



# Select Committee on the European Union

## Corrected oral evidence: Brexit: devolution

Wednesday 15 March 2017

11 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 Verma; Lord Whitty; Baroness Wilcox; Lord Woolmer.

Evidence Session No. 14

Heard in Public

Questions 132 - 139

### Witness

I: Mark Drakeford AM, Cabinet Secretary for Finance and Local Government, Welsh Government (via video link).

## Examination of witness

Mark Drakeford AM.

Q132 **The Chairman:** Good morning, Minister. A very warm welcome to our public evidence session of the Lords EU Select Committee conducted at a distance. We appreciate the arrangements and your being able to come.

This is part of an inquiry, as I think you are aware, into the implications of Brexit for the devolved nations, their Governments or Administrations and their Assemblies and people. We are very grateful that you have been able to spare the time to come to us. It is a public evidence session, so we will contrive to make a note of this and make sure that is exchanged with you and your officials to check that we have it right.

On behalf of our Committee, through the consultative machinery we have with the devolved Assemblies, I would say that we have had close and continuing working relations with the National Assembly for Wales. Obviously, we are primarily considering the Welsh perspective today. I may say in terms of personal interest that my wife is Welsh, although neither of us is Welsh speaking, and we will stay in English, if we may. You are very welcome and we appreciate it very much.

If you are ready, I will introduce you as Mark Drakeford, Cabinet Secretary with specific responsibility, as I understand it, for Brexit-related issues within the Welsh Government. I will kick off with the first question.

We have obviously seen the Welsh Government and Plaid Cymru's paper on *Securing Wales' Future*, which is very helpful. Can you say a bit more about the Welsh Government's priorities in the forthcoming Brexit negotiations?

**Mark Drakeford:** Thank you very much for the question and for the introduction. I am very pleased to be here this morning.

Our paper *Securing Wales' Future* is essentially focused on Welsh priorities, but we have tried to frame them within what we believe will be a successful outcome for the whole of the United Kingdom. In many ways, the primary purpose of our paper has been to try to help shape the UK's negotiating position as Article 50 is triggered.

We set out a series of priorities from a Welsh perspective and tried to indicate some order of priority within those priorities. We are completely clear in saying that our overriding priority is to secure full and unfettered access to the single market post Brexit. We say that because we believe that free and frictionless trade, free of tariff barriers, non-tariff barriers and with regulatory equivalence, is in the best interests of Welsh businesses and the Welsh economy. Two-thirds of exports from Wales go to the European Union. We think anything that makes that trade more difficult will be damaging to the Welsh economy.

We have set out some proposals on migration. We acknowledge the difficult issue that is migration, but we have put forward what we think are some pragmatic ideas that would allow us to have an approach to

migration that would not be so inimical to the European Union that it would rule out single market participation.

We deal with the issue of finance. We say very clearly that people who campaigned to leave the European Union said to people in Wales that Wales would not lose a penny—that is what they said—through leaving the European Union. Indeed, they said that Wales would be better off. We say that the money that comes to Wales as a result of our membership of the European Union needs to continue to come to Wales once we are no longer in the Union.

We deal with constitutional matters, both those that surround the current arrangements as we go into Brexit and what we think will be needed in a post-Brexit world. We emphasise the importance of social, environmental and consumer protections that Welsh citizens have gained as a result of membership of the European Union.

Finally, we emphasise what we have said from the very beginning—that transitional arrangements are going to be very important as we leave the European Union and that we need to be thinking seriously about how those could be designed from the outset.

**The Chairman:** Thank you very much for that, Minister. We will explore most of those points, if not all of them, in detail with my colleagues in a moment.

Can I ask you to give us a generic answer on something? Is the problem from your point of view, with your responsibilities in Wales, about making Her Majesty's Government, who are going to carry out the negotiations, aware of the issues as they affect Wales and its people, or is it also a matter of making sure that, even if they understand those issues, the nature of the way the negotiations are set up and conducted at the British end enables those opinions to be carried through? Perhaps this is a timescale issue; I am not sure. Is it a matter of establishing an understanding in Whitehall as to what the problems are for Wales, or is it making sure that Whitehall takes them forward and discharges them in negotiations that are bound to be difficult? They may be compressed in time and there may be other priorities that have to be reconciled. What would be your general response to that?

**Mark Drakeford:** My general response would be this. I think our ambitions go a little beyond your first point because they are captured in the terms of reference of the JMC (European negotiations), which is intended to be not simply a forum in which devolved Administrations make Whitehall aware of the particular needs and perspectives, but where we aim to shape a common position in relation to the UK Government's negotiations. It is more than just making Whitehall aware. It is trying to find a way in which the things that matter to Wales are implicit in a shared initial negotiating position.

On your second point, however, I very much agree. It is very important from the Welsh perspective that, when these negotiations get under way,

really careful attention is paid to the tone and approach in the first period of negotiations and that it does not get off the ground in such a way that some of the things that we think are very important to Wales never make it on to the agenda at all, because they are ruled out by an adversarial start to the negotiations that means that our interests never make it past what could be a very difficult opening.

**The Chairman:** Thank you. That is a really helpful scene-setter. We will go straight on to Baroness Brown.

Q133 **Baroness Brown of Cambridge:** I would like to ask you to expand on your opening remarks and tell us about your reaction to the Prime Minister's Lancaster House speech and the subsequent White Paper, and the setting out of the UK Government's approach to the Brexit negotiations. Would you expand a bit on what you were starting to talk about, which is the political, the economic and the legal implications for Wales of the model of Brexit that is implied in those statements and documents? Coming on to the significant deficit in EU funding for Wales, as you have already mentioned, what are the mechanisms or the ways you would see for that to be replaced?

**Mark Drakeford:** Thank you very much for that. Our reaction to the Prime Minister's Lancaster House speech and then the White Paper that the UK Government published is this. We look for points of agreement to begin with. We look to see places where we can find language in that speech and that document where we can see Welsh interests reflected. I think you can find some places. Our White Paper refers to "full and unfettered access" to the single market as our top priority. The White Paper and the Lancaster House speech referred to "free and frictionless" free trade arrangements. I think you can see some overlaps there.

You can see our emphasis on transitional arrangements, which I don't believe was part of the UK Government's vocabulary at the very start of this process, in the Prime Minister's speech. The things that she said about social protections would be quite close to the language that we used as well.

The single biggest difference, though, is that our White Paper attempts to set out, within the things that we would like to see achieved, the things that we think are the most important, whereas from the 12 objectives set out in the UK's White Paper it is difficult to get a clear feel as to which of these the UK Government think are their most important priorities. It is quite difficult to see how you would manage to achieve them all, and in the end some of them will need to be more important than others.

We try to be understanding of the fact that the UK Government will be conducting these negotiations and that they do not want to completely show their hand in negotiation at the very outset, but we think some sense of where the weight of priorities lie would have been helpful.

In terms of the political, economic and legal implications, there are very real political implications in terms of future constitutional arrangements.

We are not in the same place as the UK Government on some of those matters. Economically, our emphasis on the single market is because of the Welsh economy. We have a larger proportion of manufacturing in the Welsh economy than other parts of the United Kingdom, and those manufacturers' goods pass across the border absolutely routinely. There are parts coming back and forth through a supply chain that is complicated. If costs are added through tariffs every time a border between the United Kingdom and the European Union is crossed, we are not saying that the day after we leave industries such as Ford in Bridgend or Airbus in north Wales will no longer be there, but investment decisions will be made in the future, and if we have to face costs that other places do not, you can see how those decisions will be influenced.

For agriculture, where we have a very significant amount of exporting, our food manufacturers and our agriculture industry worry about non-tariff barriers. If you are an exporter of fresh produce, and your fresh produce sits in a warehouse waiting for country of origin bureaucracy forms to be filled in, it may not be fresh by the time it has passed that point. Economically, these are very important things to us.

Legally, the great repeal Bill, which you may be intending to explore during the session, has major implications for us and the way that we will need to respond to that.

As to the money, you are absolutely right to say that the UK may be a net contributor to the European Union but Wales is a net beneficiary—and to a significant extent. When I talk to UK Ministers about this, I say to them all the time that it would be a very difficult message to give to people in Wales that they are going to do less well out of their membership of the United Kingdom than they would have done out of their continuing membership of the European Union. We say that funds flowing into Wales today as a direct result of our EU membership must continue to flow, and to flow in full, to Wales once Brexit is accomplished.

**The Chairman:** Just for the record, that would be a matter of subsequent or concurrent negotiations within the UK to achieve that outcome, because that is not going to come directly across the table in Brussels, is it?

**Mark Drakeford:** No.

**The Chairman:** You would not want to suggest—although, equally, you would not wish to reject in advance—any likelihood of continuing EU funding for much coming through the conventional EU route as opposed to our participation in any particular specific programme such as Erasmus. In general terms, you would not expect to be looking for compensating funds from the EU, so they would have to come from the Treasury or some redistribution within the United Kingdom.

**Mark Drakeford:** That is right, Chairman. We welcomed what the Prime Minister said in her Lancaster House speech about a willingness to continue to pay into the European Union to be able to participate in

particular schemes. Horizon 2020 is a very important funding stream to Welsh researchers, but there are other, larger structural funds, agricultural funds and so on. Our White Paper sets out the most straightforward solution, and one that would prevent long hours of detailed negotiations to get back to more or less the same place. Simply putting into the baselines of the devolved Administrations the sums that currently come through EU membership would be a pragmatic and practical way of addressing this issue.

**Q134 Lord Woolmer of Leeds:** In her Lancaster House speech, the Prime Minister also committed, in her words, to “working with the administrations of Scotland, Wales and Northern Ireland to deliver a Brexit that works for the whole of the United Kingdom”.

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

**Mark Drakeford:** Our position set out in our White Paper provides for a single UK proposition in that regard. At the JMC on European negotiations, the Scottish Government presented a paper that proposed a differentiated solution for Scotland, and the UK Government undertook to discuss that in detail with Scottish colleagues. Our mind is not closed on differentiated solutions. Certainly, in the Northern Ireland context, where there are some very particular issues in relation to the border, the peace process and so on, I think there is a recognition at the UK level that there is a specific set of issues that need to be addressed in the Northern Irish context even if they were unlikely themselves to use the language of a differentiated solution.

**The Chairman:** As you know, we have reported on UK-Irish relations in the context of Brexit. Acknowledging the constraints, we will be looking in parallel at the Northern Ireland situation. It occurs to me that there are also some bilateral issues for you with Northern Ireland and the Republic of Ireland in terms of things such as shipping services, fishery limits and migration policies. No doubt you are aware of those and working on them.

**Mark Drakeford:** All of those are true, Chairman. There is another issue that is very important to us that is not simply a bilateral issue with either the Republic or the north of Ireland. Were there to be knock-on effects for Welsh ports from a solution to the border issue in Northern Ireland, it would become a material issue for us. Just to speculate for a moment, if the border between the United Kingdom and the European Union were to become the eastern seaboard of the island of Ireland, and therefore the west coast of Britain, we have very significant ports in Holyhead and Fishguard, for example, where, suddenly, the job they would be asked to carry out would be very different from the one they had historically carried out.

**The Chairman:** Thank you for recording that.

**Q135 Lord Whitty:** The Prime Minister indicated that she wanted to make sure

that, when Brexit occurs, the powers that currently rest in Brussels go to the right place, whether to Westminster or to the devolved Administrations. What is your understanding of what she meant by that and what are the implications for Wales? Do you have a view as to what EU powers should in effect be repatriated direct to Cardiff? Do you have views on competencies which are currently devolved that would then have to go to Westminster, or vice versa? In other words, are there powers that are currently reserved in the UK that, as a consequence of Brexit, should come to Cardiff? That is three questions in one, but it concerns the location of post-Brexit powers and indeed the money attached to them.

**Mark Drakeford:** Thank you for that question because it highlights an area where we are increasingly concerned that our view of things and the UK Government's view of things may not be identical.

We do not use the language of repatriation because we do not think that these powers have ever gone anywhere. Devolved powers in relation to agriculture, environment and regional policy, for example, have since 1999 been in Cardiff, Belfast and Edinburgh, and they will stay there throughout this process. We choose at the moment to exercise those competencies through our membership of the European Union. When the European Union is no longer there, these powers do not somehow come back to London to be handed on. They just remain where they have been for nearly two decades now at the devolved level.

This is a fundamentally important point from our point of view. I sometimes think that some UK Ministers, certainly, believe that, when the European Union is not there, these powers will somehow be free-floating and that if they grab them first they will be able to make decisions and the devolved Administrations will have to live with those decisions. That is absolutely not the way that we see it. We do not think it is the way the Supreme Court saw it in Miller. The point I make to UK Ministers is that, if they wish to operate in that way, they will have to legislate to take powers away from the devolved Administrations.

I understand that post the EU it will be important to recreate some single market arrangements within the United Kingdom, but our position is very clear. The way to do that is to recognise that those competencies already rest at the devolved level. We would come to the table in a very constructive way to look at ways in which we might repool some of those competencies within framework agreements that would guarantee that freedom of trade and so on within the UK would be sure to continue.

It is a matter of us coming to that table voluntarily to do those things rather than the UK Government thinking that they can grab these competencies as we leave the European Union and then impose a set of arrangements on the rest of us.

I am putting it in reasonably stark terms because, if we are not careful, this is going to become a very significant area of dispute with the devolved Administrations. It matters a lot to Wales. You can imagine how

legislation to row back existing devolution will play out in the current Scottish context. We think the UK can avoid all that by simply recognising where competencies exist today and then helping arrangements for us to get round the table together and make sensible arrangements thereafter.

Turning to the second point as to whether there are competencies that are not devolved that we think should cross the line post Brexit, we have not made any requests of that sort at this point. I do not think we would rule out that there may be some areas in the procurement field, for example, that might sensibly be devolved in the future, but it is not where our focus is at the moment.

**The Chairman:** I am going to ask Lord Whitty to come back on the strategic issue in a minute. I would like to clarify one specific point on what I thought was very clear about your message that in effect you are receiving the powers and then to the extent that was necessary reconferring them, possibly through a framework agreement. You mentioned in particular the UK single market.

I suppose that might also extend to questions of international representation. There could be fisheries limits outwith the UK, for example, or other international environmental matters. Would that be something that you would also see as being at least possibly ripe for a discussion as to how that should be done?

**Mark Drakeford:** Yes. When we sit round the table at these meetings, while the Welsh Government are strongly devolutionist in character, it is important to remember sometimes that we believe in the United Kingdom. We are a unionist Administration in that sense. Where it is sensible for things to be re-pooled in the coming together of the component parts of the United Kingdom, we will always want to take a constructive attitude to that, but it is a voluntary coming together rather than a central imposition that we think would be the sensible thing to do.

**Lord Whitty:** We have talked about the competencies, but there is also the issue of the money. With the common agricultural policy, for example, the money that comes to Wales comes through Westminster. Would you envisage a change in that situation, or is that part of the repooling of competence—that there would be a UK carve-up of what was previously EU money to go to agriculture or to structural funds? In other words, it is all very well saying that the competencies stay where they are, but the competencies are only deliverable through the money and that has some implications for future constitutional arrangements within the whole of the United Kingdom.

**Mark Drakeford:** Our position on that will be this. We could, indeed, add a further level of complex and difficult discussions between us all on how money might be distributed differently post the European Union. Our solution in our White Paper would help to avoid all that by simply saying that the money that comes to Wales today through structural funds and agriculture comes on a rulebook basis, agreed through the European

Union. We think that we should simply freeze that position and baseline it, so that it is distributed in the way that it is today.

Does that mean that, if we came back round the table, for example, to construct an animal health regime that was common across the United Kingdom, we would be putting some of that money back on the table to create that single unified system? I think in a sensible way we would do that. I can foresee a lot of time and a lot of difficult negotiation being soaked up on this issue, whereas there is a relatively simple way through it that would allow us not to do that but to focus on the very many other difficult issues that we are all going to have to face in the next couple of years.

**Lord Whitty:** I have one final question on this. Do you think that the devolved institutions within Wales, given the complexity of this process, have the resources and the capacity to deal with it and are sufficiently plugged into the Westminster end to deliver for Wales?

**Mark Drakeford:** I would not deny for a moment that coping with Brexit is a challenge for us as a Government and as an institution. Securing the staff and resources to focus on this is also a challenge for us. I suppose, if I am being optimistic, I would say that the National Assembly has been a changing and maturing organisation from the day that it first came together and we have taken on many new responsibilities, including primary law-making powers, in the last five years. We have adapted to that. This will be a significant challenge but not a step change in the way that we have had to face these things.

Are we sufficiently engaged with Whitehall? We think there are places where that engagement definitely needs to be strengthened, and sometimes there are areas of expertise where we could contribute to a UK-wide endeavour and where maximum advantage is not yet being taken of the help that we could offer.

**The Chairman:** It might be helpful, at your leisure if you wish to, if you could reflect and drop us a line as to the areas where you can make a significant contribution to the party. Thinking aloud, not least because I have an interest in agriculture myself, you might have something to say about hill farming, for example.

Let me pick up on a particular perspective from that, because it has been really useful. We are hearing a lot about reconfiguring the United Kingdom towards trade deals. That is the immediate and proximate issue of our future relations with the European Union. There are related issues about what happens to their existing free trade area agreements with third countries. Then there is the question of new trade deals with other third countries that may arise in the future.

How do you think that the Welsh interest can best be taken forward in the formulation of future trade deals?

**Mark Drakeford:** Part of the reason why we put such emphasis on access to the single market is that that is where our trade is today. If there is such a thing as an iron law in trade, the idea that trade halves as distance doubles is not a bad one to suggest. We say, why would we want to make access to our nearest neighbours, where most of our trade is done, more difficult in order to pursue deals elsewhere?

When it comes to deals elsewhere, we have Welsh industries that trade across the world. If we are able to do more of that in the future, that would be something we would welcome, but we would need to have a differentiated approach to it. We wince a little bit every time we hear a UK Minister say in a throwaway remark how great it would be to have a free trade deal with New Zealand, for example. If we get the wrong free trade deal with New Zealand, it will be the end of Welsh hill farming and sheep farming. So we will need a rethink to create some new UK mechanisms where these reserved matters—we do not want to muddy that water—will be devolved interests in the way that those reserved responsibilities are discharged, but we are able to be at the table in order to shape the thinking of those things. We put forward a proposal in our White Paper about a Council of Ministers approach to doing that.

The point you make is a really important one. There is a simple idea that any free trade deal anywhere in the world is bound to be good news—but it is a bit more complicated than that.

**The Chairman:** To close that point, there is also the question of British representation in other countries, with embassies and trade specialists who are outposted there. Presumably, the Welsh Government will have to reach some kind of understanding about being able to input any specific concerns they have, not merely at the policy level but at the operational level, and that, if people are going out on trade missions from a Welsh base, for example, they will have their interests adequately catered for and represented.

**Mark Drakeford:** We would say that that already happens and that we get a very good service from embassies in parts of the world where Welsh trade missions attend or where we have Welsh staff based in other parts of the world for trade and business purposes. When there are UK missions, we are always keen to be a part of them. There will always be things we could do better, but I do not think it is an area where we would say we would have significant complaints about the way the system operates.

Q136 **Baroness Wilcox:** This is a question about the great repeal Bill. What role do you envisage the devolved legislatures playing in connection with the forthcoming great repeal Bill? Will they need to legislate in parallel or indicate their assent by some other means such as a legislative consent Motion?

**Mark Drakeford:** Thank you for that important question. As a starting point, our ambition for the repeal Bill is that it is a successful piece of

legislation and that it does the business in the way that the UK Government describe it. Our first aim is to make the Bill a success.

I would have to say that we are slightly frustrated at the lack of engagement that we have had about the Bill. It is one of the areas where we feel that there are things we could have contributed. Our lawyers, for example, could have put some of the expertise we have in devolved areas at the disposal of the thinking that is going on behind that Bill.

**The Chairman:** Perhaps I can interpose on that point. To be clear, are you thinking this is partly a matter of policy and administration, or is it a legal input from a Welsh affairs viewpoint? Or is it both?

**Mark Drakeford:** It is probably both, Chairman, but the point I was making there was more at the legal expertise end of it. Our lawyers deal every day with secondary and primary legislation in front of the Assembly. They would have been able to make sure that people were aware of some of the technical and legal issues that will be in play in the great repeal Bill.

In the absence of some of the information we think we could have usefully received, we are having to plan on the basis that we will need Welsh primary and secondary legislation and that legislative consent Motions for the Sewel process will undoubtedly be a feature of the great repeal Bill.

**The Chairman:** So it is all of them. You need your domestic implementing legislation and LCMs for whatever is carried out in the complex great repeal Bill when we see it.

**Mark Drakeford:** We think we will need some legislation of our own. We are sure that we will have to have some secondary legislation to make sure that Welsh law is compliant post Brexit. Where there are things that the UK Government are going to legislate for on behalf of the National Assembly, they will be able to do that only with our agreement. That is where the legislative consent Motion machinery will have to be deployed.

**The Chairman:** I take it that, post Supreme Court and Miller, you still regard that as an important political objective—that legislative consent should be secured.

**Mark Drakeford:** We understand from Miller that it is not a legal matter of enforcement of Sewel or LCMs, but it is quite certainly a political commitment of the UK Government to operate in a way that is consistent with seeking the consent of devolved Administrations where the UK Parliament is legislating in devolved fields. We would certainly expect that to be observed as part of the great repeal Bill.

**The Chairman:** On a specific, I understand that Plaid Cymru has proposed a Welsh EU continuity Bill as one solution to this. What is your response to that?

**Mark Drakeford:** We keep it in mind. We have certainly not ruled it out, but, without seeing more of the colour of the great repeal Bill itself, it is difficult for us to know whether that would be a necessity from a Welsh point of view. As I said at the beginning, we come to the great repeal Bill hoping that it can do the things that the UK Government have set out as its ambitions for it. If it does, the need for separate Welsh activity may and will be reduced.

**Lord Whitty:** Are any civil servants in the Welsh Administration being seconded to Whitehall for this process?

**Mark Drakeford:** We have a number of civil servants who are employed by the Welsh Government who are currently working in Whitehall, including in the DExEU department. I do not want to give you the impression that there is an army. It is a small number, but we do have individuals, yes.

**The Chairman:** Following up on that point, it might be quite useful if you could spare the time to let us have some details as to what is actually happening. It also occurs to me that HMG have promised a White Paper in advance of the great repeal Bill, or at least around it. It would be quite useful to know, unless you want to comment now, the extent to which there is a Welsh input into that future White Paper. If it is news to you, as it will be to us when it comes, we need to know that it was sight unseen by the Welsh Government.

**Mark Drakeford:** I do not think any of us at this table could claim to have had sight of it as yet. There is some commitment from the UK Government to make sure that there is discussion of the White Paper at the JMC level prior to its publication, so we would in that sense expect to have some insight into it before it is in the public domain.

Q137 **Baroness Verma:** Minister, do you think the UK Government are doing enough to take into account and reflect the interests of the devolved institutions, including the joint ministerial committee on EU negotiations? If you do not, what do you think needs to be done to increase the interests?

**Mark Drakeford:** Having tried during the session so far to point to those places where we feel we can be positive about the way that our relationship with the UK Government and our impact on their thinking have worked out over recent months, I probably would have to say that I think that the experience of the JMC(EN) has been disappointing. I doubt it has been a happy experience for any of the participants.

There are a number of reasons for that. One is the gap between the ambition that is set for that forum and the way that it appears to operate in practice. As I said, its terms of reference set out its ambition that it should be a forum where we seek to come to an agreement on the UK Government's negotiating prospectus, but we have been pretty far from that.

It has been a forum in which devolved Administrations have been able to share their views and get a hearing. Maybe if it had been explicitly said at the beginning that that was the limit of its ambition, there would not be quite such a sense of frustration. But, to the extent that we have been able to make our case, the Scottish Government led on the discussion of their White Paper; the Northern Ireland Executive produced a paper on market access that was very properly discussed; and our White Paper was given a very proper airing at the Committee. But any sense that we have moved beyond that genuinely to try to come to a four-way agreement on the negotiations has not been achieved.

If you were taking a genuinely pejorative view—and I am emphasising that this would be at the pejorative end—you would say that the JMC has been a vehicle for managing and suppressing difficult issues rather than addressing and engaging with them. As a result, the frustration at the JMC about not being able to deal with substantive issues spills over into long arguments about process and about the way that business is conducted rather than the issues themselves.

You asked what could be done to improve it. I suggested four things when I was giving evidence to the House of Commons Brexit Committee. First, it needs to be better run. It is not encouraging when agendas arrive less than 24 hours before the meeting takes place. When you leave Cardiff to attend a meeting, there is not even a room identified where the meeting is going to happen. Minutes are not produced, so we are unable to track progress against things that have been agreed. So there is the basic business about putting more effort into giving these meetings the sort of administrative back-up that they need if they are going to be able to do the job.

It needs a proper work programme. There is a constant frustration at the JMC(EN) that we never seem to manage to get a clear sense of what that forum needs to tackle next. We have never had on our agenda an item that is actually about triggering Article 50. That seems fairly extraordinary, really.

A third thing is that I think discussions there would be better carried out, and indeed public discussion would be better carried out, if the UK Government published the evidence on which they are coming to their own policy views and conclusions. They should put some of that evidence into the public domain so we could all understand it better. If the UK Government are coming to a different conclusion from the one we would come to, what is the evidence they are using? Maybe we would understand their point of view better if we knew what it was that they were drawing on in order to shape those views—but there is very little sharing of evidence in that sense.

Finally and fourthly, and I accept that this would need to be done on a more confidential basis inside the JMC(EN), it would be very helpful if the UK Government were willing to share more of the policy options that they then read off the evidence before they narrow it down to the particular policy options they say they prefer. If we understood what they were

choosing from and what the internal discussion was about the different ways that things might be done, I think we would have a richer and more satisfactory discussion at the JMC, and the devolved Administrations would feel that the rewards for effort in turning up and participating would be more advantageous.

**Lord Jay of Ewelme:** Carrying on for a moment on the joint ministerial committee, do you see it having a role when the negotiations start in ensuring that the Welsh Administration are kept informed and have a chance to feed into the negotiating process?

**Mark Drakeford:** We do see that. We think that the JMC ought already to have had a discussion about the way in which devolved Administrations are going to be engaged in the post-Article 50 letter being issued. We have not had that as yet. Our view as an Administration is that, when those negotiations begin, devolved Administrations ought to be at the table in those negotiations when devolved competencies are directly at stake and being discussed, and that we ought to be in the room for wider discussions. I believe that the JMC process has a life beyond the triggering of Article 50 and it is at least significantly in the area that you have just described.

**The Chairman:** I have two questions to clarify. One is on the negotiations themselves. This will move into a very quick tempo. There will be lots of technical meetings going on, some of which will be simply at official level and others at ministerial level. Even the ministerial ones may well be taking place within weeks rather than on a monthly timetable, let alone a quarterly timetable.

Do you see the JMC EU negotiations machinery as potentially offering you a chance to have a slice of that action or at least to flag up areas and say, "We would very much like a place at the table when this is discussed"? Is that going to be the clearing house or is it going to have to be done otherwise; or is it going to have to be done at UK Cabinet and Secretary of State level?

**Mark Drakeford:** Given both the pace and breadth of the negotiations, I make the assumption that there will need to be a variety of ways in which that engagement can happen. I certainly think that the JMC can potentially play a part in it. It would have to be geared up in quite a significantly more effective way if it were to be able to do those things in a way that would find satisfaction with the players at the table.

**The Chairman:** That was my second question. I do not want to lead our witness on it, but it would seem to me from the way you set up your earlier remarks that, notwithstanding the fact that the JMC departed from precedent by meeting in Cardiff rather than in Whitehall, and with the Prime Minister's involvement and the Prime Minister's undertaking to "intensify" the work of the JMC, do you feel you are still faced with a cultural problem about whether this is coming from the top down or in effect reflecting your interests and making sure that they are fully woven into HMG's consideration of this?

**Mark Drakeford:** The JMC that met in Cardiff was the JMC plenary, which is, as you say, the one that the Prime Minister chairs and the First Ministers of the devolved Administrations attend. The intensification of discussion that the Prime Minister indicated was to happen at the JMC(EN). It has met once since that suggestion was made.

I always try as much as possible to be reasonable about these things. We understand that the Northern Ireland position—the elections and not having an Executive—has had an impact on the ability of the JMC to function. But if the JMC were to be able to do the job successfully that you outlined for it a few moments ago in the post-Article 50 period, it will need in my view a significant step up from where it has operated to date.

Q138 **Lord Selkirk of Douglas:** May I first express appreciation for the welcome given to our delegation that came to your Assembly a short time ago? It was very much appreciated and we learned a great deal—at least I did.

I will also mention a past interest, having been an MSP for the first two terms of the Scottish Parliament.

What are the current mechanisms for direct engagement between the devolved Administrations and the EU, with particular reference to Wales? How do you think that these will be affected by Brexit?

**Mark Drakeford:** Thank you for the question. We were very pleased indeed to welcome members of the Committee to Wales not that long ago.

We have a Welsh Government office in Brussels. That is a long-established office with very good working relationships both with UKRep and with other European Union nations and regions. Welsh Ministers regularly visit Brussels for those purposes. I was in Brussels to celebrate St David's Day. We have a major reception every year.

We are very active in a series of regional networks. It is one of the things that we emphasise as a Welsh Government all the time. The fact of Brexit is the fact of Brexit. Wales will be leaving the European Union—but we are certainly not leaving Europe. There is a series of regional arrangements where we hope we have been good players and have made a contribution, but where we have hugely benefited as well. We want to go on being able to make that contribution and gather that benefit beyond Brexit. That is another area in which we invest time and energy. We want to do more of that as the Brexit process moves forward.

We have four Welsh members of the European Parliament. We work very closely through them. Some of them are relatively senior members of the Parliament. When I was in Brussels for St David's Day I met with members of the Parliament, including Mrs Hübner, who chairs the Constitutional Affairs Committee, which in the end will make a recommendation to the European Parliament on the vote that they will have. Strengthening our ability to make sure that the Welsh perspective is understood at Parliament level is very important to us. Then we have

those direct, devolved competence issues in relation to fisheries, agriculture and structural funds, where we have strong relationships between officials here and officials within the Commission.

**Q139 The Chairman:** Could I pick up Lord Selkirk's comment as chair of the Committee and on behalf of our participation in the so-called EC-UK machinery, where we work with the devolved Assemblies. All of us who have done that—in my case for some years—have found it very stimulating. I can assure you that there are no administrative or other problems when we go to the National Assembly. It is a pleasure. If I may say, my wife and I have visited the National Assembly privately as well, just as tourists. I thought she should see it. It is an open and welcoming place.

That perhaps sets us up for our final question, which is about relations with the Westminster machinery as this happens. You have an elected National Assembly. There is the Scottish Parliament and the freshly elected Assembly in Northern Ireland, although we know the immediate problems with the Executive there, to which you referred.

Is our machinery sufficient? Is there anything we can do to create better structures in which we listen to you and, as it were, learn to respect and entertain your views as a matter of course?

**Mark Drakeford:** From our point of view, Chairman, the thing that we emphasise every time is that, when the United Kingdom leaves the European Union, the United Kingdom that will be left will not be the United Kingdom of 1972. We are not returning to a unitary state of the sort that existed then. Devolution is an entrenched part of the UK constitution now.

We believe that new and more effective ways will have to be found of making sure that we are able to come together, share views and reach agreements on matters of mutual significance.

We talked earlier about devolved and non-devolved competencies, but in many ways the things that we will need to make sure we have machinery to deal with in the future will be those things that do not sit neatly on either side of that border, where there are overlapping interests in the way that things are conducted and in the way that you referred to trade arrangements earlier.

We put forward the Council of Ministers as a potential model for that. Our First Minister, Carwyn Jones, has long advocated a constitutional convention for the United Kingdom to look at these matters and to try to come to these more effective working relationships that we will need. We do not think that we are there yet. We understand that, particularly for a lot of people at the UK level, their hands are very full indeed in dealing with the aftermath of the referendum and the two years ahead that they face. But somewhere in all of that we need to be thinking about these things now and not leaving them to be solved when we are all facing

different sorts of urgent issues, which will inevitably be there once the two-year period is up.

**The Chairman:** Thank you. We are moving towards a conclusion and we are very grateful for your time. Is there anything you want to add that you feel we have not touched on today?

**Mark Drakeford:** I think we have covered the most significant matters from a Welsh perspective. These are perilous times in many ways for the future of the United Kingdom. We think that Wales brings to the table the quality of our arguments. There has been a message saying that the conference is scheduled to end in two minutes, so I will take up no more of your time and leave what I have to say there.

**The Chairman:** On behalf of the Committee I say “Diolch yn fawr”. We are very grateful. You have been frank and helpful to us. All I would conclude by saying is that we do not regard this relationship as closed now. We indicated an interest in some specific figures and we would love to have those, but as this difficult process develops we would very much like to keep in touch with you both at the government level and, as we do already, at the National Assembly level as well.

Thank you very much. We conclude the video conference on that note.