Common Frameworks and Northern Ireland


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This written evidence is intended to supplement the oral evidence I was honoured to present to the committee on 17 November. It focuses in particular on the common frameworks as they relate to Northern Ireland. I wish to make four points in particular.

1. **Of all the parts of the UK, the common frameworks have particular significance for Northern Ireland (NI) in terms of their scope and potential impact.**
   a. Northern Ireland is the part of the UK most affected by common frameworks
      i. NI has 151 intersects between EU law and devolved competence (compared to 105 in Scotland and 66 in Wales).
      ii. NI also has the most frameworks in Category 2 (22 non-legislative) and Category 3 (18 legislative).
      iii. This is because scope of devolution, plus north/south dimensions arising from the operation of the 1998 Agreement.
   b. The absence of the NI Executive for the initial few years of development of the common frameworks (up to January 2020) is particularly regrettable therefore
      i. Because NI was represented by officials in the JMC(EN) so input confined to ‘analysis and factual responses only’, the strategic concerns of NI Executive ministers (working together) were not heard.
   c. Devolution is fundamental to the 1998 Good Friday (Belfast) Agreement.
      i. Indeed, unless Strand 1 of the Agreement is fully operational, the functions of Strands 2 (north/south) and Strand 3 (British-Irish) are impeded.
      ii. The British and Irish governments’ declaration of support for the 1998 Agreement stated: ‘all of the institutional and constitutional arrangements… are interlocking and interdependent and that in particular the functioning of the Assembly and the North/South Council [sic] are so closely inter-related that the success of each depends on that of the other.’
      iii. This should be borne in mind in all UK Government moves to restrict or alter the functioning and/or effect of devolved competence.
   d. The fact that the second principle of the common frameworks is that they will ‘respect the devolution settlements and the democratic accountability of the devolved legislatures’ is in accordance with the standing of devolution in N. Ireland.
   e. It is also important that the third principle is that ‘Common frameworks will ensure recognition of the economic and social linkages between Northern Ireland and Ireland and that Northern Ireland will be the only part of the UK which shares a land frontier with the EU. They will also adhere to the Belfast Agreement.’
      i. Some of the common frameworks address areas of NI devolved competence that specifically relate to north/south cooperation.

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This evidence is submitted in a personal capacity and should not be seen as reflecting the views of my employer.
2. The conditions in which the common frameworks have to operate are fundamentally altered by the Ireland/Northern Ireland Protocol.

a. The importance of the Protocol to the objectives of the common frameworks is reflected in the fact that the 151 areas identified in the mapping exercise behind the common frameworks include a great number that are covered by the Protocol.

i. This includes most of the Legislative frameworks, and a number of the Non-legislative ones.

ii. Some of the policy areas identified as requiring no further action under common frameworks are also covered by the Protocol (e.g. tobacco advertising).

iii. State Aid is identified as a reserved power, beyond the scope of the common frameworks, but EU state aid rules apply to areas covered by the Protocol.

b. It is also worth recognising that the common frameworks explicitly relate to areas of north/south cooperation.

c. The table below is a tentative outline of the common framework policy areas that are covered by the Protocol (in red font) and by north/south cooperation (in green font). It is a work in progress and should not be seen as a definitive list.

d. The framework on specified quantities and packaged goods is underlined because this is a common framework that specifically relates to Northern Ireland, is covered by the Protocol and is also potentially affected by future UK FTAs with other countries.

<table>
<thead>
<tr>
<th>Legislative Common Frameworks</th>
<th>Non-Legislative Common frameworks</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Implementation of EU Emissions Trading System (ETS)</td>
<td>• Resources and Waste</td>
</tr>
<tr>
<td>• Mutual Recognition of Professional Qualifications (MRPQ)</td>
<td>• Reciprocal and cross-border healthcare</td>
</tr>
<tr>
<td>• Services Directive</td>
<td>• Food and feed safety and hygiene law</td>
</tr>
<tr>
<td>• Agricultural Support</td>
<td>• Rail technical standards (interoperability)</td>
</tr>
<tr>
<td>• Agriculture – fertiliser regulations</td>
<td>• Driver licensing</td>
</tr>
<tr>
<td>• Agriculture – GMO marketing and cultivation</td>
<td>• Roads- Motor Insurance</td>
</tr>
<tr>
<td>• Agriculture – organic farming</td>
<td>• Nutrition Labelling, Composition and Standards</td>
</tr>
<tr>
<td>• Agriculture – zootech</td>
<td>• Blood Safety and Quality</td>
</tr>
<tr>
<td>• Animal health and welfare</td>
<td>• Organs, tissues and cells (apart from embryos and gametes)</td>
</tr>
<tr>
<td>• Chemicals and pesticides</td>
<td>• Public health (serious cross-border threats to health)(notification system for pandemic flu, Zika etc)</td>
</tr>
<tr>
<td>• Fisheries management and support</td>
<td>• Equal Treatment Legislation</td>
</tr>
<tr>
<td>• Food Composition Standards and Labelling</td>
<td>• Strategic Environmental Assessment (SEA) Directive</td>
</tr>
<tr>
<td>• Ozone depleting substances and F-Gases</td>
<td>+ No Further Action</td>
</tr>
<tr>
<td>• Plant Health</td>
<td>Inc. PPE, Tobacco advertising</td>
</tr>
<tr>
<td>• Plant varieties and seeds</td>
<td>+ Reserved Powers Inc. State Aid</td>
</tr>
</tbody>
</table>

**Figure 1. A snapshot of the common frameworks for NI affected by the Protocol and north/south cooperation [work in progress]**

e. The reason this is so important is that the regulatory obligations that arise from the protocol take priority, and therefore the frameworks have to have regard for and be subject to these.

i. Similarly, those relating to north/south cooperation are those in which NI has to continue to align with regulations in Ireland (e.g. for the operation of cross-border railway service).

ii. There is the possibility that the practicalities of north/south cooperation not covered by the Protocol but which may require NI/Ireland coordination would have knock-on consequences for future common frameworks, particularly relating to the environment, e.g. waste management or water quality.
3. The Ireland/Northern Ireland Protocol is a dynamic arrangement and it will have direct consequences for managing divergence within the UK

a. The Protocol puts NI in a position which means that it will be directly affected by the future UK-EU relationship, the UK-ROW relationships (specifically FTAs) in a way that is very different to the rest of the UK.
   i. This is primarily because NI is *de facto* in the EU’s single market for goods and applying the Union customs code.

b. It also means that NI is in dynamic alignment with parts of the EU acquis as covered by the Protocol (some 290 legislative instruments).
   i. What this means in practice is that any rules amended or replaced by the EU should automatically apply in NI (as per Article 13(3) of the Protocol).
   ii. It also means that if there is a new EU act that falls within the scope of the Protocol, the EU is obliged to inform the UK of its planning and adoption. And that it can take remedial action if the UK does not agree (through the Joint Committee) to see it also apply in NI.²

c. The Protocol also has implications for north/south cooperation on the island of Ireland.
   i. Article 11 states that the Protocol shall be ‘implemented and applied so as to maintain the necessary conditions for continued North-South cooperation’.
   ii. Article 11 mentions aspects of north/south cooperation that are agreed areas for cooperation (through the North/South Ministerial Council) and other aspects (e.g. fisheries, energy, telecommunications, justice and security) of north/south cooperation that were identified by the 2017 North/South Mapping Exercise as being affected by the operation of EU law.
   iii. The Protocol allows that the UK and Ireland may make arrangements that build on the provisions of the 1998 Agreement ‘in full respect of Union law’. As such, north/south cooperation is a dynamic arrangement, which the Joint Committee is charged with ‘keeping under constant review’.

d. Common Frameworks will have to accommodate the consequences of the dynamic arrangement of the Protocol as they relate to NI *vis-à-vis* both north/south cooperation and the UK [internal market].

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² This is well explained in House of Lords - The Protocol on Ireland/Northern Ireland - European Union Committee (parliament.uk).
4. **Common frameworks offer advantages over other means of attempting to maintain the UK internal market in a way that is most sustainable in policy and political terms.**
   
a. First, there is some constraint on the use of SIs made in relation to EU withdrawal when it comes to NI.
   
i. The combined effect of the European Union Withdrawal Act (2018) and EU Withdrawal Agreement Act (2020) is to grant powers to UK Government Ministers to make regulations in devolved areas of competence by way of statutory instrument (SI), where those powers intersect with EU law.
   
ii. But Section 10 of EU Withdrawal Act (2018) provides that nothing in the Act authorises regulations which diminish any form of North-South cooperation ‘provided for by the Belfast Agreement’.
   
iii. This is no doubt subject to interpretation, but in essence it means that there is a limitation on UKG SIs being used to address Brexit-related matters in NI
   
iv. But such policy areas may still be suitable for the use of a common framework, not least because of the flexibility it allows.

b. Secondly, there is a long-overdue need to assess UK governmental and organisational capacity to sustain engagement with Northern Ireland-specific issues post-transition and in light of the Protocol.

   i. Key to questions of capacity are relationships between government departments, both regional and central, some of which have flourished (notably DAERA-DEFRA) and others of which have been slower to develop.
   
ii. Churn in Whitehall, conflicting priorities between departments, and limited exchange of information both within Whitehall itself and with officials in the nations and regions were already problematic.
   
iii. Although NI officials themselves are also constrained by resources and time, the principle of subsidiary would suggest that common frameworks – with structured means of governance, communication and dispute resolution – are suitable for building on the capacity and knowledge that already exists.

c. We see one way in which the different position of Northern Ireland can be managed through the common frameworks with the example offered by the Food Standards Agency on the Food and Feed Safety and Hygiene framework.³

   i. Its update states: ‘The implementation of the Protocol means that in some instances Northern Ireland will be unable to implement the same food and feed safety policy approaches as the GB countries (England, Scotland and Wales).’
   
ii. ‘However, Northern Ireland will continue to play a role in food and feed safety and hygiene policy development under the FFSH framework. Food and feed safety issues will continue to be considered on a four-country basis: officials and Ministers in Northern Ireland will continue to be involved in all stages of policy development and discussions to resolve disputes.’
   
iii. This approach is welcome because it also allows the other parts of the UK to be made, and kept, aware of the potential impact on NI of any policy divergence. It also allows disputes to be resolved with NI ministers and officials ‘in the room’.
   
iv. *The principles of flexibility and inclusion (rather than fixity and exclusion) in this approach, although time consuming (if done properly), appear best suited to allowing NI to navigate new post-Brexit challenges for intra-UK alignment, taking into account the obligations of the Protocol and the 1998 Agreement.*

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³ Food Standards Agency, Update on the Food and Feed Safety and Hygiene framework [FSA 20-09-04], 16 September 2020, para 3.4. Available: [Food and Feed Safety and Hygiene September Board Paper_250820](#).