



European Affairs Committee

Corrected oral evidence: Dynamic alignment

Tuesday 28 April 2026

11 am

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Members present: Lord Stirrup (The Chair); Baroness Ashton of Upholland; Lord Barrow; Lord Brennan of Canton; Lord Grantchester; Lord Jackson of Peterborough; Lord Moynihan of Chelsea; Baroness Smith of Newnham; Baroness Suttie; Lord Tugendhat; The Duke of Wellington.

Evidence Session No. 5

Heard in Public

Questions 41 - 52

Witnesses

I: Lord Bew, Emeritus Professor of Irish Politics, Queen's University Belfast; Professor Jo Hunt, Professor of Law and Leverhulme Trust Major Fellow, Cardiff School of Law and Politics, University of Cardiff; Dr Lisa Claire Whitten, Research Fellow, School of Law, Queen's University Belfast.

Examination of witnesses

Lord Bew, Professor Jo Hunt and Dr Lisa Claire Whitten.

Q41 The Chair: Good morning and welcome to this session of the House of Lords Select Committee on European Affairs, where we are taking evidence for our inquiry into the issue of dynamic alignment. We are delighted to welcome as our witnesses today Lord Bew, who is Emeritus Professor of Irish Politics at Queen's University Belfast, Professor Jo Hunt, Professor of Law and Leverhulme Trust Major Fellow, Cardiff School of Law and Politics at the University of Cardiff, and, joining us online, Dr Lisa Claire Whitten, Research Fellow at the School of Law at Queen's University Belfast.

This is a public session. It is being broadcast. There will be a transcript made of the session and you will be provided with the draft so you can correct any errors that you find. We hope to be done within broadly one hour. We have quite a lot of ground to cover, so to keep within that timescale or thereabouts, if both questions and answers could be reasonably succinct, please, I would be very grateful.

Let me get us started by asking a general question of all three of our witnesses. The Government are negotiating three new agreements with the EU: an SPS agreement, an emissions trading scheme linkage, and then perhaps in rather slower time potential UK participation in the EU internal electricity market. The obvious question is: will these agreements engage devolved competences? If so, which competences and of which devolved nation or nations? Professor Hunt, would you like to start us off?

Professor Jo Hunt: Yes. Thank you very much. I will speak to the system I know best, that in Wales, but I can also make comment about the Scottish system.

The Government of Wales Act, which governs devolved powers to Wales, had a very different starting point to the Scottish legislation, the Scottish Act, but they have definitely moved closer together. They now share a lot of similarities in their arrangements, both in their scope and in their approach to devolution of powers. What we have in those systems is an approach that sets out certain reservations to the centre, to Westminster, and everything else—everything that is not reserved—is devolved. If we look in the schedules we see that international relations is reserved. The regulation of international trade is reserved. However, taken out of that is the implementation of international agreement provisions that fall within devolved competence.

We have the situation where the negotiations may be reserved, but right from the start there was always a recognition that there should be a role and involvement of the devolved Governments and parliaments in those processes. There have been concordats, arrangements for devolved Governments to feed in and be recognised as having a role in the making of international agreements. When the UK was a member of the EU, we saw that the devolved Governments and parliaments were very much

plugged into the EU government frameworks and were able to feed into how those provisions were made.

At the same time, there is no guarantee of involvement in making those international trade agreements. I think that we would reflect that the last concordat was from 2013. That has not yet been updated. There is some infrastructure in place that should be able to manage devolved interests into this, but it does not always work as one might hope that those things would work. There is some claim for the devolved Governments and parliaments to be involved, particularly in these agreements, because if we look at the specific detail of the policy areas, SPS, we are looking at regulation of food, animals, plants, animal feeding stuffs, fertilisers and pesticides. These are all very much within devolved competence in both Wales and Scotland. Energy policy is different in Northern Ireland than it is in Wales and Scotland, which have a more limited competence, though not absent altogether.

Then for ETS, the emissions trading scheme, you have areas of environment, very much so, and climate policy does fall within devolved competence. We know that at the moment the UK emissions trading scheme that was created to fill the gap after we left the European Union is managed on a four-nations basis and through a common framework, so we have recognition that those things fall within devolved competence.

The Chair: It would be fair to summarise by saying that there is no formal mechanism for you to be involved in these negotiations, but they significantly affect certain areas of devolved competence and for all of them, where the rubber meets the road, you are the ones who will have to make it work.

Professor Jo Hunt: Absolutely, yes.

The Chair: Yes. Dr Whitten?

Dr Lisa Claire Whitten: Good morning, Chair. Thank you for the opportunity to give evidence, particularly to do so remotely; I recognise that it is better to be in the room. I am still technically on maternity leave, so if I was in the room my nine-month-old would be with us and the session would be a whole lot noisier than it needs to be.

To the question on devolved competence and to add to what Professor Hunt has set out so well, when we look at the detail that we do have so far regarding the likely legal scope of the agreements to come, while the formal texts are still to be confirmed, published and finalised, the UK Government have published a list of 76 EU laws that they believe will be included within the SPS agreement. When you go through those EU laws, almost all of them engage devolved competence in whole or in part across Scotland, Wales and Northern Ireland. Meaning they would ordinarily be devolved or partially devolved areas and were as such prior to the UK's withdrawal from the EU.

There are some exceptions, and I will not go through all the 76. However, it does affirm that point that while this is international relations and that is a reserved competence, the substance of what is being talked about in these agreements, and particularly the dynamic alignment element of it, is in devolved competence. Therefore, the implementation will very much be within devolved departments and devolved policy-making. Therefore, to augment legitimacy of the agreements and to maximise their efficiency, I do think that it will be important to think clearly about how devolved institutions are involved or can feed into the oversight of these agreements, and to make sure that the devolved dimension of implementation is adequately considered.

On ETS linkage, while again legal details are still pending, the primary ETS directive was partially devolved, as Professor Hunt intimated, across Scotland, Wales and Northern Ireland during the UK's EU membership.

On internal electricity market participation, it is worth noting that regulation is devolved in Northern Ireland but not in the rest of the UK. Northern Ireland is already in a different position under the Protocol / Windsor Framework, because that provides for relevant EU laws to continue to apply to the extent necessary for the preservation of the Single Electricity Market on the island of Ireland. There will probably not, therefore, be too much regulatory change at a devolved level in relation to that agreement specifically.

Overall, the point stands: devolved competences are on the table here.

The Chair: Thank you very much. Lord Bew?

Lord Bew: I agree with the two previous speakers on the general point. I would also note that on the current arrangements for Northern Ireland, Lord Murphy's recent independent report for the Government and our own recent Northern Ireland affairs report make the point that the necessary institutional structures seem weak to deal with these problems.

I would say, just to move it slightly forward, that what is proposed for SPS looks fundamentally as if it has benign effects across the board in Northern Ireland. I think that it is quite important to say that. As Dr Whitten has said on electricity, it is hard to see where the significant change might be at all. On the SPS in particular, the impact is likely to be a remarkable thing for Northern Ireland, basically benign and not problematic if what we believe the Government are negotiating in terms of the reset comes about.

I would perhaps just talk about this whole question of dynamic alignment and the Windsor Framework, because the point made by Dr Whitten is entirely true. It is also true that there is an attempt to rebalance the relationship with Europe to go back to the original approach of the Good Friday agreement and the Windsor Framework. There is, in a sense, a qualification of that, not just in the Stormont Brake but in other key precepts of the Windsor Framework. When, for example, in your papers

we talk about dynamic alignment under the Windsor Framework, that is correct but it does need a couple of footnotes and qualifications at least.

The Chair: Thank you very much. We will return to the specifics of Northern Ireland in a moment, but first we will go to Baroness Ashton.

Q42 **Baroness Ashton of Upholland:** Thank you very much for joining us. Within the benign—as you described it, Lord Bew—thinking about certainly the SPS proposals, I wonder if we can drill down a little bit with you all to examine whether there are areas that are likely to be in scope of these new agreements where there has been regulatory divergence between different parts of the UK since we left the EU. Lord Bew, perhaps you could start.

Lord Bew: Well, there is no question that in broad terms Dr Whitten is right. The model of the Windsor Framework and the model of the protocol before it—and the Windsor Framework modifies the protocol in significant respects—is regulatory and is dynamic alignment. That is broadly the case. If you look at paragraph j, for example, in the Windsor Framework, as a result of the changes in the Windsor Framework it talks about the prospect of increasing divergence between the two economies on the island of Ireland. If you look, for example, at Northern Ireland Minister Matthew Patrick's recent speech in the British-Irish Parliamentary Assembly, you could see the development of that outwards, where the current success of the Northern Ireland economy is actually largely based on those factors that are integrated into the UK. It is because it has become a row in Belfast in the last week. Defence expenditure was not even mentioned by the Minister. He was talking about other things, cyber, fintech and so on. There is a direct line from that in the Windsor Framework, the open reference to the possibility of growing divergence between the two economies under the Windsor Framework, and, in fact, what the Minister, Matthew Patrick, said just a few weeks ago.

Yes, there is a dynamic alignment and there are still, as a function of that, many irritants—massive irritants—to people in Northern Ireland, with respect to the operation of the Windsor Framework. It can often be very small things. I think that Lord Carlile introduced the debate on his report by saying that there are types of socks you cannot get in Northern Ireland, not because of the socks—because of the packaging. I am actually wearing socks bought in Belfast last week. There are irritants. There are less of them, considerably less as a matter of day-to-day politics, but there is still a broad alignment and at the same time the Windsor Framework opens up space for a divergence. At the moment, the driving factors of the Northern Ireland economy appear to be—and it is now one of the strongest regions in the UK in recent times—those factors linked into the rest of the UK.

Dr Lisa Claire Whitten: On the broader point about internal UK divergence, I have not had the chance to do a comprehensive analysis of intra-UK divergence across all the in-scope policy areas or likely in-scope policy areas, but I would highlight one of the more prominent examples around precision breeding. In 2023, the UK Government enacted the

Genetic Technology (Precision Breeding) Act, and that enables release and marketing of precision-bred plants and animals and derived products in England to be marketed as non-genetically modified organisms. That Act does not apply in Scotland, Wales or Northern Ireland, but under the internal market Act the PBOs—precision-bred organisms—lawfully marketed in England can be sold in Wales and Scotland but not in Northern Ireland due to the continued application of EU rules on GMOs, genetically modified organisms. That still regulates precision-bred organisms as GMOs, so relevant products cannot be legally marketed as non-GMOs. That is an example of intra-UK divergence, but also one that means that, if we get an SPS agreement, as is proposed, it is likely that that 2023 Genetic Technology (Precision Breeding) Act would have to be, at the very least, significantly revised, if not revoked, because there is a different approach under EU law.

More generally, and perhaps just to speak to what Lord Bew was setting out in relation to Northern Ireland, it may be helpful to note that there is a series of variations in scope of what is being discussed. The scope of EU applicable law under the Windsor Framework is significantly broader than the scope of EU law that is likely to apply under the three prospective new agreements. There is also a wider point around divergence on the island of Ireland post the UK's withdrawal from the EU, because the Windsor Framework, while it is significant and has a real impact, as Lord Bew was highlighting, does not cover all the areas where the EU previously had competence. There is a lot of opportunity for divergence north and south on the island of Ireland outside the Windsor Framework and Windsor Framework applicable EU law post Brexit, and we are starting to see that as well.

It is worth noting that there are approximately 300—there is slight variation across time—EU laws that apply to Northern Ireland under the Windsor Framework. What is proposed under the three prospective agreements amounts to around 75 of those 300 Acts which would apply to the whole of the UK. So there is a distinct difference here in what we are talking about in terms of scope of regulatory alignment. It therefore begs the question from a Northern Ireland point of view as to how the new agreements and UK-wide alignment in those areas covered works together with Windsor Framework alignment. I also think that the nuance of that question requires legal texts because of the complexity of the issue. It is, I think, worth noting those variations in scope and understanding the substantive and likely substantive impact of divergence, regulation and alignment varies as well.

Baroness Ashton of Upholland: Thank you very much; 225 laws outside of that. Professor Hunt?

Professor Jo Hunt: Yes, to follow on from that, if we look at any internal divergence that might have taken place in GB, obviously we have that body of what is now referred to as assimilated EU law that is our starting point. Any divergence might be seen because the EU has moved or because one of the Governments or Parliaments in GB—if we bracket off

Northern Ireland—may have moved on something, leading to divergence there. We have not seen very much of that take place in areas that are within scope of these measures. It has been seen more in digital financial services, those sorts of things.

There is a range of reasons why we have not seen very much happening, either EU-UK divergence but also domestically within GB, and where we may not have seen a lot of divergence. One of those things, perhaps more positively, is common frameworks, if they are working. They are the machinery that has been brought in to replace what used to be managed by EU regulations and directives and an opportunity there for officials and Ministers to work together in areas where devolved competence was intersected by EU competence. We have that machinery of the common frameworks that was started back in 2018. Most of them are still provisional. There has not been political sign-off of that system yet. Is there the commitment and the trust to operate through that?

What we also know is those common frameworks were swept to one side by the UK internal market Act, which we have had reference to. In terms of the ability of Wales and Scotland to do things differently, the reach of the internal market Act means that their local laws will not stand against products that have been lawfully made or imported into another part of the UK. If there are different standards, the mutual recognition and non-discrimination principles mean that those products that have been produced according to different rules in different parts of the UK can be sold in Wales and in Scotland. In terms of the capacity to actually make a difference through regulating differently, that might be undercut by some of these instruments.

We have had commitment from the Labour Government in London when they undertook the internal market Act review and the decision was made not to remove the internal market Act—which is something that the devolved Governments very much want to see. They do not see that it is needed. They do not see that it is necessary. They want to work through the common frameworks. However, there was an agreement last year that the common frameworks would move back and take the primary role, bearing the weight of managing the market, so we have not seen an awful lot of difference emerge.

Dr Whitten referenced the genetically modified precision-breeding measure. My understanding is that that is potentially one of the areas that the UK Government want to see excluded from SPS, and that will then create certain complications domestically in terms of where Wales and Scotland go. We know that the European Union itself is reviewing its more precautionary position on these things and that we are seeing legislation coming through there, but it is not the same as the England approach. It only applies to plants. We have that patterning of regulation that might emerge from that.

The Chair: Thank you very much. That is interesting information, but we are going to have to pick up the pace a bit, I think, to get through. Lord Tugendhat.

Q43 Lord Tugendhat: This is to Dr Whitten and is rather following up on some of the things you said earlier. From your work on dynamic alignment under the Windsor Framework, could you give us a sense of the volume of new EU law each year that might be in scope of the three agreements that the UK and the EU are currently negotiating?

Dr Lisa Claire Whitten: Yes. I will try to keep this brief, but please feel free to stop me; I could speak for too long on this one.

The main message here is that it is very likely that there will be a high volume of EU law that is in scope each year, but the vast majority of it will be tertiary Acts of EU law—so implementing or delegated Acts, which by definition make provisions for the implementation of regulations and directives called secondary Acts of EU law in the EU context, rather than constituting a significant policy change. That is not to downplay the significance of what will likely be a substantial volume of law, but I do think that it is important to accurately characterise the nature of it.

To add a little bit more detail, because of the different scope of EU law that applies under the Windsor Framework to that which will likely apply under the three new agreements, we need to do a bit of cross-reading. Focusing specifically on SPS, which is where the majority of EU law change will come from, if you look at those Acts of EU law that are applicable under the Windsor Framework and which are likely to be in scope of the SPS agreement, I already mentioned that about 69 Acts are in that category. If you take one month of this year, so February 2026, of those 69 EU Acts that apply under the Windsor Framework and will be in scope of the SPS agreement according to the UK Government, approximately 65 new EU Acts were made in February 2026. Those 65 were all tertiary legislation, so it is all implementing and delegated Acts, which means they are introducing technical changes and updates rather than introducing a major revision of policy.

In terms of substance, just to give a bit of detail to it, 24 of those Acts were made under the animal health law regulation, which is the source of a lot of legal activity in this SPS space. They are making provisions concerning outbreaks of specific animal diseases in different EU member states or with EU trading partners. You also have, for example, about 15 Acts being made under the biocidal regulations. That is concerning the authorisation or renewal of authorisation of specific biocidal products. I will not go through all of the 65, but I can send a breakdown if it is of interest to the committee.

The overarching conclusion is that there will be a high volume, but policy change will be limited. One of the implications I would suggest, based on the Windsor Framework, is the importance of tracking, monitoring and reporting on relevant EU law changes. While a lot of that tertiary EU law change will have limited effect on UK business, trade and regulation, occasionally a decision will have specific impacts in the UK; for example, to authorise or ban a particular biocidal product or a particular additive in animal feeds, which is another area where you see ongoing EU law change, or a plant protection product or something of that nature. The

UK Government and/or devolved Governments may want to input to the relevant EU law-making processes and/or otherwise take action under the agreements reached. In order to do that, you have to be tracking what is coming and what is important and what is not important. I hope that gives a sense of the nature of the change that we are likely to see.

The Chair: Just to nail down a specific point, although it may mostly be tertiary law and therefore not of huge policy significance, the volume creates a significant workload.

Dr Lisa Claire Whitten: Yes.

The Chair: Yes. That is, I think, the key point. Good. Lord Barrow, I think that quite a bit has already been covered, but do you want to just clean that next one up?

Q44 **Lord Barrow:** Yes. On this question of the impact of the new agreements with the EU, we have heard Lord Bew say that he expects the SPS to be benign. Dr Whitten, thank you for being clear that there is a broader nature to the relationship as well as what is covered by these. This is about NI but, Professor Hunt, I will ask you to offer your views. If the three new agreements are concluded, as we have touched on, what would their likely impact be on trade arrangements between GB and Northern Ireland? Give a sense of the scale, if I can put it that way, because that is what I am trying to reach for here. Dr Whitten, do you want to start and then we will go to Lord Bew?

Dr Lisa Claire Whitten: Thank you. The SPS agreement specifically is expected to significantly reduce barriers to trade in agri-food goods from Great Britain to Northern Ireland. Crucially, traders moving relevant goods are unlikely to have to fill in export health certificates or phytosanitary certificates any more. That will reduce the cost and the friction on the GB to NI trade axes, if you will. Physical checks on consignments are also likely to be much less frequent. Of course, all this depends on the precise nature of the terms of the agreement, but in general a real reduction in trade friction across the Irish Sea. It is, however, worth noting that Northern Ireland will still be effectively under the customs code of the EU, whereas the rest of the UK will not. There is still a distinction to be made there, and it comes back to that scope of EU laws and the 300 versus the 75 or something of that nature.

On ETS linkage and participation in the internal electricity market regulation in the EU context, I do think that is significant for Northern Ireland but, unlike the case in the SPS setting, those agreements are primarily beneficial or would be primarily beneficial because they will stop additional trade barriers and costs arising rather than easing existing ones. Some of this is a bit tentative because we are still to get clarity on the arrangements under the carbon border adjustment mechanism for the EU and the UK, but the linking of the UK and EU ETS systems is anticipated to negate the need for the EU's CBAM charges to be applied in Northern Ireland. A report by Energy UK estimated that that will save

about £200 million annually on goods traded between Great Britain and Northern Ireland.

The participation in the internal electricity markets, together with the ETS linkage, is set to avoid a spike in the cost of electricity bills for Northern Ireland consumers, again also related to the operation of CBAM. Without that linkage and without these agreements, it is estimated that bills in Northern Ireland could increase by £130 million annually. So it is a counterfactual benefit for Northern Ireland to be under the ETS and internal electricity market. Overall, the reduced trading frictions from the SPS agreement are probably most significant.

Lord Bew: I agree. I was flagging that up in my first remarks. I think that you have to add a simple political point here in terms of the democratic deficit, and this may not be of comfort to everyone in this room. If there is a reset, then what will happen in effect is that Northern Ireland will receive many of these things in much the same way as the rest of the UK, some will say passively and undemocratically and others will say it is the best way out of it. The crucial point about so much of the original protocol is the fact that at that point the British Government had committed to supporting something called the island economy, which you can see not at all present in the Minister's latest speech in the British-Irish Parliamentary Assembly. However, it will reduce the political fears that it would generate within the Unionist community and the instability of the institutions. It is very important that the institutions of the Good Friday agreement become more stable and more pragmatically operated.

What we are talking about today on the whole will have that effect. It is different, it is not the same thing, but Northern Ireland is not the same as the rest of the UK anyway. It is a hybrid. It faces both ways and that is a reality that has to be accepted. Some of the sharpest complaints about the old protocol are gradually, either by the Windsor Framework safeguarding the union or the emphasis on integration within the UK internal market, fading in real life and daily perception of issues in Northern Ireland.

The Chair: Thank you. Perhaps we could move from the general to some more specifics with the Duke of Wellington.

- Q45 **The Duke of Wellington:** Dr Whitten has so helpfully highlighted the problem about breeding of plants, precision breeding. It is obviously a very important area and is likely to be one of the greatest problems for the British Government negotiating the SPS agreement. There has been a lot of very successful research done since it became possible to do this in GB, and that research will presumably have to be discarded. Could you all tell us whether there are any other areas that are likely to be difficult, not necessarily to do with the SPS but with other agreements being negotiated? I know that SPS is likely to come sooner than the others, but are there any other agreements? Are there other problems likely to arise in different sectors in the course of these different negotiations?

Professor Jo Hunt: There is a general sense of welcoming a new SPS and these wider agreements within Wales—within Welsh agriculture. I think that Welsh agriculture is very much exposed and has been very reliant on the EU market, so there is the opportunity to reduce the friction for trade across dairy, beef and agriculture and to potentially restart some trade that had been stopped, such as seed potatoes and shellfish.

In terms of potential problems, the farming community generally is concerned, as we have seen, about how there has been some movement on various pesticides and fertilisers that are being used, and some form of lead-in time to this would be needed. That needs to be built into the system. There is support for the CBAM from the interests of steel production in Wales. We know that steel exports have been very much hit by tariffs and by quotas that have been operating within the EU. The opportunities that are there are perhaps at the moment outweighing the problems that might be seen.

Lord Bew: I have what might be a slightly eccentric query about this. This is outside the SPS and the electricity, where I agree with what has been said. On the issue of gas emissions, I was slightly worried by the fact that with the previous SI in this House a few weeks ago, people seemed to have forgotten the Windsor Framework—paragraph 51—because it does essentially favour access of goods from the Scottish islands over those from Northern Ireland and the UK market. It is a small matter in one way, in material terms, but on the other hand I am slightly uneasy about the Government at times not being across the Windsor Framework, which they have fully supported but which was the work of the Sunak Government, essentially in the context in which—Lord Case has made it clear—the EU had approached originally the Truss Government about a new dispensation for Northern Ireland.

For example, somehow or other, on the last SI that we had in this general area, I did not feel that people had thought through the implications for the Windsor Framework. It is not the biggest point in the world. I just think that the Government do need to keep a firm grip. They are committed to the Windsor Framework and they have definitely worked as part of a difficult, messy process of stabilising the institutions of the Good Friday agreement, which the Government have also committed to. All I am saying is, when it comes to this area I am very keen that the Government maintain a vice-like grip on the Windsor Framework and what is already agreed with the European Union, because there are some signs of slippage.

The Duke of Wellington: Dr Whitten, are there matters other than the ones you have already referred to that you think could be a problem going forward in these various negotiations?

Dr Lisa Claire Whitten: I am not aware of additional specific cases where the UK has made relevant legislation post-EU exit that is in tension with EU law. The scope of the SPS agreement – which will be the one that affects policy development most – looking at the scope of it, where you

might see some frictions and areas where the UK may want to focus decision-shaping efforts, it is in the agri-food sector, and that is including fertilisers and pesticides, as Professor Hunt highlighted, and possibly an area where you might have a desire for the UK to put across a particular view on what should or should not be used or regulated in certain ways. There are also plant protection products, animal feeds, and animal health practices. These are areas to be watching and aware of in relation to how these agreements are implemented.

Generally, it is my understanding that all instances of non-EU member states aligning with elements of EU law is a trade-off. It is a trade-off in relation to alignment versus market access. It is my understanding that overall, while certain issues and concerns are present, across the sectors to be affected most by these agreements there is willingness to embrace this trade-off in terms of market access and reduction of trade frictions.

Q46 Lord Grantchester: Good morning. We have already heard this morning about aspects of the consequences of powers returning to the devolved Administrations rather than to the UK Government, and we heard the different flavours or interpretations that have arisen because of it. Into that mix I was wondering how you would judge the results of the declared ambitions of both the Scottish and Welsh Governments to keep within EU standards. Are there any general consequences, lessons or things to be learned from these experiences?

Professor Jo Hunt: Here we have a situation where Wales and Scotland do seem to formally approach things differently, although both started off with continuity legislation that they were attempting to roll over EU law within devolved competence through their own primary legislation. Wales set that aside and agreed to work through the common frameworks.

In Scotland, you have a piece of legislation on continuity and on alignment, which contains that commitment from the Scottish Government to align and to keep pace where appropriate with the developments in EU law where that is maintaining and advancing standards across these SPS areas in particular. There are reporting requirements within the legislation, and we know that perhaps the use that might have been expected to have been made with these powers we have not seen come through for all sorts of reasons, not least the common frameworks, the internal market Act, and the fact that there has not been too much divergence GB-EU anyway.

In Wales it was a political commitment to keep pace and to maintain alignment. I suppose the limitations of being able to exercise that power beyond those domestic frameworks that might limit it is very much, as Dr Whitten has flagged, just being able to see through that dense thicket of EU primary, secondary and tertiary measures that are coming through and being able to identify what is of significance and what should be a priority when the devolved Governments and parliaments are not as plugged into that system in Brussels as they once were, whether that was through MEPs, the Committee of the Regions, or the presence in Brussels. Both the Welsh Government and the Welsh Parliament, the Senedd, do

still have some very limited presence in Brussels but not sufficient to this task of being able to flag what is critical coming up.

I will just add one further thing to that. Of course, that was a commitment of the previous Welsh Government. We are just over a week away from the elections in Scotland and Wales. There was the dissolution of Senedd and of the Scottish Parliament back at the start of April. These negotiations are taking place at a time when there is no Government in either of those two places; there are no Parliaments to hold those Governments to account. In the manifestos of the parties that may well become the Government in Wales, the Plaid Cymru party has stated that it will have a commitment to align with EU law. It sees as an objective the return to the European Union, an EU single market and customs union. Neck and neck with Plaid Cymru at the moment, the Reform party would take a rather different position on future relations with the European Union, so we wait to see how all that plays out in Wales. We can imagine that it will be some time before we have committees up and running in the Senedd.

The Chair: The lessons already accumulated in terms of engagement and resources are useful.

Professor Jo Hunt: Absolutely so, yes.

The Chair: Dr Whitten, do you have anything briefly to add?

Dr Lisa Claire Whitten: Yes. From the Scottish perspective, as Professor Hunt has set out, there is this continuity legislation. While Scotland is not in a position of dynamic alignment with the EU, it has this unilateral voluntary commitment to align where appropriate. It is definitely true to say we have not seen use of the regulation-making powers in anything like what was perhaps expected when that legislation came into effect.

On lessons learned, and it reiterates the point that Professor Hunt has just made, it is interesting to note that in response to concerns from the Scottish Parliament's Constitution, Europe, External Affairs and Culture Committee about the insufficient transparency of Scottish Ministers' decision-making processes regarding aligning with EU law and keeping pace with EU law, the Scottish Government then subsequently committed to increase the level of information they were providing to the Parliament. In addition to their statutory reporting duties under the continuity Act, the Government now produce annual reports that give information on how alignment has been considered in respect of Scottish legislation. There is a new entry on policy notes that accompany new Scottish legislation regarding EU alignment and the policy's application or non-application. There are also assessments of EU legislation that is being made in the reporting year that is relevant to the commitment to align, and a Scottish view of priorities in relation to the EU in the coming year.

Those annual reports from the Scottish Government now provide quite a substantial amount of information; it is not fully comprehensive, but it is extensive. It is, to my knowledge, the most detailed account that we

have from an official UK Government or department that is regularly being produced on alignment and divergence with EU law. It might be an interesting reference point for the committee in terms of that issue on the importance of tracking, monitoring and reporting from a transparency point of view, and to enable stakeholders to have a sense of where the Government may be going in their relationship with EU law and how it applies.

I do think that it is an important lesson regarding monitoring and EU law tracking, which is resource intensive, but it is particularly important if you are outside the EU institutions, because you do not have that ongoing communication so you have to put more effort in.

Q47 **Baroness Smith of Newnham:** Professor Hunt, in your answer to Baroness Ashton, you already started mentioning the common frameworks and how that might have stopped the divergence we could have seen so far. We are currently in a situation of non-dynamic alignment. If we are moving to a system of dynamic alignment, to what extent is there likely to be a role for the common frameworks and what implications might there be for this alignment on the common frameworks?

Professor Jo Hunt: I think that there are a number of unknowns that we need to factor into what role the common frameworks might play. At the moment there is no one approach that these common frameworks take. They exist across—let us say 30—a range of policy areas and on each of them, because they are playing in different policy areas, there may be a different degree of divergence that could be accommodated within that particular policy sphere.

What we do not know is how much space for divergence there will be under the SPS agreement. We do not know how much space the EU rule provides that we might be aligning with. Is it a regulation? Is it an instrument that provides the space for things to be done differently? Are there exclusions? Are there exceptions? We do not know. There is that issue there at an EU level that we will need to understand, but also then domestically what is the space for things to be done differently? We do not yet know what will be in the EU partnership Bill that we will be seeing—how soon after the King's Speech we do not know—but, on that measure again, how much of it will be a transmission belt of EU measures down through London into the devolveds? Will there be space for difference within that? Depending on how much space, depending on whether we write in any consent or consult obligations within that, that might then create a role for the common frameworks. What they are is spaces for intergovernmental co-ordination and co-operation, so it depends very much on what space there is in this legislation.

If we draw parallels with the Product Regulation and Metrology Act that has been introduced, which permits the UK to take voluntary dynamic alignment in relation to product relations, if Westminster decides to bring in EU measures through ministerial powers that impact on devolved competence, this piece of legislation writes in a consent requirement for

the devolved levels. I would imagine that in Scotland and in Wales there is an expectation that that would be the baseline of how we should be approaching this, but whether in fact that is where we are going to be with the partnership Bill and with perhaps the volume of EU law that we might see coming through that, it might not be able to work in that way.

Q48 Lord Brennan of Canton: This is not a declaration, but for full disclosure I was chief adviser to the current First Minister of Wales between 2024 and 2025 and previously in 2000 to Rhodri Morgan when he was First Minister.

I am quite interested in practice, really, about how the intergovernmental arrangements will be affected by management of the UK dynamic alignment. Professor Hunt, bore da. If I could ask you first, do you think that the current intergovernmental arrangements are fit for purpose for dynamic alignment?

Professor Jo Hunt: We have seen those intergovernmental relations move a long way in recent years. We know that they were the missing piece of devolution of the territorial constitution for a long time. For a long time while we were a member of the EU, EU membership and EU governance did a lot of that work. Now, once we have left the EU, there is a need to fill that space. We have structures. We have the common frameworks, but we also have the intergovernmental ministerial groups. We have the Council of the Nations and Regions. There is a new structure that is in place; there is a new governance architecture there.

Lord Brennan of Canton: Is it fit for purpose?

Professor Jo Hunt: Is it fit for purpose? It should be in terms of how we—

Lord Brennan of Canton: That is not what I asked. I did not ask you whether it should be, I asked you whether it is.

Professor Jo Hunt: What we can see is the reality of making these things work in a way that has the trust of all participants when we know that these have not worked as effectively—

Lord Brennan of Canton: That is the point, is it not?

Professor Jo Hunt: Yes. What we do know is that, with things like the IMG, the EU and the UK, there are structures there that should be the ones that are at work here. We know that they do meet. We know that there is the opportunity to evolve.

Lord Brennan of Canton: Would they survive? Let me put it to you this way. Would they survive a situation where there was a fundamental disagreement between a future UK Government and the devolved Administrations over matters relating to alignment with UK regulations? Are they robust enough to survive that not entirely unimaginable circumstance?

Professor Jo Hunt: In one way or another they have survived through a number of those situations, working through the Brexit process. These things need to work. What we do know—

Lord Brennan of Canton: What would happen if Nigel Farage was Prime Minister and you had a Plaid Cymru-led coalition or arrangement Government in Cardiff? Would these mechanisms actually then be just swept aside by the reality of that political situation?

Professor Jo Hunt: We have a situation where the Welsh Government and the Scottish Government took very different positions on EU membership than the then Conservative Government, and managing through that has been quite a brutal process. However, there is a need for those systems to work. There are ways that they could be made to work better. They could be made more regular. They could be fixed in diaries and actually take place when they are supposed to take place.

Lord Brennan of Canton: Is it fair to say that the whole thing relies on good will, basically?

Professor Jo Hunt: It relies very heavily on good will, yes.

Lord Brennan of Canton: Can I ask the other two witnesses very briefly whether they think that the current institutions could survive that situation?

Dr Lisa Claire Whitten: I think that in part this issue gets to the constitutional nuance that Professor Hunt acknowledged at the beginning of the session, whereby relations with the EU that we are specifically discussing today technically, in constitutional terms, are reserved under the devolved Acts. It is international relations, and it is a reserved competence. However, implementation of the substance of these agreements is within devolved competence. If that scenario did play out and there is a fundamental disagreement, the truth is that it would be messy but constitutionally—legally—the UK Government could say that this is an international agreement, and it has to therefore be implemented. Devolved departments could make that very difficult. We have actually had tensions of that nature in a slightly different context in Northern Ireland. I will not for time's sake get into the details; perhaps Lord Bew might mention it. There was a case taken in the High Court. Anyway, it is getting to that tension of the constitutional nuance that we have in the UK.

On the IGR structures, as Professor Hunt was highlighting, we do now have an institutional architecture that could be sufficient and effective, but the practices are not yet there.

Lord Brennan of Canton: Okay. I think that is quite clear. Lord Bew, was there anything you wanted to add to it?

Lord Bew: You are quite right to raise the issue. The actual long-term position of the Ulster Unionists since the 20th century was that trade matters and international agreement matters were a matter for the

Westminster Parliament, full stop. In the last few years, as Dr Whitten has just pointed out, that has broken down completely in terms of people's consciousness and so on.

I do have to say that this session has made me contemplate something I had not considered before. It may be that the relationship between Wales and the centre will be more fraught than the relationship between Northern Ireland and the centre, in the sense that we have been through some of these very difficult questions. As imperfect an arrangement such as the Windsor Framework is, none the less it has improved the situation. It has removed it away from headline local concerns. What Dr Whitten and I expect to happen is for it to be relatively benign in its impact. I had not thought of this before I came in here this morning, but it may be that the stability of local institutions, which is important to us all, may now—I will leave it like this—depend on the Government not in any way resiling in their commitment to the agreements made with the Windsor Framework, not slipping back into the great problem of saying that the British Government support a united Ireland economy, for example. It depends on that. If the Windsor Framework is held to, then I think that it can be relatively stable in Northern Ireland compared to the things that Dr Whitten and I have been living through for the last few years.

The Chair: Thank you very much. I think that we have seen more widely that no matter how good your institutional arrangements are, they cannot always deal with disruptive personalities. We need to move on swiftly if we can, Lord Jackson.

Q49 Lord Jackson of Peterborough: I am just reflecting, having lived through the Brexit negotiations, on how little good will and mutual trust there was between the central Government and the devolved Administrations at that time. Let us be hopeful that things might change in the future, irrespective of the party affiliation, in government.

My question is similar to Lord Brennan's question. Thinking about the current arrangements between Westminster and the devolved parliaments on matters relating to the EU that do or might affect the UK, would these arrangements need to change in order to enable effective scrutiny of a system of UK dynamic alignment and, if so, in what way?

Professor Jo Hunt: If we think about how the TCA operates, there are various ways that the devolved Governments and parliaments are involved in the operation of the agreement. There are various committees under that. There is the Parliamentary Partnership Assembly. At all points in that, the devolved role, they are there with an observer status in all those structures. That in itself is a continued source of disappointment on the part of the devolveds, seeking to make the best they can of that status.

I suppose to the extent that the machinery is made in the UK, then there would be the desire to be more than that when working with the European Union or feeding into the European Union, creating those institutions that might be needed to make the SPS work, allowing for

more of a role for the devolveds and enabling them to review what is taking place. At the moment, working through the intergovernmental structures that are not necessarily meeting as regularly as they should means that the Senedd and the Scottish Parliament are not able to fully hold their Governments to account because they are not getting the information when they need to get the information. It is about that system. The blocks are in place, but it is not yet working effectively enough to allow that scrutiny to work.

Lord Jackson of Peterborough: As a supplementary to that, is part of the problem as well that even if we wanted to include the devolved Administrations, there are sensitivities on the EU side? For instance, the Spanish Government would not be very happy if we set a precedent whereby they had to include a Catalan representative and a Basque representative in all the bilateral negotiations they did. The wider EU might not be happy with that. Is that an issue that might also be to the fore?

Professor Jo Hunt: We generally see the EU as being an environment that has been more accommodating of regional concerns and regional interests and having space for those. It is for the UK Government on behalf of the wider UK to ask for those things to be included.

The Chair: Thank you very much. We have filled our allotted time, but we have a couple of very important questions still to come. With your forbearance, we will continue for a little while longer if that is all right.

Could I just follow up on that last question, because I think that this is one of crucial importance? I take the point about devolved Administrations wanting to have more involvement and representation within the EU itself, but on the specific point of making these things work within the UK, we have already established that the UK Government are the one that will negotiate with the EU. The devolved Administrations are the ones that will have to make it work on the ground once those agreements are made. Those two things have to be joined together. Are those mechanisms effective enough at the moment? Will they need strengthening? Will they need more resource? I do not ask you for what the details should be, but are we going to need more than we have now? Dr Whitten, do you want to give your view on that?

Dr Lisa Claire Whitten: I think that is a key question. It does get back to my favourite hobby horse, but I think that scrutinising EU legislation is crucially important, particularly in regard to this issue of enabling devolved legislation or devolved legislatures to also scrutinise. The nature of the policy areas we are discussing do tend to be quite technical when changes are being made. To get a sense of whether or not it will matter if a plant protection product of a certain kind is introduced or is banned at EU level and that change is under the SPS agreement to be implemented in the UK, I point out that Scottish farmers might use different plant protection products than Welsh farmers or English farmers. If there is not a space for all affected parties to input effectively through the devolved Administrations and legislatures to the central UK Government and

through to the UK-EU bodies that are likely to be formed under these agreements for oversight, in sharing those, as Professor Hunt was saying, there are structures there but it is like the dots are not fully joined yet. The lines of communication are perhaps not yet established or have gone dry, if you will. Ensuring that there are workable ways in which you can get information from the ground and stakeholders affected through to the EU and UK government context where changes can be made or views can be put across, I think that—

The Chair: There is more to be done?

Dr Lisa Claire Whitten: Yes, there is more to be done.

Q50 **Baroness Suttie:** I will move on now to the Windsor Framework, Northern Ireland and specific lessons learned. The previous Government negotiated the Stormont Brake as part of the Windsor Framework. How effective has this proved? How often has it actually been used, if you have those figures? As part of the potential new agreements with the EU, would you advise that the Government seek to negotiate similar mechanisms for potential use by Westminster as well as the devolved legislatures? I will perhaps go straight to Lord Bew.

Lord Bew: The Stormont Brake is really quite a distinctive thing. I think that you could make a good argument that, as part of the mood music that has led to the restoration of the institutions of the Good Friday agreement, it has played a part. It has been used once with muffled effect, and the truth of the matter is that, if you were going to use it dramatically a year from the moment the Windsor Framework was brought into being in February 2023, for the next year when there was a Conservative Government in place, they might have acted more strongly. A Labour Government, confronted with the Stormont Brake being utilised locally in the throes of a reset, are not likely to want a conflict with the European Union over any issue that might be raised. Everybody recognises this.

The Stormont Brake as part of the Windsor Framework has gone quiet, which does not mean—and I think that Dr Whitten is also on record on this—that it does not have a certain usefulness in the background. It is part of a message—the insistence that, after all, the east-west dimension of Northern Ireland is very important, as it was in the Good Friday agreement—and it is part of a process with which these realities are returned. It is quite significant that the Irish Government's reaction to the original protocol was ecstatic. They could not believe the success. The British Government were negotiating from a very weak position in 2019. Their reaction to the Windsor Framework was much more cagey and principally that is because of the Stormont Brake. The politics of this on the whole in terms of a readjustment—"rebalancing" I think was Dr Whitten's word—of the original settlement towards more fairness and more towards what is notionally the centre ground in Northern Ireland, have actually been quite effective. That is to say it has been employed and it has worked and something has not happened that might otherwise

have happened, even though its actual utility, strangely enough, is not all that important. That is Northern Irish politics for you.

I think that there is a case for saying, and Dr Whitten has said the same, that, as part of the rebalancing of what was perceived to be an unbalanced set of relationships as far as mainstream Northern Ireland was concerned, it has actually worked. If it is never used again, it may already have had its function. My own feeling is that it is unlikely to be. The circumstances in which that energy existed in the system have just changed.

Baroness Suttie: Thank you. What you are really saying is that it is better as a threat than as an actual mechanism.

Lord Bew: That therefore has implications for the other devolved institutions, but yes.

Baroness Suttie: Dr Whitten, did you have anything that you would like to add to that?

Dr Lisa Claire Whitten: Yes. I agree with what Lord Bew has set out entirely. In relation to looking at the Stormont Brake as a model and transferable idea for the whole of the UK, I am not convinced that it is the best mechanism to seek for a UK-wide agreement. The Windsor Framework is a unique set of arrangements. It addresses specific circumstances. In particular, the dynamic alignment arrangements under the Windsor Framework are unique even in EU external relations terms, specifically on the automaticity of alignment. Under Article 13 of the Windsor Framework, EU laws that are made applicable under its general terms apply in Northern Ireland as amended or replaced. That means for any EU law change coming through tertiary legislation and secondary legislation there is a conduit pipe, if you will, like under the ECA 1972 arrangement, through to the statute book in Northern Ireland. That is not the case in other association agreements. It is a specific arrangement in Northern Ireland under the Windsor Framework, and the Stormont Brake I think ought to be seen in that context.

The Chair: Yes, and in the context of dynamic alignment that would have to be transposed into UK law, which is different, yes.

Dr Lisa Claire Whitten: Yes.

- Q51 **Lord Moynihan of Chelsea:** Thank you all for coming. The idea of dynamic alignment moves the United Kingdom and Northern Ireland more into the realm of rule-taking rather than rule-making. The way that has been talked about to mitigate that is through decision-shaping—that is to say, input before those rules are made. We have had experience of that in Northern Ireland in the term “enhanced engagement”. What advice would you all have to the devolved Administrations in light of what experience there has been, which I hope you will tell us about, with enhanced engagement as to how they can be most effective? Will they be able to be effective through decision-shaping? Maybe Dr Whitten might

want to start.

Dr Lisa Claire Whitten: Thank you for the question. In some ways it is somewhat early to tell in relation to the effectiveness of enhanced engagement in Northern Ireland, just because of the prolonged period of tension and dispute in working out how what we now have as the Windsor Framework would operate. Again, the European Commission's commitment to enhance engagement with Northern Ireland stakeholders is bespoke. It is unique. Even member states do not have access in the same way to some of what is agreed under the Windsor Framework's European Commission commitment.

In particular, the annual presentation on the work programme to Northern Ireland stakeholders is not normal in the EU setting. I am not sure that that would fully be a transferable model. That said, it is there and it does provide a unique avenue for UK/Northern Ireland input to EU decision-making and EU decision-shaping. I think that it ought to be considered in a whole-of-UK strategy regarding decision-shaping under the new agreements as well as the other devolved representations, as has already been mentioned. Officers in Brussels are still there, but it is ensuring that they are sufficiently resourced in order to join a UK strategy for decision-shaping.

I am only aware of one specific case that the UK has had via Northern Ireland of effective decision-shaping in regard to EU legislation so far, and that is about Irish grass-fed beef. I do not have all the details, but it did ultimately result through Northern Ireland representation and UK representation on Northern Ireland's behalf that Irish grass-fed beef is now an all-island marker, so beef in the north in Northern Ireland is also included in that protected category of GI. That was a decision-shaping case that we have had so far, but that is the only one that I am aware of that we have had to date. Again, it is early days. I would just say that that ability to engage with the European Commission directly is a unique arrangement that Northern Ireland has, but now that is part of a UK representation, and it should be utilised as such.

Lord Moynihan of Chelsea: Lord Bew, does enhanced engagement give us confidence and hope for decision-shaping?

Lord Bew: I certainly think that there is no possibility without enhanced engagement. I think that Dr Whitten might agree with this. Everything she said about the unique circumstances of Northern Ireland and the arrangements is entirely correct. At times I am not quite sure the Northern Ireland Civil Service looked as if it had the capacity to deal with these issues. I am glad to see that she is nodding slightly. It does depend on developing an intellectual and expert culture of people. These are complex, difficult issues involving wide political questions and detail, and it is quite a difficult thing to do. That is my concern. No doubt it is probably in a better place than it was. Certainly, early on there was a jaw-dropping reaction within the system to things that flowed from the centre.

Lord Moynihan of Chelsea: Professor Hunt, let us try to make this a little pointy and give Scotland a bit of a crack of the whip, because they have necessarily not got one so far. Scotland has unique fauna, flora, pests and so forth relative to the rest of Europe. It also has active conversations and activities on things like precision breeding and agricultural biotech, on which there is a moratorium in the EU at this time. Unless decision-shaping could prove extremely effective, that would wipe out a rather hopeful area of the Scottish economy, however big or small. Do you believe that decision-shaping would help the Scottish economy to continue with its more innovative and forward-looking activities in the economy?

Professor Jo Hunt: On that decision-shaping in terms of who will be in the room, if that will simply be the UK Government, then we need to ensure that there are properly built-in opportunities for the Scottish Government and Welsh Government to be feeding into that UK Government line, that the intergovernmental machinery that takes that through works as effectively as possible, and that meetings take place regularly and system-wide to feed through that.

In terms of what the devolved Governments can be doing otherwise, as we have said, there is a presence that they still have in Brussels. There is the softer diplomacy that they could be taking on. They could be finding common cause with other regions and with other member states and be able to feed in to the policy.

Lord Moynihan of Chelsea: What will the outcome be?

Professor Jo Hunt: We have lived through EU membership and the geographic differentiation, and there was space within instruments to have that differentiation. We wait and see who would be negotiating—what Government would be negotiating for the whole of the UK—and how they prioritise particular issues. There is a lot that is obviously down to the politics, but all we can do is to do the best we can to get the right structures in place to assist that.

Q52 **The Chair:** Thank you very much. I just want to finish with a general question, which really requires only a yes or no answer. It seems to me from what we have seen previously and everything we have heard today that the volume of work that will be involved with dynamic alignment will be considerable and that the current resources of the devolved Administrations, perhaps with the exception of Northern Ireland given all the work it already has to do on the Windsor Framework, are unlikely to be sufficient. Yes? No?

Lord Bew: I agree. Northern Ireland has had some experience now, but our two reports—Lord Murphy's report and Lord Carlile's report—suggest that you need to do more work in this area as well, even though Northern Ireland has some previous experience.

Professor Jo Hunt: I would just recognise that institutionally the Senedd is about to increase from 60 to 96 members, so there is

potentially increased capacity but it is not starting from a particularly high level of membership for that. Yes, there are very real resourcing concerns.

The Chair: I see Dr Whitten nodding, which is great. Well, thank you all very much indeed and a particular thank you for staying longer than the scheduled time, but we have been covering some important issues here. You have just added to the evidence we have already collected that there is a great deal of complexity beneath the surface of what appears to be perhaps something fairly straightforward. We are very grateful to you for that. With that, I bring the public session to a close.