



Committee for Infrastructure

OFFICIAL REPORT (Hansard)

Common Frameworks:
Department for Infrastructure

16 December 2020

NORTHERN IRELAND ASSEMBLY

Committee for Infrastructure

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Members present for all or part of the proceedings:

Miss Michelle McIlveen (Chairperson)
Mr David Hilditch (Deputy Chairperson)
Ms Martina Anderson
Mr Roy Beggs
Mr Cathal Boylan
Mr Keith Buchanan
Mrs Dolores Kelly
Ms Liz Kimmings
Mr Andrew Muir

Witnesses:

Mr Graeme Banks	Department for Infrastructure
Mr Brian Gorman	Department for Infrastructure
Ms Linda MacHugh	Department for Infrastructure
Ms Bernie Rooney	Department for Infrastructure

The Chairperson (Miss McIlveen): I welcome Linda MacHugh, acting deputy secretary of resources, governance and EU; Bernie Rooney, director of gateways and EU relations; and Graeme Banks, gateways and EU relations. Brian Gorman from the planning policy division is returning via StarLeaf. You are all very welcome to the Committee. Linda, would you like to take us through your presentation? My understanding is that this will be an overview of the frameworks and that we will return to them in much more detail. Is that correct?

Ms Linda MacHugh (Department for Infrastructure): Yes. Thank you for the opportunity this morning to provide an update on the Department's work on the development of the common frameworks. As you said, I am joined by a number of my colleagues, and Brian is here specifically to talk about the land use planning one, which is outside my policy remit.

As the UK leaves the European Union, there will be a much greater onus on the UK Government and the devolved Administrations to develop policy in those areas that are currently governed by EU law but are otherwise within the areas of competence of the devolved Administrations. That means that, post the transition period, there is the potential for divergence between the UK Government and the devolved Administrations. It is therefore important that we establish appropriate mechanisms for the devolved Administrations to work together with the UK Government in managing any emerging divergence.

During the transition period, it has been identified that a common framework may be required to manage divergence in areas such as the land use planning aspects of hazardous substances, the

interoperability of the rail system, operator licensing for road transport, motor insurance, driver licensing and commercial transport. Across those policy areas, Whitehall and the devolved Administrations have worked together to ensure the implementation of the requirements of EU directives and regulations. After the transition period, common frameworks in these areas will ensure that there is policy alignment across GB and NI where this is likely to be required, such as in the land use planning aspects of hazardous substances or where divergence in technical standards is anticipated; for example, in relation to the interoperability of the rail system.

Each of these frameworks has been developed in line with the principles for common frameworks set out in the communiqué from the Joint Ministerial Committee on European Negotiations (JMC EN) following its meeting on 16 October 2017. The five frameworks that are within the remit of DFI have been developed under the following three principles. First, they must be necessary to ensure the ongoing functioning of the UK internal market while meeting our international obligations. Secondly, they must respect the devolution settlements and the democratic accountability of the devolved legislatures. Thirdly, they must recognise the economic and social linkages between Northern Ireland and Ireland and recognise that Northern Ireland will be the only part of the UK that shares a land border with the EU. The briefing material that we have provided sets out the five development phases for the common frameworks. Each of the common frameworks presented here today has completed the phase 3 review and assessment. The Department welcomes the Committee's scrutiny of the frameworks, and we will take on board members' comments and queries as we seek to finalise agreement across the four Administrations towards implementing these frameworks. Today is an opportunity to present the frameworks to the Committee, outline the broad development process and provide an overview of each of them. There will be further opportunities for more detailed scrutiny, should the Committee feel that that would be helpful.

I will now touch briefly on each of the frameworks that we are considering. The first is the land use planning aspects of hazardous substances. This common framework encompasses the elements of the Seveso III directive (2012/18/EU), which relates to land use planning, including planning controls on the presence of hazardous substances and the handling of development proposals, both for hazardous establishments and in the vicinity of those establishments. We are obliged to ensure that the objectives of preventing major accidents, and limiting the consequences of such accidents, are taken into account in land use policies. While there are very few planning applications for hazardous substances consent in Northern Ireland, this framework nonetheless allows for discussion on the principles for the development of a non-legislative framework across GB and NI post EU withdrawal. The framework essentially commits each jurisdiction to maintain broad policy and legislative alignment in the area of hazardous substance consenting as it relates to land use planning.

The rail interoperability framework covers the technical standards that apply to the operation of the rail network. A key UK Government EU exit priority for rail is to have flexibility over technical standards. However, the Northern Ireland protocol lists the EU directive on technical standards for interoperability of the rail network, which will continue to apply in Northern Ireland after the transition period. This will result in a split interoperability regime in the UK, with Northern Ireland continuing to apply EU technical standards while Great Britain applies its own rail technical standards, which may either align with or diverge from the EU technical standards for interoperability. The purpose of the rail interoperability common framework is to establish appropriate mechanisms in order to manage any divergence in the technical standards applicable in Northern Ireland compared to GB, and to ensure unfettered access for trade in interoperable rail components between Northern Ireland and GB.

The next framework covers motor insurance. The 2009 EU motor insurance directive obliges all motor vehicles in the EU and the EEA to be covered by compulsory third-party insurance and abolishes border checks on insurance so that vehicles can be driven easily between the EU and EEA countries. After the transition period, the UK loses automatic membership of the green card free circulation zone and, if not readmitted, may seek to impose border checks for green cards. This is an area where Northern Ireland may choose to diverge from GB rules, although any change would need to align with current international obligations under the Inter-Bureaux Uniform Agreement between the insurance bureaux in all countries that participate in the green card scheme. The purpose of the common framework is to establish appropriate mechanisms to manage any divergence between GB and NI in the application of the green card free circulation zone.

I move on to driver licensing. Driving licences are governed by several international and EU arrangements. The UK Government are seeking to conclude bilateral agreements on the mutual recognition of driving licence matters with individual states. Driver licensing is devolved in Northern Ireland and, as such, NI can diverge from the UK Government position, although any change would need to take account of both the international conventions and any developing bilateral agreements.

Like other frameworks, the purpose of the driving licences common framework is to establish appropriate mechanisms in order to manage divergence in driving standards and licensing regulations applicable in NI when compared to GB.

Finally, there is the commercial transport and operator licensing for road transport framework. It covers common rules for access to the international road haulage, bus and coach services market; limits on cabotage movements; certificates of professional competence rules; and the rules on obtaining an operator's licence. If any areas of divergence on these issues emerge from agreements with the EU, then this common framework will be required to manage those scenarios.

The five common frameworks have completed phase 3, with consensus being reached across the four Administrations and approval from the review and assessment panel. The frameworks have been cleared by our Minister to proceed to phase 4, which includes Assembly scrutiny. The land use planning aspects of hazardous substances have also received Joint Ministerial Council approval. Each of the frameworks covers a policy area where there is already a significant amount of collaborative working across GB and NI Departments. During our membership of the EU, much of this work has been about implementing EU directives and regulations while taking account of local circumstances. In future, these frameworks will formalise some of the working arrangements so that we can effectively manage alignment or divergent issues in these areas as they arise.

I hope that that summary has provided an overview of the work undertaken to date and some further clarity around the issues associated with common frameworks. I am now happy to take questions.

The Chairperson (Miss McIlveen): Thank you, Linda. In relation to process and a timeline for all of this, we are obviously in receipt of the letter from Chloe Smith, who outlined a scrutiny process flow chart. Within phase 3, there is an element where it suggests that legislatures would decide the extent of the scrutiny required. That would be in phase 3, but we have now moved into phase 4. Should we have had a conversation in advance of this as to what mechanisms we would be following in order to prepare for scrutiny of the common frameworks —

Ms MacHugh: Well, I think —.

The Chairperson (Miss McIlveen): — or should we have received summaries, perhaps even in advance of this rather than moving into phase 4? Should there have been some preparatory work done from the Committee's perspective?

Mr Graeme Banks (Department for Infrastructure): The complexity around the engagement with the Committee during the COVID period prevented some of this from coming to the Committee. It probably should have been shared at an earlier stage. Unfortunately, a lot of the work on the provisional frameworks was delayed due to a focus on COVID recovery. Therefore, a lot of emphasis has been put on moving this forward to Assembly scrutiny at the earliest opportunity. This has really been as quick as we could bring it to the Committee. Possibly, there should have been discussions earlier on the process for where we are now and how we move through the scrutiny process.

The Chairperson (Miss McIlveen): When you came to the Committee before to discuss Brexit, we had a general discussion around frameworks and where we were with that at that stage. It might have been appropriate to have flagged that at that point, because certainly the Committee would have been flexible in accommodating the Department at any time for additional meetings and so on in order to have that discussion, had that been appropriate. From that perspective, it is disappointing, particularly regarding the hazardous substances framework. I understand that that was published on 23 November, yet it is now 16 December and we have missed a certain degree of opportunity in order to scrutinise, when today we are only looking at an overview, rather than any real detail.

Mr Banks: I think Brian will respond to that point.

Mr Brian Gorman (Department for Infrastructure): My apologies, Chair. This is a new process to us, and we certainly thought we were following the process in line with the other Administrations. We do not see that there is any bar on the Committee providing any input to this as we go along. We do not see the deadline or end date of the end of December as precluding any further scrutiny by the Committee. We are more than welcome to take that on board. My apologies, but we felt that we were progressing the process in line with the other jurisdictions. My apologies if there is a feeling of any delay. It certainly has not been intentional on our part.

The Chairperson (Miss McIlveen): The hazardous substances framework will be implemented by 31 December, regardless of scrutiny from the Committee or elsewhere.

Mr Gorman: That is a deadline. We are not fixed on that deadline; it is a deadline that we have heard in discussions with the other jurisdictions. If this goes beyond that, I do not have any concerns about taking comments from the Committee through to discussions with the other jurisdictions as we progress this. It is a new process to us, and we have no issues with the Committee passing issues to us to bring for further scrutiny.

The Chairperson (Miss McIlveen): I appreciate that. Has it been scrutinised by the other devolved Administrations?

Mr Gorman: I understand that it has been brought to all the other legislatures, but we have not had another session with the other jurisdictions to understand exactly where they are in the process, or to get feedback or to review issues that may have been raised by them.

The Chairperson (Miss McIlveen): I just want to clarify whether they received it before we received it.

Mr Gorman: My understanding, from the informal engagement that we have had with colleagues in other jurisdictions, is that some of them were in advance, but we are not operating to a fixed timetable, in my view, so I do not think that we lose anything by the Committee taking its time to scrutinise this. We will bring those issues forward regardless of when they are provided to us.

The Chairperson (Miss McIlveen): I appreciate what you say, but, when we see that there is an implementation date of 31 December, it red-flags something to us with regard to where the Committee sits.

Mr Gorman: Yes, Chair, but my understanding of how this framework will be implemented is that it simply provides a framework for discussion on future policy issues. It is not that it is going to have an operational impact from 31 December. The intention of the framework is to provide a framework for a future policy engagement across the Administrations.

The Chairperson (Miss McIlveen): I appreciate that. Thank you. Linda, you mentioned that it is really about whether the Committee feels that it should scrutinise this, as a scrutiny Committee. We had that discussion at the previous sessions. I am going to assume that members will want to scrutinise the elements of it. What is the role of scrutiny? Obviously, we can spend a lot of time on it, or we can spend a short time on it. What change, if any, can we make? I suppose I am talking about the point of what we do. Is it going to make a real difference, if we do have a concern?

Ms MacHugh: Coming new to this, my understanding has been that the devolved Administrations have been trying to develop the frameworks with a degree of commonality and identify areas where there could be divergence. As Brian said, there absolutely is opportunity. As I understand it, 31 December is the EU transition period end deadline. It is not a fixed deadline with regard to all the detail of this. Where the detail will be important is when looking at what policies are implemented in the future. The Committee's role in that will be absolutely essential and critical. Graeme can correct me if I am wrong, but my understanding is that the devolved Administrations have been trying to develop the frameworks, identify areas where there could be divergence and identify what the implications could be, for example when travelling across borders, or over to Scotland, with your driving licence or whatever. The real issue comes when any devolved Administration or region attempts to do something different. That is when we get into the detail. Graeme, is that correct?

Mr Banks: Yes, absolutely. I will build on what Brian said about the process and the scrutiny process, and what you said, Chair, about the opportunity for the Committee to input into that. We are in a slightly unfortunate position, because Westminster jumped the gun on the devolved Administrations. They have had, at least, sight of this in advance of your Committee. My understanding is that the other devolved Administrations are following a timeline in the process that is similar to ours. This week, scrutiny Committees in those legislatures will be examining the frameworks. We are broadly in line with colleagues in Scotland and Wales. There will absolutely be an opportunity to make an input. For example, at Westminster, there has been input that has already begun to filter through to consideration for the finalisation, or the next stage, of the implementation of these frameworks. Where the Committee identifies potential improvement, streamlining or clarification around the role of scrutiny

on the development of policy as it applies across these common frameworks, there is an opportunity to feed into that. That is an important role for the Committee to play.

Ms MacHugh: We are in daily contact with officials right across the Department from all the nations, so this is moving at pace, but, as Brian indicated, there is opportunity for the Committee to give any concerns or directions that it wishes.

Mr Gorman: If I can make one further point, this is a framework that we see going forward for policy discussions. It has no impact on the legislation currently in place, which transposes through Northern Ireland domestic legislation the EU directive requirements. It is only when the EU directives cease to be that common source of requirements in all the jurisdictions, depending on future agreements, that there may be discussions on how each Administration wants to move forward if changes are required in those policy areas. Even if we get to the point where there is a degree of policy divergence or policy development, we will still be bringing that forward through domestic legislation, and the normal scrutiny process of the Assembly will apply.

The Chairperson (Miss McIlveen): Thank you. That is helpful.

Ms MacHugh: We are bringing this to you today, and we welcome any views that the Committee has. Those will then be reflected back through to the discussions between Whitehall and the devolved Administrations, as will the views of the other jurisdictions. Then we will have to try and reach a common view on any amendments that need to be made, and we may then need to come back with the final versions, so it might be an iterative process. We are keen to hear from you as a Committee as to how you want to take forward the scrutiny of this. As Brian and Graeme have said, whilst the end of the transition period is the end of this month, these frameworks will only really need to kick in as and when we start to look at divergence, and that will not happen in the next few months. There is some time to get this right. It is better to get it right than to get it done by the end of this month, which is clearly not going to give you the scrutiny role that is enshrined in the process.

Ms Bernie Rooney (Department for Infrastructure): If it is helpful, we are trying to map out the day one issues, week one issues, month one issues and month three issues. We are trying to identify that kind of timeline so that we will know what we ought to bring and when, but it is not an entirely clear process at the moment.

The Chairperson (Miss McIlveen): OK. Thank you for that. I will avoid getting into the detail of any specific framework and just ask what local stakeholder engagement you have had with regard to these.

Mr Banks: On the rail interoperability framework, there has been engagement with NI Railways, as the infrastructure managers, and it is quite right that it has input into that process.

The Chairperson (Miss McIlveen): And that is the case with all the frameworks? You have engaged with regard to —?

Mr Gorman: As hazardous substances was one of the pathfinders, that stakeholder engagement was managed through Whitehall. The input from the Northern Ireland element may have come through Executive Office colleagues, but the stakeholder engagement that will impact policy and development will be where we see any points of policy intention or amendment going forward. The framework is simply how we will engage in those discussions. So, if we think that there is a policy requirement or a legislative amendment required, we will follow the normal policy development consultation legislative process at that stage.

The Chairperson (Miss McIlveen): So, at this stage, engagement has been fairly limited?

Mr Gorman: It has been limited from our perspective with officials across the four jurisdictions at this stage, yes.

Ms Kimmings: My questions are more specific to some of the frameworks. Are we going to try and get into a bit of detail around those? What is the suggestion?

The Chairperson (Miss McIlveen): Sorry, could you repeat that?

Ms Kimmings: You said that maybe we should not get into too much detail on the individual frameworks. My question is on driver licensing. Is it OK for me to go ahead?

The Chairperson (Miss McIlveen): Go ahead.

Ms Kimmings: The driver licensing framework states that it is within the North's gift to set its own driving standards and licensing regulations, but divergence is unlikely, given the benefit of aligning to the current UK driving standards, which are considered to be of a high quality. Does that not prejudice the Minister's decision on whether or not to diverge? There is a choice, but is there one choice that it is better to take? The Department could be setting up a bilateral agreement with the South on driving licences as an urgent matter. I know that people are really keen to know what the outcome of that will be.

Ms MacHugh: I think that the response to that will depend on the position that would arise if either the EU or Whitehall were to decide to do something different to what is happening now. As officials, we would need to look at how either one or the other was starting to diverge, and then we could make a recommendation to the Minister about what is best for our local circumstances. It could be that we align with GB, but, equally, there could be a decision that actually, because we are part of an island, it might better to align with the EU. I think that it would depend on the nature of the divergence, and we would have to do the policy research, make recommendations and bring it to the Committee. The Minister would then decide on which to align with or whether we maintain our status quo.

Ms Kimmings: *[Inaudible.]*

The Chairperson (Miss McIlveen): Sorry, we did not hear you. Can you repeat that?

Ms Kimmings: Does the Minister have a view on that at the minute, or where does that sit with *[Inaudible]*?

The Chairperson (Miss McIlveen): Apologies, we can still not hear you properly.

Ms Kimmings: *[Inaudible.]*

The Chairperson (Miss McIlveen): It might be useful if you sent an email to the Committee, and I can ask your question for you.

Ms Kimmings: Yes. Thank you.

Mr Boylan: Thank you very much for your presentation, Linda. There is no doubt that there are big challenges ahead. I agree that it is not really about legislation or policy; it is about the roll-out of where we actually go. It is about our public message and our message out to the business world. It is about COVID, Brexit and all of that. It is about North/South and east-west. I am going to couch my language in relation to that, because there are big challenges here. I agree with the Chair. The Chair asked whether or not we have a scrutiny role, and obviously we will offer some thoughts, but most of that is going to come from the general public and the business world in relation to the frameworks. It is about how we operate. The first thing that people will ask about is green cards or what lorries can go where or how the hauliers will operate or how we will transfer goods and all of those things, and the frameworks lead to, especially, air elements, rail operability and all of the things that have been mentioned.

I want to go back to the frameworks. Joint decision-making is required within them, and I make my point in this context. Clearly, most of these matters are devolved matters for the Department. If the Minister wanted to move outside the framework, has she the power to do that? If North/South operations were going to be adversely impacted, for the sake of the economy, would the Minister have any powers to move outside the framework?

Ms MacHugh: The frameworks are not actually about policy; they set out how we would deal with diverging policies. They are about the process and the mechanism rather than us having this framework of, say, driver licensing policy and how we will move away from that. They are not about moving out; they are about dealing with divergence.

Mr Boylan: I appreciate that, Linda. I am only asking the question. I am mindful that we are coming out of COVID and have big economic challenges, so we need to be snappy in how the Minister makes a decision. Do you understand me?

Ms MacHugh: Yes.

Ms Rooney: Yes.

Mr Boylan: It is new to all of us. I ask in that context of where we will move as a society.

Ms MacHugh: You are absolutely right: I think that, in some people's heads, the whole EU exit thing will disappear on 1 January 2021 at the end of the transition period. As officials, we are thinking that this is the start of it.

In the past, with the UK, Ireland and the rest of the EU following the same directives and standards, there was a degree of homogenisation, albeit that there was a bit of leeway at times to deal with local issues, even within the directive framework. Now, we will have to look at what the EU is doing, what Whitehall might be doing and what other devolved Administrations might want to do for devolved areas. Looking at that in the round, we will then have to make a decision about what is right to do here for our local circumstances. It will be a whole new area of work, not only for me and my team but the rest of the Civil Service. It will be throughout the Civil Service. We will have to look at very many different areas of policy development.

Mr Boylan: I understand that, and that is why it is important. If we are setting up a framework, we will have to be both flexible and reactionary.

Ms MacHugh: Yes, and that is what is enshrined in the frameworks. There is a realisation of that. For example, on rail interoperability, because it is enshrined in the Northern Ireland protocol, we are required to follow EU law on that. That makes sense because we have an island on which trains run between two jurisdictions. If you had different standards, it would make that operationally impossible. The framework will deal with how that divergence will be handled with the UK. One area there is that manufacturers of train parts, say, could end up having to manufacture to two different standards: one to service our market and one to service GB.

Mr Boylan: I appreciate that, but my main angle is that I am trying to marry up where we go and how we work with the general public. That is generally what we will get, and we saw that throughout COVID-19 with the number of questions that we received.

I have a couple of specific questions. The decision-making fora will involve officials, legal experts and everything else. What role will the Minister have in that? Will she have political or bi-weekly meetings?

Ms MacHugh: Officials are working to develop it, but Ministers will have to sign it off.

Mr Boylan: I am going by your paper.

Ms Rooney: The framework devises the common approach that all regions will adopt to take forward the policy position with the various Administrations post 31 December.

Mr Boylan: I want to ask a few specific questions. Cabotage is an issue now.

Ms MacHugh: Absolutely.

Mr Boylan: That has been raised. Your briefing paper refers to the role of the British embassy in Dublin in making decisions on cabotage. The section on roles and responsibilities states:

"officials from the British Embassy in Dublin. These officials would be responsible for making decisions on any issues which may arise, such as decisions on cabotage."

My question is about those decisions. What engagement has there been with the Irish Government on that? Has there been any? Are you familiar with that?

Ms MacHugh: We have had informal discussions with officials on cabotage, but we cannot enter into any formal negotiation on anything at the moment, because it is all tied into the wider negotiations. We may end up with cabotage being covered by whatever comes out of Brussels or London. If it is not, it is likely to be for the UK Government to negotiate with the EU on that or bilaterally with Ireland if it turns out to be an issue on the island of Ireland. It is a difficult issue.

Mr Boylan: That was my follow-on question. If you do not secure the cabotage or special arrangements for driver certificate of professional competence (CPC) residency, will you diverge from the British rules? How do you foresee that going? The way I see it is that these questions will come thick and fast. I know that it will not be on 1 January, but, as business, hauliers and all the sectors roll out, we, as elected reps, will be asked questions and we will bring them to the table here. We will be asking the Departments those questions.

The general public are well ahead of the game in asking questions. They may not understand all the rules, but they are certainly coming to us. Those kind of things need to be discussed now. I appreciate that it is a framework, that it is all set up and that we are trying to foresee exactly where we are going with all this, but, in some cases, people will be ahead of the game in asking questions, and we may not have all the answers. Part of our role — it is not even scrutiny — will be working with the Department to get some of those answers issued, because they will come in question form.

Ms MacHugh: On cabotage, the decisions will have to be made by third countries, because the issue with cabotage is what happens in a third country. It will have to be set in either their law or in EU law as to what we can and cannot do once we cross a border, so, as I said, we will be relying on either a negotiated agreement with the EU or individual bilateral agreements with individual countries.

Mr Boylan: This is my final question on cabotage. You talked about the Minister being able to make decisions and about reaction. I do not mean that we will have to react in a split second, but, for the benefit of North/South and east-west matters, those decisions will have to be made. Are we saying that the Minister has the power to make those decisions across the jurisdiction?

Ms MacHugh: I think that that will depend on the decision. As I said, I am not sure that any Minister here could decide on cabotage in a third country, but our Minister will clearly have a role in lobbying her counterparts and making the case.

Mr Boylan: I appreciate that. That is the difficulty.

Mr Banks: Can I expand on that a little bit, Linda?

Ms MacHugh: Yes, absolutely.

Mr Banks: The Minister will have the authority to make decisions on devolved matters, and, if that leads us to a position that diverges from GB, the framework is there to manage that divergence. Provided that it is within the Minister's gift to make the decision on a devolved matter, she can make that decision, and that might take us to a divergent position. That can absolutely happen.

Mr Boylan: I appreciate that. It is a broad discussion, and we could talk about it all day, but I will let other members in.

The Chairperson (Miss McIlveen): The devolved arrangements are very different in each legislature. Can you give us some clarity on which of these frameworks are purely for Northern Ireland only?

Ms MacHugh: All of them are designed to make sure that Whitehall and the other three devolved Administrations can deal with any divergence. We are involved in all of them.

The Chairperson (Miss McIlveen): There will be some that Northern Ireland has particular interest in that Wales and Scotland may not.

Mr Banks: Rail interoperability is an example of that. The only competent authority on interoperability of the rail system in GB is the Office of Rail and Road at Westminster, and the Department here is the equivalent for Northern Ireland. There are no equivalent Departments in Wales or Scotland, even though they will have an interest. Obviously, they have rail systems there.

The Chairperson (Miss McIlveen): So the only issue is rail interoperability. That is the only aspect that will be for Northern Ireland only.

Mr Banks: I cannot speak about driving licences, motor insurance and other areas because they are outside my policy area, but interoperability is one example.

Ms Rooney: I assure the Committee that strong representation has been made on concerns about driving licences, particularly professional driving licences. The Minister has written to her counterparts making strong representations so that there is no disadvantage to the Northern Ireland economy or to professional or personal drivers.

Mr Muir: A lot of my questions have already been asked and answered. I think that Cathal talked about the risk of the Minister diverging and causing significant consequences for travel between Northern Ireland and the Republic of Ireland or between Northern Ireland and GB. I understand that there are section 12 freezing powers around that. What are those powers? Have they been invoked yet in the situation with the frameworks?

Mr Banks: I do not have specific details on that, but, to my knowledge, those powers have not been invoked.

Ms Rooney: I do not have detail, either; I would need to check it out and get back to you.

Mr Muir: I understand that it gives the UK Government powers to intervene and then direct the devolved legislature to do what is instructed.

Ms Rooney: My understanding is that they are trying to avoid that, but I do not have sufficient detail; I would need to check it out.

Ms MacHugh: I do not think that it will have happened yet because these are not in operation yet.

Mr Muir: The power is a safeguard against the risk of the devolved Assemblies diverging, but there is a concern that the UK Government will, yet again, interfere with the devolved Assemblies.

Ms Rooney: I am content to take that away and look at it.

Mr Muir: That would be useful.

Ms Anderson: We on the Executive Office Committee have, for our sins, dealt with this quite a bit. I concur with you that it is coming very late to the Committee for discussion. The Executive Office Committee has been dealing with the scrutiny of the overall common framework process and governance.

It sounds very jargonistic to most people, and it is. I am not saying that people in our constituencies are not intelligent enough to understand what a common framework is; I am saying that they probably do not see the relevance of it. This is EU law that created consistency across this island and with the island of Britain. Brexit will result in regulatory divergence. This is to ensure that we are all in the same frame: compliance with the protocol takes precedence, regardless of whether the British Government interfere. Is that where we are at, given what you said about the SR?

Ms Rooney: Yes.

Ms Anderson: OK. There are 154 areas where EU law intersects with the different Assemblies, 151 of which touch on the North. That was all supposed to be sorted out before 31 December, but this is the Committee's first discussion of it. It has not been sorted out. Six of those areas are being prioritised, one of which is hazardous substances. I assume, Chair, that we will come back to this in the new year.

There are three principles in the common framework. A lot of the presentations that I have heard or been involved in concern the impact of divergence east-west. The third principle is North/South and all-Ireland in the context of the Good Friday Agreement. Linda, I picked up on what you said about having to follow EU law when it comes to the hazardous substance framework. However, the paper states:

"what may become possible post-Exit that is not possible now is that the ... devolved administrations will have the powers within a domestic context to relax requirements on the level of substances".

That jumped out at me. Why would we want to relax requirements on hazardous substances? Surely we would want to stay with the highest standards. Is the Minister countenancing relaxing standards, or does the protocol set where we are at with regards to hazardous substances?

Ms MacHugh: I will bring Brian in on that one.

Mr Gorman: That is not the intention, Ms Anderson. The framework is written in a way that provides a framework for all the Administrations. We would step away from the common source of the new directives. I think that all the jurisdictions, quite rightly, have fairly high standards in practical terms. The only way you would seek to amend the hazardous substances directive would be if there was a new substance or concerns were raised about the levels or common storage of substances.

If that is the inference given, it is not the consideration of the officials who are taking this forward that you would be relaxing it. You may have storage concerns. If that was not something that had a common source of [*Inaudible*] in the new directive, the EU have then [*Inaudible*] us to change that, but, again, within the devolved situation.

Ms Anderson: Can I ask you about hazardous and dangerous minerals, for instance, to purify water and for the water quality?

Mr Gorman: I am losing the sound, there. Apologies.

Ms Anderson: OK, the officials here might be able to pick it up. We asked NI Water about Brexit and its consequences for the minerals required to purify water. They can stockpile for only a number of weeks. Were something to happen in 15 days' time, and some felt that there was a need to stockpile more, but we were told us it was dangerous to stockpile, that could be changed to enable Departments to do that, if the Minister so wished.

Ms MacHugh: To change policy like that, you would need to go through the whole policy process, with risk assessment, environmental impact —

Ms Anderson: The policy is going to be changed anyway. When we are coming out of the EU, although perhaps not in relation to this, some of the 151 areas are legislative and some non-legislative. This is a non-legislative one, but it will have implications.

Ms MacHugh: This framework could not deal with, for example, a concern that chemicals were running low, and say, "Oh, sure, we'll just use the framework and change the regulations, and bingo, Northern Ireland Water can stockpile more chemicals", because A, that is going to be dangerous, and B, this framework provides a mechanism only to work through what might be diverging policies.

It is not about the policy change in and of itself. That would be a whole separate process and would take considerable time and consideration to put through.

Ms Anderson: What does the term:

"within a domestic context to relax requirements on the level of substances"

mean? The Committee was told:

"what may become possible post-Exit that is not possible now is that the ... devolved administrations will have the powers within a domestic context to relax requirements".

So, what does "to relax requirements" mean? I ask just to satisfy myself that we are not walking into, potentially, someone going to [*Interruption.*]

Mr Gorman: Sorry, I am back sound-wise.

It is merely a possibility because you could, depending on the agreement, be moving away from the common [*Inaudible*] part of any EU directive. Whilst it may be a possibility, there is no policy intent on moving that way. You cannot change anything on the basis of this framework; you will still be bound by policy and legislative requirements.

You used the example of Northern Ireland Water wanting to stockpile. If anybody wanted to stockpile hazardous substances not in line with current legislation, we would need to look at amending the legislation, but that would be through the normal legislative process.

Ms Anderson: OK, it is just that what was in the information that we received could give that impression, so just think —

Mr Gorman: My apologies, because no policy intent is being discussed in these groups at the minute. It is purely how we are engage, should that be the case. It is to make sure that Administrations are aware across the board if we were proposing any change, or we may learn from other jurisdictions. That is the limit of [*Inaudible*.]

Ms Anderson: Have I read right the information that we received about green cards? Has the Minister the power to resolve the green card uncertainty? I live in Derry. Buncrana is four miles away. I can put one foot in the North and another in the South. I have friends and relatives on the other side of the border, and people like myself, and everyone else in the North, may need a green card to go to the South of Ireland, whereas somebody from Spain, Germany or Italy can land in Dublin and drive around the South without a green card, but those of us who live on the island cannot. Does the information that we received suggest that the Minister minded to resolve that green card uncertainty?

Ms MacHugh: You are right that, at the moment, come 1 January, anybody driving a car into the South will need a green card. That is the current position, and that is an impact of leaving the EU.

Ms Anderson: Has the Minister done anything to resolve this? When I read the information, there was the suggestion that maybe the Minister would have the powers to resolve such an uncertainty.

Ms Rooney: That is part of the negotiations at the moment, so the Minister does not have the authority at this point in time to make a difference. She has made strong representations about the disruptiveness that this could cause, through the various authorities of the negotiating team in the Department for Transport, which has been made fully aware of the concerns about this.

This is more of an insurance issue, and I apologise if you are already aware of that. Northern Ireland could, as with hazardous waste, diverge. However, any change would need to align with the international obligations under the — I am not familiar with the detail — the Inter-Bureaux Uniform Agreement between the insurance bureaux of all countries that participate in the green card scheme. Whilst it is absolutely not the preferred position, and representations have been made about the inconvenience and disruption for drivers and confusion for the citizens of Northern Ireland, we really need to await the outcome of the EU/UKG negotiations before any action can be taken.

Ms Anderson: Does the Minister not need to alert people about what will happen in 15 days' time? Thirty thousand people cross the border every day to work or to study, and 60% of the cross-border movement in my constituency between Derry and Donegal. Thousands of people cross the border; therefore they need to know that, in order for their insurance to be covered.

Ms MacHugh: That is part of the public awareness campaign. All the details on this are nidirect. All insurance companies really should be automatically issuing green cards to all their customers.

Ms Anderson: I can tell you that I have not had one, and I live four miles from the border. Thousands of people across the North are in the same situation.

Ms MacHugh: When, this time last year, we thought that we were going to have a hard Brexit, some insurance companies proactively sent out green cards. Others waited for customers to get in touch to ask, "Can you issue me with a green card?". My advice to anybody who does not have a green card but who regularly crosses the border, or who is planning to cross the border in the near future, is to contact their insurance company to get a green card.

Ms Anderson: It goes back to what the Chair said about the need for us to have had engagements on this subject earlier because there is a role for the Committee in this and in alerting our constituents to what is coming.

I have a final question on rail interoperability. Surely the Minister is not countenancing engaging with components that are potentially below the EU standard. This might be an interpretation or my reading of the information that came through.

Mr Banks: No, absolutely not. The purpose of the framework is to provide those mechanisms so that any trade in interoperable components coming into Northern Ireland, or leaving Northern Ireland to go into GB, meet the appropriate standards. The Department as a competent authority would be assessing any goods coming in — as it does now — to ensure that they meet the EU technical standards for interoperability.

Ms Anderson: OK, thank you.

Mr K Buchanan: Thank you all, so far. Linda, to pick up on your point, would you clarify that we are now moving into phase 4?

Ms MacHugh: Yes.

Mr K Buchanan: So we are referring here parliamentary scrutiny of provisional frameworks. So if we, or Scotland or Wales, had a problem or issue with any of those frameworks, what is the process and the timeline for Northern Ireland, for example, to say, "No, we are not happy with that part of that framework"? What influence do we have on all the other ones? How is the decision made that we all come to a common agreement on that issue, irrespective of which devolved area it comes from?

Ms MacHugh: That largely depends on how much concern there is, not only potentially here but in other jurisdictions and —.

Mr K Buchanan: On whatever the issue is?

Ms MacHugh: Yes, and what the issue is and whether it can be resolved. It is unfortunate that the process has not kicked off sooner. As we said, in terms of the timeline, we are in line with the other devolved Administrations. We need to allow time for both the Committee and my Minister to consider what the final Northern Ireland position would be, and then that will have to come together with the other jurisdictions before we can sign off on an agreed common framework.

Mr K Buchanan: What is that timeline? At what point do we say that, for example, this Committee, this devolved area or Scotland, for example, cannot go back to feed in to that common framework? At what point is it too late for that to feed back —?

Mr Banks: There is no firm timeline. The key is about ensuring that we have that framework to manage any area of divergence. As colleagues mentioned earlier, it is about getting that right, so there is no fixed deadline that we are working this to. Although, obviously, it would be beneficial to have each of the frameworks in place as soon as we possibly can, but it is very important that we take these points on board and that we do not jump to a situation where there is concern that is potentially not addressed, which could result in a difficulty in the frameworks. There is no firm deadline; some of these frameworks may be easier to reach agreement between the Administrations on, engage with the Committee on and get their final approval before others. However, obviously, we want to get them in place as soon as we possibly can in 2021.

Mr K Buchanan: There obviously is no an end date, but there has to be a timeline.

Ms Rooney: We are in phase 3, and we are moving into phase 4.

Mr Banks: That is right.

Ms Rooney: Phase 3 is about detailed policy development resulting in a provisional framework for confirmation. Therefore, these frameworks are to agree a common approach across the nations. Phase 4 is actually the important area, and it is described as the "Implementation and framework

agreement". Therefore, with regard to anything in these documents, we are not confined or not set in stone; it is just that the nations have agreed a common approach as to how they will address issues such as driving licensing and things like that. Therefore, there will be collaborative work. It is described in the overall framework document as:

"Collaborative work to prepare implementing legislation, primary and secondary as appropriate, and non-legislative elements of individual frameworks".

That is, as I mentioned earlier, where we get into the nitty-gritty detail where proposals come to Committee for consideration and we consult and take views on how things would be implemented in the devolved Administration moving forward. This is just really about setting the common approach of how things would be dealt with so that no nation goes off and does something that is of real disadvantage. For example, for lorries that are going across to Scotland, we do not want to have any barriers with that trade. There is a further stakeholder consultation process and there is parliamentary scrutiny of the provisional framework, so that is all of the detail of the next stage. This document is primarily setting out the common approach that each of the devolved Administrations would take if we should be left in this situation when the outcome of the negotiations is known. Unfortunately, at this point, we do not have any indication of what the position is. There is a clear process that each devolved Administration will go through. This is just the common approach document, and phase 4 is the frameworks implementation framework agreement, so that is when we will be coming back and forth, saying, "Well, this is what is being proposed on driving licences. What are your views on this? Are you content?" As Linda said earlier, the real work starts post 1 January, if we are left in this situation.

Mr K Buchanan: OK, thank you.

Ms Rooney: With regard to communications, the Department has looked at the various customers; as soon as we know the outcome, we have looked at all of the channels of who to inform, how to inform and what the key message is, and we have looked at the social inclusion. For example, Mr Boylan said that if you are an 80-year-old driver then you may not use nidirect, so there are things like leaflets and information through post offices. We have an outlined strategy in place with identified communication channels. Our difficulty at the moment is that, until the negotiations conclude, we do not have a message that we can communicate.

The Chairperson (Miss McIlveen): I am a bit concerned about there being no fixed deadline, given that we are aware that there will be issues have been identified even in the draft frameworks. My concern, from being in this place for such a long time, is that policy development and then moving forward with legislation can be quite a slow process, yet there will be very real issues on the ground that need a speedy response, as opposed to the very long, protracted process that we are used to. I am concerned about the commentary around there being no deadlines, because there will be deadlines, and there will need to be deadlines.

Ms MacHugh: The challenge will be if there are real operational issues that need to be addressed, and if the only way to do that is to, for example, change primary legislation. We are in a position where we cannot change primary legislation procedures, other than to argue that we need an urgent procedure. The response to COVID has shown that, if things are absolutely required, you need to do something very quickly. The real deadline for these frameworks is the first time that we need to do something that diverges in these areas. If we are in that position on 1 January, I do not think that we can afford to hang around waiting to change primary legislation; we would have to find a mitigating measure that is much more immediate than that to deal with the immediate concern. It might then raise a policy issue that we will have to look at in the longer term. Relying on a legislative change to address an immediate operational problem would not work. We would have to try to find a mechanism, not to get around legislation, but to work with our counterparts on whatever the issue is to find an immediate operational solution.

The Chairperson (Miss McIlveen): Linda, I want to ask you for some reassurance that, in the last four years when we have discussing this, and with all the different planning that you have done for various scenarios, there will be some constants within that where there may be issues, and that work has started so that we will not be in a situation where you are only really focused on that work come 1 January. Please give me that assurance today.

Ms MacHugh: We have looked at the day 1 issues. We have worked as hard as we can within the legal framework that we have to mitigate as many of the potential issues as we can. There are three or

four issues that are still a bit of a cause for concern. We have Interbus. We have the European Conference of Ministers of Transport (ECMT) licences. We also have an issue with some of the driving licences that were extended for a year because of COVID, and the recognition of those in third countries. We may have a role in some potential issues with the supply chain. If there is traffic disruption at the ports, we will need our traffic control measures to kick in to manage that as best we can, along with the PSNI. We have looked at mitigating measures for all of those. Ideally, they will not be issues because, in the next day, week or whatever, we will have an agreement, but if we do not get one, we will need to go to plan B or, in some cases, plan C, and we have worked through all those. Some of them will require negotiation, at a minimum, bilaterally. That is where we cannot do anything at this point in time, but we are aware of the issues and are as prepared as we can be.

The Chairperson (Miss McIlveen): OK. Thank you.

Mr Beggs: Thanks for your presentation, Linda. We all need to be very careful in this area. I commend the process that you have done to date. We in Northern Ireland are probably more vulnerable than any other region if we diverge from either Europe or the UK, because of our interdependence. What engagement has there been with the Road Haulage Association and Logistics UK? To me, these are the guys at the coalface who will quickly know the issues when they arise and will have a mechanism to react to them.

Ms MacHugh: For the past few years, the Department has had regular stakeholder engagements, informally, at an official level, and formally with the Minister. The Department has held workshops throughout the whole process and has good working relationships with the Road Haulage Association. Clearly, they are also concerned. We know what their issues are, and we are working with them as closely as we can, as, indeed, we are with the ferry operators. There was a period last year when there was a fear that we might run out of ferry capacity across the Irish Sea. We did an awful lot of work with the haulage industry, the ferry companies and the ports to identify the capacity of the ferries. Through that work, we realised that the capacity itself was not an issue. There might be an issue with the paperwork and getting the goods on and off the ferry. The Department has worked to try and get the message out that the paperwork needs to be right. However, we do not need to buy extra capacity on the Irish Sea ferries, for example. There has been an awful lot of very close engagement. In late summer or early autumn, the Minister had a specific meeting with the road haulage sector on all of these issues. She has also been closely engaged. It might have been mid-autumn — do not quote me on the date — but it was within the last month or two.

Mr Beggs: For ourselves, carrying a green card is not a huge issue if it has to be done until there is a wider agreement. However, I am concerned that we are listening to the haulage industry, because this feeds the economy and jobs. If there are interruptions, it can cost jobs, cause business to be lost and have long-term implications. What needs to be done to ensure that, on 1 January, issues such as operator licensing regulations in the EU, which we will no longer be a part of, will not cause interruption to the movement of vehicles? With the technicalities of driver licensing and the change of CPC rules, it is important to listen to the regulations that are applicable in the EU, but also we have to maintain the applicable UK regulations. One of the issues I have picked up on in recent weeks is the importance of backloads. What may seem to be a very small amount — "Oh, it doesn't matter. It is only affecting that small area" — can have a huge cost implication for the transportation of goods. We all need to be watching out for issues that may arise and reacting quickly to try to address them. Can you tell me if a driver from Northern Ireland can legally drive in the Republic on 1 January? Can an HGV driver?

Ms MacHugh: Yes, and that will depend on the permit that the driver has. In terms of our own legislation, bear in mind that, on 1 January, our laws are identical, because we have transposed EU law. It will take a bit of time to get legislative divergence. The bigger issue will be whether or not there is an ECMT permit.

Mr Beggs: What is an ECMT permit?

Ms MacHugh: Sorry: the European Conference of Ministers of Transport. They are permits that allow drivers to work across the EU, and that is probably the key issue, because there are limits on the number of permits. Permits have already been provided, but there are not enough for the numbers of drivers that need them.

Mr Beggs: I think we have some hauliers whose drivers go out on a Sunday somewhere in Europe, work across Europe during the week, and then bring a backload back in. How many drivers do we have in that position at the moment, and how many permits have we been offered?

Ms Rooney: Some 15% of the permits available came to Northern Ireland. The application window was open from 2 to 20 November. I do not remember the exact figure, but a total of just over 1,600 permits were issued, and we got 15% of that.

Ms MacHugh: It is not enough to cover our haulage sector.

Mr Beggs: How many are outstanding?

Ms MacHugh: We need to check that with the policy area in the Department that is dealing with this specific issue, but we will get back to you with the exact figures. Our Minister has written to the Department for Transport, saying that the number of permits is not enough to cover the needs of our haulage sector.

Mr Beggs: You are actually highlighting a real live problem today, that some companies will not be able to carry out their normal routing and distribution. In turn, that means the cost of getting some goods to Northern Ireland will increase, and that of getting some of our exports out. How is that currently being addressed?

Ms Rooney: It is one of the top four issues that we have identified. It is in the same category as the driving licences.

Ms MacHugh: It is also clearly feeding into part of the negotiations. It is a very difficult area. The haulage sector operates on the basis that, if a truck leaves here and goes to somewhere in Europe, it can pick up something and take it to another European country and then come back to us. That is the business model. The cabotage bit in the middle is also going to be an issue, unless we can get an agreement. It is frustrating that, at this time in the year, weeks before we leave, we are still unclear as to what the position is. We have made it clear to the Department for Transport that this will leave us in a very difficult position.

Mr Beggs: You say that this is one of the top four issues. What are the other three?

Ms MacHugh: We have Interbus, which may affect passenger transport on the island of Ireland. We are looking at potential mitigations if there is no agreement. There is an extension to the Interbus agreement that must be signed up to by, I think, at least three EU member states for it to be valid. That will not happen until the end of the negotiations. We are waiting to see whether that is actually going to be agreed. If it is not, we will have to enter into bilateral arrangements with Ireland to allow scheduled cross-border bus services to continue. Occasional ones are OK, because they are already covered in the Interbus agreement, not the extension to that agreement.

The drivers' licences bit is one of the top four, particularly the drivers' licences that have been extended.

The other one is general traffic disruption, which we need to work with the PSNI to deal with.

The Chairperson (Miss McIlveen): Does any other member wish to make a comment at this stage? We will return to this in detail.

Ms Anderson: I have one small point that will probably impact on other constituencies. In Derry, there are 20 bus drivers who work for Translink but live in the South. They have EU driving licences, and they drive buses here. A number of them have been in contact with me asking whether, on 1 January, they can go to work.

Ms MacHugh: I am sure that Translink will have been working on a solution to that. There was, at one stage, a possibility that the cross-border rail service might be impacted, but Northern Ireland Railways actually set up a company in Dublin to allow it to continue. There will be an additional cost to the company, but at least the train service can continue. As and where there are solutions, we have clearly been working to put those in place.

Ms Anderson: A number of companies have looked at the supply chain and looked at the South —.

Ms MacHugh: It is the same with the hauliers. Some haulage companies have now set up companies down South to get over the licensing issues that they might have. The private sector can often be more nimble than the public sector in sorting things out. Private-sector companies do not have to go through a legislative process to set up down South, and they can do that. However, it will come as an additional cost.

Mr Boylan: I appreciate your understanding of it and the explanation. However, to be fair, some of them might seem like big issues, but they are not. When it comes to bus travel, it makes sense to have an economic model for the whole of the island. If it is east-west, it does not make any difference either. At some point, the Committee will have to look into those issues.

Cabotage is definitely a big issue. If we are going to support hauliers, we definitely need to look at that. This framework is an operational framework if we are going to change policy or legislation; that is what it is. I would definitely ask the question about operator licensing. Those are the sort of high standards that should be set in any country. I do not think that any Committee member here would have any issues with that, to be perfectly honest. Those standards are set in order to protect the operator and others.

The point is appreciated, and it is a job of work for us. However, I do say this: it is an operational framework, and private industry and business are well ahead of the game. They are looking to us on 1 January. I know that we will roll out our own normal government structures — whatever the Department rolls out — but people will come to us to ask questions, and we need to hit the ground running. There is no doubt that we face big challenges.

The Chairperson (Miss McIlveen): Thank you all for coming this morning. We will return to this in the new year.