to that, please?

Mr Huey: Listing is a key part of the negotiations. Listing is not binary; there are different levels of listing. The easiest example to illustrate is pets, a subject on which I receive many, many letters. I am asked whether pets will be able to move freely between Northern Ireland and GB next year. Between Northern Ireland and GB, there should be very few difficulties because that is within the gift of the British Government, of course. However, the level of checks required on pets coming in will depend entirely on the level of listing. If there is no listing, it will be as though your dog were coming from America or another third country: it will need the whole lot, including a period of quarantine, a movement certificate and a rabies vaccination. That is quite serious. For listed countries, there is list 2 and list 1. With list 1, the checks required will be minimal. The level of checks required under the regulations depends very much on the level of listing.

Maurice, you have hit on an important and key point. We do not know the level of listing because the UK/GB also has to list the European Union: there is a mirror position. There are also discussions on the detail of the certificates that will be used for goods moving from GB into the EU, which the EU is very keen to know more about. Most of this is still stuck within the negotiations, and there is no clarity yet. In the real world, I cannot see a position where listing will not happen. That is because of the reciprocal actions of listing, which is why I explained that. The EU wants to do trade with us, and we want to do trade with it. Listing is part of that process, and, until you are listed, you cannot trade. You are quite right about that. Similarly, we could not send beef to the United States until we were listed.

Mr M Bradley: Thanks very much for that. On another point, Robert, you said that you were looking for roughly 100 people to be employed at the ports to oversee the current infrastructure changes. Can you outline whether, of all the government bodies and agencies that are involved in the implementation of this programme, DAERA will have any say or any role in the management of that multi-agency port?

Mr Huey: The main focus of our concern is various parts of DAERA. The plant inspectors are under Fiona McCandless, and John Joe O'Boyle is the chief forester. We deal with live animals. Then, there are the staff of local authorities, who do the food checks. It is a complicated delivery structure, which we need to coordinate closely. That is happening, as you would expect, under my SPS programme. It is a complicated delivery structure, all under the umbrella of HMRC as the principal authority in portal controls. At the other side of it, however, it is fairly routine, and it is what happens already for third-country checks in Northern Ireland and across the UK. The systems are fairly well worked out; it is the scale that is the issue here. It is where a single physical infrastructure helps us to carry out our checks. I am sorry; I forgot Border Force, which is in there as well carrying out its checks.

Dr McMahan: I go back to your question: we do not manage them directly, of course. They are all different organisations. We are focusing on the SPS element. Some issues, such as customs and all those other elements, will have to be resolved outside this programme. We have enough problems at the moment without taking those on as well.

Mr M Bradley: I pay tribute to Denis, Norman, Robert and Mark and the rest of the staff for all the fantastic work that they are doing. It is marvellous. Well done, gentlemen — and ladies.

Dr McMahan: Thanks, Maurice.

The Chairperson (Mr McAleer): Are you there, Harry?

Mr Harvey: Can you hear me?

The Chairperson (Mr McAleer): Yes, we have you, Harry.

Mr Harvey: OK, good job. I could not do it myself.

Thank you very much, Robert and Denis. It is good to see you with us today. Your briefing paper on the Internal Market Bill says that it ensures:

"that EU State Aid rules do not apply in any form in GB."

However, the next sentence says that a finance Bill, which is not yet published:

"will give the UK Government the power to define which goods ... are not 'at risk'".

Until that Bill is published, we do not know what we are preparing for. Minimise is a key word at this stage, is it not?

Dr McMahan: Norman might want to talk about that in a bit more detail.

Mr Fulton: The issue of at-risk goods centres on the tariff regime that might apply. Obviously, that is very much linked to the ongoing negotiations between the UK and the EU. Certainly, everyone would very much like to see a zero tariff/zero quota agreement being reached. In the event that that does not happen, there is an issue under the protocol as to whether tariffs may apply on goods coming into

Northern Ireland from GB. The way that it is framed in the protocol, it all depends on whether there is a risk of those goods moving on through Northern Ireland into the rest of the single European market. Defining "at risk" goods is a key issue.

That should, effectively, be agreed in the Joint Committee arrangements under the protocol, but the UK Government want to remove the risk of not coming to a conclusion. They talk about taking certain powers, which could come forward in the Finance Bill. All these things are very much in play, so we cannot really say how it will all play out. Clearly, however, if we end up with a zero tariff/zero quota trade deal with Europe, all these things fall away. It is all very much still to play for.

Mr Harvey: You are right: it is all still very much to play for. I really look forward to hearing what is in the Finance Bill. To finish, if we are not on the same footing, what preparations are in place to deal with that?

Dr McMahon: Do you mean what contingency arrangements are in place if there is no deal?

Mr Harvey: Yes.

Dr McMahon: We can touch on that again. Robert, do you want to do that?

Mr Huey: OK. As Mark said in some detail, we are making significant contingency plans in the event of there being no deal, but, as I said at the very beginning, the number of checks and the pure requirement for physical checks, particularly on supermarket goods, are beyond what we, in all likelihood, could deliver. We are moving forward in good faith. We are planning against a reasonable worst-case scenario. We have a number of scenarios, as Mark outlined, that we are working against. All that I can assure everyone here and the folks who are listening to this is that we are doing our very best to ensure that the hassle and hold-up for traders bringing goods into Northern Ireland will be minimised to whatever effect we can give it, but we really do have to wait until we can get some clarity from the outcomings of the negotiations, and that is now only weeks away. We are not waiting on that; we are getting on with it because time is of the essence. We were doing a bit of work yesterday, and it suddenly hit me that we have 60 days until Christmas, if you are working only five days a week — that would be a nice idea. That is a relatively short amount of time in which to do an awful lot of the work that is still ahead of us.

Mr Harvey: OK. Thank you very much for all that you are doing; it is much appreciated. I know that it is not easy.

The Chairperson (Mr McAleer): William, do you want to come back in?

Mr Irwin: Yes. What impact has COVID had on your ability to deal with the situation?

Dr McMahon: COVID has had a huge impact generally, as it has on all sorts of work. There are a couple of elements to that. With the previous runs on the supermarkets, when people were queueing for goods and were, in many cases, buying more than they needed, we found ourselves having to take a much greater focus on food security, which Mark has talked about, and that has been very useful.

By the way, it has been good to see how robust the supply systems have been and continue to be. We have no reason to believe that that will not continue to be the case. We focused a lot of our attention on it. We went through all the normal emergency planning in the central contingency group every morning. That obviously put a lot of the discussions that we need to have at a UK and international level on the back foot for a time. All those things have definitely had an impact. Again, it delayed the start date because we had a lack of clarity, which we still have. We are doing our best in that context to try to work at speed to make up for as much of that as possible through the operational side.

Mr Irwin: It has proven that businesses have a great ability to adapt. I think that, in relation to Brexit, businesses can and will adapt, if they have to do so.

Dr McMahon: COVID, for all its tragic consequences, has meant that we very quickly got into a situation where we were meeting three times a week with the industry, from farm to fork, which is one of the things that have worked well. We continue to do that: we have a meeting next week. We consistently do it. We will need to broaden out the sort of communication that was referred to earlier using the same approach. We have learnt an awful lot about technology from this. For example, I think

that it was last week when we had 600 people come along to one of our team meeting, so everybody heard the issues at first hand. That is what we try to do. We need to do that with the industry now, and we are starting to do it. As I say, we were reluctant to do it because we did not want people to say, "You can't give us any answers here". We are at the point now where we are just going to say, "Here's what we're doing. Here's the contingency arrangements we're putting in place. Here's the information we're waiting for" and have an honest conversation and listen to their views about how to respond. That will be our next step.

Mr Huey: In normal circumstances, William, getting 100 stakeholders in a room three times a week is unthinkable. We now do it like that. It is one of the great benefits. People talk about returning to normal. I do not want to. I frequently sit in my conservatory with my headphones on from 8.00 am to 6.00 pm in one meeting after the other, with my wife, who is also working from home, bringing me lunch. We would not have thought about doing that beforehand. Like the rest of you, I work away at emails and do other things in meetings; you cannot do nine hours of meetings in a day. There is a different way of working, and an awful lot of it is better. The bit that you miss is the people bit; the chatting around the edge, the social interaction and the mental welfare piece, which is a really big issue for us all in trying to manage our people. You do not have the same opportunities to work out what is going on in people's lives and adapt and help as you do when you actually meet people. That is a big challenge. As far as meeting stakeholders, engaging on something as difficult as that and working in a Department is concerned, working from home is efficient. We have to deal with COVID and Brexit. All I need is one of my favourite diseases in the autumn and we really will have a bit of a challenge. Those are all unknowns. We will deal with what is in front of us. We are moving forward.

You paid tribute to all of us. I will focus on the work that Mark and his team have done over the past few months. Since 26 May, an outline business case has gone through Finance and Treasury, and the sites have been identified. Plans were put to Europe for the first time on 30 June, and we have replies to Europe ready to go back on adapted plans. That is a huge amount of work.

Mr Irwin: I think that the Committee is appreciative of that.

The Chairperson (Mr McAleer): Clare Bailey, who has sent her apologies — she is unable to be here today — has sent in this question that she would like to be asked: could the Internal Market Bill affect any future legislation here on minimum farm-gate pricing?

Mr Fulton: It takes you back to the more fundamental issue of the value of minimum farm-gate pricing. At the end of the day, we are a trading region and an outward-looking region; we need to be able to compete. If we start to move in the direction of minimum farm prices, we will undermine our capacity to trade and be competitive. There are much more fundamental issues with minimum-pricing legislation. Therefore, I do not think that we even need to get to the point of considering whether it, in some way, cuts across what is in the Internal Market Bill; it has more fundamental problems than that.

The Chairperson (Mr McAleer): I have no real follow-up, but the question was not really about the principle of farm-gate pricing. Some of the farming groups have demanded legislation here in the future. Do you think that that would have an impact on any potential legislation?

Mr Fulton: If you look into some of the very fine detail of the Bill, you will see that there are certainly powers in there that, effectively, prevent the devolved Administrations bringing forward legislation that would cut across the issues that are set out in the Internal Market Bill. Remember that it is about trying to ensure that the internal UK market functions effectively. Therefore, there are measures in there to ensure that anything that may be brought forward by devolved Administrations does not undermine the effective functioning of the internal market. There are provisions in the Bill to do that.

The Chairperson (Mr McAleer): I guess that that is clause 49, which is the protection of the Act against modification. In a nutshell, you believe that the Internal Market Bill, when enacted, will effectively prohibit any potential legislation on minimum farm-gate pricing here?

Mr Fulton: Potentially, but it is something that I have not looked at through that lens. As I have said, we have some much more deep-seated issues with minimum pricing legislation to address before we would even get to the point of considering it against the Internal Market Bill. It could even fall foul of the state-aid provisions that we will be operating under as well. There are therefore many more issues that we will need to consider before we even get to the point of considering it against the Internal Market Bill.

The Chairperson (Mr McAleer): No problem. Thank you very much, Norman.

I thank you very much, Denis, and all the other officials here. We appreciate the constrained and pressurised circumstances that you are working in, and we really appreciate the fact that you came here this morning and provided detailed answers to all our questions. Thank you for your attendance.