



Select Committee on the European Union

Uncorrected oral evidence: Brexit: devolution

Wednesday 15 March 2017

9.35 am

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Members present: Lord Boswell of Aynho (The Chairman); Baroness Brown of Cambridge; Lord Jay of Ewelme; Lord Selkirk of Douglas; Baroness Suttie; Lord Trees; Baroness Verma; Lord Whitty; Baroness Wilcox; Lord Woolmer.

Evidence Session No. 13

Heard in Public

Questions 124 - 131

Witnesses

I: Lord Hain; Lord Hunt of Wirral; Lord Wigley.

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Examination of witnesses

Lord Hain, Lord Hunt of Wirral and Lord Wigley.

Q124 The Chairman: Good morning, my Lords. It is a pleasure to have three Members of our House with us this morning, designed to give a representative feel for opinion across Wales and in pursuit of the inquiry we are carrying on in all the devolved territories of the United Kingdom on the implications of devolution for the devolved nations of Brexit.

We are in this room partly for technical reasons. Later in the morning we are going to take evidence by videoconference from Mark Drakeford on behalf of the Welsh Government. We need to be in a room that can accommodate that. I am sorry for the distance, but I think we are all used to projecting our voices.

You will be familiar with the normal rules of engagement. This is a public evidence session. It is on the record; we will record it and send you a transcript for any factual corrections. It is also fair to say, not least because you are about the place as we are, that we regard this as a continuing exercise over the next couple of years. We will report, but we are very much in the business of wanting to get views, perceptions and representative opinion across the piece. We hope that we can have a relaxed and informative discussion with you.

In chairing, I ought perhaps to declare an interest as a former participant in Welsh higher education. I was deputy chair of governors at Cardiff Metropolitan University laterally, although I no longer serve in that capacity. I take a continuing interest myself, not least because my wife is from the principality but not Welsh-speaking. We have agreed that we will conduct this in English.

Having completed the transparency bit and welcomed you, I will kick off with a general question and then my colleagues will want to come in, as you know. How you find it convenient to answer and in what order is very much up to you. I ask the three of you individually what your reaction is to the Prime Minister's Lancaster House speech and the subsequent White Paper, which sets out the UK's approach to Brexit negotiations. What are the political, economic and legal implications for Wales and the other devolved nations of the Brexit model that the UK Government are pursuing? I think you have some form in that area, and we are also all bearing that issue in mind.

Lord Hain: My colleagues have volunteered me to start on this one, at least. Thank you very much for inviting us and for the work you are doing, which has been extraordinarily helpful to the debates on Brexit, especially the one I read very carefully on Northern Ireland.

The Prime Minister's Lancaster House speech was fine on sentiment, but the reality will be the test. There was very little clarity about the devolved legislatures, including the devolved nations. I thought her speech in September at the Tory party conference when she said, and I paraphrase, "We voted in the referendum as one UK, we are negotiating as one UK and we will leave as one UK", begs a whole lot of questions. I

wonder whether still lurking in her mind is some of the dead weight of the Home Office, which in my experience as a Secretary of State for Wales and Northern Ireland is the most hostile of the government departments to devolution. I hope that she will see her role in a much more inclusive fashion, as I am sure she will seek to do.

Lord Hunt of Wirral: I also commend the work that you are doing in this Committee and your sub-committees, which I believe sets the gold standard, particularly for the other place, in how to tackle some very complicated questions. Although you may not have read it yet, I should alert you to the fact that the Select Committee on the Constitution, of which I am proud to be a member, has just, last week, published its ninth report on the great repeal Bill and delegated powers. We focused, in the light of the Lancaster House speech of course, on the domestication of EU law.

We stressed that the UK Government have to make clear what they envisage the role of the devolved institutions to be in the process of domesticating EU law, and whether Ministers for the devolved institutions will be responsible for preparing amendments to those elements of EU law that will, following Brexit, fall within their competence.

My overall view is that the positive argument for Brexit set out by the Prime Minister at Lancaster House was to bring power closer to the people. It is therefore essential, as the UK leaves the structure of the European Union, that there must be no power grab by Westminster. I would like to return in more detail to that a little later, but certainly I welcome the setting up last month of the Joint Ministerial Committee on EU negotiations. I understand that detailed proposals as set out in the *Securing Wales' Future* document are now part of the discussions between officials from the two Governments.

There are common objectives, which no doubt you will hear a bit more about. I know that my good friend Lord Wigley will also want to stress those common objectives, which are as free as possible access to the single market, a migration system that encourages the brightest and the best to come to this country, and the earliest agreement to secure the status of EU nationals living in the UK and UK nationals living in the EU. No doubt we will return to those points a little later.

Lord Wigley: Thank you for the opportunity to appear before you. We very much welcome you undertaking this inquiry. I perhaps come, as has been partly alluded to, from my background in industry. It is the economic side that concerns me most. I worked for three supranational American corporations before entering Parliament: Ford, Mars and Hoover. Therefore, the effect that these decisions will have on such inward investment is very close to my heart.

With regard to the paper, I will be honest and say that my reaction was one of dismay. The Prime Minister's speech and White Paper seemed to confirm the UK's intention of pulling out of the single market. It is difficult to stress how important the EU single market is to the Welsh economy,

even more so than to the rest of the UK. Last week's trade statistics show that the European single market continues to be Wales's largest trading partner, accounting for 67% of all Welsh exports. Last year, Wales had a £2.25 billion trade surplus with EU countries and a £2.3 billion trade deficit with non-EU countries.

The failure to come to a comprehensive free trade agreement with full participation in the European single market, particularly with regard to the US companies here, would be disastrous for our manufacturing industry, which is worth £9 billion to the Welsh economy. A Brexit deal that withdraws the UK from the single market would mean that Welsh exporters would have to pay the EU's common external tariff, and without any new agreement it would have to trade according to WTO rules. This would be disastrous for Welsh exporters. Food exporters, for example, would have to face a tariff of 15% on exports to the EU. Our cars would be subject to 10%. Those sorts of thresholds are ones that are really worrying. It is in that context that I have some misgivings about both the speech and the White Paper.

The Chairman: Thank you for those initial comments and for your courteous reference to the work of our Committee. I can assure those listening that this is not meant to be, and nor will it be, a love-in but a serious examination of the issues. You have all started to rehearse the matters we want to return to.

I am beginning to try to draw together themes we have heard, and you have come in at the beginning of the maturation of the process of a report. Would it be fair to say that there are two separate concerns, which I think have been reflected in what we have heard already? One is that Wales, and the other devolved nations but we will concentrate today on Wales, has separate or distinctive interests, be it a high concentration of manufacturing industry to which Lord Wigley has just referred or a high concentration of the sheep industry and hill farmers as an example from agriculture, where I also have some background.

There is the question of distinctive interests that will be very familiar to anyone who has had executive responsibilities in or around Wales. The second one is the representation of those interests in the negotiations. It could be, shall I hypothesise, that Whitehall might have got the point about there being some particular relevance to the principality, but because of the way in which the negotiations are structured or the time factor, or trade-off issues, and notwithstanding those interests, they might somehow get buried in the process?

Is that a helpful way of looking at it? First, does Whitehall understand the issues that worry you, and, secondly, can it accommodate representing those issues? Does it have the firepower to do so in its negotiations?

Lord Hunt of Wirral: The answer simply is, no, it does not, and yes, it will.

The Chairman: No, it does not understand, and yes, it will

accommodate.

Lord Hunt of Wirral: Yes.

The Chairman: If it were to understand.

Lord Hunt of Wirral: We set out in our report last week that new interfaces have to be established. In a way, my experience of politics in Wales dates back from birth to the pre-devolution era. Therefore, I am probably approaching it in a slightly different way, but I agree that there is a huge opportunity here for the devolved legislatures to have the freedom to legislate in devolved areas that are currently circumscribed by EU law. Therefore, the UK Government and the devolved Administrations have to manage these new interfaces and potentially overlapping responsibilities between reserved matters and devolved competence in areas where the writ of EU law no longer runs. That is going to be a great challenge and it will require a great deal of discussion.

Lord Hain: In terms of the broad picture and to add to what David has said, we have an asymmetric structure of devolution in the UK. It is very different in each of the three cases. I do not see why there could not be different solutions for each of Wales, Northern Ireland and Scotland appropriate to their interests and their needs, or in Wales's case our needs.

Obviously, there is a different political imperative in the sense that, as we all know, Scotland and Northern Ireland voted to remain, and Wales voted alongside England to leave, much to my regret. There are different politics but they are very different structures, and I think we should start from the presumption that there is not a uniform, one-size-fits-all approach to this. It has to be tailored to the particular needs of each of the nations and, in Northern Ireland's case, the particular Good Friday settlement context in which that should be viewed.

Lord Wigley: I would agree very much with that. There is a need to approach this with flexibility and mutual respect, with certainly a willingness to avoid a one size fits all model.

The principle of subsidiarity that has been so central to the development of the European Union is something that ought to come into these considerations. That may well work through in slightly different ways in different areas.

If that is the case, it is very important indeed that there is a close working relationship between the Administrations in Cardiff, Edinburgh and Belfast with those who are negotiating at the coalface in the discussions going forward. Creating a bond of trust and a willingness to listen may be a key to making the whole process more acceptable in the devolved areas.

The Chairman: Thank you. I think that takes us very readily into Lord Woolmer's question.

Q125 **Lord Woolmer of Leeds:** To use the Prime Minister's words in her Lancaster House speech, she committed to "working with the administrations of Scotland, Wales and Northern Ireland to deliver a Brexit that works for the whole of the United Kingdom".

I have three questions. Do you think it is possible to respect the referendum result while at the same time taking into account the different views across the nations of the UK as expressed in the referendum?

Is it possible, in your views, for the nations and regions of the UK to have differentiated terms of exit from the EU, or is a consistent approach across the UK the only viable solution?

You have touched on the paper *Securing Wales' Future* already. How realistic in the context of the Brexit negotiations are the proposals set out there?

Lord Hain: This is obviously all complicated stuff. If you take Wales as an example, I thought the First Minister, Carwyn Jones, very clearly set out a series of areas that bear directly on your question. He pointed out that Wales is in receipt of considerable common agricultural policy funding. Wales is also in receipt of probably the highest per capita level of European structural funding, with the possible exception of Cornwall. It is terribly important in west Wales and the valleys.

That has to be tailored. It has to be recognised in how the consequences of Brexit are negotiated between London and Cardiff in this case. There are also issues that follow from that on the Barnett formula and the block grant. How do you readjust and reconfigure that to take account of the lost funding directly from Brussels, in the case of agriculture and structural funds for example, which will now presumably have to come directly through the block grant via the Barnett formula from London?

I would hope that the promises of the leave campaigners that there will be no shortfall are going to be honoured. They all made it clear when they visited Wales—I remember this very clearly—that Wales would not lose out in terms of agricultural support and structural funding support; that would come from the Treasury via the block grant and the Barnett formula.

That seems to me to go right to the substance of two key areas to which we need to see answers.

The Chairman: On that point, as I understand it, given that a lot of the EU money coming at the moment—I think you stand to lose £670 million, if I remember the figure—is needs related or related to specific industries, be it hill farming for example, if that were simply to fall to the Treasury in Whitehall and to be redistributed on the current Barnett formula, that would lead to a net loss to Wales. You are nodding. That is at least an area on which we have already heard some technical evidence.

Lord Hain: Absolutely, Chairman. You need to adjust the floor of the Barnett formula in those respects, both in terms of agricultural funding and structural funding.

Lord Wigley: I will come in on that. I believe that the Barnett formula may be singularly inappropriate for trying to redistribute a sum like the gross sum of £670 million that you referred to. Quite clearly, these moneys have come into existence because of specific dimensions and needs within the Welsh economy. You can think of the agricultural structure, highland farming, the sheep meat regime and all the rest. You can think of the poverty in the old industrial areas. Therefore, any formula that is not needs-g geared is going to lead to a significant loss.

There were a number of questions asked. I do not believe that there has been an acceptance in the approach from the Prime Minister of the need to be sensitive to the different aspirations and circumstances in the various parts of these islands. Indeed, I suspect that, had there been a more sensitive approach to that, we would not have had the statement made by Nicola Sturgeon on Monday of this week. She was clearly looking for some way of access to a single market. Were it possible to differentiate in a way that would allow that question at least to be addressed, I suspect that she would still be on board in a different way from what exists now.

There is a differentiated situation already, of course, within the United Kingdom. Think of the situation of the Channel Islands. By virtue of Protocol 3 of the UK accession treaty they are in the customs union, and for the purposes of trade and goods are essentially in the single market as well, and yet they are outside the European Union as such.

If you look at other countries, Denmark is a member state but it has part of its territory, Greenland and the Faroe Islands, currently outside the EU and the EEA. That situation will develop even more if the Faroe Islands becomes a member of EFTA, as is currently under consideration. The Faroe Islands has asked the Danish Government to support that application.

These models were explored in detail in the Scottish Government's EU White Paper as an alternative to the UK hard Brexit proposed in Mrs May's White Paper. I believe that there will be a need to return to an approach of greater flexibility if we are going to avoid this becoming totally divisive.

Lord Hunt of Wirral: There are three questions. On the first one, respecting the result, we have to remind ourselves that the 854,572 people in Wales who voted for leaving the EU, compared with the 772,347 who chose to remain, is pretty close to the UK average. Therefore, of course, we will respect that. The majority is much bigger than it was in favour of the Welsh Assembly, but I respected that decision and I am determined now to work on it.

Secondly, it is possible to have different terms. If I could just throw into the mix the very special status of Wales, recently we have seen a remarkable cultural and economic renaissance. Wales is very much an outward-looking place and will remain so despite what happens in these discussions.

My memory is that a generation ago there was a danger that the Welsh language would slowly wither away and die through demography, neglect, et cetera. The resurgence of Welsh culture and influence in recent times, paying tribute to Lord Roberts of Conwy, who worked with me on getting through the Welsh Language Act, is inextricably linked to that marked revival of the Welsh language. So Wales is a very special place and therefore requires a different approach.

It is essential that cultural, political and trading links are maintained with the rest of Europe. I will just give one example. I do not want to see any new restrictions on people travelling to cultural events in Wales. I want to see the Welsh language as a special working language within whatever institution emerges.

Q126 Lord Trees: Good morning, gentlemen. I have quite a few sub-questions here and I hope you have copies. Essentially, it is all about the repatriation of powers. As the Prime Minister has said, she wishes to be very careful to ensure that the right powers return to Westminster and to the devolved Administrations. I suppose the first question is: what do you think are the right powers in that context?

Are there any EU competencies relating to devolved matters that you think should be reclaimed by Westminster? Conversely, are there powers currently reserved to the UK Government that you feel should be devolved post Brexit?

Do you think the devolved Administrations have sufficient capacity to deal with all these additional potential responsibilities?

Looking longer term, what do you think are the long-term implications constitutionally and for the balance of powers within the United Kingdom, and the long-term integrity of the single market of the UK?

There are a lot of questions there.

The Chairman: I think it may be sensible if we end-load the answers and talk first about the powers as such. If you want to return later, or indicate that you wish to do that, with some of the more long-term perspectives, that might be helpful. Clearly, they are absolutely central to our inquiry.

Lord Hunt of Wirral: It is all about making sure that the right powers are returned to Westminster, and then the right powers are passed to the devolved Administrations. These are early days. I would have thought the guiding principle is to ensure that there are no new barriers created to living and doing business within our own union. That means protecting our own domestic markets so that the UK can strike the best trade deals

around the world and protect our common resources. That really must be the benchmark.

There is a need for this close working relationship now with the devolved Administrations and making sure there is no grab for power. During my time as Secretary of State—I do not know about Peter—I kept on trying to secure more devolved powers. I found I was up against a machine, particularly over the police. I had actually agreed with the Home Secretary that powers so far as the police were concerned should be devolved. Ken Clarke agreed, we all agreed and we shook hands on it. Then I blinked a couple of times and nothing seemed to happen for six months. I chased Ken and he said, “Oh, sorry, yes”.

There is this almost automatic reflex action to say, “No, it is far better to leave it where it is”. I would be a little more radical. This new situation gives the Welsh Assembly a huge opportunity now, and no doubt Dafydd will have his very strong views on this, to make Wales an even more outward-looking place.

I would prefer to go back to what I termed the old motor regions model. I think it is worth a fresh look: developing between Wales bilateral and multilateral links post Brexit with similar regions and countries elsewhere in Europe.

The Chairman: I think I am right in saying that Wales is collectively twinned with Baden-Württemberg, for example, which must be from my own experience the most successful Land in Germany.

Lord Hunt of Wirral: Yes, and I signed the treaty, Chairman. I was told by the Welsh Office that I had no power to sign treaties. Fortunately, I happened to see the Foreign Secretary in the margins of Cabinet and I said, “Oh, I have just signed a treaty with Baden-Württemberg”. He said, “Oh good”. I went back to the Welsh Office and said, “I now have the full authority of the Foreign Secretary”.

The Chairman: This is becoming a very interesting seminar on the workings of Whitehall.

Lord Hain: My experience is very similar to David’s, albeit it was under devolution. I noticed, for example, in the recent Wales Bill that there was a very aggressive attempt to reclaim some powers there under the guise of the reserved powers model.

Be that as it may, should any competencies be returned to Westminster? My default position is no. I think that would be very negative and very unpopular in Wales. However, the areas that trouble me—it would be really good if you have not had an opportunity as a Committee to date to have a close look at it, and I would be interested in your answers—would be trade policy, environment policy, agriculture and fisheries, where there is an external foreign policy element as well as an external element between the nations. For example, fishing in the Bristol Channel has both a Welsh and an English interest in it. There will be many other examples.

This is the area to which I think we need to pay the most attention and give the most scrutiny. As I say, it is those areas where there is an external impact of a domestically devolved policy, which will become further devolved with Brexit.

You asked whether there were any powers currently reserved that should be devolved. I am not a fishing expert; I was never a Fisheries Minister. I notice that fishing quotas are devolved in Scotland but not in Wales or Northern Ireland, for example. That is an area that you may want to look at. I do not know what the Welsh Government's view is on that, but it seems to me that it is something that should be scrutinised. Again, I would be interested in your answers on that.

On the question of whether there are resources for taking on the additional responsibilities, the answer is plainly not. In the Welsh Government, there is not the same kind of equivalent resource that you got in UKRep in Brussels, which I have seen at close quarters as a Minister, especially as a Europe Minister. I think that an extra allocation of administrative and expertise resource will need to be given under either a Barnett formula or some reconfigured block grant allocation.

Do you want me to deal with the wider implications, because I would like to say something on that?

The Chairman: None of these are micro points, but it would perhaps be sensible to deal with it here from your own experience as a Europe Minister, looking at UKRep. That is a small team you see up front at the head of a delegation, as we typically do on visits to Brussels. There are some very serious officials who can advise us and help us.

Is it a natural go-to for the Welsh Government also to be represented? I am not sure whether there will be seconded officials day to day. I am not talking about the negotiations; I am talking about current business, as it were. Is that as important as the Welsh Government's office in Brussels? How do you get those thoughts across, or will that also need to change? That is a micro point, but I think it is an important one.

Lord Hain: I think it will have to change because the Welsh Government has its own office in Brussels, as you know. That is important and its capacity has extended over the years, and quite rightly so. UKRep is right at the centre of the inner core of the European Union institutions, with the Commission, the Council and the Parliament, in a way that the Welsh office in Brussels does not have the same capacity or reach. As Europe Minister, I was aware that the Permanent Representative would be in constant touch with their opposite numbers as well as the particular specialist policy staff members under the ambassador. You notice all of that. I do not think that the existing Welsh capacity—that is in no sense to criticise it—has the firepower proportionately that you get from UKRep. I am sure that will be true of Northern Ireland and probably Scotland as well.

The Chairman: Thank you. Would you like to go on to your wider

thoughts?

Lord Wigley: Could I pick up one point that Peter is making with regard to UKRep? We are singularly fortunate in that the new head of the Civil Service in Wales, Shan Morgan, was deputy head of UKRep, so she brings in that perspective as well as the contacts that may well be necessary.

With regard to that, the lack of capacity is probably a lack of expertise in depth. There will be pressure, as there is pressure on the Civil Service in Whitehall now, to get people with that background.

Going back to the more general question with regard to the repatriation of powers, the first thing I would say is that we have just had the Wales Act that has gone through Parliament. That has changed the basis of the model of devolution to the reserved powers model, which means that the assumption is that everything is devolved unless it is specifically retained at Westminster. Therefore, I believe that should be the approach with regard to the powers coming back from Brussels. If they are in devolved areas, then the assumption would be that they would be devolved.

The Chairman: For the record, Lord Hunt is nodding.

Lord Wigley: It is an approach that at least gives some guidance as to a common-sense basis of going after it.

Lord Hain: I am also nodding.

The Chairman: That is very useful. I will pick up that specific with Lord Wigley first. Are you looking for a situation where they are conferred to the devolved Administration, and then, maybe to the extent that it is expedient, reconferred by some arrangement, possibly on a shared competencies model?

Lord Wigley: Indeed. When functions are repatriated from Brussels, there may well be the assumption on the subsidiarity rule and the retained powers model that that they come to Cardiff, and then as they work out it may be that problems arise that need to be addressed. The question was asked about the UK single market and the same sort of level playing field is needed within that.

Chairman, I do not know whether or not you have been presented with a document that was prepared by Dr Jo Hunt of the Wales Governance Centre in December.

The Chairman: Yes, we have that.

Lord Wigley: You will have seen paragraph 8 of that document where she says that, post Brexit and within the scope of its devolved powers, Wales could decide to regulate in line with EU measures in preference to new UK laws.

That opens a whole raft of questions and the way one approaches it. If that is going to be the case, clearly it is in the interests of the

manufacturing industry in Wales exporting to Europe that there is that commonality with EU regulations, but it has to be done in a way that does not distort the market within the UK single market. There is a balancing act there, and that comes back to the need to have mechanisms of discussion and even arbitration. There is a question as to whether what has been set up so far with regard to a discussion model is going to work effectively. There are a lot of reservations as to whether that will work. That may be the subject of another question that you want to come on to.

The Chairman: I think we owe Lord Hain another round on his vision of the future.

Lord Hain: I think there is going to be both an imperative and a necessity to deal with the wider constitutional fallout from Brexit on Wales, Scotland and Northern Ireland. This goes to the heart of the report drawn up by the Constitution Reform Group, of which I have been part and which is chaired by Lord Salisbury, the former Leader of this House. It is an all-party group, and Lord Campbell of Pittenween, is also on it.

We have looked at reversing the whole nature of devolution by drawing up a new Act of Union. There is a draft Bill in place that we presented to the Constitution Committee of this House. Essentially what we have had up to now is a top-down model of devolution. In other words, Whitehall devolves powers by agreement and through Parliament. This model projects a bottom-up form of devolution. In other words, you turn it on its head so that Scotland, Wales and Northern Ireland—and, for that matter, any English regions, including London—would be able to decide what powers they want best to be shared at a federal UK level.

I think that model would better suit the consequences of the fallout from Brexit. It would keep the union together, which is important from my own political point of view, but also make sure that all the interests of the different nations—and in our case Wales's interests—together with Northern Ireland are protected. I do think that we have to look at that. That might deal with some of the stresses that are coming particularly from Scotland and Northern Ireland at the moment.

The Chairman: Do any colleagues want to come back on that? It occurs to me that we are on the edge of, and would not wish to trespass on, the work of the Constitution Committee. We need to respect that, but our thinking would, one hope, emerge in a way that was complementary to its thoughts.

Lord Jay of Ewelme: I was very interested in what Peter Hain was saying about those elements of what are now devolved policy that have international foreign policy aspects. You mentioned trade policy, environment policy, agriculture and fisheries.

What is the best way of handling those elements that have a foreign policy element to them, which would normally be handled from

Westminster when the rest of the issue is devolved?

Lord Hain: This is a very thorny problem. Take environment, for example. On the one hand, acid rain does not stop at Calais. Just because we have left the European Union does not mean there is not an interface problem. The same is true for fishing, water quality and so on.

The default position has to be that these remain devolved and you do not repatriate. That is my default position. However, there needs to be some kind of interface. Intergovernmental machinery always implies enormous bureaucracy, which you have seen from the inside of government as have I, and it can be pretty deadly. Some kind of new, fresh intergovernmental relationship is needed to resolve these matters.

Lord Wigley: The question was raised with regard to agriculture, for example. Of course, within the EU itself the Welsh Minister of Agriculture has been the representative in Brussels, sometimes representing the UK Government on matters such as the sheep meat regime, where there is a speciality in Wales. Any move backwards from that would be regarded as a retrograde step in Wales, from the point of view of getting the needs of a specific sector important to the Welsh economy to be given the prominence that it needs.

Lord Jay of Ewelme: I suppose one could argue that the present arrangement, being members of the EU, enables these sorts of issues to be handled more easily than when they come back here. The tension is between Cardiff and Westminster rather than Westminster and Brussels.

Lord Wigley: That is why I have no doubt at all that there needs to be some joint UK Council of Ministers or whatever, established with a mutual respect and not the default position that Whitehall must be right and the other three administrations wrong. If that could be established, you could defuse problems before they become political ones. That must be the ambition.

The Chairman: We need to move on, but Lord Whitty has also caught my eye. Perhaps it is appropriate to declare an interest and say that, even if I am not Welsh speaking, on my farm in the past, at least, the majority of the sheep were.

Lord Hain: Welsh speaking or Welsh.

The Chairman: Both.

Lord Whitty: I have no sheep interests to declare. We are talking about powers, but powers are only implementable if you have the money. Peter referred earlier to a possible rejigging of the Barnett formula. Clearly, the money that Wales used to get, or has hitherto got, from the EU from agricultural and structural funds and so on was disproportionately large in relation to the rest of the country. On the other hand, it was probably slightly less than the Welsh contribution to our overall contribution to the EU budget.

You referred to an Act of Union, but even during the negotiation of the Act of Union in 17-whatever, money was a big issue. As part of the post-Brexit devolution settlement, would you expect a new Barnett formula to be part of that settlement; otherwise, whatever powers are devolved, if the Treasury decides on the allocation of money, those powers cannot be exercised entirely domestically within Wales? What would a new, post-Brexit monetary settlement look like for Wales?

Lord Hain: Much more generous than the present one.

The Chairman: Perhaps, in moving to the negotiations, you could give fairly short answers.

Lord Hain: You have put your finger right on the button on this in the sense that you have pointed out that Wales has a deficit of around £15 billion of income raised compared with income received across the board. We just have a low tax base relative to the UK average.

The Barnett formula as presently constituted is not going to deal with this problem. It needs to be rejigged and refigured. The problem is that everybody who has looked at changing it for something better has always gone back to it, because what you replace it with is not obvious. It will be very valuable if your Committee is able to identify with some precision precisely the points that Larry has made.

Lord Wigley: Successive Committees in this House have looked at the Barnett formula. Joel Barnett himself looked at it and said that it was way out of date. Had it not been for the commitment given in Scotland that Barnett was pretty well inviolate at the time of the 2014 referendum, we might well have been moving towards more of a needs-based formula. There has been a consensus in Cardiff that that is what is now needed.

In the long term, what is needed is to get the Welsh economy right so that we generate a higher income per head, generate the tax take that can come from that and pay for what we want. It really is demeaning that we are always cap in hand, looking for money. I would much rather we were not and did not have any of these gripes about not getting the money that we should, et cetera, et cetera. That comes back to the central economic question and how Brexit is going to impact on that.

Lord Hunt of Wirral: I agree.

The Chairman: That is very helpful. In the spirit of that, we move on to some perhaps rather shorter-span questions, but it was important to have explored those issues.

Q127 **Baroness Suttie:** Lord Hunt, you have already touched a bit on the great repeal Bill and the Constitution Committee's report. Could you say a little more about the role you envisage for the Welsh Assembly and the other devolved legislatures in connection with passing the great repeal Bill? Do you think they will have to legislate in parallel, or do you think they should indicate assent by other means such as legislative consent Motions?

Lord Hunt of Wirral: We have recommended a new approach. I do not want to rehearse what we have recommended, because you have referred to it.

On the overall approach, I welcome what the First Minister has said about the Welsh Government having to approach their work in new ways, but what does that mean?

We have touched on finance. That is key, because there is a history of underfunding, which I tried to tackle when I was responsible by getting additional money voted. It is so difficult to find a solution to the Barnett formula. I would really go out to get additional funding, bearing in mind the long-term sickness problem from which Wales suffers so much and the fact that we do not have a strong enough trading and industrial base ourselves, in particular with a changing world.

There is now an opportunity to try to put things right. I would be very interested in pursuing, as I say, the motor regions policy in relation to foreign affairs and trade, but within Wales there are huge opportunities to take more and more responsibility. I said before that I do not think any decisions now taken by the devolved Administrations should be removed from them. But, as the powers come over from Brussels, there is a huge challenge now to work out how Wales could seize the opportunity to have more influence over future prosperity.

We are all committed to a healthier and more prosperous Wales. I think it requires quite a close working partnership, particularly through the new Joint Ministerial Committee on EU negotiations. There is scope there for a consensus emerging if the First Minister actually means that there must be new ways. If the UK Government accept that approach, I am rather excited by the prospect that Brexit—although I strongly campaigned for remain—will give us the opportunity, as the White Paper said, to have a new partnership with the European Union and a new partnership for Wales within the European Union.

One of the great tragedies in life for me is that the Committee of the Regions never succeeded in the European Union, mainly because of the bureaucratic approach of Brussels. Freed from that opportunity, the challenge for Wales will be to forge a closer working relationship with the other motor regions of Europe, not necessarily only those within the European Union structure but right across. There is increasing evidence that Wales is stretching out more globally, and I greatly welcome that.

The Chairman: I am just thinking of follow-up comments. We started on the narrower tapestry of the actual nuts and bolts of the repeal Bill, LCMs, separate and devolved. Given that we have painted a fairly wide picture, it would be helpful if the other two responses can focus more on that.

Lord Hain: My default position—and I hope this is the position of your Committee and the Government—is that you should not be able to

proceed without the consent of, in this case, Wales, but it is also true for Northern Ireland and Scotland.

There were, for example, disagreements over the recent Wales Act. There were negotiations in which arguments being pressed by the Welsh Government, put from the draft Bill and in Committee and on Report here, were accepted by the Government, but there were others that were not. There was a stand-off, and in the end the Welsh Assembly had to decide whether to let the Bill go through, even though it did not approve of all of it. So there is a process of negotiation, but I do not think the Government should proceed without legislative consent Motion agreement from the Welsh Assembly.

Lord Wigley: First of all, we have grave misgivings about the way in which the whole order system is going to be used. Statutory instruments will be unamendable going through, and we will certainly be opposed to that.

My Plaid Cymru colleagues in the National Assembly will be pressing the Welsh Government to bring forward an EU Continuity Bill in Wales that will enshrine into Welsh law all European legislation that applies to devolved functions, and provide a legal framework for incorporating future EU directives into Welsh law. We regard that as a positive way of getting a framework that is relevant to the situation that has been rased here.

There is a question of the implications if a legislative consent order is needed and the consent is not forthcoming. We would regard it as the UK Government's political duty to respect the Sewel convention to uphold whatever decisions have been taken by devolved institutions. We hope that will be the case.

Q128 Lord Jay of Ewelme: I want to ask a bit about the Joint Ministerial Committee, to which Lord Hunt has already referred. Do you think that through the Joint Ministerial Committee, for example, the UK Government are doing enough to take into account and reflect the interests of the devolved institutions? If not, what more needs to be done?

The evidence that we have had so far is that Westminster tends to think that the Joint Ministerial Committee is working extremely well, but when you go to Cardiff or Edinburgh you get the impression that it is rather dismissed as an inefficient or insufficient mechanism for reflecting the views of the devolved Administrations. How do you see it?

Lord Hain: Having sat on it and been a member of it, I think it is pretty ineffectual and useless, to be perfectly honest. It need not be, and it could be, especially with the new version—its reincarnation through the negotiation side of things—really central in a positive way. I also think the British-Irish Intergovernmental Council could be quite important, especially as far as Northern Ireland is concerned.

These institutions either need to be given real life or they should simply be quietly allowed to die.

Lord Jay of Ewelme: But how would it be given real life? How would you make the Joint Ministerial Committee into a committee that gained the confidence of both Westminster and the devolved Administrations, acting as a positive mechanism for ensuring that the views of the devolved Administrations are taken into account?

Lord Hain: First, the Prime Minister has to attend them. By the way, all Prime Ministers in my experience were pretty allergic to attending them, because they had busy diaries—and no doubt for other reasons.

If all three First Ministers are really going to feel it worth their while travelling to London, she or her successor has to be there for it to have any useful purpose, particularly at this time. Their respective Secretaries of State and their opposite numbers also need to be there. But discussing real figures as opposed to some of the agenda items I remember all too wearily, which were routine, bureaucratic and frankly a waste of everybody's time.

Lord Wigley: With regard to the present performance, you have no doubt heard the comments made by Mark Drakeford recently in evidence to another Committee. He said, "The Joint Ministerial Committee on exiting the EU is less organised than a community council". That is the Welsh Minister's belief.

To be fair, Chairman, within this document there is a call for remodelling the Joint Ministerial Committee with statutory underpinning as a solid grounding for a new UK Council of Ministers. That proposal is currently being examined by the Welsh Governance Centre and could provide a more acceptable framework for discussions surrounding all these matters in future.

Lord Hunt of Wirral: I am still trying to get my head round the fact that Lord Hain says he attended this Committee, because it has only just been set up.

Lord Hain: I do not mean the negotiation one. I mean the old one.

The Chairman: The old JMC rather than the JMC EU, I think.

Lord Hunt of Wirral: Also, with regard to Lord Wigley's comment, I always found community councils rather well organised. I just feel that the Joint Ministerial Committee can really work very well, particularly as the present Prime Minister has taken on a much more active role in taking forward this work, going back—if I dare even refer to it—to the days of Baroness Thatcher.

The Chairman: I think I am right in saying that the present Prime Minister used the word "intensify" after a meeting she went to.

Lord Hunt of Wirral: We had the Joint Ministerial Committee plenary meeting in Cardiff, when the Prime Minister committed to the work of the JMC. As I understand it, it has already met on four occasions and discussed quite a range of issues. The engagement with the Welsh

Government in advance of triggering Article 50 later this month involves looking in detail in this JMC at the Welsh Government's White Paper. That is a welcome development.

I completely agree with my colleagues that there needs to be a degree of consensus here. There are lots of areas where there will be agreement. Let us build on those rather than getting too worried about any potential disagreement before it has actually arisen.

Lord Wigley: With regard to that document, the Welsh Government, my own party Plaid Cymru and the Liberal Democrats have supported it. I know that privately a number of Conservatives do as well. I do not think that we carry UKIP with us in that approach. It is an excellent White Paper and it compares very favourably with the UK White Paper, if I may say so. It is a basis for the sort of co-operation that you are talking about.

Lord Jay of Ewelme: So you would all agree that the Joint Ministerial Committee could be an effective mechanism.

Lord Wigley: If there is respect. It should be seen as a partnership of equals with a mutual respect there. I am not quite sure if that is always the case.

The Chairman: We want to leave a few minutes for some perspectives on Northern Ireland. I have two potential questions, one of which we have substantially covered. That is about the interface with the EU, but Lord Selkirk may want to come back on that if there is time. First, I invite Baroness Verma to ask her question.

Q129 **Baroness Verma:** Are existing mechanisms for interparliamentary dialogue between Westminster and the devolved legislatures sufficient to deal with the challenge of Brexit? If not, what new structures do you think need to be in place?

May I add a supplementary question to that? It is really about what you were saying earlier. How do you promote investment coming into Wales after Brexit, and are our embassies sufficiently ready to promote the needs of the devolved legislatures?

Lord Wigley: I have answered part of the question, which was tangential to a previous question in relation to the work that is going on in the Welsh Governance Centre.

I will address the final point about embassies abroad, which is very interesting. I believe that embassies abroad in most countries should have either an additional person or a designated person from existing staff as a contact person for as the Welsh Government, but equally for Scotland and Northern Ireland, and that there would be as of right the expectation of being able to co-operate, particularly on trade matters, which are so important and are going to be even more important following Brexit. That is a very important dimension on which I know there will be a constructive approach from Cardiff Bay.

Lord Hain: On interparliamentary contact, it goes without saying that I am in favour of it. I would caution against it becoming routinised. Given how busy MPs are, and in our case Assembly Members, and given the different timetables, it is quite difficult to get people together. Increased dialogue would be a very positive thing. Especially on a project like Brexit, it would be really important.

What concerns me about leaving the European Union, apart from anything else, is that at the moment Wales has direct representation on the European Economic and Social Committee, the Committee of the Regions, and obviously through our MEPs in the European Parliament. That will all go. The problem, as I mentioned on environment policy and a lot of these policies, is that Europe will still affect us, because it is our neighbour as the European Union. It would be good if you had an opportunity as a Committee to look at that and at how that democratic deficit can be repaired.

The other side of it is that at the moment the Commission has offices in Wales, Scotland and Northern Ireland, as well as its main one in London. They will go, and I assume they will be replaced by a European delegation embassy of some kind. Will that still have offices in Wales, for example? That is a question to be asked. Hopefully, subject to tariffs and barriers, Wales's great bulk of trade will still go into the European single market and you will need that kind of governmental and official interface in some form or other.

Lord Hunt of Wirral: The answer to Lady Verma is that the existing mechanisms are not sufficient. New mechanisms are needed. I would build on the work of the ministerial committee, expanding it as happened to a more plenary discussion to produce consensus. Certainly a new approach is needed, and probably also new structures.

Q130 **Lord Selkirk of Douglas:** I should perhaps mention a past interest, as I was an MSP for the first eight years. I do not know the answer to the question I am asking, because a lot has happened recently.

In your view, to what extent are the EU institutions and member states fully aware of, and likely to take account of, the specific concerns of the devolved nations generally at present, and Wales in particular?

Lord Wigley: Probably not enough. I am not convinced that the Welsh Government are doing enough to voice Wales's concerns directly to the EU institutions and the other member states. They are making an effort but it is an immense job.

I am equally not convinced that we can rely on the UK Government to communicate the concerns that we have in Wales in that direction. Therefore, it is a question of whether any new mechanisms can be built up.

The Welsh Government have a European Advisory Group, which includes Welsh MEPs, Welsh Government Cabinet members and various experts. That is a useful tool, but with regard to interfacing with the regions we

have found in my own party, Plaid Cymru, when we go out to Brussels or other European centres, that there is an awareness of and an interest in co-operating with Wales. Surely we should find mechanisms for continuing that approach when we are outside the European Union, because there is a commonality of interests that will remain in the economic area but particularly also in the cultural area that has been touched upon.

Lord Hain: I do not have anything to add to what I have said.

Lord Hunt of Wirral: There must be a bridge-building exercise. The Welsh Government have to take the lead in this to ensure that their concerns are properly discussed. It is a matter of doing that in harmony and in positive partnership with the UK Government.

Q131 The Chairman: You will be aware that this Committee meeting is in the context of our inquiry into the devolved nations generally. I am conscious that Peter was the former Secretary of State for Northern Ireland as well as for Wales, although not concurrently. I would not wish to signal any inhibition on our part in hearing comments from the other two noble Lords on that matter, but I would ask Peter about the Northern Ireland perspective, not least because of his recent engagement in the Article 50 legislation that has gone through and the amendment thereto.

Would you comment initially on how this looks across into Northern Ireland? Can you fill us in, first, on what key aspects HMG should bear in mind in the forthcoming negotiations in order to safeguard the interests of Northern Ireland? In particular, we have government statements that they want to see as frictionless arrangements as possible in relation to cross-border matters. As you know, we have reported separately in the context of Brexit on British-Irish relations generically. Does that imply that there will be an element of friction, or can it really be frictionless?

Secondly, today we have been discussing the fact that the Welsh Government have produced their own analysis of the Brexit situation. Of course, the Scottish Government have done the same. For reasons we all appreciate, that has not been possible for the Northern Ireland Executive, and that may not happen for a bit. Does that run the risk of any diminution of Northern Ireland's voice in this debate, and is there anything further that can be done to make sure that Northern Ireland may be accommodated, given the particular political difficulties it now faces?

You have identified that the interests of the three devolved nations in the United Kingdom might be somewhat different from each other as well as from England or, indeed, the overall interests. Peter should lead, but our other two colleagues should feel that they can contribute.

Lord Hain: Thank you. To start on the last part of your question, it seems to me that there is a real dereliction of duty on the part of the locally elected politicians in allowing this huge vacuum to open up in which their own inputs to the vital future of Northern Ireland following

Brexit are simply not being registered at all. It is another reason why it is vital to get the institutions back up and running.

In the meantime, I hope the Secretary of State for Northern Ireland is making sure—I am sure he will—that he is registering with them the concerns both of the civil servants on the devolved side of government in Northern Ireland and of the individual politicians—the former Ministers in the different departments and so on—so that this stasis, which is very worrying and very dangerous, is mitigated.

On the question of the border, as you implied I made quite a lengthy speech in moving my amendment, which I sent to you yesterday, in which I drew on your own excellent report. No answers have been given as to how it is possible to have a frictionless border, when it is—or, rather, will be—the external customs frontier of the European Union. I am very worried about it in terms of the peace process and the continued buy-in to that on the part of nationalists and especially republican communities in Northern Ireland in relation to trade and the increasing normalisation of relations between the Republic and Northern Ireland. All those matters are really worrying.

I do not know whether we will look for a special arrangement. Scotland is looking for a special arrangement in respect of the single market, it seems. Perhaps Wales will too well; it would certainly be in its interests to do so. Northern Ireland definitely needs some kind of special arrangement to be negotiated over the border and over its trade and increasingly integrated economic relationships between both parts of the island of Ireland.

On the question of the border, if people are talking for example about electronic controls, I would not mind, and I cannot imagine that even the most hardened republican would mind, if you had the same kind of minor arrangement that you have when you enter an average speed zone on the motorway. In other words, it clocks your number plate going in and checks whether you have still done 50 miles per hour over the average rather than speed up to a speed camera, stop and speed up again afterwards. I would not mind that, and, as I say, I cannot imagine even the most hardened republican would mind it. But once you get beyond that, whether it is animal movements within farms that straddle the border or is seen as a kind of security check on people who may be moving about their ordinary life, this is fraught with dangers. I would not mind electronic controls of the average speed kind, but once it gets into security barriers, electronic bar-coded or not, you are opening up Pandora's box. When that happens, the political implications can be very serious, in my view.

The Chairman: Thank you for that. Dafydd or David, would you like to add anything?

Lord Wigley: It would be impertinent for me to have an opinion on the situation in Northern Ireland compared with the depth of knowledge that Peter has. All I would add is that the formula of the single market that

may be so relevant for the links between the north and the south of Ireland is also the basis for resolving the situation with Scotland, and, of course, is in Wales's interest. If that could be achieved, we would kill several birds with one stone.

Lord Hunt of Wirral: It is unwise to second-guess what may emerge from the current interparty discussions, except to hope and pray that they will succeed.

The Chairman: On that sober note, because these are very serious issues, I am immensely grateful to our three colleagues, as is the whole Committee. They have different perspectives but a common depth of experience, and I thank them for sharing them with us this morning. We have had a really lively discussion and I can assure you that we will be taking what you say very seriously, and stitching it not only into the report we have in mind but into our continuing dialogue with you as colleagues as this fascinating but rather challenging process develops. Thank you.