



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Rural Affairs, Islands and Natural Environment Committee

**Wednesday 2 November 2022**

**Session 6**



The Scottish Parliament  
Pàrlamaid na h-Alba

© Parliamentary copyright. Scottish Parliamentary Corporate Body

Information on the Scottish Parliament's copyright policy can be found on the website - [www.parliament.scot](http://www.parliament.scot) or by contacting Public Information on 0131 348 5000

---

**Wednesday 2 November 2022**

**CONTENTS**

	<b>Col.</b>
<b>DECISION ON TAKING BUSINESS IN PRIVATE</b> .....	1
<b>COMMON FRAMEWORKS</b> .....	2
<b>UNITED KINGDOM SUBORDINATE LEGISLATION</b> .....	35
Animals and Animal Health, Feed and Food Plants and Plant Health (Amendment) Regulations 2022...	35

---

**RURAL AFFAIRS, ISLANDS AND NATURAL ENVIRONMENT COMMITTEE**  
**28<sup>th</sup> Meeting 2022, Session 6**

**CONVENER**

\*Finlay Carson (Galloway and West Dumfries) (Con)

**DEPUTY CONVENER**

\*Beatrice Wishart (Shetland Islands) (LD)

**COMMITTEE MEMBERS**

\*Karen Adam (Banffshire and Buchan Coast) (SNP)

\*Alasdair Allan (Na h-Eileanan an Iar) (SNP)

\*Ariane Burgess (Highlands and Islands) (Green)

\*Jim Fairlie (Perthshire South and Kinross-shire) (SNP)

\*Rachael Hamilton (Etrick, Roxburgh and Berwickshire) (Con)

\*Jenni Minto (Argyll and Bute) (SNP)

\*Mercedes Villalba (North East Scotland) (Lab)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

George Burgess (Scottish Government)

Mairi Gougeon (Cabinet Secretary for Rural Affairs and Islands)

Euan Page (Scottish Government)

**CLERK TO THE COMMITTEE**

Emma Johnston

**LOCATION**

The Mary Fairfax Somerville Room (CR2)



## Scottish Parliament

### Rural Affairs, Islands and Natural Environment Committee

*Wednesday 2 November 2022*

*[The Convener opened the meeting at 09:32]*

#### Decision on Taking Business in Private

**The Convener (Finlay Carson):** Good morning, everyone, and welcome to the 28th meeting in 2022 of the Rural Affairs, Islands and Natural Environment Committee. I remind members who are using electronic devices to switch them to silent.

Our first item of business is a decision on whether to take item 4 in private. Do members agree to do so?

**Members indicated agreement.**

## Common Frameworks

**The Convener:** Our second item of business is an evidence session on common frameworks with the Cabinet Secretary for Rural Affairs and Islands. I welcome to the meeting the cabinet secretary, Mairi Gougeon; George Burgess, the director of agriculture and rural economy at the Scottish Government; and Euan Page, the head of United Kingdom frameworks at the Scottish Government.

I invite the cabinet secretary to make an opening statement.

**The Cabinet Secretary for Rural Affairs and Islands (Mairi Gougeon):** Good morning, everyone. Thank you for inviting me to give evidence on common frameworks.

We are coming to the culmination of a process that started all the way back in October 2017, with the agreement of the framework principles by the joint ministerial committee on European negotiations. I know that there have been concerns about the delays during the development of the frameworks, and I share the frustration of the Parliament and, indeed, stakeholders at the time that it is taking to finalise and deliver them. However, the most significant factors in causing those delays lie outside the Scottish Government's control, and I am, of course, grateful for the committee's patience on that. Despite those frustrations, we remain committed to working collaboratively with the United Kingdom Government on common frameworks, on the basis of consensus and in line with the framework principles.

The frameworks, including the ones that the committee is currently scrutinising, are being established to manage policy divergence on the basis of agreement and in a way that respects devolution. They have been operational on an interim basis since the end of the transition period, and they will, of course, remain provisional until all four UK legislatures have completed their parliamentary scrutiny.

It is important to note at this point that the frameworks are policy neutral. They are intergovernmental arrangements for managing policy divergence and are not, in themselves, policy innovations.

The fundamental reason for putting the frameworks in place has not changed. When we were taken out of the European Union, after the 2016 referendum, we accepted that there would be some areas in which the practical, regulatory and market implications of that decision would need to be managed. The frameworks offer a model by which to manage such implications by agreement and collaboration between equals

rather than by imposition. That approach could be usefully applied to intergovernmental relations in the UK more widely, but, sadly, that is not much in evidence in other UK Government efforts.

The United Kingdom Internal Market Act 2020 is a glaring example of the UK Government's willingness to drive a coach and horses through the devolution settlement when it suits it. We remain fundamentally opposed to that legislation, which continues to pose a significant threat to the implementation of the common frameworks. I am sure that we will pick up on that issue later in the evidence session.

Several of the frameworks that were published earlier this year fall under this committee's remit. As I have said in previous sessions with the committee, I am committed to being open and transparent in relation to the common frameworks and to working with the committee as much as possible during the scrutiny process for the frameworks.

**The Convener:** Thank you, cabinet secretary.

As you said, the frameworks are provisionally in operation. However, in practice, they will probably be a moving feast—there will never be a point when we have a final piece of legislation. The frameworks have been in operation to some extent since January 2021. Can you give us some examples of how they operate? What have been the successes and challenges since they came into operation?

**Mairi Gougeon:** In this area, in particular, the common frameworks that we have set out essentially replicate mechanisms that were already in place. Although we are trying to work through the common frameworks on an interim basis until they have been through the scrutiny process and are agreed, they build on the existing mechanisms and our previous terms of engagement with the UK Government.

The process is not an entirely new one for us. If we look at the environment, food and rural affairs, in particular, and the way in which we have worked with the UK Government, it can be seen that we have had in place for some time the interministerial group, in which we have talked through some of the issues. In a sense, the common frameworks formalise some of the existing structures.

**The Convener:** Can you give us some examples from within your remit of how the frameworks have changed? What lessons have you learned as you have gone through the process?

**Mairi Gougeon:** It is fair to say that we are probably still learning lessons and that the frameworks still need to be embedded.

There are some examples of where the common frameworks process has been used, particularly when we look at the exclusions process in the United Kingdom Internal Market Act 2020—I do not know whether we will cover that later in the evidence session. We have used the exclusions process once so far, in relation to single-use plastics.

However, we have also seen examples in which, despite all four Administrations agreeing to the process and agreeing to work in collaboration, the process has not been adhered to. An example of that relates to the UK Government's Genetic Technology (Precision Breeding) Bill. The process should have been used for that but, instead, it started the other way round. The bill was published without discussion having taken place with the other Administrations in the UK.

With some of these areas, it is important, as we work through the process, that we learn how we should engage with one another. However, again, we are still very much working our way through that.

**Alasdair Allan (Na h-Eileanan an Iar) (SNP):** Obviously, the whole category of Government activity around the frameworks is forced upon us all by the existence of Brexit, which is another story.

Are all the elements of the frameworks—the working groups and so on—operational now, or are there bits of them that still have to be created?

**Mairi Gougeon:** If it would be helpful, George Burgess can probably provide an example of how they are operating at the moment, in comparison to how things would have worked before.

**George Burgess (Scottish Government):** Essentially, the frameworks are operational—all the groups that are described in them are up and running. For example, as the cabinet secretary said, in the Department for Environment, Food and Rural Affairs space, we have the interministerial group. Below that, there are a number of structures, such as a senior officials programme board and policy collaboration groups.

As the cabinet secretary said, most of that was already in place for some time. One of the bits that had to be created specifically because of Brexit was the market monitoring group, whose function was previously carried out by the European Commission. We had to create a domestic version of that. The work is up and running, the group is meeting and its material is being published on the UK Government's website for all to see.

**Alasdair Allan:** On the back of that, will you explain a bit more about what the market monitoring group does and how it came into being?

**George Burgess:** In essence, that group looks at market prices and trends for the principal agricultural commodities of beef, sheep, grain, pig meat and dairy. As I said, the function was previously carried out by the European Commission. That was to guide whether it needed to intervene in the markets in any way through private storage aid or the like.

We no longer have access to that European consideration, so the group provides that function on a UK-wide basis. If it identifies problems in the markets—there have been a number of examples of that in the past 18 months to two years—it can provide analytical advice to the other groups and structures and, ultimately, to ministers, so that ministers in the various Administrations can decide whether they need to take action to intervene.

**Jim Fairlie (Perthshire South and Kinross-shire) (SNP):** I am going to refer back to the question that the convener asked about challenges with the frameworks, given that they appear to be agreed between Governments, although stakeholder evidence provides the view that provisions of the United Kingdom Internal Market Act 2020 render them kind of useless.

I note that the Law Society of Scotland said:

“We note that there are no domestic legal constraints on the powers of the UK Parliament or UK Government concerning common frameworks.”

It added, conversely:

“we note that the devolved governments will be bound to such common frameworks either because they have agreed to them or because they are bound by law.”

Does that give you concern about how the common frameworks will work for the Scottish Government?

**Mairi Gougeon:** It gives us serious concern. I think that we all recognise the need for common frameworks. We believe that we have put forward a really good model for how we can work together and manage policy divergence, and we have committed to the process. However, a series of acts have been introduced that seek to undermine that. That was clear in the report of the House of Lords committee and in its scrutiny of the United Kingdom Internal Market Act 2020, which really undermines the work that we have tried to achieve through the common frameworks process. There is also the Subsidy Control Act 2022, which constrains the work that we have tried to take forward through common frameworks, and the Retained EU Law (Revocation and Reform) Bill, which is currently progressing through the UK Parliament and which is causing us serious concern.

We have been told that common frameworks will be protected, but we have not yet been told

how that will happen. It is really frustrating and concerning that, as much as we have committed to the process and as much as we think that it is a positive way to collaborate and move forward, it is continually undermined by pieces of legislation that seek to hamper the choices that we can take.

**Jim Fairlie:** My understanding is that, despite all the rhetoric around common frameworks and how we will work together, it is ultimately the UK minister who will make the overruling decision on whether a common framework is within exclusions that the Scottish Government might wish to apply. Is that correct, or is it your understanding?

**Mairi Gougeon:** Unfortunately, the backstop for all these positions is that that is where we end up. However, it is important that we have the exclusions process in place in relation to the United Kingdom Internal Market Act 2020. Earlier, I gave an example of how we have been able to use that, although the process has not been without its issues in relation to the directive. When we introduced those regulations to the Scottish Parliament, there was a gap in implementation in terms of the items that we wished to see banned. The initial exclusion that the UK Government put forward was narrower than what we sought, and the UK regulations did not come into force until August, so there was an implementation gap of a few months. The process is important and we have the mechanisms by which we can try to exclude, but it is not perfect.

**Jim Fairlie:** Okay. Therefore, we can only hope that we manage to get agreed points as we move forward.

09:45

**Ariane Burgess (Highlands and Islands) (Green):** My question is about funding capacity for the additional work.

There is the work that you need to do in your directorate in relation to policy in Scotland; there is the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021, through which we are tracking what is going on in the EU; and now there are the common frameworks and the need to track the relationships between the four devolved nations. Is there agreed resource and funding that makes it possible for you to do that work well, or are we having to stretch between departments and move people around? It seems that another layer of work has to take place. Is there funding for that?

**Mairi Gougeon:** I do not know whether officials want to come in on that point, in particular. I suppose that that goes back to what we discussed earlier. In some ways, existing structures are being built on. I am sure that George Burgess or Euan Page will be able to say more about what

that means for their own workloads. On the whole, it is positive that there are ways that we can collaborate.

**George Burgess:** On the specific point about continuity and alignment with EU law, that is obviously a Scottish Government position and not one that is shared by our colleagues in DEFRA. Although I am sure that DEFRA will have an eye on developments in Brussels, it is not attempting to track them as closely as we do. Therefore, that is probably not an area in which we can rely on a collaborative approach and share the resources to do the job once for all Administrations. In other places—such as the market monitoring group, which I mentioned earlier—a lot of the work is done by DEFRA, and we benefit from the work of its greater analytical capacity. However, when it comes to keeping an eye on EU developments, we probably have to do more of that for ourselves.

**Beatrice Wishart (Shetland Islands) (LD):** Good morning. We have spoken about the challenges and concerns, but how will the four Administrations ensure transparency in the operation of the common frameworks?

The second part of my question is about the working group meetings. When I saw the papers, I was surprised at just how many of those there are. Within the working group meetings and within each of the frameworks, how is information made available to Parliament and the public?

**Mairi Gougeon:** On the point about the transparency of the process, I know that those who provided evidence to the committee highlighted concerns, and I understand and recognise the stakeholder concerns about transparency. We are keen to get the committee's feedback on what the scrutiny process could be like. We have set out how the frameworks that we currently have will be monitored and reviewed. We want to hear from the committee about ways in which we could improve the relaying of information and make that process more transparent. We are happy to consider any suggestions that result from the committee's scrutiny.

On the reporting mechanisms that we currently have, the committee will be aware that we publish the draft communiqués from our interministerial group meetings. We also provide updates after those meetings on some of the areas that we have been working on or that we have been looking to discuss. Again, I am more than happy to take away any particular comments or suggestions once the committee has finished its scrutiny.

**Jenni Minto (Argyll and Bute) (SNP):** I thank the cabinet secretary for coming along. In your introduction, you said that there should be collaboration among stakeholders. I will follow on from Beatrice Wishart's question. Does the work

between the devolved Parliaments and Westminster feel like a collaboration between equals?

**Mairi Gougeon:** The development of the common frameworks has been a really positive piece of work. I know that I will be coming back to the committee in relation to the joint fisheries statement. That example shows that we can work together well.

It is just frustrating—I am thinking of some of the examples that I gave earlier—when the process is undermined or not quite adhered to. If all four Governments commit to the process and adhere to it, it can offer a positive model of co-operation and collaboration between Governments, which could be used more widely across different areas.

**Jenni Minto:** We are taking evidence from you, and you said that we could feed back our thoughts. Is further stakeholder and parliamentary engagement talked about at your meetings?

**Mairi Gougeon:** It has not been yet. All the different Parliaments have been undertaking their own scrutiny processes, but, once we have been through all of that and the scrutiny is complete, we will look to engage, to see what changes to the frameworks process will be needed. The evidence that the committee has taken and the scrutiny that you have provided have been important in enabling us to see areas in the frameworks that could be improved.

I know that stakeholder engagement was an issue that came out strongly in all the evidence, and I mentioned the House of Lords report in the context of how we could better engage. I recognise the concerns that have been expressed about stakeholder engagement. However, we need to strike a fine balance, because the different Governments need space for free and frank discussion.

It is important to highlight that the common frameworks process does not, and is not intended to, replace the stakeholder engagement that we currently undertake as part of policy development. We will still engage with stakeholders as we normally do, whether we are bringing forward legislative proposals or developing policy. I emphasise that we are not replacing stakeholder engagement, which is still a vital part of how we develop policy. The common frameworks process is another mechanism that sits alongside that.

**The Convener:** Anyone who tuned into the first few minutes of this meeting would have got the impression that this is all a bit of a disaster and that Westminster is ignoring the Scottish Government. It sounded pretty grim. Questioners then suggested that Scottish Government policy might be undermined.

However, 10 minutes in, cabinet secretary, you are saying that it is all very positive. Can you confirm that the operation of the common frameworks within the four Administrations is working well and does what it says on the tin?

**Mairi Gougeon:** Well, that is the thing. I do not think that I have contradicted myself. It is a really strong model, and, if all the Administrations commit to adhere to the process that we have set out, as we have done, it could work well. However, the problem is that we have seen the process undermined. I talked about the example of the exclusions process—it was the first time that we used it, and it did not work perfectly, so I hope that lessons will be learned from that.

If we all adhere to the process, it will be a good process and model. The point is that we need it to be adhered to. We cannot have the process undermined by the introduction of legislation that constrains the policy choices that we can make. That is the complete opposite of what we all committed to through the common frameworks process.

**The Convener:** I presume that the framework is there to deal with the Scottish Government's position of wanting to align with EU law, which is contrary to the position of some other Administrations.

**Mairi Gougeon:** Yes, it is there to manage policy divergence, when that takes place.

**The Convener:** Thank you.

**Alasdair Allan:** My take on that differs slightly from that of the convener. It is up to this Parliament to align if it chooses to align, but I will leave that there.

Cabinet secretary, will you say a bit more about how the four-country approach works in practical terms and how much room it leaves for divergence, given that it is this Parliament's choice whether to diverge or align?

**Mairi Gougeon:** It absolutely is. It might be helpful if George Burgess talked about particular examples and how we have managed them. I talked about the Genetic Technology (Precision Breeding) Bill, which is, unfortunately, an example of the common frameworks process being bypassed. We are working through that issue, because there could be divergence and an impact on us, in Scotland, which we must try to manage. George Burgess can give you more detail.

**George Burgess:** Perhaps the most useful bit of background goes right back to the start of the process and the set of principles that were agreed in the joint ministerial committee back in 2017, which the cabinet secretary mentioned. The key principle is to enable the functioning of the UK internal market while acknowledging policy

divergence. Therefore, fundamental to all the frameworks is the recognition that policy divergence can and will happen. The purpose of the framework is to ensure that, when there is divergence, we work in as collaborative a fashion as we can.

**Alasdair Allan:** How have you engaged with stakeholders on some of the issues? I was interested to hear you use the phrase "coach and horses". Those of us who are on the Constitution, Europe, External Affairs and Culture Committee have heard that phrase used by NFU Scotland, whose representative said:

"we have had the internal market act, which, as I said, almost drives a coach and horses through the principles of common frameworks".—[*Official Report, Constitution, Europe, External Affairs and Culture Committee*, 16 December 2021; c 4.]

You mentioned it as a backstop, but does the existence of other such legislation provide a direct threat to what you are trying to achieve through the common frameworks?

**Mairi Gougeon:** Absolutely, because, as much as we have an exclusions process, that threat still remains. The Subsidy Control Act 2022 is another example. All the concerns that we raised throughout the bill's passage—particularly in relation to agriculture, which we felt should not have been part of that regime in the first place—have been completely ignored. That example has also been used. It is really frustrating and worrying that, as much as we commit to the process, there are pieces of legislation that are a threat not only to that process but to devolution.

**Alasdair Allan:** I understand that the Law Society of Scotland has also raised some of those issues. It noted:

"there are no domestic legal constraints on the powers of the UK Parliament or UK Government concerning common frameworks."

Given the sovereign nature of the UK Parliament and the backstop that it presents in all those matters, what conversations have you had with the UK Government about how it intends to use those powers?

**Mairi Gougeon:** I am happy to pass that question to Euan Page, who will be able to provide more information on that.

**Alasdair Allan:** We have mentioned two acts of the UK Parliament, and what I am driving at is whether you have concerns that it could use its powers in other ways, too.

**Mairi Gougeon:** Yes, I have concerns about that.

**Euan Page (Scottish Government):** The key point to remember is that frameworks are non-legislative arrangements. They are not binding on

any party and, as the cabinet secretary set out, in a way, their strength is that they offer an alternative model of progress in relation to the practical implications of managing regulatory coherence in a multilevel state by agreement rather than imposition. However, we operate in the unique circumstances of the UK constitution. Parliament remains sovereign, and we have seen worrying developments since Brexit, with repeated breaches of the Sewel convention in respect of legislation passing without the consent of the devolved Administrations.

The cabinet secretary alluded to the concerns about the retained EU law agenda. The internal market act was an unwelcome and unanticipated intrusion in the development of common frameworks and was itself implemented without the consent of the Scottish Parliament. We are under no illusions about the challenges that we face and the specifics of the UK's constitutional arrangements. However, common frameworks offer the best existing model for an alternative way of managing the practical, day-to-day challenges of managing regulatory coherence in a devolved state such as the United Kingdom.

**The Convener:** Stakeholders highlight that, although frameworks allow for different approaches when the four nations diverge, they are still vital. Given the four-country approach to regulation and decision making, are there areas in which the framework will create a closer collaboration between the four nations than previously existed?

10:00

**Mairi Gougeon:** I would be happy to come back to the committee if I think of specific examples of that. As I have said, the frameworks build on existing models where we have strong collaboration. That is evident in the framework on animal health and welfare. We work with a number of groups because, when it comes to animal health, diseases do not respect borders. It is important that we work together and that we have cross-collaboration.

If there are further examples that could be provided, I would be happy to follow up on that with the committee—unless George Burgess has any examples that he can give.

**George Burgess:** I can give a small example. As the cabinet secretary said, there was already a lot of collaboration, but, as a result of the agriculture support framework, a group to look specifically at cross-border holdings was created. Obviously, as part of the EU, we would have been looking within the UK at any effects between the different jurisdictions, but we have given a specific focus to that issue by establishing a group.

In practical terms, that is a bigger issue between Wales and England because of the nature of our landscape, but it is of some relevance for Scotland, too, and we are part of that group. That is one example of an area in which, as a result of the frameworks, there is a greater focus and greater collaboration than there was hitherto.

**Jenni Minto:** Back in 2016, supporters of Brexit said that it was all about taking back control. I might argue that, as we can see, what that meant was Westminster taking back control from Scotland.

I am also a member of the Constitution, Europe, External Affairs and Culture Committee, which took evidence on the subject of frameworks from a variety of people, including Professor Nicola McEwen and colleagues. Professor McEwen suggested:

“common framework agreements could commit the Scottish Government to shared or minimal standards and rules, potentially limiting the scope for action of the Scottish Parliament.”

In what areas do you think that our devolved settlement could be impacted?

**Mairi Gougeon:** Euan Page would like to come in on that.

**Euan Page:** In recent years, we have worked closely with Professor McEwen and many of her colleagues on such issues. I would probably disagree on the risk of frameworks imposing a constraint on devolved policy making, because that is not what they are there to do. They are not in themselves instruments for policy innovation; instead, they are mechanisms for managing the changed circumstances that we find ourselves in now that we are no longer an EU member state.

George Burgess alluded to the JMC(EN) principles that underpin frameworks. Those principles, which have proved remarkably resilient and useful as a touchstone in understanding how frameworks operate, make it very clear that frameworks should operate in a way that respects the democratic accountability of the devolved institutions and the devolution settlements.

It is hard to think of a situation in which, through the frameworks process, we would be seeking to impose a self-imposed constraint on devolved policy options. That is not what frameworks are there to do. They are there to enable us to anticipate, notify and manage potential issues around intra-UK regulatory hearings at the earliest possible opportunity. Therefore, the sort of scenario that you have mentioned should never arise.

**Rachael Hamilton (Ettrick, Roxburgh and Berwickshire) (Con):** On that point, have the

common frameworks led to an increase in the devolved nations' decision-making powers?

**Mairi Gougeon:** We have had more powers in relation to our decision making as a result of what has flowed through following our leaving the EU. However, the common frameworks, in and of themselves, do not give us more powers; they set out a way for us to collaborate and work with each other in managing policy divergence. I hope that that makes sense and answers your question.

**Euan Page:** The cabinet secretary is absolutely right: frameworks have not conferred new powers or additional decision-making capacity on the devolved institutions. They are a mechanism for managing the change dispensation that we are in, whereas, before, devolved powers would have been exercised—including by the UK Government, acting for England—within a symmetrically applied framework provided by EU membership. It is therefore a case of the same powers being exercised in a different context. Frameworks offer a mechanism for managing the practical implications of that changed context.

**The Convener:** I remind members that the purpose of our session with the cabinet secretary is to explore common frameworks that are within the committee's remit, including those on agriculture, not to explore the broader constitutional issues around such frameworks. Our questioning should focus on that.

**Alasdair Allan:** Are we not talking about the evidence from farmers, or will that come up at another meeting of the committee?

**The Convener:** We have before us a paper that focuses on the agricultural side of things. I feel that we have been concentrating a lot on the constitutional issues instead of the specific issue that we are supposed to be concentrating on, which is how the common frameworks affect agriculture.

The animal health and welfare framework sets out a preference for joint policy making, and the whole of our animal health and welfare policy falls within the scope of that. However, that stands in contrast to other frameworks. Why do some frameworks include only policy areas that were previously governed by EU law?

**Mairi Gougeon:** Most frameworks do, but animal health and welfare is one area where the common framework is broader, because of the issues that we are dealing with. As I highlighted in an earlier response, animal health issues do not respect borders.

We have a strong history of collaboration, which the committee will have seen from the existing decision-making forums that are listed in the framework and from our ways of working. It is

important—and a very positive development—that we consider such policy areas in the round with regard to how we collaborate.

**Jim Fairlie:** On the issue of divergence between Scotland and other areas of the UK, am I correct in thinking that, right now, there is an avian flu policy for the housing of birds in England but not in Scotland? There are about 80 cases in England and only four in Scotland. During the foot-and-mouth disease outbreak in the 2000s, we, in Scotland, took the decision to close immediately when we found a case, whereas it took a week to make such a decision south of the border, as a result of which the spread down south was much greater. Surely, we would want to retain our ability to make our own decisions on animal health and welfare in Scotland.

**Mairi Gougeon:** Absolutely, and the framework would not change that position. You have given one example, but if the committee wants further details on that aspect, I will be happy to write to it about the decisions that we have taken. That position would not be impacted by the framework.

**Rachael Hamilton:** But has the reverse not happened this time with avian flu? England has had a lockdown, with birds being kept inside, while Scotland has not.

**Mairi Gougeon:** But again—

**Rachael Hamilton:** I am asking just for the record. Is that situation, which is happening this week, not the reverse of the example that Jim Fairlie just gave?

**Jim Fairlie:** That just highlights the point that I am trying to make, which is that we should retain our own ability to deal with these things.

**Rachael Hamilton:** But we do.

**Jim Fairlie:** I know—I am just highlighting that fact.

**Mairi Gougeon:** That is what I have been saying. We still have that ability, and the common frameworks do not change that.

**Rachael Hamilton:** Given farmers' significant concerns about avian flu, I think that it is important for the committee to put that on the record.

**George Burgess:** I would add that, daily—perhaps even several times each day—there is contact between the chief veterinary officers of the various Administrations, who consider the situation on the ground in each part of the UK so that they can advise ministers in the respective areas on the appropriate course of action.

The avian influenza situation is really acute, particularly in East Anglia, which is dreadful for the producers and not good for all the other stakeholders involved, including the Animal and

Plant Health Agency. There is close interaction among the Administrations, particularly at chief veterinary officer level.

**Jim Fairlie:** Without labouring it, that was exactly the point that I was making: there is already close collaboration on those things. Therefore, we are still talking about what is in the paper.

Moving on, does the Scottish Government have an understanding of the policy divergence that will be accepted within the common frameworks and how that divergence will be assessed?

**Mairi Gougeon:** That is why we have the common frameworks processes—they allow us to discuss matters at an early stage. As part of the common frameworks, we share information early and try to resolve any potential issues as early as possible, so that they do not need to be escalated. If it looks as though there might be policy divergence, the common frameworks ensure that we discuss at an early stage what the impact might be and how it might be managed.

**Jim Fairlie:** I clearly remember, back in 2016, asking the head of the Tory party in Scotland and David Mundell where the governance for agriculture would lie post-EU exit only to be told that far more power would be coming to Scotland. That was the repeated mantra: far more power would be coming to Scotland.

We have the decision-making policy with regard to the new agricultural support system. However, with the UK Government bringing in the Subsidy Control Act 2022, do you have any concerns that what we are trying to do in Scotland could fall foul of that legislation?

**Mairi Gougeon:** We reiterated those concerns right through the passage of that legislation. It is frustrating that none of those concerns were ever addressed and that the bill was not amended in a way that would have resolved them. I know that officials are working together on the guidance and the act's practical implications, and I understand that those conversations are on-going, but it is, as I have previously outlined to the committee, one of our biggest concerns.

**Jim Fairlie:** How do the common frameworks protect your ability to put in place a policy that ensures that the policies that we want to implement in Scotland to support agriculture are as the Scottish Government intends? How do the common frameworks protect that?

**Mairi Gougeon:** At an early stage, we would discuss our proposals and how we would intend to bring them forward. I am sure that George Burgess can talk you through the detail of the process, but I come back to my previous concerns. Although the common frameworks

process is a positive and collaborative way of working, there are, at the same time, pieces of legislation coming in at the side that seek to undermine that way of working and that could constrain our policy choices.

It is important that we work on the guidance, so that we can see the practical implications of the 2022 act, because we have been concerned throughout that it could constrain the Scottish Government's policy choices. The direction that we might like to take could be completely hampered by the legislation and some of its principles, given the very different landscape that we have in Scotland. Some of the voluntary and coupled support schemes that we have, for example, do not exist in other parts of the UK. We have them in Scotland for the very specific reason that we want to continue to support people who are farming in the most difficult terrain and the most remote and rural parts of the country. We have been concerned that the 2022 act could hamper our ability to provide that support or that it could lead to disputes further down the line. Again, though, we will continue to work through the process. George Burgess will talk you through how that works practically.

**Jim Fairlie:** I just want to come back in quickly, before George bamboozles me with the science of it.

I do not know whether the UK Government's policy has changed, what with the turbulence over the past couple of weeks and the fact that I have not been home yet, but my understanding of the UK Government's position is that, by 2027, all direct support will be taken away and the process down south will be based entirely around environmental controls and access to land. On the other hand, the Scottish Government's preferred option is still to retain 50 per cent of direct payments—that is the quoted figure, and you can clarify for me whether it is correct—to continue to allow support for food production. Is that the kind of area that might cause concern? Will common frameworks allow you to protect that position?

**Mairi Gougeon:** The common frameworks process itself allows us to address or work through potential issues when they emerge. Again, common frameworks in themselves will not necessarily protect our position if another piece of legislation comes in at the side and undermines it completely.

10:15

**Jim Fairlie:** Ultimately, then, the 2022 act could overrule the common frameworks that you are working with. Are you telling us that, if you were to put forward a negotiating position through the common frameworks, saying, "This is the problem

that we want to address,” but the UK Government had a completely different and diverging policy, that piece of legislation could overrule the work of the common frameworks?

**Mairi Gougeon:** Yes, because it is the legislation. The common frameworks are not a legislative mechanism; instead, they are a mechanism through which we have all agreed to work as a means of collaboration and on the basis that we are collaborating with each other as equals. That is where I come back to the concerns about the UK Internal Market Act 2020 and the Subsidy Control Act 2022. They undermine that process. Indeed, that has been recognised through the work that the House of Lords has done on the issue, too.

**Jim Fairlie:** Okay, George—bamboozle us with the science of how that is going to work.

**George Burgess:** You are correct in saying that, as legislation, the Subsidy Control Act 2022 and the UK Internal Market Act 2020 would take precedence over anything in the frameworks. To be fair, the 2020 act recognises that one of the reasons that UK ministers might seek to introduce exceptions to the market access principles is specifically because of something that might have been agreed through a common framework process. It is therefore not all one way, but the legislation will take precedence over anything in the frameworks.

With regard to the example of agricultural support that has been used, under the mechanism set out in the framework, a discussion would take place between the Administrations, principally in the policy collaboration group. In that group, the Administrations regularly come forward and set out in broad terms the policies that they intend to bring forward. It is an opportunity for each Administration to say, “Wait a minute. Hold on. Great—you can do what you want in your Administration, but it will cause a problem for the internal market or for divergence.” That is the opportunity that we have within that group and, ultimately, any matter could be escalated up to the interministerial group.

At several recent interministerial group meetings, we have had quite good discussions. The most recent meeting was hosted by the Welsh Government, which set out proposals on which it had just launched a consultation. In essence, the frameworks provide that opportunity for Administrations to explain to the others what they are doing and for other Administrations to raise a red flag if they see any difficulties.

At the risk of bamboozling you further, Mr Fairlie, we also have the World Trade Organization agreement on agriculture process, which is a formal mechanism by which all

Administrations must provide advance notice of agricultural support schemes—ultimately, for notification to the World Trade Organization. Those are formal mechanisms that we are all using.

**Jim Fairlie:** Okay. I see that Rachael Hamilton has a supplementary question, convener.

**Rachael Hamilton:** How do the common frameworks interact with the market principles of non-discrimination and mutual recognition when a devolved Government can, of course, take a different policy journey?

**George Burgess:** I will give a bit of the answer and then, on this occasion, I will leave it to Euan Page to bamboozle.

The market access principles that are set out in the United Kingdom Internal Market Act 2020 apply across the board. There are some exceptions in that act—for issues of food safety, for instance—on which different decisions can be taken. However, generally, the principles apply across the board and any departure from that would require the use of the exceptions process that is set out in the act. We talked earlier about the use of that in relation to single-use plastics. That is the mechanism. Basically, if it is covered by the market access principles, we have little choice unless one of the exceptions applies.

**Euan Page:** That is precisely the point. It is useful to contrast the different ways in which the principles of mutual recognition and non-discrimination, which are common to most internal market regimes and are at the centre of how the European single market operates, work.

Within the ESM, those provisions operate as broad legal principles that can be applied. In the internal market act, they are rigid statutory requirements, so there is much less flexibility to tailor policy in a way that recognises local needs and conditions. As George Burgess said, there is much less in the way of derogations and exemptions set out in statute. Those that are there apply to a very small number of issues relating—to put it crudely—to things that might kill people if such provisions were not in place, such as animal or plant health emergencies, chemicals in pesticides and so forth.

In the European single market, there is a principle—a kind of rolling recognition—that member states can, while observing the broad legal principles of mutual recognition and non-discrimination, make the case for legislation that disregards those principles in pursuit of wider environmental, social or economic goals.

That is the difference. The internal market act is a much less flexible, and much more rigid, statutory regime. That creates problems in respect

of tailoring local policy and ensuring that devolved legislation has its intended effect. It is why that is such a difficult issue in the context of developing common frameworks—it has been one of the main reasons that that process has taken as long as it has, as we have tried to work out those issues.

**The Convener:** I call Ariane Burgess—

**Jim Fairlie:** Convener, the witnesses have just raised a point that is really important to farming in Scotland. I have a question that follows on from the one that Rachael Hamilton asked.

**The Convener:** If we get a chance, we will come back to it.

**Ariane Burgess:** I will dig down a bit further on divergence. The Soil Association Scotland, in its response to the call for views, raised a number of concerns. It noted:

“the framework for Organic Production states that there is ‘existing disagreement’ between parties on whether certain matters are devolved or reserved”,

and it pointed out:

“It is concerning that there is such a lack of clarity about what is devolved and what is reserved, several years after ... the UK officially left the EU.”

I am curious to learn what work is being done on that specific framework to generate clarity. We have an ambition for organic production, and it would be useful to hear what is going on there.

**Mairi Gougeon:** That is no problem. It is really frustrating that we are still in that place. I have been liaising with the UK Government on that, but we remain in dispute over the exact responsibilities in relation to organics. However, I do not think that that hampers too much the work that we would be looking to take forward through the framework.

George Burgess may want to come in on that.

**George Burgess:** I can give a bit more detail. The difference in view between the Administrations is principally around some of the import-export control elements of organics. Our view, in contrast to the UK Government’s view, is that more of that is devolved. The framework provides a way through that: a modus vivendi for us so that, despite the disagreement, we can, in effect, park the issue and get on with it. It sets out a way of making sure that we can still recognise organic certification bodies and all the other functions that need to be carried out so that we can do that work collaboratively.

There is a disagreement in the same way as we have had disagreements with the UK Government in other areas—for example, around some of the fair dealing and supply chains provisions in the Agriculture Act 2020, which relate to producer

organisations. However, we try not to let that get in the way of making progress.

**Ariane Burgess:** If you have parked a certain aspect, how do you communicate to stakeholders who work in the area that it is okay and that we are moving forward?

**George Burgess:** The guidance that is published relating to the export or import of organic products will set everything out, including the body that should be contacted, so that there is no dubiety from the point of view of stakeholders or businesses about what they need to do. We have made sure that the outward communication to stakeholders takes account of the accommodation that we have reached as to how we are going to work.

**Mairi Gougeon:** I am willing to be corrected if I am wrong, but I think that that may have had an impact in relation to notification to us or the Parliament of statutory instruments in that regard. We have flagged that to the committee previously and we will continue to raise it with the UK Government. That is where we see one of the main impacts.

**Jenni Minto:** Some stakeholders have expressed the view that the common frameworks should underline minimum standards and commit to non-regression. Only some of the frameworks set those baseline standards. For example, the plant varieties and seeds framework sets out an intention to maintain minimum standards across the UK but provides the opportunity for nations to flex above the standards where appropriate. Why are there different approaches to the standards? Would it not be better and an improvement to set a baseline consistently across the common frameworks?

**Mairi Gougeon:** The issue of consistency more broadly has been raised, which is why we want to go through the scrutiny process and reflect on any comments on it. You mentioned the framework on plant health, but we also have the same approach in relation to the framework on animal health and welfare, where we have set the minimum standards that we would expect to adhere to. If the committee has particular comments on that, we would be more than happy to consider them. When we are dealing with animal health and welfare, in particular, it makes sense for us to have that baseline and to start from there.

**The Convener:** We have heard about the interaction between the forthcoming agriculture bill and the Subsidy Control Act 2022. Are there any similar implications for the fisheries framework in relation to the Subsidy Control Act 2022?

**Mairi Gougeon:** I am unable to give any more detail on that at the moment because it is one of the issues that we are working through. I

mentioned earlier, in relation to the Subsidy Control Act 2022, that officials are working together on the guidance. We are also working on that area in relation to fisheries and aquaculture. I will be happy to keep the committee updated on that.

**The Convener:** That would be useful. It would be helpful, if anything comes up, if you could write to the committee on that.

**Mairi Gougeon:** Absolutely.

**Jim Fairlie:** We talked earlier about policy divergence. The EU policy allowed the Scottish Government to have the less favoured area support scheme. Are there any concerns about how the United Kingdom Internal Market Act 2020 or the Subsidy Control Act 2022 might affect the introduction of a similar policy through the Scottish agricultural support bill?

**Mairi Gougeon:** In the response that I provided earlier in which I outlined some of the support that we give, LFASS was in my mind. That is support that we offer in Scotland that is not offered elsewhere in the UK, and we thought that the Subsidy Control Act 2022 posed a real threat to that.

**Jim Fairlie:** Do you have a concern that the potential for you to implement a similar scheme will be impacted?

**Mairi Gougeon:** Yes, we still have that concern about the Subsidy Control Act 2022, because no amendments were made to resolve any of the concerns that we raised in relation to it.

**Rachael Hamilton:** Given the point that Jim Fairlie makes, it might be useful if the cabinet secretary could provide the committee with information on the powers that related solely to reserved matters but that now, following our exit from the EU, relate to Scotland—the new powers that will be conferred on Scotland relating to agriculture and the islands. It would be interesting to have an understanding of that.

**Mairi Gougeon:** I would be happy to set that out. I do not know whether the committee was copied into all the correspondence that we had with the UK Government when my colleague Ivan McKee was dealing with that with his UK Government counterparts in relation to the Subsidy Control Bill. I would be happy to provide that information, along with the further evidence that we have said that we will provide.

**Rachael Hamilton:** Thank you.

**Karen Adam (Banffshire and Buchan Coast) (SNP):** We have spoken about the Scottish Government choosing to keep regulatory alignment with EU frameworks. I would like to dig

into the reasoning for that. What are the benefits of doing that?

10:30

**Mairi Gougeon:** We made that policy decision and set out right from the start that we wanted to remain aligned with the EU. Ultimately, we want to do that for our reaccession, but we also want to maintain the standards that have been set by the EU, and to go further than that if we can and if we feel that it is appropriate. We think that that is an important starting point. Even when it comes to facilitating trade, problems have emerged where there has not been a commitment to maintaining such alignment. That is where we are coming from on that.

**Karen Adam:** Is there anything in particular that the committee should be aware of with regard to keeping that alignment with EU regulations in the frameworks? Is there anything that should be a priority for us at the moment?

**Mairi Gougeon:** I would be happy to come back to you with further information on that and to keep the committee apprised. That may be an area for further monitoring and review as part of our consideration of the frameworks.

**George Burgess:** The obvious example of that is the Retained EU Law (Revocation and Reform) Bill, because that is proposing, on the face of it, to sunset all the retained EU law in this space. That is a considerable divergence from the EU position.

Where the UK Government and the bill will end up remains to be seen, but that is the biggest thing that is happening in the divergence space at the moment.

**Karen Adam:** That is useful to know. Thank you.

**Rachael Hamilton:** I have a supplementary question. The Scottish Government has the power to adopt, amend or abandon retained EU law. What would you scrap or retain with regard to the islands and agriculture portfolio?

**Mairi Gougeon:** In relation to EU law?

**Rachael Hamilton:** In relation to retained EU law.

**Mairi Gougeon:** That is part of the problem with the retained EU law bill, because so much of it is relevant to the agriculture and islands portfolio, in particular, to this committee and to the Net Zero, Energy and Transport Committee. To quantify that, you will, no doubt, be aware of the response of Food Standards Scotland to the publication of that bill. It would be a massive undertaking if we had to replace retained EU law in that area, because the timescale for that is the end of December next year.

**Rachael Hamilton:** What work has the Government done on that? Obviously, there are laws that might not be useful in relation to agriculture and the islands, as well as ones that might be useful. The Scottish Government has the ability to amend such laws. Has any work been done on which retained EU laws would be adopted, amended or abandoned?

**Mairi Gougeon:** Some of that is set out in the framework. I think that the animal health and welfare framework refers to about 500 pieces of legislation, of which 108 refer to animal health and welfare policy—I am sure I will be corrected if that is wrong—so we are not talking about a small amount of legislation.

**George Burgess:** Quite a bit of that work was done when we did the deficiency fixing. An example of that is the single common market organisation regulations, which are part of the common agricultural policy. When we deficiency fixed that behemoth of a regulation, there were some significant chunks on support for the sugar sector and on olive groves that we simply deleted. That was done by agreement between all the Administrations. Therefore, we have already done quite a lot of the clearing out.

That said, I have no doubt that bits of old regulation are still hanging about on the statute book that could be set to one side as a sensible tidying-up exercise. Of course, that is not what the retained EU law bill does; it basically takes everything off the statute book unless there is intervention.

**The Convener:** Rachael, do you want to continue with your line of questioning?

**Rachael Hamilton:** Do you want me to ask the question that I was supposed to ask?

**The Convener:** Yes, please.

**Rachael Hamilton:** Yesterday at Westminster, the Genetic Technology (Precision Breeding) Bill had its third reading. We know how that could support Scottish farmers in relation to innovation and meeting net zero targets, improving food quality and helping with the food supply issues that we have right now. Will the Scottish Government be considering an exclusion from that bill?

**Mairi Gougeon:** My colleague Màiri McAllan has been leading on that element of work. I highlight that there is frustration that that aspect jumped the common frameworks process, when it is exactly the kind of issue that we should have been considering through the process. I think that it is now going back through that process in relation to plant varieties and seeds, but I would be happy to come back with further information on that.

**Rachael Hamilton:** Euan Page mentioned the exclusion that Scotland took on single-use plastics. Can you highlight any examples from that process that might be relevant to the rural affairs and islands portfolio in respect of taking an exclusion from the UK IMA?

**Euan Page:** I defer to George Burgess on the policy detail of that.

**George Burgess:** It is important to recognise that Scotland cannot simply take an exclusion. The powers to grant exclusions from the Internal Market Act 2020 are conferred only on the secretary of state, and we can seek only to persuade the UK Government to introduce an exclusion.

With regard to market access and goods, single-use plastics is, so far, the only exclusion that has been pursued. In some ways, it was trickier, because it was the first one to go through the process. In other ways, however, it was easier, because all the Administrations were heading in pretty much the same direction, towards restricting single-use plastics. The difference between the Administrations was more one of timescales. In some ways, that one was almost easy to deal with. I suspect that, for precision breeding, on which there is greater policy divergence between the Administrations, getting an exclusion will be rather more of an uphill task.

**Rachael Hamilton:** On that subject, Scottish farmers do not want to be looking over the hedge to see English farmers enjoying a competitive advantage. On these specific issues, do you have conversations with farmers and those who would be affected by—to put it in simple terms—taking an exclusion from the Genetic Technology (Precision Breeding) Bill?

**Mairi Gougeon:** We engage regularly with our stakeholders anyway where such issues can be raised. That would be the forum in which we would discuss the policies that we are seeking to develop or take forward. I do not know whether that answers your question.

**Rachael Hamilton:** It does—it is just that so many stakeholders have different views. We know that anyone in the organic farming movement wants the Scottish Government to take an exclusion in relation to that particular bill. However, there are many others, such as farmers who deal in traditional agricultural commodities, who do not want to be looking over the hedge to see English farmers with a competitive advantage.

I am wondering about the whole process. I do not know what process you follow. Yes, there is stakeholder engagement, but we hear so many different views in committee. How do you translate that into the policy that you create? I know that

you are not leading on this area—it is Màiri McAllan.

**Mairi Gougeon:** To be honest, that is the problem right across the piece—

**The Convener:** I suggest that we focus not on the genetic modification bill specifically, but on the general approach that you would take in seeking an exception and how you would make the case for that.

In your answer, perhaps you could also consider this. We have touched on the single-use plastics exclusion. The process for that was a bit messy and it did not go particularly well. What lessons have you learned from that, and what different approach might you take if you were looking for an exclusion again?

Perhaps you could put all of that in your answer.

**Mairi Gougeon:** Yes—that is no problem, convener.

I go back to what I said earlier: the common frameworks in themselves will not address that problem, because it is about the mechanism that we are dealing with. If we take a different position from that of the UK Government, it is about how we manage that divergence and what it might look like, and how we consider the implications of that. It does not replace our normal process of policy development or engagement with stakeholders.

What Rachael Hamilton describes is an issue that I encounter in the round, across my portfolio. We deal with stakeholders who have different, and sometimes very polarised, views. We have to listen to those views—that is part of my role and responsibility—and determine how we are going to take a policy forward. The common frameworks in themselves do not replace that process.

With regard to the process for exclusions, it is important that we learn lessons. As George Burgess said, the single-use plastics exclusion was the first time that we had been through the process and really tested the waters. I think that it is fair to say that the issue was more on the UK Government's side. When it brought the regulations forward, there was a gap in their implementation and the regulations were narrower in scope than what we had had. Again, all that we can do is learn the lessons from how that example was taken through as we look to deal with similar issues in the future.

**The Convener:** Alasdair Allan has a supplementary question.

**Alasdair Allan:** It is on the single-use plastics issue that has been mentioned and the lessons for how we would deal with the UK Government again if similar issues arose.

**Mairi Gougeon:** Euan Page will come in on that point.

**Euan Page:** I have a couple of observations to make. That was the first outing for the exclusions process, and it is understandable that processes may take time to bed in as people understand what is being asked of them at different stages.

The process itself, such as it is—it is fairly straightforward—was appended to a written ministerial statement that was laid in the House of Commons in early 2021. I can send the committee the link to that if you do not have it. It is simply a ministerial commitment to use the delegated powers of the relevant act to give an exclusion where agreement on policy divergence has been reached in a framework, and it sets out how that works with regard to the exclusion-seeking party using the framework structures to notify.

The lessons to be learned are about the need for all parties to be clear on decision points—what has been agreed at a particular point; on minimising the scope for reopening issues where agreement has been reached; and on giving effect to an exclusion in a timely manner. Those are the three broad pieces of learning that we would look to apply to future exclusion processes.

**The Convener:** Thank you. That is useful. With regard to practicality, when an exclusion is suggested or requested, at what point do all the devolved nations get involved? Does that happen from the outset? If there is a request for an exclusion on single-use plastics, for example, do the Welsh Parliament and the Northern Ireland Assembly get involved in that discussion or negotiation from the outset, as part of the framework, or do they do so only when there is a potential issue?

**George Burgess:** The general purpose of the frameworks is to deal with such issues at as low a tier in the structure as possible. If such an issue arose in the agriculture space, for example, the policy collaboration group, which I have mentioned a couple of times, would be the obvious place, official to official, for that to be raised. That would probably be at the initial stages. One Administration might say that it is planning to pursue a policy in that area and it foresees that it might require an Internal Market Act 2020 exclusion. Advance notice would be given to the other Administrations, and the work would take place, probably in the same group. Whichever Administration was proposing the exclusion would have to set out the details of what was being looked for. That would, in the agriculture space, go through the policy collaboration group, or through equivalent groups in other policy areas, and then to the interministerial group.

Essentially, that is the process that was followed in relation to single-use plastics. As Euan Page said, there have been some bumps along the way. At one stage, we thought that something had been agreed between the Administrations at official level, but then, at the interministerial group, it seemed that that was not quite the case. Nevertheless, we managed to work through that.

The other lesson to throw in quickly is that we were right to think that seeking broader exclusions would be a better way forward. Otherwise, the UK Government and Parliament, and this committee, would probably get a series of narrow exclusions. If DEFRA or the Welsh Government were to choose to take a slightly broader approach to single-use plastics, we would potentially get a series of incremental instruments having to be made, rather than acceptance at the outset that we were all heading in roughly the same direction in that space and that we should take a broad exclusion so that we would not have to get into the debate every single time.

We will see how we get on.

10:45

**The Convener:** Okay. So—just to get it clear in my head—the practical way to do that would be through the policy collaboration group, which has civil servants from the four nations on it. Then, the senior officials programme board, which also has representation from the four nations, would scrutinise it and look at any potential issues. The policy would then go to the interministerial group, where a final decision would potentially be agreed.

**Euan Page:** I think that your original question was probing whether the initial engagement would be bilateral between the devolved Administration and the UK Government. The default is that the frameworks are multilateral fora for engagement, and, as the single-use plastics example shows, we gleaned useful information from the Welsh Government and its parallel plans. As George Burgess said, we were moving in the same direction in that space. However, I emphasise that that process also applies to the UK Government, should it wish to seek an exclusion for devolved policy affecting only England—it is not a one-way street, with the devolved Governments seeking exclusions from the UKG.

**The Convener:** It is hugely helpful to have a practical idea of how we go through the process. Thank you for that.

**Rachael Hamilton:** Do you want me to ask the next question, on the next subject, convener?

**The Convener:** Yes, please.

**Rachael Hamilton:** How will future trade agreements interact with the common frameworks

within the remit that you have as cabinet secretary?

**Mairi Gougeon:** That is set out in some of the frameworks, which recognise how that could be dealt with and which also set out the trade-specific engagement fora that there are. Again, it might be helpful to have an illustrative example. We have been through the process with some free trade agreements. I will hand over to George Burgess, who can give a bit more detail of that.

**George Burgess:** Looking at the agriculture space again, as well as the groups that are set out in that framework, there is a group called the trade engagement group, which has been running for several years. Again, that is all four Administrations working together. At various points, it has been looking at themes such as what we would want to seek in trade agreements on provisions on sanitary and phytosanitary measures, antimicrobial resistance and the like. That is a discussion between DEFRA and the other Administrations.

Ultimately, of course, trade agreements are being pursued by other parts of the UK Government, and the devolved Administrations do not have a direct involvement in that; at most, our role in that process is advisory. Once a trade agreement has been agreed, it becomes an international obligation and we and the other Administrations are obliged to observe and implement it, which in some cases might require legislative amendment. Those legislative amendments would have to be considered and agreed through the framework process and between the Administrations.

**Rachael Hamilton:** Were there legislative amendments that had to be considered in order to export lamb to the US, for example?

**George Burgess:** Not on this side of the Atlantic; it required changes to legislation in the United States. Of course, that was not in pursuit of a full trade agreement; it was simply a bilateral agreement on that very specific subject.

**Rachael Hamilton:** I am interested in the trade engagement group. Who represents Scotland within that sphere? Is it civil servants?

**George Burgess:** It is civil servants, yes. For a large part of the past several years, it has been me. I am also the representative on the policy collaboration group and the senior officials programme board, and I am a regular attendee alongside the cabinet secretary at the interministerial groups.

**Rachael Hamilton:** I have another question on that group. You defined the difference between trade agreements in the UK and the trade engagement group, including the different scope

of the work within that group. What kinds of discussion do you have in the trade engagement group about agriculture and fisheries? What scope do you have?

**George Burgess:** As I said, the group has principally been looking at the sanitary and phytosanitary provisions that commonly occur in trade agreements. On some of the detail of that, we defer to specific groups on animal health and plant health—we defer to the experts on those topics.

An area in which we have not been able to engage in the trade engagement group has been some of the market access and tariffs issues, which are probably more significant for us. The area has been very jealously guarded by the Department for International Trade. Our engagement in the trade engagement group is with DEFRA, in the main. An environment group has been set up that will, I think, pick up some of the environmental aspects of trade agreements.

**Rachael Hamilton:** Thank you.

**Jenni Minto:** In its submission, Soil Association Scotland mentions the EU civil dialogue group, which pulls together evidence from stakeholders, including producers who are involved in organic production. The association points out that such a group is missing from the common frameworks structure.

Cabinet secretary, you talked about routes of engagement. How can the Scottish Government or perhaps this committee ensure that stakeholders are engaged in the process? We touched on stakeholders earlier.

**Mairi Gougeon:** As I said, that is a point that I have taken strongly from the evidence that this committee and the House of Lords committee heard. I know that, broadly, everyone thinks there should be greater opportunity for stakeholder engagement in the frameworks, and I am more than happy to consider particular suggestions from the committee about stakeholder engagement. As I said, we still need to be able to have free and frank discussion with other Administrations in the UK.

I say again that the process is not replacing the normal stakeholder engagement that we have. Again, I will be more than happy to hear the committee's comments.

**Jenni Minto:** We must ensure that enough time is built into the timetable to allow scrutiny and engagement to happen.

**Mairi Gougeon:** Absolutely.

**Alasdair Allan:** We have touched on the EU civil dialogue group. The previous set-up in the EU gave certain stakeholders a voice—in that

example, in the context of organics. Are there any other groups that we need to reinvent to ensure that stakeholders are as involved as they were when we were in the European Union? That is not meant to be a trick question; I am just curious to know whether there are other things that we need to reinvent—apart from our reputation in the world.

**Mairi Gougeon:** In leaving the EU, we have obviously lost access to a number of groups and forums that we were part of previously. When I gave evidence to the committee on the joint fisheries statement, I highlighted that. Marine Scotland science is a leader in Europe, through the work that it undertakes in marine labs, but there is no doubt that we suffer from not having the same links and access as we had before.

I go back to the point that I made previously about stakeholders. The new approach does not change how we develop policy, because we will still engage with stakeholders in the normal way.

Another example of a loss of the access that we had in the EU relates to the European Food Safety Authority. The loss of access to the EFSA has had implications for us and has meant that, in GB, we have had to put in place an entirely new process, which involves the Food Standards Agency and Food Standards Scotland and which has added extra complexity for the businesses that have to adhere to different processes. I hope that those examples are helpful.

**The Convener:** The next question is about the loss of capacity from the EU scientific agencies. The vast majority of that question may have been answered, but Karen Adam might have a supplementary question.

**Karen Adam:** We have lost access to the EU scientific agencies. How does that affect the ability of the working groups to gain access to that scientific advice? What has been the fallout from that, and what can we do now?

**Mairi Gougeon:** This relates to my previous example. The Food Standards Agency and Food Standards Scotland have had to be involved in the new process. That is one specific example. I do not know whether officials have more examples that it would be useful to highlight. I would be happy to follow that up with the committee and to provide more detail of the wider implications of losing access to that scientific advice.

**George Burgess:** EFSA is perhaps the best example. We have not lost access completely, so, if a novel food goes to EFSA for risk assessment and consideration, we will still see the output from that process, which can be used by the FSA and FSS. Assuming that there is a similar application in Great Britain, they can use that output, although they cannot simply say, "Europe has done it, therefore we will automatically do the same thing."

I suppose that the loss is more that we see the output at the end of the EFSA process but we do not see what has gone on within the process along the way. We are rather blind to developments on the European stage.

One very influential group is the Standing Committee on Plants, Animals, Food and Feed, which determines maximum residue levels and the like in products and is quite significant for Scotland. We are no longer part of that. We know that, at the moment, SCOPAFF is working on some topics that could have a significant impact on Scottish industry, but we are not party to the detail of what is going on. Essentially, we are restricted to what can be seen in the public domain.

**Jenni Minto:** I am interested in how the newly established Environment Standards Scotland will be able to scrutinise decision making within the common frameworks processes or feed in to their development.

**Mairi Gougeon:** The role of ESS is to assess compliance with environmental law. The frameworks, in and of themselves, do not alter that or the role of public bodies that would be engaged in doing that. If any legislative changes were due to be made, I imagine that ESS would have an interest in that, but I do not know how much of a role ESS would be expected to have in relation to the frameworks or what input it would be expected to have.

**The Convener:** I am conscious of the time. Can you allow us another three questions, cabinet secretary?

**Mairi Gougeon:** That is fine.

**The Convener:** That is much appreciated.

**Alasdair Allan:** How will the Scottish Parliament be informed about decisions, including when an exemption under the UK Internal Market Act 2020 has been sought? How do you get told and how do we get told?

**Mairi Gougeon:** I have mentioned previously how we inform the committees of work that is undertaken in the interministerial group. For example, we have the communiqués, and we also send over a note of some of the items that have been discussed.

The exclusions process, in particular, would involve the Net Zero, Energy and Transport Committee. Parliament is notified at the point at which the secondary legislation goes through. That is the only example that I have. I do not know whether my officials have any information about whether there is any earlier engagement than that with the committee.

**George Burgess:** The cabinet secretary is right. The record of it would be in the communiqués from the interministerial group. Once regulations actually come forward, there is a process that is in place, because the consent of the Scottish ministers to those regulations is generally required, and there is agreement with the Parliament on the process involving committees before ministers are able to signal that consent. At that stage, there is a formal process.

11:00

I suppose that, at the moment, a gap would exist if an exclusion were to be sought by one Administration but not agreed to—that would not go through that process. However, I expect that, if we were in that situation, it might become a fairly significant feature in the notes from interministerial groups.

**The Convener:** We will move to questions from Rachael Hamilton.

**Rachael Hamilton:** I do not have any more questions. Oh—yes, I do. What information would be provided to the Parliament to enable it to monitor the functioning of the frameworks and provide input to their review and further development?

**Mairi Gougeon:** The Parliament's role in monitoring and reviewing frameworks is an important part of the process. The various Governments in the UK have been discussing what that might look like. Again, I am keen to hear from committee members what such scrutiny can or should look like. If members think that the process can be improved upon in ways beyond those currently set out in the frameworks, I am open to consideration of those.

Euan Page might want to come in on that.

**Euan Page:** I do—very quickly. The programme of parliamentary engagement with the four UK legislatures is an essential part of the finalisation of frameworks. The House of Lords committee and others have already done good work on future reporting issues. From the Constitution, Europe, External Affairs and Culture Committee's work in considering, in the round, how the Parliament fulfils its scrutiny function in a very changed environment—as well as the frameworks, there are questions around internal markets, the continuity act and so on—Mr Allan will know that the boundaries are blurred. That requires a lot of serious consideration, so we are engaging directly with officials who support that committee on questions of future reporting and notification.

**The Convener:** This committee has certainly had concerns about the detail that accompanies the statutory instruments and legislation that we

consider, in relation to timescales and so on. How we should address that will form part of the discussion of our future work programme.

**Ariane Burgess:** I get the overall impression that there is a sense that common frameworks are a positive measure. They are about collaboration through agreement rather than about imposition. I am curious to hear whether, in the future, such frameworks could be created in areas that are currently reserved to or legislated for by Westminster, thereby strengthening devolution instead.

**Mairi Gougeon:** As you have set out, it is a really positive model that we would like to think could be used more widely as we engage on such issues.

George Burgess wants to come in.

**George Burgess:** Although I do not think that we would count it as a formal framework, which would have a specific purpose, one example in that space relates to protected geographical indications for foods. We accept that that is a reserved matter. Nevertheless, we have managed to agree with the UK Government and the other Administrations a process whereby they are all involved in considering proposals that are introduced by any part of GB. That is one area in which, ultimately, decisions are still for the secretary of state, but there is rather more formal involvement in the process than there has been hitherto.

**Ariane Burgess:** So, there is not specifically a new common framework, but there are areas in which collaboration is agreed upon, and it seems that that is happening more.

**George Burgess:** Yes.

**Euan Page:** At their genesis, the specific purpose of common frameworks was said to be to consider the divergence in management policy in areas of devolved competence that would intersect with EU law when we were still an EU member state. The cabinet secretary is absolutely right: the value here is in recognising the benefits that accrue from taking a frameworks approach to other areas, including reserved matters that impact differently or more significantly in Scotland, and seeing them as mechanisms that are founded in co-operation rather than just putting more grit in the system. That is to everyone's benefit and makes for better policy.

**The Convener:** That is a positive note to end on. I know that common frameworks are being put together at the moment and that a firefighting approach is having to be used to ensure that we get legislation in place. However, from what you have said, cabinet secretary, it appears that, in the

future, such frameworks could be a way to promote devolved priorities.

**Mairi Gougeon:** Common frameworks are about collaboration on the basis that we are working together as equals. They offer a positive way of working. Provided that everyone adheres to the process, they can be a positive way forward.

**The Convener:** Absolutely. On that note, I thank the cabinet secretary and her officials, whose answers have helped us to consider a rather cluttered and complicated topic.

I am not going to suspend the meeting before we move on. We will simply continue, because we have only one other item of business to consider in public.

## United Kingdom Subordinate Legislation

### Animals and Animal Health, Feed and Food Plants and Plant Health (Amendment) Regulations 2022

11:05

**The Convener:** Our final item of business is consideration of a consent notification relating to a UK statutory instrument. I refer members to page 27 of paper 3.

I draw members' attention to a letter from the Minister for Green Skills, Circular Economy and Biodiversity that was sent on 31 October. It indicates that the provision that amended article 18 of the plant health regulation has been removed from the SI and will be incorporated into a different SI, which will be notified to the Parliament later in November. Do members have any comments on the notification?

No member has indicated that they wish to comment. Are members content with the Scottish Government's decision to consent to the provisions set out in the notification being included in UK, rather than Scottish, subordinate legislation?

**Members** *indicated agreement.*

**The Convener:** That concludes our business in public.

11:06

*Meeting continued in private until 12:00.*

This is the final edition of the *Official Report* of this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

---

Published in Edinburgh by the Scottish Parliamentary Corporate Body, the Scottish Parliament, Edinburgh, EH99 1SP

---

All documents are available on  
the Scottish Parliament website at:

[www.parliament.scot](http://www.parliament.scot)

Information on non-endorsed print suppliers  
is available here:

[www.parliament.scot/documents](http://www.parliament.scot/documents)

For information on the Scottish Parliament contact  
Public Information on:

Telephone: 0131 348 5000

Textphone: 0800 092 7100

Email: [sp.info@parliament.scot](mailto:sp.info@parliament.scot)

---



The Scottish Parliament  
Pàrlamaid na h-Alba