



Northern Ireland
Assembly

Committee for The Executive Office

OFFICIAL REPORT (Hansard)

Brexit Contingency Planning:
Executive Office

30 September 2020

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mr Colin McGrath (Chairperson)
Mr Doug Beattie (Deputy Chairperson)
Ms Martina Anderson
Mr Trevor Clarke
Mr Trevor Lunn
Mr George Robinson
Mr Pat Sheehan
Ms Emma Sheerin

Witnesses:

Dr Andrew McCormick	The Executive Office
Ms Karen Pearson	The Executive Office

The Deputy Chairperson (Mr Beattie): I welcome Andrew McCormick, director of international relations, to give us a briefing; and Karen Pearson, director of EU operational readiness and COVID-19 recovery. Both witnesses are from the Executive Office. The session is being recorded by Hansard, and the transcript will be published on the Committee web page. This oral session follows from the session that we had last week with the two junior Ministers, which I found extremely useful and which raised a lot of questions.

Dr Andrew McCormick (The Executive Office): Thank you very much, Chair, and thanks for the chance to get back to you on an important and challenging topic. It is one for which we are now gearing up to be as well prepared as possible. The Executive agreed, some time ago, that we needed to prepare for a scenario where there is a non-negotiated outcome. That is a slightly awkward phrase, but it is not no deal, because there is already a withdrawal agreement in place, and that is only challenged at the margins in the great scheme of things. The vast majority of the withdrawal agreement is definitely standing and in force.

This is very different from the work that we did on no-deal planning for 31 March last year, and again for 31 October, in what was called Operation Yellowhammer. We learned a lot of lessons from that work, as similar themes and issues arose. Karen, Gail McKibbin, myself and a number of others were deeply involved in that process, all through the backend of 2018 and all of last year. A lot of really good work was done in the Executive Office and, more especially, across the operational Departments. A lot of really good preparatory work was done in that context, and there is a lot that we can build on.

The fact is that, in this scenario, the protocol will be in place and that means that we, in this jurisdiction, have more things certain than is the case across the water, where the differences between

a negotiated settlement, a free-trade agreement, and associated agreements, compared to a non-negotiated outcome, are more acute. There are certain things that we can look at and say, "We know that, for this issue, the protocol will apply." That is a very important security factor for us.

Undoubtedly, the protocol will be more difficult to implement in a non-negotiated outcome than if there is a free-trade agreement. Therefore, there is an important difference and very strong arguments that all Executive Ministers are clear that the right thing for here is to get a zero-tariff, zero-quota deal, alongside agreements with the EU on issues such as transport, security and all those things, in whatever format they are brigaded and governed. That is one of the big sticking points in the main negotiations: how different components of the negotiation come together. Whatever about all that, a good, broadly based agreement will make a significant difference here.

Therefore, it is contingency planning. You can have your own crystal-ball view as to what will happen in the next four or five weeks, which is the time horizon that the main negotiations are looking at. Who knows? We need to be ready for whatever the outcome, and the protocol applies whatever the outcome. So there are a lot of challenges in that process. We have prepared a heat map, a dashboard, different ways of analysing all the issues. There is a significant number of issues, and we have to look at them thematically and departmentally. Sometimes, the same issue will affect different Departments, so they need to be analysed in a cross-cutting way. We have had a good look at planning assumptions and are making some progress in that regard. That was quite slow to get in to, but we are making significant progress on it.

Apologies that the paper reached you only a short time ago, but the attachment gives a categorisation of the issues, partly to draw out the dependencies. There is a group of issues where exactly how we and, more importantly, businesses, plan will depend on the outcome of the main negotiations. There are some very important issues still outstanding in relation to the interpretation, application and implementation of the protocol, and there are number of issues that are within the gift of London in terms of how they are settled. Our role, as officials, working with our counterparts in London, Edinburgh and Cardiff and with Ministers, is to put the devolved perspective into those discussions to try to get the best possible outcome.

Part of the point of all this is that there are a lot of dependent issues at the moment. As those things get resolved — a lot of them must get resolved in the next four or five weeks — more issues will crystallise as issues of implementation. The fourth category is things that are now down to us, as a devolved set of institutions here — the Executive, the Assembly and Committees — to deal with, such as the legislation programme; guidance to businesses on the issues that are within our control; and issues where our role is the implementation and fulfilment of obligations rather than working out what the obligations are. Moreover, there are areas in which the obligations are not yet clear. That is difficult and challenging with fewer than 100 days to go, but that is where we are.

It is better to negotiate for a good outcome than cut to, "Well, let's just implement what we think we know at the moment". That would be worse than our hoped-for outcome. It is better to continue to press through those negotiations, influencing the highest-level negotiations at Frost/Barnier level and definitely contributing to the negotiations on the protocol to get the best possible outcome. Technical discussions are going on now. The specialised committee needs to meet again and form a view on some of those things. It then needs to go to the Joint Committee for a decision. That all needs to happen. It is definitely worth doing that, even though it means more weeks of uncertainty. Given that choice, do you choose bad certainty over hoped-for better? That is an easy decision to take, even though it is an uncomfortable one.

We then need to move into planning and implementation as the mode of operation, probably through November and December. That is when there will need to be maximum engagement with businesses, maximum confidence-building, clear explanation and clear communication, getting that as sharp and straightforward as possible for every sector and citizen, given the various significant aspects of the protocol and withdrawal agreement.

I hope that that was helpful scene setting. Karen may have something to add. It was an attempt to pull the threads together.

The Deputy Chairperson (Mr Beattie): Andrew, thank you. It is not easy to be where we are at the moment. The point of this for us today is all about the nuclear option of a non-negotiated outcome. What preparations do we have for the nuclear option? Following on from our meeting last week with the junior Ministers and from what came out of the Justice Committee, which I am a member of, is there any sense of a non-negotiated outcome working group being constituted, where everybody can

do joined-up thinking in that regard? It was clear from speaking to the Chief Constable last week that the police are talking to other Departments. People are therefore clearly talking to other Departments. I have to say that this is only an impression, but it all seems to me to be being done a little bit in isolation. Nobody is dragging it all together to make sure that we are all walking in the same direction. Does that make sense?

Dr McCormick: There is a working group, and it met this morning. We have met regularly for the past month or more, and we are nearly ready to open up the group to a wider attendance, including PSNI and local government, as would be conventional in any planning approach of this nature, in which we are dealing with contingency planning that stretches from policymaking and decision-making through to very much practical and operational issues.

Part of the reason that we have not been ready for that is that there are so many issues on the first part of that page that are still contingent and uncertain. We also have still to bring forward and clear at Executive level the guidance at ministerial level on the planning assumptions that we adopt. We know a bit more than we did about the planning assumptions at London level. Those are now a lot clearer to us. We are translating that into our context, making sure that that works and looking at all its dimensions.

There is therefore a group, and its membership will be widened soon. We are not quite ready to make it to that point just yet, but there is clear intent that a wider group will be involved. It will have a close link to the work that Karen is leading on, which is contingency planning for and management of COVID and the classic civil contingencies role that is always there for, for example, winter pressures and weather events.

Ms Karen Pearson (The Executive Office): It is important to focus on one thing that Andrew said in his opening remarks, and that is that we have done this once before, with the group for Operation Yellowhammer. This is very different, however, because there are still some uncertainties, and the outcome may look different, but, for planning methodology and to determine the ability of Departments to work together, we have pretty much brought that group back together. It is working reasonably well. We would like to be further on, no doubt, but there are still some unknowns and some gaps in our knowledge that we need to fill. We can, however, give an absolute commitment that local government, the PSNI and the Food Standards Agency (FSA) will be on that group as quickly as we can have them on it.

The Deputy Chairperson (Mr Beattie): Andrew, I do not want to labour the point, but I will be honest with you: it is 1 October tomorrow. We are really in the endgame here. I am slightly concerned that we have not widened the membership of the group yet. Who is on that group as we speak? Who chairs it?

Dr McCormick: I chair it, and there are representatives on it from all the Departments. Separately, we have a liaison arrangement with the Northern Ireland Office (NIO) so that we can link into what is going on at UK Government level. We are also strongly linked into the Cabinet Office transition portfolio board, which looks at the range of planning issues across the whole of the UK. There is a good structure in place, and we are moving it forward.

You mentioned the nuclear option. Even within a non-negotiated outcome, there is still a spectrum of possibilities, mainly based on the issues in section 2 of the annex attached to the paper, which are dependent on how the protocol negotiations turn out. One of the reasons that we would have difficulty should there be a non-negotiated outcome would be the absence of a free trade agreement. If we had good and helpful arrangements agreed with the European Commission on the implementation of the protocol, however, those arrangements would remove a lot of the difficulties. Part of the reason that we are not fully into planning and implementation mode is that there are still genuinely important things to play for, and those are absolutely worth pursuing.

The Deputy Chairperson (Mr Beattie): You are absolutely right, because there are known knowns, known unknowns and unknown unknowns. I get that.

May I press on that one issue, please, Andrew? When the working group's membership is widened, will it be ministerial-led? Is that the level that we are talking about here? To me, you would expect it to be. This is so critical to us for the future. Will that working group be ministerial-led?

Dr McCormick: The work will be overseen by the Executive. All this work — everything that we do — is being reported to the junior Ministers and to the First Minister and the deputy First Minister. We have

not planned to have such a structure, but it will partly depend on how some of the things resolve themselves.

We also need to link into the way in which the civil contingencies group (CCG) works. That is an important point. There are still some things that we need to pick up on following the review of the command, control and coordination (C3) arrangements that Minister Kearney mentioned last week. There is work for us to do, but the point to make is that, whatever happens, decision-making on planning assumptions and the direction of the work will absolutely be a ministerial responsibility.

The Deputy Chairperson (Mr Beattie): I have a brief question before I bring in the rest of the Committee. I do not want to hold you to this. I am just trying to get a sense. Do you have any target times for the planning assumptions? Is there a time at which you will say, "I do not have this by now, so this is what I have to do"?

Dr McCormick: The reality is that so much depends on the negotiations timetable. The Prime Minister's line was to say that the main negotiations need to be resolved by 15 October. There is a European Council meeting in late October. By the end of October, a lot of things will have crystallised, so we will know much more clearly where we stand. Anything that we can do in our discussions with London to push for resolution on the protocol issues is already happening. There are technical discussions going on this week and next week with the Commission that are going in that direction. I will venture to say that around the end of October is probably a turning point. If things are not clear by then, we will need to take a different tack.

The Deputy Chairperson (Mr Beattie): All of the questions that I am asking are based on it all not working and all falling down, resulting in a non-negotiated outcome. That is my real concern and what I am trying to drive at. Some people will see that as being a real possibility.

Thank you for your answers. I will hand over to Colin now.

Mr McGrath: Thank you, Andrew, for the presentation. All of this is predicated on waiting on the determination of negotiations, which is not something that you can control, so none of my questions is in any way an attempt attribute blame.

Can you give me a flavour of how many of the items are binary, in the sense that if you get a deal, x happens, and if you do not get a deal, y happens? If the items are binary, can preparations be made for either outcome, or is it the case that the majority of the issues being negotiated are spectrum-based, and it will depend on where the outcome lands, which then dictates what your next action is if you have to prepare for a negotiated or a non-negotiated outcome. Which of the two scenarios would be in the majority?

Dr McCormick: If you will forgive me for giving a Civil Service answer, the answer lies somewhere in between *[Laughter.]* Let me expand on that a little. There are quite a few points at which an individual item leads to a binary choice, but we have a combination of issues here. One of the most prominent ones is the treatment of goods moving from GB to NI. The first question is this: will there be a deal? Assuming that there is no major free trade agreement, you have an issue around what the tariff policy is at UK level. What is the interaction of EU and UK tariffs? We therefore come down on a side of that binary choice. The question then is this: will there be a good and positive outcome to the discussions on at-risk goods. The objective from our side of the negotiations is to minimise or try to eliminate to the greatest extent possible anything being treated as being at risk, thus keeping the flow as smooth as possible. Everyone would be united in the view that that is highly desirable. We then have the controversial proposal in the Internal Market Bill that the UK unilaterally decide to do it that way. That is problematic, because, from the other point of view, the questions are these: what is entering the single market, what is affecting potential distortions of trade, and how might that be abused? There is another binary outcome there. It is perhaps not even binary and is instead a gradation, from very extensive and very complicated at-risk rules to a highly successful outcome, in which hardly anything is treated as being at risk. That is only one out of 10 or 15 sets of choices.

The outcome of all of that is a spectrum from the very best possible application of a non-negotiated outcome to what we would call a reasonable worst case. The responsible thing for us to do is to look at a reasonable worst case and then build our plans around that. That is partly what was clear in the Michael Gove correspondence that was commented on last week. It is what we did with Operation Yellowhammer: looked at a reasonable worst-case scenario. Cost issues arise, but you look at a reasonable worst case. You do not look at a very worst case, as doing that would take you to some of

the alarmist stories. Those are unnecessarily alarmist, however, because good faith and common sense are obligations on all sides of the negotiations. Looking at a reasonable worst-case scenario should still keep a lot of things moving and flowing. Essentials will be fine in any scenario. There may be some cost issues to deal with, and that is one thing on which the Executive are very focused.

Sorry. That was a complicated answer.

Mr McGrath: No. It was a fabulous Civil Service answer to the question. Thank you for that.

I get what you are saying. You are suggesting that there is a spectrum and that it is then about boiling it down to a good outcome, a bad outcome and an outcome that is in the middle. You are aiming for the one that is in the middle. Correct me if I am wrong, but, even in preparing for the middle outcome, which is a reasonable worst outcome, we will be ready for just about the basics by 1 January. That means that a considerable amount of preparation will not be ready. That is based on a reasonable worst outcome. If we are to have a bad outcome, we are not going to be ready for anything by 1 January. What happens?

Dr McCormick: That absolutely should not happen. There is the time and the will to avoid that. The hardest questions arise around the flow of essential goods and highly regulated goods. Lots of technical issues need to be resolved in all of that. I would suggest that a reasonable worst-case scenario is not in the middle but towards the bad end.

It is about looking at the spectrum of reasonableness. We have to make sure that we have a responsible set of plans and are looking to help businesses and those in logistics and transport to be geared up and ready. The concerning thing, and this applies to all affected parts, is that businesses are not as ready as they could and should be, partly because there has been so much uncertainty. There is a need for clear messaging that says, "Whatever else may happen, you need to be ready to take these steps. They are steps that everyone needs to take, a lot of which are certain".

We need to work with London and alongside the other devolved Administrations to get out the clear and straightforward message that, whatever happens, the situation is going to change. That is what some of the UK Government's communication campaigns have been about. They have said to be ready for these things, because, wherever we settle on the spectrum — whether the outcome is negotiated, difficult or whatever — there are a lot of things that need to be done. People should not be saying "Oh, it will wait. There will be some kind of pause period". There is no reason to expect any kind of pause. There is no chance of an extension to the transition period, and it will not feel like an extension to the transition period. It will feel like quite a radical change, even to just some things. For example, the border model is not so relevant to us, but looking at it from the point of view of GB/EU trade, some things are being phased in. That is a sign that no one is completely ready. We need to recognise that and adjust to it.

Mr McGrath: Hearing you say that we need to be ready and prepared and that information campaigns need to be launched continues to be very worrying, given that it is 1 October tomorrow. How do Departments and the devolved regions get together to prepare and plan those information campaigns in order to have them ready so that businesses are then prepared by 1 January? No time slippage with that date makes it very tight.

It will be difficult for you to give a brief view on this, but the protocol agreed leaves us in the North following guidelines for EU standards and its directives. The Internal Market Bill will allow for a divergence from those for products coming here, which will cause a massive difficulty. It is a circle that cannot be squared. What consideration is being given to the impact of the Internal Market Bill on already negotiated outcomes, including stuff that has been banked as, "We have dealt with that. We have thought it through. We know what we are doing"? Now, at this late stage, those outcomes are being blown back open again. Have there been conversations or discussions had or preparations made on the outcome of the Internal Market Bill?

Dr McCormick: At the risk of using the unfortunate phrase, the actual effect of the proposals on the protocol is relatively limited. The clauses in the Bill that have a direct impact relate not to the state-aid rules that will apply to firms and businesses that are based here but to the concept of reach-back, where there is an attempt to exclude companies that trade with, in or through Northern Ireland from the scope of the protocol's provisions on state aid. Narrowly, that is what that aspect is all about. The intent is that the Internal Market Bill does not change the protocol. There are very large areas of the protocol that are not changed at all by it.

The other bit that has been announced but not yet progressed is the proposed provisions in the Finance Bill, which will not be introduced until the UK Government are ready to bring it forward. Those provisions will affect the definition of "at-risk goods", a point that I made earlier. Those are the elements involved. Another one is the exclusion of the obligation to have exit declarations. That is the other provision in the protocol, and that is on movement of goods from NI to GB.

The substantive uncertainties arising from the Internal Market Bill are specific and limited as a matter of fact. That does not take away the materiality or the significance of what has happened, but the Bill's actual, substantive impact on business planning is not so great. It will not change the fundamentals of the protocol, which include access for Northern Ireland businesses to the EU market. There is no land border, so there is total openness of trade for Northern Ireland businesses into the EU. The Bill then promotes unfettered access of Northern Ireland goods into the GB market and tries to address the issues of non-discrimination and to provide for competitiveness in that context. Again, there are good and positive intentions behind aspects of the Bill. That does not mean that it is not complicated and that there are no other hazards, but the substantive uncertainties are not so great.

Mr McGrath: Thank you. Good luck.

Mr Lunn: Thanks for your presentations. I do not want to delay the Committee by saying much about this. It will be the same as I have been saying for the past six months.

I appreciate your saying that there are some positive aspects to all of this and that work is going on behind the scenes. When I hear that at your level, that gives me some hope that we will not be cut loose and stranded at the end of the year. When I look, however, at the report from Mr Šefčovič about the meeting on Monday and then look at Michael Gove's response, I just think this: where is the common ground, because there is not any? They say exactly the opposite things. Mr Šefčovič is stressing:

"The Withdrawal Agreement is to be implemented, not to be renegotiated — let alone unilaterally changed, disregarded or disappplied."

That is, pretty much, what the British Government have in mind. Michael Gove's response, and I will finish with this, is that he first:

"reiterated the importance of commitment by both sides to upholding obligations under the Withdrawal Agreement".

Right? He goes on to say that the UK is clear that the measures that Europe wants dealt with in the UK Internal Market Bill will not be withdrawn. End of story. Where do we go from there? You can take that as a comment. I do not mind.

Dr McCormick: The question of how that gets sorted out is definitely above my pay grade. It is probably above Mr Šefčovič's and Mr Gove's pay grades to sort that out. It is about how the whole thing settles. There is a clear tension. What is striking is that there remains a process of negotiation happening, to the extent that the issues that are in play can get resolved. It is still possible that the at-risk goods issue can get resolved between the technicians and that an acceptable solution will emerge. In which case, that bit of the Bill becomes unnecessary. Whether it was necessary for the Government to proceed as they did with the Bill, and even in plans for the Finance Bill, is way above my level of discussion, however, and I cannot comment.

What I can say is that there is a process of discussion, which, if it leads to a satisfactory outcome, can still take us to the right place on at-risk goods, subsidy and state aid. State aid has always really been at the heart of this, given how economies compete. It is a global point that is relevant to every free trade agreement in the world.

In a way, it is perhaps not surprising that there is that kind of fairly ferocious exchange at this stage of a process. It certainly does not lead me to conclude that it is game over and agreement is not going to happen. There is still the possibility, although it might not happen. I do not know what they intend, but the possibility of agreement is there. It would be highly beneficial, from all points of view, if agreement can be reached on acceptable terms.

Mr Lunn: Will there be another meeting of the Joint Committee before the end of October?

Dr McCormick: Yes. I am confident that there will be. First, there needs to be a meeting of the Specialised Committee. Prior to that, real work needs to be done on those things, as is the case in any European process. I have been on the periphery of European business for nearly 40 years, and agreement is always worked out in small, technical discussions between officials, under a political mandate. Colleagues have seen this time and time again: arrangements are sorted out, and then there is the formal process. It used to go to Coreper and the European Council. That is the kind of thing that people do, have done and know how to do in the great scheme of things.

Mr Lunn: Martina perhaps knows more about that than I do. What you are saying is that really there is nothing to worry about.

Dr McCormick: No. You are stretching what I said too far there *[Laughter.]*

Ms Anderson: Trevor, you have plenty to be worried about, unfortunately, and you are intelligent enough to know that.

It is worth reminding us all that Operation Yellowhammer is now being held up as something that officials had worked on and that they will work on a similar process going forward. When Operation Yellowhammer was presented — leaked — to Joe and Jane Public, the British Government denied it. First of all, Michael Gove said that there was, as I recall, a watered-down version of it, but they would not even release that. Why would they not release it? Because it showed that there would be a shortage of food, a shortage of fuel and a shortage of medicine, and that it would not be possible to process and purchase chemicals in the same supply chain. The Department for Infrastructure has told us that, in the event of no deal, it will cost more. Lorries will be delayed for two and a half days at ports. The chaos continues. Unfortunately, as we have been told, it will be over by October, because the European Parliament and 28 other Governments and countries have to give their imprimatur to the future relationship. The clock is ticking. Tomorrow, it will be 1 October, and we are one month away. I am concerned that we are now talking about Operation Yellowhammer as the basis upon which we are working towards looking at a reasonable worst-case scenario. We have the information about Operation Yellowhammer, if that is the reasonable worst-case scenario. We can get that information and get an understanding of it. That explains it all to everyone who is concerned about it.

At that time, the British Government also recognised that they expected there to be a harder border in Ireland in the context of having no future relationship with the EU. You talk about the obligations on both sides, and you say that reasonable people here hope — wishes are for Christmas — that we get a better outcome. From your professional civil servant's position, does the Internal Market Bill break international law?

Dr McCormick: That is a question for a lawyer.

Ms Anderson: We have heard from lawyers. We have heard from the Attorney General. We have heard other people talk about how it breaks international law. Are we in a situation, then, where civil servants are being asked to implement a breach of international law?

Dr McCormick: In fairness, the original statement by the Secretary of State for Northern Ireland acknowledged that there were specific and limited breaches of international law. That is what he said.

Ms Anderson: Yes, only a limited breach.

Dr McCormick: There is no problem or issue in relation to civil servants working in Northern Ireland on this point, because the legal framework that we work under all flows from the Belfast/Good Friday Agreement and the Northern Ireland Act 1998. Everything that is done in this place, in the North/South institutions and so on flows from that legislation, and it governs what we can and cannot do both at ministerial and departmental level, so there is nothing like the risk or issue that might apply to those working in London, where the argument of the UK Government is that Parliament is sovereign and that, if Parliament legislates, that sovereignty applies. That is the essence of the argument from the Attorney General in London. That is the essence of what they have brought forward publicly as the way in which it is being handled. That is for them. That does not affect us directly in these institutions, because these institutions are created by the agreement and the Northern Ireland Act, as successively amended following further agreements. That keeps us, in that sense, straightforward, and it means that there is no challenge or hazard to our obligations. We and Ministers in the Executive and the North/South institutions only have the power to do what those provisions provide for them to do, and

anything else would be ultra vires. That is a much more straightforward legal context than that which applies to what is going on through the Internal Market Bill.

Ms Anderson: Let us look, then, at the Good Friday Agreement and the functionality of the Assembly. You have a Finance Minister telling you that the Internal Market Bill overrides the authority of the Assembly and his authority.

Dr McCormick: Yes, that is a different part of the Bill.

Ms Anderson: It is a different part of the Bill, but I was not actually only going into sections of the Bill; I was talking about it in its totality. Given that that is theoretically the case, we could have a situation where state aid rules would enable a British Minister to override the authority of the Finance Minister. So, for instance — we have already gone through the RHI scandal — we could have a Minister deciding that they will bypass the Finance Minister to give funding to a preferred business without having to have the authority of the Assembly, Executive or Finance Minister. In theory, for state aid rules, that can happen.

Dr McCormick: I am not sure that that is novel, in the sense that nothing in the Northern Ireland Act took away from parliamentary sovereignty. I think that there is a clause in the Northern Ireland Act that allows for Westminster to legislate with regard to issues in Northern Ireland in any case. The provision that takes us into the Department of Finance locus in the UK Internal Market Bill is the one that is most controversial with Scotland and Wales, because that is being argued as overthrowing — if that is not too strong a word — or really challenging the whole principle of devolution, under which devolved Budgets are used by the devolved institutions. It is a new provision for the UK Government to invest or undertake expenditure in the devolved regions on their own behalf. That is highly controversial, but I think that it is differently controversial from the state aid provisions in clauses 40-45 of the Bill. The clause dealing with the financial power is a different controversy, and that is not where the potential breach of international law would be. It is being argued, in particular by the Scots and the Welsh, and also by Ministers here, as challenging the principle of devolution, and therefore it is highly objectionable in those terms. However, it is a different dispute —.

Ms Anderson: It is a breach of the Good Friday Agreement, which is also an international agreement that is lodged with the United Nations, so it is a breach to the devolved powers of the Assembly. One might argue that it is six of one and half a dozen of the other; it is two international agreements being breached.

Take workers, families and communities. If, for instance, in a few weeks' time we are going over a cliff and there is no future relationship, and with all the tampering that has taken place with the functionality of here and the protections that had been the obligations in the protocol, where will that leave, for instance, the workers? There are 30,000 people who cross the border every day to work and study. Where does it leave them and the protections if there is a harder border in Ireland? We know about trade, cows and sheep and the protections that were given in the agreement there, but we also want the human beings and their rights to be upheld, given that the Charter of Fundamental Rights has been scrapped. So, on families, communities and workers, how are the people going to be impacted on in the reasonable worst-case scenario?

Dr McCormick: I think that even beyond the reasonable worst-case scenario and into the worst-case scenario there is hardly any impact with regard to the movement of people across the border. That is because the overriding commitment from both Governments is to the common travel area (CTA).

Ms Anderson: Yes, but that is not in law. We know that that has not been codified in law, so therein lies another problem.

Dr McCormick: Yes. However, there is no indication of anything that is undermining that. That has been built in to the working assumptions and the whole basis of planning right from the beginning of this whole process. Also, it is not that there is anything that arises from the Internal Market Bill which takes us back towards the risk of a land border. That is not where this lands. The issue is much more limited in terms of its scope. The state aid provisions are to be resolved but, even with regard to goods or trade, there is no sign of a risk to the fundamentals of why the protocol was agreed in avoiding a hard border. If you look at it, as you said, in relation to workers and families, even in the status quo there are hardly any constraints or checks on the movement of people. There would be a change in some of the entitlements.

Ms Anderson: The status quo is not going to be maintained. It is not going to be like when we had the transition, when people did not notice any difference, when we moved, being kicked out of the EU, because there was a transition. There is not going to be that smooth-running process as we hit the end of this year. There is going to be a difference; people are going to feel and experience that difference.

Dr McCormick: Not through checks on people crossing the land border. That is not going to happen, partly because the CTA applies, and partly because it is just far too controversial and impractical. Both of those apply, and also there are good fundamental working relationships between the British and Irish Governments in the way immigration is managed and handled. That is long-standing, and is based on the CTA. I am not sure whether Karen can add to this from her justice background. I just do not see this as a high-risk area. I need to look at and ensure that people who work in one jurisdiction and live in another is handled out, but for British and Irish citizens the common travel area creates those entitlements, and they will be honoured. I see no threat or risk to those entitlements.

Ms Pearson: I cannot think of anything in particular to add. Your point is, "Does it feel different?" Yes, of course, because we are out. Some people will feel very strongly about that. With regard to the protocol and the arrangements in place, I cannot think of anything specific that is going to get in the way of movement throughout Ireland.

Ms Anderson: Childcare? I just throw that out as an example. If you live on one side of the border, social security regulations apply. Are you saying that all that will be applied across the island?

Dr McCormick: Education, health and social security are all within the scope of the common travel area.

Ms Anderson: Even though they are not in law yet? That is just a hope that those commitments will be honoured.

Dr McCormick: That is right.

Ms Anderson: So we will keep our fingers crossed?

Dr McCormick: It is absolutely our expectation that that will be sustained and not give rise to difficulty.

Ms Anderson: OK. You will forgive people for being somewhat sceptical and worried.

Dr McCormick: I totally understand.

Ms Anderson: Just finally, page 13 of the information we received relates to the certainty that the Minister for the Economy says that she requires in order for her to engage with business about what is coming down the track, potentially, at the end of this year. She also confirmed to me that, since COVID, she has not really been engaging with businesses because there is a lack of certainty. She does not know how this is all going to play out. The Minister is not engaging with businesses. Given what is said on page 13, businesses have to plan and they do not have any direction about planning. The Minister says that she is not engaging with them until she gets certainty and clarity. Surely all that adds to the concern that people, and particularly businesses, are feeling at the moment, and the chaos that could emerge.

Dr McCormick: Businesses have raised, consistently and persistently, a whole range of concerns and have made a very concerted set of efforts to seek out clarity. The main source of that clarity is the outcome of the negotiations between London and Brussels. That is where the uncertainties lie, and it is the only place where they can be resolved. I go back to what I said earlier about the process of resolving those issues in the next few weeks. That has to happen.

The other very constructive thing is that the business community have not just sat, asked questions and complained. They have been very thoughtful and innovative in putting forward ideas, suggestions and proposals to us, DFE, DAERA, NIO and the Cabinet Office as to how things might work out. In fairness, that is also part of how the NIO proceeded after the publication of the Command Paper in May. It referred there to the creation of the business engagement forum. Several of those discussions were described as co-design. They are saying to the business community, "Here's an aspect of the implementation protocol that is quite complicated. What do you as businesses think would be the best

solutions?" That has been going on. A lot of people have been working very constructively on that. I pay tribute to the business group that has led that work. It has engaged faithfully and creatively to try to solve problems. It is by no means easy.

Ms Anderson: Just so that I understand it. Sorry —.

Dr McCormick: We have been involved in that with UK officials.

Ms Anderson: Has the Department for Communities brought forward any contingency plans based on the reasonable worst-case scenario — whatever that looks like — given that that is what we are working on at the moment? Has the Minister for Communities brought forward any proposals as to how that could help businesses start to plan, given that that is the context through which you are building whatever you are building?

Dr McCormick: It is still a work in progress, because there are pretty fundamental aspects, as in the attachment to the paper, that are genuinely not resolved. To say to businesses, "Do this and not that", when it might be better to do it in a different way, is not the right thing to do at this stage.

Ms Anderson: I will take that as a no.

Dr McCormick: It is not the —.

Ms Anderson: It is not your fault, but I will take it as a no.

Dr McCormick: It is not the ideal place, but it is better than rushing to implement and plan for a worse outcome than may be delivered.

Ms Anderson: It is better to be prepared and have a contingency plan in place, even if it is not so bad and you do not have to implement it. That is one thing, but at least you have a contingency plan in place in the event of a backstop.

Dr McCormick: In fairness, larger companies will have done exactly that. They have the capabilities to do so.

Ms Anderson: Well, the companies have been working on their own.

Dr McCormick: Large companies, yes. Small companies do not have the capacity to do that, especially with the extreme uncertainty arising from the virus. It would be unfair to do that. That means that we have to —.

Ms Anderson: That is where the Minister for the Economy's engagement with businesses is crucial in helping them navigate their way through this potential outcome.

Dr McCormick: Invest NI and InterTradeIreland will probably have quite a lot to say on that. I do not have more detail, but I think that there has been good engagement under the Minister's direction.

The Deputy Chairperson (Mr Beattie): I will move this on. Pat.

Mr Sheehan: I have a quick one, Andrew. Thanks for all you have told us so far. Has there been any involvement of the Dublin Government or officials in the no-deal planning process, outside the main negotiations between the British Government and the EU?

Dr McCormick: Yes, we are in touch regularly with colleagues in the Irish Government and are working well. There are specific provisions in the protocol for North/South cooperation, and there are logistical issues that are best dealt with, and are being dealt with, between the respective operational Departments. I am aware of good contact on transport, for example. There is more to be done, but there is involvement. Things moved more slowly when they were in Government-formation mode, but that is picking up. Important opportunities lie ahead in continuing to work on a North/South basis.

If some issues are not resolved in negotiations, there is one possible way forward. When the European Council approved the withdrawal agreement in January, a provision was made in the

Council's conclusions that allows member states that are affected to make proposals for bilateral arrangements with the UK. That is a possible way forward. It applies to Spain in relation to Gibraltar and to Cyprus in relation to the British sovereign bases in Cyprus. That power could be invoked to settle something on a bilateral basis between Dublin and London. It could be relevant to what we need here. That was a long yes.

The Deputy Chairperson (Mr Beattie): Emma, do you have any questions?

Ms Anderson: We cannot hear you.

The Deputy Chairperson (Mr Beattie): We are not hearing you.

Ms Anderson: Are you looking in? She is OK.

The Deputy Chairperson (Mr Beattie): George, do you have any questions?

Mr Robinson: It has been self-explanatory so far. I am just in listening mode.

Mr Beattie: OK, thank you. I take it that those are all the questions.

Andrew and Karen, thank you very much for that. It was really useful, with some good answers. This issue will always kick up more questions, and we will have to revisit it. Thank you for coming along and taking the time and for being as honest with us as you can.