



Northern Ireland
Assembly

Committee for Infrastructure

OFFICIAL REPORT (Hansard)

Common Framework on
Hazardous Substances:
Department for Infrastructure

3 February 2021

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

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

Witnesses:

Mr Brian Gorman	Department for Infrastructure
Ms Irene Kennedy	Department for Infrastructure

The Chairperson (Miss McIlveen): I welcome our witnesses via StarLeaf. We have Brian Gorman from operational governance and Irene Kennedy, who is head of the planning, policy and legislation branch.'

As an introduction and for members' information, I ask you to turn to the correspondence that we have received. I will do a summary of what those say, for the record. We have a response from the House of Lords Common Frameworks Scrutiny Committee on the hazardous substances planning framework. The House of Lords Committee has advised that it welcomes several parts of the framework but has a number of concerns. The Committee makes two recommendations that, it believes, would facilitate future stakeholder engagement and parliamentary scrutiny of the framework. It recommends that the review should actively solicit input from a wide variety of stakeholders, including non-industry stakeholders, and that a report from the review should be published and shared with the UK Parliament and devolved legislatures in order to facilitate future parliamentary scrutiny.

The House of Commons Housing, Communities and Local Government Committee reported that it made a call for evidence on the framework and noted that it has not been contentious except for a request from the Health and Safety Executive (HSE) that the framework should include provision for consultation in the event of proposed legislative divergence. The Welsh Assembly Climate Change, Environment and Rural Affairs Committee also called for stakeholder engagement and scrutiny as part of any review. The Scottish Parliament Local Government and Communities Committee, while it is content, noted that the coming into force of a common framework in no way limits the right of a parliamentary Committee or the Parliament as a whole to scrutinise and debate operational matters that are dealt with under a framework that are within its remit or competency, where there is public interest in doing so. It is important for members to note that in our reflections.

Brian, are you going to lead on this?

Mr Brian Gorman (Department for Infrastructure): Yes, Chair.

The Chairperson (Miss McIlveen): I ask you to make your introductory comments. Members can then indicate if they wish to ask a question. Thank you.

Mr Gorman: Thank you, Chair and Committee members. Thank you for the invitation to scrutinise further the land use planning aspects of the hazardous substances common framework after our initial meeting on 16 December. As the Chair said, I am joined by Irene Kennedy, who has also been involved in this work.

It is possibly worth briefly reiterating some of the key points from our initial discussions in December. Following the UK's departure from the European Union, there will be scope in the future to develop policy and possibly legislation in areas that have previously been governed by EU law but that are otherwise within the area of competence of the devolved Administrations. Future EU directives or amendments to directives may not automatically apply as they have done previously. Therefore, there is potential for policy divergence across the four Administrations in those areas that have previously been governed by common source EU directives. The work on common frameworks has been taken forward to provide a mechanism within which any such future discussions can be managed.

It is important to highlight the fact, as I tried to do at the initial meeting, that the framework itself and the work to date do not propose any policy or legislative changes in relation to the hazardous substances regime. What is intended is to put in place a process to deal with any potential future changes and possible divergence and to manage that within the context of devolution. The land use planning aspects of the hazardous substances common framework have been developed in line with the overarching principles of common frameworks, which have been agreed by the Joint Ministerial Committee (EU Negotiations), and those principles subsequently agreed by the Northern Ireland Executive.

In our work with our colleagues in the other Administrations, we have taken a realistic approach to accommodating any possible future divergence that may be considered necessary to meet local needs and priorities while seeking to support broad alignment in this area at a strategic level. At the last meeting, the Committee raised a number of issues, including the timetabling of the scrutiny process and the maintenance of existing standards in the current hazardous substances regime. We are happy to revisit any of those points if that would be useful. Of course, as with the other legislatures, we would welcome any recommendations from the Committee.

We will forward any comments or recommendations that we receive from the Committee for discussion with the other Administrations in tandem with those that you have already raised. The lead Whitehall Department is keen to schedule another meeting of the four Administrations to consider the results of scrutiny by each of the legislatures, and that is how we see the process moving forward.

I hope that that is brief enough, Chairperson.

The Chairperson (Miss McIlveen): OK. Thank you, Brian. We had a briefing on this just prior to Christmas, but, for the record, these are common minimum requirements and there may, of course, be a requirement for divergence. Can you take the Committee through the process for that and describe how agreement can be reached on divergence?

Mr Gorman: We have to bear in mind that we have our current extant legislation, which was developed in advance of the EU directive in this area. There is a common interest in maintaining high standards and we have common work across the Health and Safety Executive and the Health and Safety Executive Northern Ireland (HSENI) to do that. There may be areas of divergence where there is a change to an EU directive or where an Administration find a previously unanticipated issue or consequence in the existing system. Generally, however, there is no appetite or drive at the moment to diverge from the current system. Were that to emerge, then, under the framework, each of the Administrations is committed to keep the others up to date with issues and whether they think that any policy change is necessary. They take a "no surprises" approach and would call a meeting to discuss what the issue is and to see whether it is common across the Administrations and whether it requires change. As I said, that might come as a change to an EU directive, but, in the circumstances, the idea is to keep all the Administrations aware of an issue, of possible policy change and of what an Administration might seek to take forward.

Were that the case — I do not see anything that drives that thinking at the moment in the Northern Ireland regime — under the devolved settlements in each of the Administrations, the normal policy development process still applies, as does the legislative process if, subsequently, legislation is required. The process of public consultation and stakeholder engagement on any change and the Assembly process of managing legislation is still in place, and that is what the Assembly and public scrutiny [*Inaudible.*] Currently, it is a mechanism to manage any possible future discussions, but we have not identified any issues that might require that at the moment.

The Chairperson (Miss McIlveen): OK. The common theme from each of the regions has been in relation to stakeholder engagement. Has there been any discussion as to how that could be improved or built into the processes? You said that any discussions about divergence would be part of the normal work that you carry out, were there to be any change of policy or, indeed, amendments to legislation or new legislation. I want to talk about stakeholder engagement more broadly, where that is seen to be appropriate.

Mr Gorman: We have taken forward significant elements of planning policy development — for example, through the transfer and reform of planning powers. In any policy area, we would identify who the key stakeholders are on that policy change and engage through public consultation and directly where necessary. That informs the decision on policy options. In addition to that, if you think that legislative amendment is required, the legislative process through the Assembly, not only directly with the Department but with the Committee, will engage with stakeholders on those issues.

To date, the stakeholder engagement on the framework has been led by the Ministry of Housing, Communities and Local Government (MHCLG) and is targeted at some of the associated key industries. As you say, Chair, stakeholder engagement was raised in recommendations from the other legislatures. We are more than happy to take forward that issue for discussion with the other Administrations in relation to the framework. However, normal stakeholder engagement and public consultation requirements in the development of legislation remain unchanged. Should some change be considered necessary, we can change.

The Chairperson (Miss McIlveen): What are the next steps with regard to that?

Mr Gorman: As and when we receive recommendations from the Committee, MHCLG, the lead Whitehall Department, is keen to schedule a meeting with the four Administrations, at which point all the responses from the legislatures will be considered. Discussions at that meeting, and feedback on those options, will move forward into operation and any amendments to the framework that might result from that.

Ms Anderson: Thank you, Brian, for that overview. The draft framework proposes having a review and a meeting between the British Government and the North and Scottish and Welsh institutions. That is at least two years after the framework comes into effect. That is meeting with us not just after the horse has bolted but after the horse has gone. Some other Committees — for instance, in Scotland and Wales — have said that two years is too long. May I ask about that time frame, because I think that it is far too late to engage at that time?

Mr Gorman: Certainly, and good morning. At this point in the framework, it is two years or shorter if necessary. That is partly informed because there are no potential changes that we see on the horizon to the directive, which had been the common source for the legislative provisions in each Administration. There are no current issues in that regime that we anticipate would necessitate that meeting. However, if something crops up, we do not have to wait for the two years to elapse. If, based on feedback from the legislatures that they want it to be revised, we are more than happy to discuss that with the Administrations. I see no issue with changing or reducing that time period, subject to discussion with the other Administrations.

Ms Anderson: I am glad to hear that there are no anticipated changes. However, two weeks ago, we were told that, in relation to workers' rights, there will be a review of the 48-hour working week. We need to be mindful and to keep an eye on that and that, if something materialises, it comes back to the Committee.

The draft framework states:

"The involvement of other stakeholders [in any review] would be considered at the time."

I see that other Committees have touched on that, so should the framework not include stakeholder involvement in the review process from the outset?

Mr Gorman: As I say, I have no issue with that. The initial stakeholder engagement on this as a pathfinder for the common frameworks was essentially MHCLG-led. There was probably not as much local engagement as may have been the case if it had been more localised. We have no issue with stakeholder engagement and would fully anticipate it.

Irene and I have taken forward policy and legislative change. To get the right policy objective, it is essential to have key stakeholders, otherwise you run the risk of bringing forward proposals that will not be effective and could have been better informed by stakeholder engagement. It is all the way through policy and legislative development, which is why we have operated with it.

Ms Anderson: As the Chair said, we have had engagements with you before, so is the feedback from this and other Committees taken into account?

Mr Gorman: Yes, that is the way in which we will take feedback into account. We are aware of the responses from both Houses in Westminster, and from Scotland and Wales. When we get the feedback from this Committee, we will bring all those together. MHCLG, as the lead Department, will coordinate that meeting and look at all the feedback.

Mr Boylan: The UK Government and the devolved Administrations have a set of nine principles for future ways of working that would make up the agreement. Is that the same across all the frameworks?

Mr Gorman: Good morning. I am not sure, Mr Boylan, because we are not involved in each of those. However, we have coordinated that work in terms of sharing the framework with the Executive Office. I cannot say categorically that that is common to them, but the Executive Office and even the Cabinet Office are aware of it. Our focus has been on this framework, so I am not fully aware of the detail of what would be in the others.

Mr Boylan: Sound. Chair, we will maybe follow up on that to see whether it is the same across the board.

Brian and Irene, I meant to say that you are welcome to the Committee. We are still at phase 4. When will we get into phase 5? Can you comment on that?

Mr Gorman: Yes. Once all the feedback from the legislatures has been addressed, we will move into the operation. The operation will not be a day-to-day operation. It will be where, in our view, issues would arise. There will not be day and daily contact, because, as I said, it is an area in which we have no issues on the horizon. It will be ongoing contact with the Administrations as and when issues arise in a formal checkpoint meeting.

Mr Boylan: You indicated that you will keep the Committee well informed about everything that comes through as best as you can.

Mr Gorman: Yes. In fact, the framework might be amended on the basis of the feedback on the recommendations from each of the legislatures.

Mr Boylan: Finally, Brian, although this briefing is about hazardous substances planning, I want to ask about some of the other stuff that the Committee is involved in, such as interoperability and rail interoperability. Where are we on that? Will you comment on when we will find out anything about that? How is that going?

Mr Gorman: That I do not know. I am not involved in those frameworks. Hazardous substances and all the transport frameworks may seem a strange mix for the Department. The hazardous substances framework was selected by the Cabinet Office and does not have the direct operational impact that you might anticipate from transport-related issues. When they come in front of the Committee, our colleagues, with whom we have worked on the principles and how we should take forward discussions, will be able to provide you with the detail on those. I am not up to speed with the detail of those.

Mr Boylan: That is fine. Chair, perhaps the Committee can ask a question about that. Thank you very much for your presentation.

Ms Kimmins: Thanks, Brian. I have a couple of questions. On the hazardous substances framework, your briefing states that reducing standards in this way is not something that the industry [*Inaudible*] is likely to pursue and that the proposed approach is considered appropriate. I take it that the British Government have not indicated any intention to divert or lower standards on this issue.

Mr Gorman: No, absolutely not. In fact, there is a useful piece in the framework that shows that the legislative provisions across all the Administrations predate the EU directive, so the standards were there. With some of the directives, you tend to find that they are instigated by or in reaction to a particular issue. This directive was in response to a particular accident, but the regimes that were in place across the four Administrations predated that, and there is no current appetite to reduce those standards.

The framework states that there is that potential when you move away from the EU common source. That is the reality of moving away from the common requirements of the EU directives and overlaying the devolved settlement. However, I am not aware of any intention or anything that is being planned that would give rise to that.

Ms Kimmins: What about all policies in the common frameworks? For example, another briefing stated that a key British Government EU exit priority for rail is to have flexibility over technical standards. Do you think that that would be right across the board?

Mr Gorman: Similarly as I said to Mr Boylan, I am not sighted on the other frameworks. When our colleagues come to the Committee to discuss those frameworks — the other five — they may be able to deal with that issue. I am afraid that we are focused only on the hazardous substances framework.

Ms Kimmins: OK. Thank you. I want to ask about a scenario in which the North would like to diverge from Britain and stay in policy alignment with Europe. My colleague Martina asked that question last week and was told that it would depend on the policy area. Can we get a breakdown of that for the hazardous substances and rail interoperability frameworks, for example? What would happen?

Mr Gorman: I will restrict my answer to the hazardous substances regime. For anything that is within the planning regime, which is a devolved matter, if there were an issue that was peculiar to Northern Ireland and we wanted to move away from the common convergence across the Administrations, under the framework, we would advise the other Administrations. As I said, there would be no surprises, and we would keep everybody up to date and discuss that. If there were an issue that was pertinent to a devolved matter that we wanted to take forward, subject to the terms of the devolution settlement, we could take that through. It might be a small area or it might be something significant, but, again, that would be subject to policy and the legislative process of the Assembly within the devolved settlement.

Ms Kimmins: OK. Thank you. My final point is on the third common framework. It states:

"Frameworks will ensure recognition of the economic and social linkages"

North and South. We need to ensure that this principle is applied in practice. Has the Department engaged with its counterparts in the South on these common frameworks?

Mr Gorman: We have not engaged on this framework because it is in relation to planning, and the legislation is territorially limited to Northern Ireland. Where there are any potentials under the legislation on operational matters or transboundary issues, that would be a practical matter. However, the way in which we manage policy is constrained across the four Administrations.

Engagement with the other states is more of an operational matter and that is [*Inaudible*] but it is dealt with under the legislation. If that were to be amended, it would be policy consideration development on a legislative amendment.

Ms Kimmins: OK. Thank you, Brian.

Mr Beggs: Thank you for your presentation, Brian. There seems to be agreement in what we are talking about and 'how planning can interact with hazardous substances. You mentioned that this area of planning legislation developed around a major incident. To give us all a better picture of what this is about, can you advise us on the incident that drove this type of planning?

Mr Gorman: It did not drive the planning legislation. Perhaps I misled you on that. The planning legislation was already in place. The hazardous substances regime across the four Administrations was already in place and predated the EU directive. That directive — this is a bit of a check on my history recall — came from an industrial accident in Italy. It is the Seveso III directive. It relates to a lack of concern about the control of hazardous substances that led to an EU review of that area. The regimes across the four Administrations predate that and had high standards already in place. Sometimes you will find that, across the EU, standards and regimes are not at the same levels, and it will take only one incident to bring it to everyone's attention. The approach of the directives is to bring everybody up to those minimum standards. Those standards might already apply and be in place, so member states have much less to do in order to comply with the requirements of the directive.

Mr Beggs: It is good to hear that we already have those standards in place. Thanks.

The Chairperson (Miss McIlveen): No other members have indicated that they wish to ask any further questions. Brian and Irene, I thank you for your attendance this morning. The Committee will follow up with its recommendations.

Mr Gorman: Thank you.