



Constitution Committee

Corrected oral evidence: Future governance of the UK

Wednesday 15 September

10.20 am

Watch the meeting

Members present: Baroness Taylor of Bolton (The Chair); Baroness Doocey; Baroness Drake; Lord Dunlop; Lord Faulks; Baroness Fookes; Lord Hennessy of Nympsfield; Lord Hope of Craighead; Lord Howarth of Newport; Lord Howell of Guildford; Lord Sherbourne of Didsbury; Baroness Suttie.

Evidence Session No. 10

Virtual Proceeding

Questions 125 - 135

Witness

I: Sir Jeffrey Donaldson, Leader of the Democratic Unionist Party

USE OF THE TRANSCRIPT

1. This is a corrected transcript of evidence taken in public and webcast on www.parliamentlive.tv.

Examination of witness

Sir Jeffrey Donaldson.

Q125 **The Chair:** This is the Constitution Committee of the House of Lords. We are conducting an inquiry into the future governance of the United Kingdom. Our witness this morning is Sir Jeffrey Donaldson MP, the leader of the Democratic Unionist Party. Good morning, Sir Jeffrey.

Sir Jeffrey Donaldson: Good morning.

The Chair: Thank you for joining us. Before we get into some of the detail of where we are now in the situation as it is with the Irish protocol and post Brexit, perhaps you could give us some idea of how you thought relationships were and what the state of the union was pre-Brexit and pre-current difficulties. Were things working well in terms of relationships between the Northern Ireland Executive, and Members there, and the UK Government?

Sir Jeffrey Donaldson: First of all, thank you for this opportunity to speak on what is, for me, a hugely important topic. Yes, I think, in general, relationships have been good between the Northern Ireland Executive and the UK Government. If you look at the level of co-operation that occurred during the Covid pandemic, the strength of that relationship is evident. The level of support Northern Ireland received from the UK Government during the pandemic was very strong—support, for example, in terms of additional funding for some of the schemes that we put in place to support businesses and individuals, particularly the furloughing scheme and the scheme for self-employed and other individuals.

One thinks also of the UK vaccination programme. There is no doubt that Northern Ireland benefited from being part of the UK vaccination programme, and the speed with which the UK Government were able to deploy the vaccine undoubtedly put us well ahead of some of our neighbours. It also benefits, on an ongoing basis, from the support of the UK Government in the significant subvention that Northern Ireland receives for our budget each year from the Treasury.

In general terms, the relationship between the devolved Administration and the UK Government has been good up to the point where the Northern Ireland protocol began to be implemented on 1 January this year. Of course, I am happy to talk about that in more detail. I would just make a couple of general comments.

First of all, sometimes, though not generally, there is a tendency in Whitehall to see issues that are UK-wide from an English perspective. That can be frustrating at times because the general policy direction is set for England, and then Northern Ireland, Scotland and Wales of course benefit in financial terms, but our ability to shape the initial policy approach is perhaps more limited in that sense. Clearly, in the context of the union, while support for the union in Northern Ireland remains

strong—and that is evident—consistently in surveys and opinion polls, we recognise that, for example, in Scotland there has been unease about the benefits of the union and a significant debate there. There is no doubt that the debate around the future of the union is likely to continue.

While I accept that the present Government have a very strong line in support of the union and have set up special arrangements in the Cabinet Office on the union—and we welcome, for example, the union connectivity review initiated by the Prime Minister—at times, Chair, if I may say so, the rhetoric is not always matched by the practice, and in Northern Ireland we find that, while there is strong rhetorical support for the union from the UK Government, at times that does not always follow through in practice.

I am very happy to respond to questions about the protocol, but there is no doubt that the Northern Ireland protocol and its inclusion in the EU withdrawal agreement has created a major concern for us in our constitutional and economic relationship with the rest of the United Kingdom.

The Chair: We will come on to that in just a moment and, indeed, intergovernmental relationships. Some time ago, we were taking evidence from Lord Empey, and he said that there was a feeling in Northern Ireland that devolution meant “devolve and forget”—let devolved authorities get on with things too much themselves and take just the overall picture from Westminster or Whitehall as the Government dictated. Do you recognise “devolve and forget” as a phrase that has any resonance?

Sir Jeffrey Donaldson: It is worth bearing in mind that the Northern Ireland Office has more staff than the Scotland Office and the Wales Office, so there is a recognition in the UK Government that Northern Ireland still requires a lot of attention, not least because of the history of the peace process and the very delicate balances that are at the heart of our current political arrangements. I would say, in fairness to the current Secretary of State and his predecessors, that they take a keen interest in the day-to-day affairs of Northern Ireland. The current Secretary of State is someone whom I engage regularly with on issues that are devolved but where there is an interest for the UK Government.

I would perhaps say that, at times, it is frustrating that, in fact, it is not a matter of “devolve and forget”, but on some key issues the UK Government take it upon themselves to legislate on areas that are either primarily or wholly devolved. In fact, far from “devolve and forget”, sometimes it is “devolve and take back”, but without actually repatriating the powers from the Northern Ireland Executive and Assembly to Westminster. There is a tendency for the UK Government to step in and legislate on issues where there are difficulties, undoubtedly, within the Northern Ireland Executive. So I am not a big fan of the idea that you devolve powers but then periodically intervene and legislate over the heads of the Northern Ireland Assembly and Executive. For me, I am not quite convinced that “devolve and forget” is evident when the UK

Government have stepped in and legislated on a number of key areas that are, in fact, devolved powers.

The Chair: We may come back to that later, but let us move on to the protocol and its impact. Baroness Suttie, do you want to come in here?

Q126 **Baroness Suttie:** Good morning, Sir Jeffrey.

Sir Jeffrey Donaldson: Good morning.

Baroness Suttie: You made a keynote speech last week on the Northern Ireland protocol. Could you say a little more about what you believe to be the constitutional impact of the Northern Ireland protocol on the wider union but, in particular, also on Northern Ireland's relationship within the union? I should say for the record at this time that I am Liberal Democrat Northern Ireland spokesperson in the House of Lords, but I am asking this very much from the perspective of this inquiry this morning.

Sir Jeffrey Donaldson: Thank you for that question. It goes to the heart of the main issue at the moment in relation to our constitutional status. The Northern Ireland protocol, in my opinion, and in the opinion of the High Court in Belfast, alters the constitutional status of Northern Ireland within the United Kingdom.

The most fundamental piece of law in terms of Northern Ireland's place within the union is, of course, the Act of Union itself. Recently, the High Court ruled, in a landmark case, that the EU withdrawal agreement, and the Northern Ireland protocol, which is an integral part of that agreement, repeals key elements of Article 6 of the Act of Union. That article makes provision for free trade within the United Kingdom. It states clearly that there should be no barriers to trade between the constituent parts of the United Kingdom, albeit in 1801 the island of Ireland as a whole was part of the United Kingdom, but the Act of Union was unamended when Northern Ireland remained an integral part of the United Kingdom after partition in 1921. For the High Court to state very clearly that the terms of the Act of Union have been altered significantly by the Northern Ireland protocol marks, for us, an unacceptable change in our constitutional status.

It is also worth noting that Article 1 of the Belfast/Good Friday agreement makes very clear that any change to the constitutional status of Northern Ireland should require the consent of the people of Northern Ireland, and the consent of the people of Northern Ireland has not been sought to amend Article 6 of the Act of Union, which, as a result of the protocol, has been changed.

The difficulties now created by the protocol in impeding trade from Great Britain to Northern Ireland are significant. We know that many of our largest businesses, retailers and manufacturers are having real difficulties in accessing their traditional supply chains from suppliers in Great Britain. There is the absurd situation where Northern Ireland companies are being told that goods or component parts that are being sent from their supplier in Great Britain to the company in Northern Ireland are in

customs and are sitting in customs for weeks on end. There is added paperwork, added cost and increased bureaucracy. The result of all of this is that many companies in Great Britain are now saying it is really not worth doing business in Northern Ireland—it is just too much hassle. That is having a real economic impact in Northern Ireland, but it is also having an impact in terms of political instability.

At the heart of the Belfast/Good Friday agreement, there are three sets of relationships: internal to Northern Ireland; the relationship between Northern Ireland and the Republic of Ireland, or north-south; and the relationship between Northern Ireland and Great Britain, and the Republic of Ireland and the United Kingdom, or east-west. It states quite clearly in the agreement that those relationships are interlocking and interdependent. In other words, if you harm one relationship, by extension you harm all of them.

It is our view that in harming the east-west relationship, as the protocol does in creating a border in the Irish sea, it harms the internal relationship, it harms the relationship between Northern Ireland and the Republic of Ireland, and, therefore, far from protecting the Good Friday/Belfast agreement, as the EU claims is its objective, it is, in fact, undermining the agreement, undermining the relationships that are at the heart of that agreement and creating political instability. That is why I am saying this is not sustainable. We need to resolve these issues and quickly.

Baroness Suttie: Could I ask you a little more about consultation—lessons learned on this for the future? Do you think there should be an enshrined mechanism to make sure that the different constituent parts of the United Kingdom are consulted by the Westminster Government before such major decisions are made?

Sir Jeffrey Donaldson: Indeed. It is not that the UK Government were not warned about the impact the protocol would have; they were. Indeed, our concerns were raised in all the debates around the EU withdrawal agreement and the protocol in terms of the impact creating an Irish Sea border would have on our economy and political stability. I regret that the UK Government pressed ahead with that without seeking the consent of people in Northern Ireland. That is in breach of the Belfast/Good Friday agreement. Yes, stronger consultation will be important, but—let us be clear—we are not talking here just about consultation. Article 1 of the Good Friday agreement is very clear. It is more than consultation. Consent is the principle that has been set aside here.

The Chair: If, Baroness Suttie, you do not want to pursue it further, we will move on to other aspects of intergovernmental relations. I will bring in Lord Dunlop on this.

Q127 **Lord Dunlop:** Good morning, Sir Jeffrey.

Sir Jeffrey Donaldson: Good morning.

Lord Dunlop: You have talked in your answers to Baroness Suttie about the Belfast agreement's three-stranded approach. What has not been mentioned so much is what one might describe as a fourth strand, albeit one not in the Belfast agreement—the intergovernmental structures to help manage relations between the UK Government and all the devolved Administrations.

Where, from a Northern Ireland perspective do these fit into the grand scheme of things, and what role do you think they should play going forward to demonstrate to people in Northern Ireland that their views are being taken into account by the UK Government, following up what Baroness Suttie was saying, in the context of reaching and implementing trade and other international agreements, for example?

Sir Jeffrey Donaldson: In the wake of Brexit, it is more important than ever that the UK Government and the devolved Administrations are joined up in their approach. As I indicated earlier, there is a perception at least in some of the devolved Administrations that the UK Government tend to take a very English-centric approach to what are national issues. Therefore, the more that we can have dialogue and engagement between the devolved Administrations and the UK Government, the more that perception will be diminished, and I think that will be a good thing.

Many of the structures that are in place at the moment to enable contact between Ministers in the devolved Administrations and Ministers in the UK Government are good. They are working well. I know from the feedback I get from my Ministers in the Northern Ireland Executive that they welcome that engagement. It is helpful in terms of encouraging a more joined-up approach on issues that are of national importance, not just regional importance. I think those structures could be strengthened.

I would also like to see the UK Government having a stronger presence in each of the devolved countries. For example, it would be nice—and the Prime Minister has talked about this—to see the Cabinet meet occasionally in Belfast, Glasgow or Edinburgh and Cardiff to see the UK Government getting out from London a bit more. Symbolically, that would send a very powerful message that the UK Government are interested in what is happening in the rest of the United Kingdom and that when they take decisions of national importance they affect all UK citizens.

We would also like to see more of the UK government departments that still have a function in the various parts of the United Kingdom having a greater presence in the various parts of the United Kingdom. We welcome the fact that, for example, HMRC has a significant presence in Belfast. We do a lot of work in Belfast that is work on a national basis. We would like to see more of that sharing out of government jobs across the United Kingdom.

On your core question, at times I feel that the east-west relationship in particular is not given the investment that it requires in time and commitment. I would like to see the British-Irish Council, for example, more proactive.

Brexit compels us to strengthen the east-west relationship, not just Northern Ireland-Great Britain but the Republic of Ireland-United Kingdom relationship as well. There is scope to strengthen that relationship. We are neighbouring countries. There is so much we have in common. There are so many areas for co-operation. I would like to see the role of the British-Irish Council, the British-Irish Parliamentary Assembly and other east-west institutions strengthened and more linked in to what we do on an intergovernmental basis.

Lord Dunlop: Following up on that, the processes within the UK for managing intergovernmental relations have been widely criticised for being ad hoc and unpredictable. In March, the UK Government tabled proposals to reform the management of these relations. The Scottish and Welsh Governments have expressed pretty clear and strong views about these reforms.

What are the views of the Northern Ireland Executive? Is there a single view? You talk about strengthening that and you mention the British-Irish Council. Is there anything we can learn from the structures and mechanisms of the British-Irish Council that could be applied to intergovernmental relations within the UK? Specifically, do you think any new proposals on this should be put on a statutory basis?

Sir Jeffrey Donaldson: Time will tell whether what the Government propose to do in strengthening the intergovernmental arrangements in the UK at the moment will actually deliver more effective, more efficient Government. We are prepared to work with those intergovernmental structures, and we want to encourage the UK Government to strengthen them and make them less ad hoc and, certainly, more frequent in their application and implementation.

The British-Irish Council is an institution that itself needs to be strengthened, so I am not so sure that we can draw too much from how it operates at the moment. I would like to see it meet more often in sectoral format, for example.

There is much wider scope for co-operation across all the Governments within the United Kingdom and the Republic of Ireland, and, of course, not forgetting our friends in the Channel Islands, the Isle of Man and so on. I would like to see not just a strengthening of the intergovernmental arrangements between the devolved Administrations and the UK Government, but a strengthening of the British-Irish Council east-west relationship, and I think we are compelled to do so as a result of Brexit. I am not sure that there are great lessons to be drawn from BIC at the moment. Rather, there is room for improvement there as well.

Lord Dunlop: Should all of this have been put on a statutory basis? Do you have a view on that?

Sir Jeffrey Donaldson: Yes, we should consider such an approach because it creates a framework within which we are able to operate. It gives a degree of certainty around the level of co-operation that one can

expect between the devolved Administrations and the UK Government; and I think, yes, there is a basis for considering putting these arrangements on a statutory footing.

Lord Dunlop: Thank you.

The Chair: Baroness Fookes, do you want to follow up on devolved competence?

Q128 **Baroness Fookes:** Yes. Sir Jeffrey, you have already touched on the subject I want to raise with you. You have been very critical of the UK Government's intervention in abortion law, arguing that it risks undermining devolution. Are there any circumstances in which you think it is acceptable for the UK Government to legislate in devolved areas?

Sir Jeffrey Donaldson: Of course we accept that the UK Government and Parliament are sovereign. There may be occasions, perhaps in a national emergency, for example—and we have seen that with Covid—where it is appropriate for the UK Government either to intervene in an area that is a devolved matter or to set a national approach, a national strategy, for something that requires a nationwide response. Yes, of course there are circumstances in which it is appropriate and proportionate for the UK Government to act, but we have seen with increasing frequency the UK Government deciding to legislate on areas that are either wholly or primarily devolved matters.

You have mentioned abortion—that is correct—but we have also seen more recently the UK Government announce that they are going to introduce legislation in Parliament on cultural issues, which are wholly devolved to the Northern Ireland Assembly and Executive. Again, we see an increasing tendency of the Government to intervene in devolved matters, and that is a matter of concern because it undermines confidence in the devolved Administration in Northern Ireland. I know this from my own interaction with the public. They ask the question, "What is the point of having a devolved legislature when the UK Government are constantly intervening and taking back the right to legislate on matters that remain devolved?" So I think it does undermine the devolved settlement in Northern Ireland when that happens.

Baroness Fookes: Have you made representations to government or the appropriate government departments on these issues?

Sir Jeffrey Donaldson: We most certainly have. If I can go a little further, the basis for the devolved Government in Northern Ireland being restored last year after three years of having no devolved Government was the New Decade, New Approach agreement. A large number of issues were dealt with in that agreement, some requiring the UK Government to legislate, but the culture package is part of that agreement and it is not a matter for the UK Government to legislate on, and yet they have said that is precisely what they are going to do.

At the same time, there is an area where the UK Government have a responsibility, and that is in relation to trade between Great Britain and

Northern Ireland. They gave a commitment in the New Decade, New Approach agreement that they would, if necessary, legislate to restore Northern Ireland's place within the UK internal market, and yet the Government have shown a marked reluctance to do that. There is almost a cherry-picking of issues that, I think, creates major concern in Northern Ireland. It is not balanced. It is not proportionate. Therefore, it is harmful to political stability in Northern Ireland.

Baroness Fookes: Thank you.

The Chair: Lord Dunlop, do you want to come in with an additional question?

Lord Dunlop: Yes, I want to follow up. One of the core themes of New Decade, New Approach was to develop within the Northern Ireland Executive a greater sense of collective ministerial responsibility and a commitment across all parties to the delivery of a shared plan and goals, rather than what has characterised the past where individual departmental silos were pursuing a single-party agenda. What evidence is there of a change of approach, and what legitimate part can and should the UK Government play to help foster it?

Sir Jeffrey Donaldson: First of all, thank you for your continuing interest in Northern Ireland. I know that you have taken a keen interest and have been looking at these matters on a wider front.

This is a difficulty for us in Northern Ireland. We have what I would not call a unique form of government, but mandatory coalition is not the kind of government you find in most parts of the world, where parties automatically gain a place in government when they secure a threshold number of seats in the Assembly.

Presently, we have five parties in the Northern Ireland Executive, and that is at times quite an unwieldy coalition. You have parties from both ends of the political spectrum. It would be akin to having a government of national unity in the United Kingdom involving the Liberal Democrats, the Conservatives, the SNP and the Labour Party. You can begin to imagine how difficult it would be to devise a programme for government in those circumstances given the very different ideological approaches that those parties take.

It is the case in Northern Ireland, and yet we have managed on each occasion to devise and agree a programme of government for Northern Ireland that has a broad consensus despite the differences in political opinion that we represent as political parties. However, it leads to a tendency where Ministers operate almost in silos, and the capacity for the Executive to take collective decisions is therefore limited and sometimes undermined. Thankfully, during the Covid pandemic, the Northern Ireland Executive have done quite well in rising above ideological difference to agree arrangements, to safeguard the population and to make provision for their health needs during the pandemic.

In the past year and a half, the Executive have functioned quite well in terms of their collective decision-making on Covid, but when it comes to other areas there is no doubt that very often there is an inability to reach decisions on a collective basis, which means that Ministers will often do their own thing, and that creates political difficulties. We have seen that sometimes the UK Government decide to intervene and take away the power to legislate, or at least to legislate without reference to the Northern Ireland Assembly and Executive.

We need to look at reform in the medium to long term of those institutions. Personally, I would like to see Northern Ireland move towards a voluntary coalition-style of government where we reach a level of political maturity that, after an election, parties get together and decide who wants to be in the Government, agree a programme for government and go forward on a voluntary coalition basis, because mandatory coalition at times can be unwieldy, difficult and make it difficult to get decisions that are pressing.

Lord Dunlop: Could I press you a little more on that in terms of the role of the UK Government? You have welcomed the role of the Secretary of State and the interest that UK Government Ministers take in Northern Ireland. How do they strike the right balance between being a force to help encourage and support the devolved institutions to work more effectively without going the other way that you have identified of facing accusations of treading on devolved competence? It seems to me that, as the devolved institutions in Northern Ireland evolve, mature and develop, there is a role for the UK Government to help that process along. Where would you strike the balance?

Sir Jeffrey Donaldson: I draw on remarks made once by the former leader of the SDLP in Northern Ireland, Mark Durkan, former Member of Parliament for Foyle. He once said at a meeting of the British-Irish Association that perhaps the time had come to remove “the ugly scaffolding” of the Good Friday agreement. By that, he meant that there are so many props, so many safeguards, built into our political system that it makes it very difficult to have an effective, efficient, functioning government, and, therefore, there is a tendency at times when we run into difficulty to look to big brother—the UK Government on occasion, but also, of course, nationalists very often turn to the Irish Government.

If we were to proceed with further reform of our political institutions in Northern Ireland along the lines Mark Durkan has suggested of removing some of these props, we might move to a situation where the political parties develop a degree of greater political maturity in taking the tough decisions that need to be made. A voluntary coalition would be more conducive towards that kind of consensus politics than is the case when people automatically have a right to be in government and, therefore, perhaps do not develop the same level of maturity around consensus building as is required.

In response to your question, “Is the responsibility there on the part of the Government?”, yes, to a degree, but there is a greater need to

reform the way the political institutions operate so that political parties in Northern Ireland take more responsibility for the tough decisions that have to be made on a consensus basis and perhaps through a more voluntary rather than mandatory coalition arrangement.

Lord Dunlop: Thank you. I am sure others will want to develop some of these themes.

The Chair: Indeed, I am sure they will. Can we move on to the legislative consent process and bring in Lord Hope?

Q129 **Lord Hope of Craighead:** Good morning, Sir Jeffrey. You have referred several times to the tendency of the UK Government to legislate over the heads of the Northern Ireland Assembly. There may be two situations. One is where they simply do so without any regard to the situation in Northern Ireland at all, out of ignorance or inadvertence; and the other is in the teeth of a refusal to pass a legislative consent Motion, which I think was the case of the European Union (Withdrawal Agreement) Act 2020 where the Assembly withheld agreement, as indeed happened in Wales and Scotland.

The question I have is about the Sewel convention, which has been in place since 1999. My impression, looking at it in my case from a Scottish perspective, is that it worked comfortably until recently, and particularly until we began to grapple with Brexit, and then it has begun to fall apart. What is your impression of the way the Sewel convention worked before the Brexit issues began to emerge and how it is working now?

Sir Jeffrey Donaldson: The Sewel convention probably provides us with sufficient protection. The problem is that it is not always respected. If the Sewel convention was respected, it is probably sufficient and adequate to cover the concerns that we might have. I very much regret that, in the context of Brexit, we ended up in a situation where the Government proceeded with the withdrawal agreement, including the Northern Ireland protocol, without the consent of people in Northern Ireland, as I have stated earlier. The arrangements we have at present are probably sufficient, but they need to be respected.

Lord Hope of Craighead: Do they need to be strengthened because, at the moment, certainly as far as we are concerned in Parliament, we do not hear very much about the process of working the convention into effect and the level of engagement there is with Northern Ireland before the decision is taken, indeed if there is any engagement at all? What steps are being taken to explain the reasons why, if they are minded to do so, they are determined to proceed without consent? Is there something wrong with the process?

Sir Jeffrey Donaldson: There are deficiencies in the process at the moment. It is often the case that, when legislation is being brought forward in Parliament that impacts on Northern Ireland, you get a phone call a few days before the Bill is introduced in Parliament, maybe 10 minutes, with the Minister explaining how good this is and what the benefits are but there is very limited capacity for pre-legislative scrutiny.

We are not arguing for a substantive change to the Sewel convention. We are asking Ministers to give more weight to the need to consult and the need to engage with people from the devolved areas when they are introducing major legislation at Westminster that impacts on those devolved areas.

We recognise that Parliament is sovereign. We are not suggesting that the sovereignty of Parliament should be changed or diminished, but how the Sewel convention provisions are implemented needs to be strengthened, or at least Ministers need to take a different approach—a more proactive, engaging approach—with those of us who represent parts of the United Kingdom with devolved Administrations.

Lord Hope of Craighead: Thank you very much. I would hope that there is a better process of dialogue—you talk about the telephone call just a few days before the decision is taken—perhaps continuing after the Bill is introduced to make sure that all the boxes are ticked and some effort is made to recognise the position of Northern Ireland before a decision is taken to legislate against its wishes.

Sir Jeffrey Donaldson: That is right. We should also look at the amount of time that Ministers spend in the devolved countries. When Ministers are introducing legislation that has a major impact, they should take time to go to Belfast, Edinburgh and Cardiff, and engage with people and listen to what they have to say before legislation is introduced. That would make a significant difference in the quality of the consultation and dialogue that takes place.

Lord Hope of Craighead: Thank you very much indeed.

Q130 **Lord Faulks:** Good morning, Sir Jeffrey. Following up those questions from Lord Hope about the Sewel convention, I understand what you say about the need for greater co-operation and greater respect for the process.

We have heard evidence from Michael Gove about the Sewel convention, which effectively was that if, sadly, there cannot be an agreement about some legislation, it is ultimately a matter, as you suggest, that Parliament is sovereign, and, notwithstanding the lack of consent, a Bill will be enacted. On the other hand, we heard from Mark Drakeford, the First Minister of Wales, that he thought that, if there was some sort of deadlock, there ought to be an independent body of some sort that decided what the right process should be. Where do you stand on this particular issue?

Sir Jeffrey Donaldson: I would prefer the current process to be strengthened in terms of what I have just stated in response to the previous question about strengthening dialogue and engagement between Ministers, and not only the devolved Administrations but Members of Parliament and Members of the Lords representing or coming from those devolved countries. We used to have, for example, the Northern Ireland Grand Committee in Parliament, but it was stood down when the devolved Administration was formed. I understand the reason

for that, but it has left a void in the kind of debate we used to have in Parliament with Ministers present about key issues, some of which remained a matter for Parliament to legislate on.

We should be looking at not just the governmental arrangements but how Parliament scrutinises and considers these matters as well. Is there room for greater parliamentary scrutiny, or at least dialogue at parliamentary level, as well as engagement with devolved Ministers? I am not convinced that the proposal made by the First Minister for Wales is the way forward. Parliament is sovereign. The UK Government derive their sovereignty from the sovereignty of Parliament. We are not arguing that that should be diminished by introducing some kind of referee. If sensible, effective arrangements are put in place under the Sewel convention, for us, that is probably adequate for the time being.

Lord Faulks: Do you think that the Institute for Government's suggestions about repairing matters are sensible, and do they reflect some of the concerns that you have?

Sir Jeffrey Donaldson: Yes, they do in part, but of course there are issues that are particular to Northern Ireland—and I have mentioned some of those in my earlier responses—that are perhaps not covered by the report. In the context of reforming our political institutions, we have a Bill going through Parliament at the moment that arises from the New Decade, New Approach agreement on partial reform of some of our processes and governmental arrangements in Northern Ireland.

We are looking at how we can step up the process of reform—I have alluded to some of that earlier—which is not necessarily covered by what is in the report by the institute. But, as far as it goes, we welcome many of those proposals.

Lord Faulks: Thank you very much.

The Chair: Baroness Doocey, can we bring you in at this stage, please, to widen the issue a bit?

Q131 **Baroness Doocey:** Yes. Good morning. Would more significant reforms to the UK's territorial constitution help to manage relations between London and the nations and regions? If so, what issues would be on the top of your list?

Sir Jeffrey Donaldson: First of all, we need to have a culture of respect between the UK Government and the devolved Administrations, and I think that is important. It is not necessarily a reform; it is a change of attitude, a change of approach, but it is very important.

In terms of, for example, reform of the House of Lords, we have good representation there from across the community in Northern Ireland. That is important.

Perhaps we need to look at the size of the House of Lords. I have seen the value and the benefit of having a revising Chamber in the UK

Parliament, and I want to ensure that the House of Lords retains that capacity, whatever the reforms might be. And, yes, we would like to see that, whatever reform takes place, there continues to be strong and proportionate representation from the devolved countries in the House of Lords. That is an important element in Parliament.

In the House of Commons, we have 18 Members of Parliament out of 650. When that is divided among four different political parties, and when we have a situation where seven of those MPs do not take their seats in the House of Commons, it means that in the Commons the voice from Northern Ireland is not as strong as it could be. Having Peers representing Northern Ireland from various backgrounds in the House of Lords is very important for us, and I would want to ensure that continues in any proposal for reform.

I repeat what I said about the tendency of the UK Government to legislate in breach of the devolved settlement. That undermines confidence in devolution, confidence in the devolved Administrations, and I really do think the UK Government should only do so in the most exceptional circumstances. That needs to be underpinned and maybe we need to look at how we can build in stronger safeguards for the devolved Administrations in protecting their legislative rights under the current constitutional settlement.

For me, the main issue at the moment, as I have said earlier, is the protocol and the impact the protocol is having on our constitutional relationship with the rest of the United Kingdom and on our economic relationship—the fact that Northern Ireland is now separated from the UK internal market with a border in the Irish Sea. We could talk about reform, but, for me, this is huge. We need to resolve this issue. This is getting in the way of the kind of normal relationships we would expect to have with the rest of the United Kingdom.

Baroness Doocey: Would it be fair to say that that is much more important to you than any other reforms that people are working on at the moment under the UK's territorial constitution?

Sir Jeffrey Donaldson: Yes, undoubtedly, that is the case. Addressing the problems created by the Irish Sea border in the protocol is hugely important for Northern Ireland. The protocol has brought about a change in our constitutional status, and that has not been set in any context of reform. So, yes, this is hugely important for us. We need to resolve this. To be honest with you, talk of other reform is secondary to the need to restore Northern Ireland's place fully within the union, in both constitutional and economic terms, because that is the wish of the majority in Northern Ireland.

Baroness Doocey: And if that is not done?

Sir Jeffrey Donaldson: Then I fear for the political and economic stability of Northern Ireland. In circumstances where the east-west relationship—our relationship with the rest of the United Kingdom—is

harmed on a daily basis, that undoubtedly has an impact on the north-south relationship and on the internal relations within Northern Ireland. The Belfast/Good Friday agreement represents a very delicate constitutional balance, and it was on that basis that unionists and nationalists supported it and the St Andrews agreement, which resolved some of the issues that had not been fully addressed in the Belfast agreement.

To tamper with that very delicate constitutional balance takes a real risk with the stability of the political institutions and of Northern Ireland. The Government need to do what they said they would do in their Command Paper published earlier this year and put that right, because, unless we deliver the solutions that are required and remove these barriers to trade and the political instability they create, I fear for the stability of the political institutions.

Baroness Doocey: Thank you very much.

The Chair: That is an appropriate time, Lord Howell, to bring you in.

Q132 **Lord Howell of Guildford:** Those last words from Sir Jeffrey are rather a sombre and sober reminder of the dangers we are in. I want to say first how much I welcome, Sir Jeffrey, your thoughts about strengthening the union Parliament and modernising the committee structure here to enable better forums to be created in which these very difficult issues will be discussed. I really wanted to ask you about something different.

You were talking to Lord Dunlop earlier about strengthening the UK-Ireland relationship as part of the jigsaw—the context—in which this balance can be maintained. Could you talk a little more about that? As you say, the lack of consent inside Northern Ireland is a constant problem because there is a large chunk of the electorate who, as nationalists, do not really want Northern Ireland's constitutional status to stay the same; they want it changed. One of the ways in which they want it changed is all sorts of new ties with Dublin and the Republic. What ties do you think can be really strengthened without leading into the conundrum of possible reunification?

In my time in Northern Ireland, we had very many practical arrangements, which I could enumerate. Do you see ways in which London and Dublin can really get together in new and constructive ways and change the whole context of this very awkward debate?

Sir Jeffrey Donaldson: The first thing we need to do is to restore the very delicate constitutional balance that is at the heart of the Belfast and St Andrews agreements, because that is where we have the source of the current instability. As I have said, it was foolish to tamper with those constitutional arrangements because both unionism and nationalism had signed up to them. Both unionists, who of course want to remain part of the United Kingdom, and nationalists, who aspire to a united Ireland, accepted that very delicate constitutional balance, and yet it has now been upset by this protocol. The first thing we need to do is to rectify that situation and we need to restore that constitutional balance. When that

happens, I believe that post Brexit there is a need to strengthen the three sets of relationships.

If we look at the east-west relationship, for example, there is scope for the UK and the Republic of Ireland to do more collaboratively, and that includes in areas where the EU has competence but where there is scope for co-operation. For example, agri-food is a big sector in both Northern Ireland and the Republic of Ireland, but there is scope for co-operation there that could be taken forward. Fisheries and cultural issues are other areas. There are many areas where we can strengthen co-operation between the Republic of Ireland and the United Kingdom post Brexit in a way that does not compromise the Republic's membership of the EU but makes sense in terms of developing good neighbourly relations.

Equally, when it comes to north-south relationships and the work that is taken forward collaboratively between the Northern Ireland Executive and the Irish Government, there is scope to look at how we can continue and build on that co-operation. Again, we are in a real difficulty here, because unionists feel their relationship, and not just their relationship but Northern Ireland's relationship as a whole, with the rest of the United Kingdom has been undermined by this protocol. That is affecting everyone in Northern Ireland, not just unionists. We need to rectify that problem and do so quickly so that we can explore the potential for strengthening the other sets of relationships, not least that between the United Kingdom and the Republic of Ireland.

Lord Howell of Guildford: We all know the absolute incompatibility between the total priority in Dublin for the Republic remaining in the EU and the desire to keep the border open. That creates a basic incompatibility out of which arises the whole of your concerns now. We can go round and round here, but is there an escape route? Do you see Dublin ever thinking in far more advanced terms about its relations with the United Kingdom? We have the common travel area. We have all kinds of common links in practical areas of transport, energy and so on. These are the everyday issues that would actually affect people rather more than the constitutional dramas.

Is this the way that London should be encouraged to go? Should we be a lot more understanding of Dublin than we have been in the past, and should Dublin be a lot more understanding of Britain than its history has led it to be, so finally invalidating the old and constant undermining force of a desire for a united Ireland?

Sir Jeffrey Donaldson: I think that is absolutely right. I would like to see that greater and mutual understanding develop. The common travel area is quite a remarkable thing that allows for the free movement of people across these islands. It was welcomed that the European Union conceded that the common travel area should remain in place post Brexit, but it begs the question: if you can allow the free movement of people, why did we get so worked up about the movement of goods? When one considers that the goods that flow across the Irish border represent a tiny, tiny proportion of overall EU trade, the risk to the EU

single market is minuscule, and yet the EU has brought forward the sledgehammer, if I may use that description, called the protocol, to crack what is, effectively, a nut—a tiny amount of trade that flows across the border. We do not want a hard border on the island any more than we want a border in the Irish Sea.

Are there pragmatic solutions similar to the pragmatic solutions we found to keep the common travel area in place that could be applied when it comes to trade? I believe there are. I believe there are systems and practical arrangements that could be put in place that safeguard the EU single market and allow for goods to be checked that are in transit to the EU single market while allowing the free flow of goods within the UK internal market. It is entirely possible to do that. If it is possible to do it with the movement of people, why on earth is it not possible to do it with the movement of goods? I hope that we will see greater pragmatism.

I am encouraged by what the Irish Prime Minister and the EU chief negotiator, Maroš Šefčovič, have said about the need to find practical solutions. I hope that the engagement that will take place over the next few weeks will indeed find that pragmatism leading to a solution that removes the unnecessary Irish Sea border and puts in place practical and sensible arrangements that enable us to build the kind of mutual understanding that you quite rightly have spoken of.

Lord Howell of Guildford: Thank you.

Q133 Lord Hennessy of Nympsfield: Sir Jeffrey, I was very struck by the point you made about how one regards the British constitution as a whole depends on where you see it from—the perspective is different—and the danger of the dominance of the English perspective being treated as if it is the only one. I think it is true to say that since 1921 constitutional matters have been a considerable and constant concern—acute concern—to the people of Northern Ireland in a way they have not been for the people of England anyway until recently, where there has been a marked indifference to constitutional matters. There is a smug view that we have this terrific unwritten constitution that was the envy of the world full of unspoken checks and balances. In Northern Ireland, you have lived every day with the constitutional question since 1921.

How do you view the constitution as a whole, building on Lady Doocey's question? Michael Gove, when he came to give evidence, described it as loose and baggy, and thought it was a wonderful thing being loose and baggy. What does the British constitution as a whole look like to you? I do not think anybody has ever asked you that before, have they?

Sir Jeffrey Donaldson: They have. There is a constant debate about whether the United Kingdom should have a written constitution in similar form to other countries. Of course, Northern Ireland does have, in a sense, a written constitution through the Northern Ireland Act 1998, which superseded the Northern Ireland Constitution Act, which previously was the framework for governance arrangements in Northern Ireland.

I am sympathetic to the view, generally, that, "If it's not broken, don't fix it". That is not to say that our constitutional arrangements cannot be improved; I believe they can, but I am not convinced that the route to take necessarily is a written constitution.

It is a debate we are open to participate in and to listen to the views of others. As I say, I remain to be convinced, but I can see that as the debate on Scottish independence, the constitutional arrangements for Northern Ireland and, indeed, the continuing debate in Wales goes forward, perhaps there is a need for looking at whether we should have a constitutional convention in the United Kingdom to examine how we take forward our constitutional arrangements in the future. Can we tighten them up?

I am not unsympathetic to the view that Michael Gove expressed. Sometimes, when you go tampering with things that have passed the test of time, it is not necessarily a good thing. You open up issues that maybe are best left not opened at this time. However, we cannot ignore the fact that constitutional arrangements in the United Kingdom are a matter of hot debate in Scotland, Wales and Northern Ireland, but increasingly in England as well. So, maybe the time has come to look at some kind of constitutional convention where we consider these matters as a whole and not just in silos—Northern Ireland on its own and Scotland on its own. That would perhaps provide a way of England being more engaged in that wider constitutional debate.

Lord Hennessy of Nympsfield: Can I follow up briefly, Chair, with a personal question, if Sir Jeffrey will allow me, on what you described as your mandatory coalition system? You are one of a tiny handful of people in the UK, not just in Northern Ireland, who can collapse an Executive. From what you have said recently, you may do it in a matter of weeks. The word "awesome" is overused; it is almost a piece of linguistic litter, but that kind of responsibility on your shoulders and on the shoulders of one or two others in Northern Ireland is truly awesome. How do you live with that, because you know, do you not—we all know—that if you did that in the next few weeks it would send a convulsion through Northern Ireland politics, UK politics and European politics too? It rests on you, Sir Jeffrey. How do you live with all that day to day? I could not do it, to be honest.

Sir Jeffrey Donaldson: It is a huge responsibility. The cut and thrust of Northern Ireland politics—and I have been around Northern Ireland politics now for well over 30 years—perhaps prepares you for taking on such responsibility. To be clear, it is not a decision I want to take. I really fervently hope that we can find the solutions that are required to avoid the collapse of the political institutions because we have all invested so much in those institutions and in developing and strengthening stability in Northern Ireland. That is why I worry about the impact of this protocol because it has the potential to drag us backwards. It has the potential to undo much of the good work that has been done.

If the EU in particular is serious about protecting the agreements and the political stability in Northern Ireland, it needs, if I may say so, to rise above its sense of regret—I put it no stronger than that—that the UK has left the European Union and stop using Northern Ireland as some kind of political football. It is a dangerous game, and Northern Ireland should not be used—if I may use another sporting analogy—as some kind of ping-pong between the UK and the EU. The delicate constitutional balance that represents the political dispensation in Northern Ireland is too fragile for people to play games with it. Therefore, I am trying to call people up, call them out and say, “Hold on, this needs to be sorted. We can’t drag this out interminably month on month. It is harming the economy”.

Peace and prosperity are twins. They go hand in hand. If we are to build the peace process in Northern Ireland and strengthen stability, prosperity is part of that. Right now, our economy is being harmed by this protocol. You are right: it is a huge responsibility. I hope that in time, going to the heart of the question that this committee is addressing, we can reform the way that these things work so that in future we move away from mandatory coalition and people having what you describe as “awesome responsibility” to an arrangement whereby we develop consensus politics in Northern Ireland. That was what the agreement was designed to do, but it has not yet achieved it because, as Mark Durkan said, the ugly scaffolding of the Good Friday agreement is now getting in the way of the kind of consensus approach to politics in Northern Ireland that we really need if we are to move forward. To get to that point, we need to restore the delicate constitutional balance. That means dealing with the protocol and removing the barriers to trade and the harm that this protocol is doing to our economic and political stability.

The Chair: Can we move on then to funding arrangements? Lord Howell, can I bring you in?

Q134 **Lord Howarth of Newport:** Good morning, Sir Jeffrey. You have deprecated the tendency of the UK Government to legislate in devolved areas, although you accepted that it was appropriate for the UK Government to act for the UK as a whole where Covid was concerned. You have stated your view that some of these interventions have not been balanced or proportionate. What are your views about the UK’s powers to spend money in devolved areas under the internal market Act 2020? An example would include the application of the UK shared prosperity fund.

Sir Jeffrey Donaldson: In those circumstances, if the allocations that are made to the devolved Administrations are consistent with the Barnett formula and are in addition or what we might call Barnett consequentials, it is right that the UK Government have a role in setting the overall framework within which that spending takes place.

However, as I have said earlier, there is a need for greater consultation on this. If the UK Government in a non-emergency situation are developing a policy that has UK-wide application and has major spending implications, we need to see more dialogue, as we mentioned earlier, and

more engagement with the devolved Administrations about how that policy is developed. Yes, in principle, it is right in certain circumstances for the UK Government to set the overall policy framework, but provided and subject to the caveat that funding allocations that are made are in addition to Barnett and that the devolved Administrations benefit therefore from that additional spending.

Lord Howarth of Newport: So you would be content with consultation. You would not go so far as to demand that the Northern Ireland Executive should have a formal part to play in deciding on the precise allocation of such resources.

Sir Jeffrey Donaldson: That is perhaps for future conversations about what we have spoken about in terms of the existing constitutional arrangements. If consultation is meaningful and real, and it is not a last-minute approach to things, but that the devolved Administrations and—I go further—Members of Parliament in the Lords and Commons are included in that consultation prior to the development and decisions on those wider policy frameworks, for me, that is probably sufficient at the moment, pending any further proposed change to our constitutional arrangements.

Lord Howarth of Newport: A year ago, Northern Ireland's Finance Minister, Conor Murphy, was quite angry about the internal market Bill. He said that the arrangements were greatly concerning and could, indeed, have huge implications for the Good Friday agreement. Was that an overstatement?

Sir Jeffrey Donaldson: I do not want to get into too much party politics in this submission to the committee, but I will simply say this. There are some political parties in Northern Ireland that will make a lot of noise on some occasions, but when the UK Government intervene to do something that they perceive to benefit them there are rather fewer objections to that kind of action. I take these things sometimes with a pinch of salt. Parties will do what parties do and speak out when it suits them to speak out, but it is not always consistent.

The Chair: Thank you. Baroness Drake, can we bring you in here?

Q135 **Baroness Drake:** Thank you. Good morning, Sir Jeffrey. Staying with the allocation of the powers that the Government have taken under the internal market Act, to what extent do you think that examples devolve and take back? You put three caveats to the exercise of those powers: subject to the Barnett principles, allocations in addition to Barnett and consultation. If I could push you a little on the governance around the decision-making on those funds, are there particular measures or arrangements that you would want to see put in place to give you more confidence about how those powers under the internal market Act would be exercised?

Sir Jeffrey Donaldson: Yes. For a start, since it is the UK Government taking these decisions, perhaps we need to look at the level of

parliamentary scrutiny that takes place. We have the Northern Ireland Affairs Committee. It has a role in bringing Ministers to the committee and holding them to account in scrutinising some of their actions.

There is a case to be made once again for reverting to the kind of Grand Committee approach that we took to some of these issues—the Northern Ireland Grand Committee, the Scottish Grand Committee, the Welsh Grand Committee. Consultation could take place within those committees where Members of Parliament representing a devolved country—and indeed that could be replicated in the Lords as well—have the opportunity to have a say in what the Government plan to do in terms of those wider UK decisions that impact on spending decisions.

As well as looking at how the devolved Administrations might interact with the UK Government on this—and, as I have said, for the time being that involves greater, more proactive consultation—we should not stop there.

Enhanced parliamentary scrutiny on these decisions, particularly where they involve funding and there are consequences for the devolved areas, would give a greater role for Members of Parliament from the devolved countries. Sometimes, as a Member of Parliament from a devolved country, I think we are very much involved in taking decisions about England that affect England, but we are not so much involved, at least in the consultation process, in decisions that impact on Northern Ireland, Wales and Scotland. There is a need to look at the parliamentary scrutiny of these decisions as well as the interaction between the UK Government and the devolved Administrations.

Baroness Drake: Thank you.

The Chair: Sir Jeffrey, no one else has their hand up for a question, so we have completed the aspects that we wanted to talk to you about. I thank you very much for your time this morning. We value listening to a whole range of contributors, and it has been helpful to us to hear your views. Thank you very much.

Sir Jeffrey Donaldson: Thank you very much to the committee as well for this opportunity.

The Chair: Thank you. We will close the meeting there.