



Select Committee on the European Union

Uncorrected oral evidence: Brexit: devolution

Tuesday 21 March 2017

4.05 pm

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Members present: Lord Boswell of Aynho (The Chairman); Baroness Armstrong of Hill Top; Baroness Brown of Cambridge; Baroness Browning; Baroness Falkner of Margravine; Lord Green of Hurstpierpoint; Lord Jay of Ewelme; Earl of Kinnoull; Lord Liddle; Lord Selkirk of Douglas; Baroness Suttie; Lord Teverson; Lord Trees; Baroness Verma; Lord Whitty; Baroness Wilcox; Lord Woolmer of Leeds.

Evidence Session No. 15

Heard in Public

Questions 140 - 148

Witnesses

[I](#): Lord Alderdice; Lord Trimble; Mark Durkan MP.

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Examination of witnesses

Lord Alderdice, Lord Trimble and Mark Durkan MP.

Q140 The Chairman: Good afternoon. Thank you very much for coming in. You will be aware of the background to our Committee's work. As part of our generic work on the consequences and implications of Brexit, we are looking at the implications for the devolved nations, their Administrations and Assemblies, and their people. It will be familiar to you from earlier work we have done that we have identified problems in the island of Ireland.

Our prime concern today is with Northern Ireland. Indeed, we all awoke to the news of the death of the former deputy First Minister, which intensified our interest from the point of view of both the political arrangements and the effects on individuals, and the implications at all times on the peace process and the achievements, which have been understood by all members of the Committee. We are hugely grateful.

You will all be familiar with the fact that the usual rules of engagement from our side apply. This is a public evidence session, for which we are very grateful. We will record it and send you a transcript for any textual corrections. I remind my colleagues that if they have a specific interest relating to the inquiry, not a generic one, they should declare it when they speak.

I am sure we can have a very useful and constructive engagement. We have already had some useful evidence from the devolved nations, and it would be really useful to conclude, although not quite conclude, with your perspectives. If you are ready to start, unless you would like to make an opening statement—you are very welcome to do so—perhaps you would identify yourselves for the record.

Lord Trimble: I am David Trimble. I do not know that I want to say much by way of an opening statement, but I would say that all the questions are focused on Northern Ireland, and we should think a little bit about the position of the Republic of Ireland.

The Chairman: Please do not feel inhibited. If it is relevant, it would be helpful to us.

Lord Trimble: In my view, it will be heavily impacted. The impact on us will be slight, but it will be very heavy there in view of what I think is likely to happen, but we will deal with that.

The Chairman: Let us bring that up in responses. It is a helpful lead-in.

Lord Alderdice: I am John Alderdice. Thank you for your brief remarks about Martin McGuinness. He was a formidable leader and a good colleague in politics in the Assembly. He was also an essential—some might even say, knowing his background, the essential—contributor to the peace process.

Lord Trimble: On the positive side.

Lord Alderdice: Indeed. For his family and others, it is a very difficult day. This is all about relationships, not just between individual people but between communities and countries. The reason for the European project was to try to make sure that Europe did not go to war again. It was not fundamentally about the euro, the single market or a seat at the top table of world affairs for European politicians; it was about relationships. What we took out of it to create a peace process was how to develop in a creative way the relationships between these islands. We will come back to that, because at the moment it seems to me that there is a lot of emotion swilling around, with people, both in Brussels and elsewhere, declaring things to be absolute requirements. That is not the way things grew, developed and became successful. I hope that the emotion can begin to die down and we can begin to focus on what can creatively be done.

Mark Durkan MP: I am Mark Durkan, Member of Parliament for Foyle. Martin McGuinness was my constituent. I can confidently say that he never voted for me and was very confident in boasting about that, but it did not impact in any way adversely on our personal relationship. Like others, he was someone I may have met first as a political opponent, but I was able to develop a working relationship with him as a partner in various tentative talks, in actual negotiations and in government. In many ways, he became one of the figures who epitomised the transformative impact of the Agreement and the process itself.

As to the issues before us, it is important that we do not look at these questions purely from a Northern Ireland perspective. Although that is important, we need to remember that the Good Friday Agreement has three strands. Strand 1 is Northern Ireland and its institutions, but strand 2 is concerned with north-south issues and refers specifically to EU matters on a number of occasions. Strand 3 of the Agreement also provides for things to be looked at on an EU basis. This gives rise to the fact that potentially, particularly in the eyes of nationalists but maybe not only nationalists, there will be a significant deficit in strand 2 of the Agreement if, as we go forward, either we have to change the terms of the Agreement to take account of the fact that we no longer have common membership of strand 2 or we just pretend that no difference has been made to the standing of the six existing implementation bodies.

Strand 2 provided for cross-border implementation bodies, and the fact is that they were not agreed at the time of the Agreement but subsequently. The reality is that the bodies that were agreed had a tendency to relate heavily to EU funding or to questions of common compliance with EU directives. That was partly for defensive reasons. The unionist representatives negotiating post agreement wanted to be able to say that the north-south bodies that were created were dealing mainly with EU matters, on which there would have to be some sort of institutional arrangements anyway. Therefore, for their defensive arguments they minimised the significance of the bodies. For people now, the question that will arise, if those existing bodies do not even have the

significance or relevance of common EU membership, is whether we need to review and renew them in the Agreement in the terms provided for.

Particular political issues arise purely on the institutional side, before we even get to questions on the constitutional dimension. We need to remember that the Good Friday Agreement is reflected in the Irish constitution and changes to it, which was why the Taoiseach, in his visit to Brussels on 23 February, made the point that it was a priority of the Irish Government that any new EU-UK treaty should absolutely and explicitly reflect the principle of consent.

The Chairman: Thank you all very much for that. A common theme is that you want to look beyond the land boundary when appropriate. We can fully understand that. As you know, we have looked at it separately. This is about devolution. I do not feel that you should feel inhibited in adding comments on that. I was interested in everything David said, in particular the emphasis on the personal side. One aspect that I and other members of the Committee want to highlight when we look at these issues is that it is about satisfying the needs of people and their communities as well as the platonic ideals of institutional structures. So that they work, we have to get them to meet and deal with the practical problems and aspirations of individuals. I hope we can go ahead on that basis.

If you are happy to start, perhaps I can put the first question. Please answer in whatever order you find most comfortable. Individually, what is your reaction to the Prime Minister's Lancaster House speech and the subsequent White Paper setting out the UK Government's approach to Brexit negotiations, and, drawing on that, what are the political, economic and legal implications for Northern Ireland of the Brexit model that the Government are pursuing?

Lord Trimble: I question the use of the term "Brexit model". If I invited you all to define the Brexit models that exist, I wonder whether I would get similar answers from more than one person. The concept is wholly misleading, because it makes us think there are choices where there might not be choices. I cite in particular people who talk about a hard Brexit model. The hardest Brexit model I can think of is having to pay between £20 billion and £60 billion to the European Union for its future expenditure and having it impose upon us things that are designed to put off anybody else from ever wanting to leave. That is about the hardest one I can think of, but people normally use the term to mean something else.

We do not know what is likely to be the model until the negotiations begin. It is very unfortunate that we have spent so long talking about things without knowing what we are talking about. That is inevitable, because until the negotiations begin we have no idea what the parameters are.

With regard to the Prime Minister's speech, the important thing is that her objective is to have tariff-free access to the single market. If that can

be achieved, it will solve lots of problems. If we have problems, it will be largely through finding ourselves with tariffs. I think we will be coming back to that later, so I will not go into it at the moment. Beyond that, I do not think there is anything I want to say at this stage.

Lord Alderdice: Reading the speech, the Prime Minister was very strong on the UK as a whole—as a global power and so on—but the United Kingdom is not a homogenous entity; it has all sorts of bits and pieces in it, slightly outside it and so on. In the British-Irish Council we also have the Isle of Man and the Channel Islands. They are not within the EU or the EEA, yet somehow or other we are able to find ways of working with all of that. The whole of the United Kingdom itself has an established Church, but since 1870-71 not in my part of these islands, and a different established Church north of the border in Scotland and a different way of doing law. It has been perfectly possible to work with those kinds of things.

What is a bit unfortunate in the conversation both within the UK and in relation to Europe is the notion that there has to be one homogenous model rather than, as is perfectly possible, other kinds of arrangements. Indeed, the European Union has entirely accepted that all along, for Britain and Ireland anyway. Under the Anglo-Irish Agreement and subsequently the Good Friday Agreement, we have special arrangements whereby British and Irish Prime Ministers, Ministers and civil servants meet one another without the European Union being involved at all. Indeed, the European Union was the model for us—it was not followed slavishly—but all sorts of different arrangements have been able to be put in place, even between Ireland and the Isle of Man on certain financial arrangements.

The idea that there has to be some kind of homogenous approach seems to me to be based not so much on political reality, or even legal requirement; it has much more to do with an emotional response from Brussels and, to some extent, London. That is why we should pull back a bit and realise that there is not only a case for complexity but precedents for it both within the United Kingdom and the wider islands, and in the European Union. The European Union has been perfectly prepared to accept those things. For example, I always find it very interesting that, when it comes to dealing with Northern Ireland affairs, the Irish Government, who until not too long ago claimed constitutional jurisdiction over the north, send their Foreign Minister to deal with those questions, while the United Kingdom, which in that sense regards the Republic of Ireland as a foreign country, sends a domestic Minister—the Secretary of State for Northern Ireland.

There are all sorts of ways in which you can do these things without producing some kind of concrete approach. The idea of saying that we should try to get the best deal that we can in the relationships in these islands and with the rest of Europe is the best way for us to take things forward with a good deal of creativity. That was why we were able to get the Belfast Agreement. It had to be flexible and creative, but it was

possible. That kind of attitude and approach is the best to take. I did not see very much of that, quite understandably, in the Prime Minister's Lancaster House speech, but perhaps after her current tour we might see a little more of it.

Mark Durkan MP: I was not very impressed by the speech or the White Paper. I see more of a Brexit model there. As regards the Prime Minister's claim that she has positively addressed questions such as the common travel area and the Government's commitment to the Good Friday Agreement, I contend that she has conflated very superficial understandings of separate issues. As I listen to Ministers talk about the White Paper and their commitment, it is quite clear that they do not have even an understanding of the development of history in relation to our process.

Many people seem to think that the absence of a customs border is somehow a function of the Good Friday Agreement, whereas it was one of the conditions that helped us to get to that Agreement, because we were able to say to those who still adhered to physical-force republicanism, "Look, we are going to see the removal of a border. In 1992, we saw the removal of the customs border. The remaining border is the security border, and that will be removed if we can get an end to violence". People seem to confuse the key sequence of those things and misunderstand just how important and crucial our common membership of the EU was to achieving what we did with the peace process. As John Hume always predicted, it was the context and the model for us to resolve those issues.

Like John Alderdice, I think that, on the one hand, we need to recognise, as I indicated in my opening remarks, that Brexit and how it happens could have serious adverse implications for the existing institutions of the Good Friday Agreement and the institutional and constitutional balance there in ways that could be politically debilitating. I also think we can flip that around and positively say that, in a lot of the challenges that Brexit poses for the island of Ireland and the relationship between the islands, the Good Friday Agreement provides us with a potential toolkit for answering a number of those problems and challenges. For instance, people are trying to say that the British and Irish Governments cannot do bilateral negotiations or discussions at the minute because of the south being bound as one of the EU 27. The Good Friday Agreement provides for a British-Irish intergovernmental conference where the two Governments are free to discuss sovereign matters. The whole scope of those matters is regarded by the EU as still sovereign to the UK and Ireland, and relates directly to a lot of the precepts and principles of the Agreement itself.

Similarly, strand 2 of the Agreement provides an ambit—remember, the Agreement has always been fully supported by the EU—for us to say that we can have defined areas of co-operation north and south on the island; we can even have joint implementation of those things. In his initial speech, even Michel Barnier seemed to indicate that potentially he was

willing to see continuity of funding to Northern Ireland, given his personal experience in bringing forward EU programmes for us. The Government are being very unimaginative and uncreative in how they face up to some of these questions and in identifying potential answers.

- Q141 **Lord Jay of Ewelme:** My question follows from what Lord Alderdice was saying. Arlene Foster said that Northern Ireland has a “unique set of circumstances” that need to be “taken into account” in the Brexit negotiations, but she does not want to see Northern Ireland being granted some kind of special status. Of course, Scotland has its own specificity, as do Wales and Northern Ireland. Can you see a Brexit arrangement for the United Kingdom as a whole? To what extent do considerations affecting each of the devolved territories need to be taken into account?

Lord Trimble: When I looked at the phrase “unique set of circumstances” I was not quite sure what it meant. Obviously, there are some differences within the British Isles as a whole, and there are different historical reasons behind them. At the time of the union of Parliaments in 1707, the Scots laid down some constitutional fundamentals, which in theory do not exist in our constitution. The interesting thing about those fundamentals with regard to education, the law and the Church is that Westminster continuously observed them and never changed them without consent. It was not a question of the consent orders that go round at the moment; it was done informally. There are things being done, but they were always managed in a way that sat within our major institutions.

I want to touch on what Mark said about the north-south bodies. There is one north-south body that deals explicitly with EU matters. With regard to the others, it is very hard to find any significant EU content. Maybe my memory has faded since the time we drew up the detail on those matters.

In the unique set of circumstances, there is the common travel area, which stemmed from the time immediately after the 26 counties left to form the Irish Free State and then the Republic of Ireland. The mindset behind the common travel area is explicitly stated in the Ireland Act 1949, which declares that Ireland shall not be regarded as a foreign country for various considerations. The common travel area fits into the same mindset, which says, “We are not really going to take Irish independence seriously. In so far as we can, we will treat it as if it is still part of the United Kingdom”. That is the rationale behind it. Originally, it was formed because the Government were concerned for the unionist minority in the 26 counties and wanted them still to be able to take the benefit of being British citizens. That is where it comes from, and that is why the common travel area applies only to citizens of the United Kingdom and the Republic of Ireland. It is not a general free travel area in the way the European Union purports to be.

When we look at how the common travel area is to operate in the future, with one caveat I do not see a big problem with regard to persons

moving about. That has been happening since the 1920s. There will be a need to keep an eye on it. We have known about that for years. We turned up an al-Qaeda cell operating out of Belfast because its members assumed nobody was looking for them there. We need to keep track of that. It looks as though that can be done largely electronically without having significant road checks and border posts. The problem comes if there is a tariff.

The Chairman: Goods are more difficult than people. You are nodding, Lord Alderdice.

Lord Trimble: I think there probably will be a tariff. I know the Prime Minister hopes there will not be tariffs but, looking at the sorts of things coming out of Europe, I do not see how you can avoid having some. However, I hope the United Kingdom Government will not respond by imposing tariffs themselves. That might look like an unbalanced response. If the EU insists on a tariff and we cannot get it to change its mind, I do not think we should reinforce a bad thing. We should operate without tariffs on our side. Indeed, there are economists who say that is the preferred way of dealing with tariffs.

That situation will make it easier on the border itself, because there will be no need for UK installations north of the border. The problem will come south of the border, because if there are tariffs EU law will require that there be structures there. The structures will be only south of the border, not north of it, if we have a sensible response from our own Government.

Lord Alderdice: It is important to focus not just on the United Kingdom and the devolved institutions but on these islands, which requires people in this city to look further than they normally do. I gave an example in a recent debate on the National Crime Agency. One of the responsibilities of the agency is border security. When I asked Lord Taylor of Holbeach, who at that stage was responsible for the piece of legislation, whether the Home Secretary at the time, who has now gone on to greater things, had had a conversation with the Minister of Justice in the Republic of Ireland, the answer was, "We didn't really think about that". Nobody intended any snub or unpleasantness; it just did not come to mind to do such a thing.

I want to hammer home again and again that the Republic of Ireland has interests, but we have interests in our relationship together. We are all family in these islands, which means of course that we fight with each other as families often do, but there are really important relationships. If we are to find a way through this, we need to pay attention to that. It is not that this is the only part of the EU where that is the case. The Nordic Council in Scandinavia has countries in the EU and countries outside it, with all sorts of special arrangements and relationships with one another. It is perfectly possible to do it if people put their minds to it creatively.

The European Union can be quite creative about these things, but when we begin to think about things solely in terms of laws, constitutions and structures, as though they are the primary thing rather than the thing

that is there to service the needs of the relationships between the countries, we get ourselves into a problem. There are lots of possibilities for being flexible. We are fortunate that in the Republic of Ireland we have a very strong view at every level that people want a good relationship. That is what we need to hold on to and work with.

The Chairman: Can I unpick one thing you said about the relationship? I think I have the message, but I want to be clear. We were told in another inquiry that at working level now, perhaps not some years ago, relations between the Police Service of Northern Ireland and the Garda Síochána are very good and intimate, and they tip each other off about concerns they may have. Are you signalling to us, without casting aspersions—I am not looking for that—that there needs to be London-based ministerial buy-in to the process, as well as the operational one that is already in place?

Lord Alderdice: Absolutely. The guys and girls looking after the border know that it cannot work unless they know each other's telephone numbers and can have a cup of coffee together and so on. There is a tendency in London to focus on things that are really important to England, and some other places, rather than realising that we are all part of this together and it is very important. Indeed, there may well be things for some of our companies and other entities where the relationship with the Republic of Ireland staying within the EU could be very positive. Some of our universities might want to have campuses there; some of our banks might want to be there. Some of us, like me, carry two passports most of the time, because I go to various parts of the world where it is better to have one passport than the other, and vice versa. Just keep in mind that we are all together in this.

Mark Durkan MP: To go back to Lord Jay's point, I can understand what Arlene Foster is saying. I have heard her talk more fully about Northern Ireland having unique circumstances, unique history, unique geography and some unique arrangements. I listened to the Brexit Secretary last week when he appeared before us in the House of Commons Select Committee. He said that he and the Prime Minister were seeking a unique deal from unique negotiations as far as the UK was concerned.

Of course, the Prime Minister has used the word "bespoke" for quite a lot of what she wants for the UK, but people seem to have a hang-up about the concept of anything special in relation to Northern Ireland; there seems to be sensitivity around the "special" word. Indeed, I heard an Irish Government Minister say that even other people in the EU do not like the word "special". However, in the Special EU Programmes Body, the EU particularly liked the word "special". Michel Barnier especially liked the idea of it being the Special EU Programmes Body, but clearly we need something that is relevant to and commensurate with the different dimensions of our circumstances.

To be very clear, Northern Ireland is unique within the UK post Brexit because it will be the only part of the United Kingdom that could elect to rejoin the EU without requiring an Article 49 negotiation. To avoid any

possible ambiguity, the Taoiseach wants that in any new EU-UK treaty, so that the kinds of arguments and uncertainties that surrounded the Scottish referendum, for instance, could not be used to say, "You might think you are having a referendum on a united Ireland, but it will be very complicated because you might not get into the EU", or whatever. Remember, it might not be just Spain that would have issues with that; other member states would want assurances that anything done in respect of Northern Ireland ever having such a referendum did not create a wider precedent elsewhere in the EU for regions to state-hop or whatever. People would have to know that the provision was pre-sourced in the bespoke, unique Good Friday Agreement, and was being translated into survival post Brexit.

It also avoids any confusion following the Supreme Court ruling. The Supreme Court said that the principle of consent under the Good Friday Agreement provides only for the decision as between the United Kingdom and a united Ireland, not as to the European Union. If it means that the consent principle does not affect leaving the European Union, we have to be clear that nobody can say that the consent principle of itself does not affect joining the European Union, so we must have it nailed down.

Another point where Northern Ireland is unique is one touched on by John. Northern Ireland will be the only part of the United Kingdom where people by birth can elect to be citizens of an EU member state, so there are two key differences.

Then we have provision in the Agreement, given that the ambit of strand 2 does not have to be fixed in its original terms; it was meant to be iterative and capable of development. It will have to be looked at now if the north is no longer in the EU, potentially, after Brexit, but it could provide a basis whereby Northern Ireland could have a lean-to arrangement with the Republic as far as certain EU programmes were concerned, maybe as far as treatment of the single market was concerned, at least in certain sectors, and potentially for customs union equivalence. There is no reason why the ambit of strand 2 could not be used creatively to do that if the European Union was minded to agree it. Barnier seems to have a predisposition to some continuity arrangement in respect of the precepts of the Good Friday Agreement.

Lord Jay of Ewelme: I was going to ask what a good Brexit deal might look like for Northern Ireland, but in a way you have answered that. I have a specific question on funding. Do you all share the view that it would be good if some kind of EU funding—for example, funding that is now across the border—continued after we left?

Lord Trimble: The special programme for peace and reconciliation is about £300 million per annum—something of that nature. It is not officially in the EU budget; it is in the loose money that the Commission has knocking around and manages to find year on year. There is no budgetary basis for it. I am not quite sure how you then provide in an agreement for continuation of something that does not have a budgetary basis in the other institutions, but I am sure that is a mere technicality.

Outside that, we will no longer have regional funds. I presume, therefore, that we will find equivalent programmes developing within the UK, which might be a good thing, because the regional fund never worked terribly satisfactorily from our point of view. There will be a whole host of areas where the UK will have to develop new programmes for things that currently come under the EU.

Lord Jay of Ewelme: Will it be the same amount as they get now?

Lord Trimble: It will be a matter for decision here as to what things we decide to replicate and what things we do differently. Are we going to use the money in the same way, or shall we use it differently? There will be sums available for various programmes; it is a question of what we want in that respect. When I say “we”, I am talking on a UK basis. Those are things that will emerge not just during the negotiations but afterwards, when we think about what programmes we want to adopt with the moneys that will be available.

Lord Alderdice: I want to pick up one specific area in regard to your comments. The reality of life for many people in border areas over the past number of years is that they are travelling and working backwards and forwards; they engage in education on one side and work on another side; they live here and have their healthcare there, and so on. For healthcare, in Mark’s area for example, it is possible to provide specialist facilities and adequate care only if you have a population that is transborder, because the populations of the areas are too small to provide a lot of specialist services. If the EU is to pay attention to the needs of people in distant parts of the Republic of Ireland, at the border and in Donegal, it will have to be prepared for some kind of cross-border operation and potentially the funding of it.

That is a case where it would make sense for the British Government and the Northern Ireland Executive to talk with the Irish Government and to have a joint approach to the EU that said, “Even if you are prepared to put money only inside the borders of the EU, you will have to put some of it in such a place that there can be cross-border facilities created for the benefit of people on both sides”. That would be particularly true of things such as health, education and transport, where those facilities are crucial.

Mark Durkan MP: Of course, it would help if we could have continued funding access in a number of areas: first, for the special EU PEACE programme, some of whose dimensions are cross-border, although not all the measures are; and, secondly, the Interreg programme, which is not just cross-border between north and south but involves Scotland and Wales. It is important that that support is continued. If we saw a complete drop-off of funding for the sort of measures that have been there, it will not just hit the community and voluntary sectors.

To go back to a point Lord Trimble made earlier about other bodies, it is not the case that only the Special EU Programmes Body has dealt with European matters. The fact is that the food safety body deals largely with questions of compliance in and around health, food safety, production

and consumer stuff. A lot of it is about a common understanding of directives and stuff within the island. A lot of the work done by the Loughs Agency on the environmental side has been about compliance with EU directives. Similarly, the inland waterways body has dealt with a lot of compliance issues. They have distinctly channelled European funding into their areas of work, not least when their own funding was cut.

We would not just make that point because we want a basis for continued EU funding, probably through the ambit of strand 2 in particular; we have also raised with the Irish Government that there might be a case for them to discuss with the British Government, say in the context of the British-Irish intergovernmental conference, the question of the loans to Ireland repayments that are required in future. We all remember the 2011 Act.

I believe that principal of £3.1 billion is due in 2021. Obviously, there will be some negotiation at that stage. Currently, every 15 June and 15 December between £40 million and £50 million has been paid in interest. When it comes to our identifying potential funding sources in future, either to help match any continuing EU funds or to replicate EU funding that has supported Interreg, on an east-west as well as a north-south basis, maybe there is a creative area that could be looked at, because Brexit will impose particular costs on Ireland anyway, as we know. It may be that in the context of a strong continuing relationship between the UK and Ireland post Brexit something creative could be done with some of that funding, at least to earmark or stream some of it into continuity resourcing in those sorts of areas.

Q142 Lord Selkirk of Douglas: I would like to ask a question in two halves, if I may. First, are you concerned that the current political situation in Northern Ireland, and the inability at present of the Northern Ireland Executive to agree an approach on Brexit, may either prevent Northern Ireland's interests being adequately taken into account in the negotiations or make it very difficult for them to be properly taken into account? What can be done to mitigate or avoid that situation?

The other half of the question is whether the United Kingdom Government are doing enough to take into account and reflect the interests of the devolved institutions, including through the Joint Ministerial Committee on EU negotiations. If not, what should be done to rectify the matter? What do you think needs to be done in that connection?

Lord Trimble: Going backwards, one of the really good things that flowed from the Agreement in 1998 was the creation of the Joint Ministerial Council. It is not provided for in the Agreement but it was seen as a useful thing to have. Without it, our agreement might never have happened. The JMC is a good thing, and I am happy to see that it is being used with regard to the current negotiations. Given the structure of the JMC, the devolved Administrations are there and the Council is in a

position to discuss the matter with them. There is a slight problem about whether the Northern Ireland institutions will be functioning.

The Chairman: We had noticed.

Lord Trimble: Yes. I do not think we have any clear answers at this stage as to what is going to happen on that front. I am not particularly optimistic about it, but if the institutions are not actually functioning it is important that the Government find ways to keep the major parties informed and contributing, and to find ways to consult political bodies and persons in Northern Ireland in any event. It may be done in an informal context, but it is hugely important. My impression is that the Government are aware of that need and at the moment are keeping in touch with them. I hope they will continue to do so.

The Chairman: Can I check that the portal for that is primarily the Northern Ireland Office? In the absence of a reconstituted Executive, the expectation is that the Secretary of State for Northern Ireland would take soundings and make the necessary contacts.

Lord Trimble: I would like to see if they could do that through the JMCs, because if it is done just through the NIO it will be focused purely on Northern Ireland. One of the advantages of the JMCs is communicating with the people of Wales, Scotland and elsewhere.

The Chairman: And hearing about their own experience and difficulties.

Lord Trimble: Yes. It is about having a broader-based discussion, but you are quite right; a lot of it will have to be done through the NIO, and through Ministers in your area, Mark. Are they not travelling to the regions on a regular basis as well? We would encourage them to continue to do that.

The Chairman: That is helpful. Mark, do you want to come in?

Mark Durkan MP: Obviously, we have a difficulty. We are in negotiations and we have seen this déjà vu before. I think we can look to some decisive fudge yet again on a number of points. I do not believe that the parties, having come through a bruising election and with all the difficulties of Brexit, will want to suspend their mandates for direct rule, in that sense. The difficulty is, in what terms do we go forward? It would help enormously if parties were incentivised by the United Kingdom Government changing the terms in which they talk about Brexit in relation to Northern Ireland—if they stopped the constant superficial lip service to the Good Friday Agreement, stopped conflating it with the common travel area and stopped issuing platitudes about a border that will be as seamless and inspectionless as possible that nobody really trusts anyway.

Instead, the UK Government could say head-on, "If the Irish Government as co-guarantor say they want something in the new EU-UK treaty in respect of the principle of consent, we as the other co-guarantor want that too". As co-guarantors of the Agreement, the two Governments have

the facility to use the British-Irish Intergovernmental Conference to meet to discuss matters of common concern in sovereign areas. The Agreement allows them to invite Executive Ministers to those discussions as well.

That is another area where Northern Ireland could be unique in the United Kingdom. Northern Ireland Ministers could have some unique aspects in planning some of the post-Brexit arrangements without being stuck simply within the JMC and finding that Northern Ireland is constantly caught behind the Scottish question. It is clear to us that often the reason why UK Government Ministers do not want to concede anything special in relation to Northern Ireland, and seem to have difficulty about even admitting that the north is unique, or would be unique, in being able to rejoin the EU without Article 49, is because they are afraid of detonating some run of claims in respect of Scotland.

If the UK and Irish Governments asserted their respective positions and joint positions under the Good Friday Agreement, I do not think the EU would be spooked by that. I do not think the Irish Government would get a yellow card from Brussels for going bilateral in relation to that, particularly if they were doing it under the terms of the Good Friday Agreement. It would create a context in which parties in Northern Ireland, which have different emphases in relation to Brexit, and obviously had different positions in the referendum, might not differ so much when it came to achieving at least some continuity of funding and access in market terms. It would give them a context in which they could pursue their common interests and not be caught in some of the false and clumsy positioning that is coming from the UK Government alone.

Lord Alderdice: The implication is not just that we have a little temporary frisson but that we could end up without Ministers to involve themselves in things because the Executive would have to be suspended. That is a very real possibility, and I share David's anxiety that it could happen. Were it to happen, it seems to me very important that the Government try to find a mechanism for not suspending the Assembly, even if the Executive are suspended. The continuity of the Assembly is really important, and it is perfectly possible to construct an arrangement whereby Ministers from London can engage with the Assembly and answer questions in the Assembly on an advisory basis. That is a much better way of trying to keep people in Northern Ireland and their representatives engaged. Absent that, there would be little alternative but ad hoc meetings on the one hand and perhaps some kind of conversation with Peers and MPs from Northern Ireland on the other, which would be deeply unsatisfactory.

Lord Trimble: I understand entirely what John is saying about the need to preserve the existence of a political class. I have to declare an interest, in that my son is employed by a member of the Legislative Assembly to run his office for him, so my son could suddenly find himself without an income if we go too far down that road.

I understand the desirability of providing for a continuous political class, because that is what happened in the past when we had difficulties, but I am a little uncomfortable with it because there are plenty of folk who would be very happy no longer to have responsibility. They could continue to amuse themselves in the institutions and the Assembly without having to take responsibility for decision-making. It is rather attractive to some people, and we should not encourage that. I am not quite sure what the answer is. I agree with you up to a point, but we need something that will encourage Members of the Legislative Assembly to get the job done.

Q143 Baroness Verma: I would like to talk a little more about frictionless arrangements for goods and services. In the Government's assertion, what do you understand frictionless arrangements to mean in relation to the cross-border movement of goods? Lord Trimble talked about having tariffs and non-tariff barriers. What do you think the Government need to do to mitigate the implications of what will obviously take place on the Irish border when we come out of the EU?

Lord Alderdice: The business of frictionless movement of things backwards and forwards across the Irish border is something of a cottage industry in Ireland, which goes back a very long way.

The Chairman: We are thinking about frictionless in legitimate contexts.

Lord Alderdice: I am sure you are, Lord Chairman. The point is that it is only worth while smuggling things—to give it its proper name—if there are different prices on either side of the border. Not all goods are worth smuggling even in terms of prices. It seems to me that there could be a case for identifying the goods on which you would be particularly careful not to have tariffs developing, rather than a blanket "Let's not do anything at all". Then you can encourage companies to come in and set up in such a way that they benefit, even though they have no background history there at all, whereas when it comes to things such as agribusiness or tourism there are certain specifics.

I have no idea what the Government mean. I rather fear that in the political class over the past 20 years we have got into the way of saying two or three paradoxical things in the same sentence in the hope that, if you say them in the same sentence, it will make them true and make them happen without working out how it happens. It is more possible on the question of movement of people; it is more difficult with goods and services, but maybe it will be possible to negotiate for specific goods and services that are indigenous. It would not include everything, but it might be helpful.

Lord Trimble: There are two borders to think about. There is the border within Ireland and the border on the Irish Sea. We have to bear in mind that 65% of the exports of the Republic of Ireland go to England. At the moment, there are no tariffs on those. Tariffs will not have much impact on us, because we do not have much north-south trade. The really big trade takes place east-west. The primary market of the Republic of

Ireland is the rest of the UK. It has tried over the years to diversify a bit, but it has not changed the percentage all that much.

The Republic's second biggest market is the United States. The central European countries of the EU do not feature very much in its trade. That was why I hinted earlier that it will be more heavily impacted than others. It will get a bad blow from the United States. If Trump goes ahead with his proposals related to US businesses that have offshored a lot of their capital, with very large capital balances offshore to avoid heavy US taxes, and he is thinking of having a special tax regime to encourage US firms to bring all that money back to the United States, there will be a large outflow of capital from the Republic of Ireland to the US. The Republic will, therefore, find itself in quite difficult circumstances. I know it is not germane for us, but I suppose it will look a bit strange to people south of the border to see that they can get goods fairly easily over to Northern Ireland, but going the other way it will perhaps be more difficult.

Mark Durkan MP: As indicated earlier, I do not believe there is a lot in the language of seamless and frictionless. The Irish Government have been conducting a civic dialogue involving meetings in a number of different sectoral formats. When one of those sectoral formats looked at questions of transport and transport of goods, it emerged that Irish Government officials already had to consider what kind of customs arrangements they might look at. They did not want posts and queues on the border, but it was as though there would be bespoke customs parks where vehicles would be dealt with in an unobtrusive, comfortable and smooth way.

Obviously, there have been questions about electronic tracking and ways of avoiding a clumsy border post arrangement, but that of itself does not stop the problem of borderism affecting business, and businesses having to take greater account for proving their own transaction trails. We need to remember that in a number of sectors in Ireland, north and south, the value chain moves around. Some of the milk used in various dairy products and cream liqueurs, most of which are made in my constituency and are available here in all good supermarkets, can cross the border up to five times at different stages in the value chain.

Lord Alderdice: The same goes for headage for animals; some of them cross the border a few times, too.

Mark Durkan MP: There is a wee carousel for pigs—they go round and round. It is all very well for the Prime Minister to use a phrase like “as seamless and frictionless as possible”, but who knows what is going to be possible? Your Lordships may have noticed a report yesterday that seemed to suggest that the EU Commission had some questions about British customs standards and might be looking to retrieve some money in relation to that. Questions about those customs standards give rise to the fact that, if there is wider distrust of UK customs standards, and there is an impression that goods are coming into Europe from China outside the terms under which they should be coming, the danger is that the

Revenue Commissioners in the south will find themselves being asked by the EU 27 to be on the front line of policing against that, so all the platitudes about a frictionless border may not get us anywhere.

In my role on the Brexit Committee in the Commons, I have found that when we pursue some of those questions members more or less say, "If somebody else imposes a frictionful border that is their problem, not ours. We did not plan it and we will not be imposing it". That does not answer the problem for sectors in my part of the world.

The Chairman: These comments have excited some interest from colleagues.

Lord Trees: I wanted to ask about livestock. The livestock trade is pretty important to both the north and the south, and traditionally attracts big tariffs. It is not just about tariffs; there is an important biosecurity issue. Can you comment on how that might be coped with, because it could be very profound, and beyond losing a bit of money here and there?

Lord Alderdice: Biosecurity is in some ways less of a problem than in lots of other places, because the island is a virtual quarantine and has been very tight about animal health. The first of the six bodies that everybody was prepared to agree to was one that dealt with animal health north and south of the border. On that, I think there would be a degree of commonality, expertise and commitment in most areas, but Mark might be better prepared for or interested in the other issues.

Mark Durkan MP: Clearly, there is a problem. Different sectors within the meat industry have moved in different directions. For some types of livestock, the processing plants tend to be on one side of the border; for others, they tend to be on the other side of the border. As a number of food companies have merged and become conglomerates, they have rationalised their operations in that way. Clearly, something would need to be properly managed there.

Are there ways in which we can use pre-existing agreements and understandings from the Good Friday Agreement to give us a context for dealing with these things? As John indicated, the fact is that agriculture and food is one of the areas of co-operation under the Good Friday Agreement. Animal health is one of the issues specifically mentioned therein. It could well just be a question of developing and rearticulating some of those understandings, particularly given the shape of the market as it now exists and the structures of those businesses, which to all intents and purposes are cross-border.

For other sectors, we need to remember that one of the implementation bodies set up to lead with trade and business development now goes under the name InterTradeIreland. Essentially, it addresses indigenous business; it does not deal very much with inward investment. Addressing indigenous businesses in a number of sectors particularly encourages people to take up the option of EU challenge funds and various innovation programmes. We could articulate some of the understandings in that area

in ways that might give the EU some comfort that, for certain sectors and classes of business, the north should be treated essentially as a single market or with as much equivalence as anybody could have.

Lord Trimble: In some of those areas, that was the case before the formation of the European Union.

Lord Green of Hurstpierpoint: One of the cornerstones of the British Government's expressed strategy for negotiation with the EU is a deep and comprehensive free trade agreement. If they are eventually successful in completing an FTA—let us say that they cannot do it in two years and it takes a bit longer—and it genuinely is deep and comprehensive and, say, better than the Canadian one, there is a fair chance that it will have done away with all, or virtually all, tariffs and set the tariff regime at zero. We would be left with some regulatory issues and rules of origin procedures at borders. There has been quite a lot of discussion recently about the ability to apply electronics to rules of origin checking. Am I being too optimistic in musing on the possibility that all of that might come together in a way that does indeed leave the border reasonably frictionless and seamless, albeit not quite as good as at present?

Lord Trimble: I remember the time when I was on the sub-committee looking at TTIP.

Lord Green of Hurstpierpoint: I do too.

Lord Trimble: The impression we had then was that the EU was not terribly good at trade agreements. It might be nice to have a deep and comprehensive trade agreement, but I would be very sceptical—

Lord Green of Hurstpierpoint: I remember Lord Trimble asking me some questions about TTIP.

Lord Alderdice: The one comment I would make is not so much about the EU but about the difference in attitudes at home to those kinds of questions about the border. There was a time—all three of us can remember it—when quite a number of people in Northern Ireland would have been very happy about the idea of a pretty rigid border and implementing it in all sorts of robust ways. What is quite striking now is that you really do not hear that conversation. As people have lived and worked together, crossed the border back and forth and done things, there is a strong motivation and positive attitude to overcoming problems of that kind, rather than using them for political purposes. To me, that is very positive.

The Chairman: As regards political pressure—I am not talking necessarily about community political pressure of one stripe or another—do a lot of people in border areas write to elected Members to say that they are really worried that what they have got used to doing is going to be upset? We are familiar with, and are discussing this afternoon, the problems of Northern Ireland as a whole in the context of the island of

Ireland, but is there a specific border perspective as well?

Lord Alderdice: It is not just a border perspective. In the run-up to the referendum, some people were keen that remain and Brexit campaigns would be run. We did not do that. We had a public conversation that brought together people from the border areas, people in the legal profession, farmers and students in a whole series of almost town hall-type meetings for people in specific areas. Whether or not they were on the border, where of course it was very acute—although nobody is that far from the border in Northern Ireland—the general concern was that people did not want to lose the gains that had been made. My colleague can speak a lot more about the border issues, but although it was certainly acute there I got the sense that people in general did not want to lose the freedom to move throughout the island.

Mark Durkan MP: People in border areas are very anxious. This is one of the issues that has come through strongly in the Irish Government's all-Ireland civic dialogue. In addition to sectoral concerns and ideas about mitigation and safeguarding, there have been particular concerns in relation to border areas among people who live, work and serve across the border or across sectors, particularly at community level. People are aware that, even in the context of the experience of the four supposed freedoms, we have still had experiences of borderism.

Only a year and a half ago, I found myself having to write to an Irish Government Minister and a devolved Minister about ludicrous situations that affected wedding car businesses in the north-west of Ireland. People were being told by a new enforcement officer on the Donegal side of the border that, if they brought passengers from Derry to a wedding location in Donegal and then went off to another location for the reception, they had to carry the same passengers. If the passengers were the bride and whoever was giving her away, they are the people who would have to make the second journey for the photographs and the third journey to the reception— not the groom or whoever she was marrying. They were told that was what freedom of movement meant. They were not strictly licensed to pick up passengers in the Republic, because they were licensed under a different system.

Some of the businesses caught by that on the northern side of the border were lobbying to say, "You could retaliate. We could have enforcement to stop some of their buses getting contracts for schools in Derry, because they do not meet our emissions standards", or whatever. The natural propensity of the population in Derry is not to want borders, but people can fall into borderism when somebody makes it their business to identify and enforce regulatory differences, and then you get tit-for-tat issues and nonsense. I deliberately use the word "borderism" rather than the more loaded word "partitionism", but there are genuine sensitivities.

I also give the Committee the example of a local businessperson, now retired, who told me that, even after 1992, in his particular area of business, which was to do with alarm systems, he still had to have separate tools and show that any equipment he was fitting in the south

had come through the south and was from a business address in the south. That applied for a number of years. When I asked who had been enforcing that, he said the businesses themselves said that was what they had been advised in insurance terms. If something went wrong with the stuff they had fitted, their claim might run aground because a smart small-print lawyer would say, "Aha. This did not come under our relevant regulations at the time". There are risks of people other than the state starting to insinuate differences that colour or inhibit the natural flow of trade and choice of product or services.

The Chairman: Thank you for those examples. If it is any consolation to you—I do not wish to overstate this because your problems are relatively greater; I would not pretend otherwise—I myself have lived and farmed for nearly 50 years across a county boundary in England. Quite a lot of what you say is resonant at a lower level.

Lord Green has a comment and then Lord Teverson. Then we want to touch on some more institutional questions.

Lord Green of Hurstpierpoint: I have a quick comment. What you have just described are perfect examples of the imperfections of the single market for services. As a generality, the single market for goods works quite well, and the single market for services works very imperfectly. The risk going forward is that, with Britain outside the single market, the restraining behaviour of Brussels and elsewhere to cut back on that kind of behaviour will go away, and the situation will start to deteriorate quite rapidly.

Mark Durkan MP: That somewhere-over-the-rainbow situation might arise, but I am not expecting it very soon.

The Chairman: We will reflect on that, unless you want to comment.

Lord Teverson: I would like to comment on something interesting that Lord Trimble said earlier. As we are going to be outside the customs union, I regret to say that I do not see how there will not be a border of some kind. David, you made an interesting comment about a way round that. I think you were suggesting that, even if there were tariffs one way, maybe we could avoid having tariffs the other. I want to understand how that might work. We would have freedom to take back control and, I suppose, theoretically discriminate between EU states. How would that work, because it is a window in for the rest of Europe?

Lord Trimble: I was going on the hypothesis that the EU insists on an external tariff barrier at one level or another. I am saying that we should not retaliate. If there is retaliation, you are in danger of getting a bit of a trade "war" going on. I think it is better not to retaliate. Indeed, by not retaliating if people taking goods north to south had to pay a tariff, but if they were taking goods from the south to the north they did not, it would be constantly in the public mind that tariffs are not permanent; they can change further, and hopefully will.

Lord Teverson: But that would mean effectively making goods coming through the border from the whole of the EU tariff-free.

Lord Trimble: Yes. If you are thinking of free trade, that is part of it; if you are a genuine free trader, that is what you would want to do.

The Chairman: As I indicated, we would like to move on to some institutional questions. I think we have been right to concentrate on the practical problems on the border, which we identified from earlier work too. If we can work on the practical assumption of allowing about five minutes for each of the four outstanding questions, we can end at a reasonable time.

Q144 **Earl of Kinnoull:** Moving on to powers coming back via Brexit, I am going to read another quote from the Prime Minister. She has committed to "working very carefully to ensure that, as powers are repatriated from Brussels back to Britain, the right powers are returned to Westminster, and the right powers are passed to devolved administrations of Scotland, Wales and Northern Ireland". I have two questions. First, in respect of Northern Ireland, what did she mean? Secondly, what competences do you think should be transferred to Northern Ireland?

Lord Trimble: In respect of Northern Ireland, you would go back before 1972 to look at what were then devolved matters in Northern Ireland and were transferred to Brussels. You would argue for them to come back to the Stormont Parliament from Westminster. It is not so easy to do the same calculation for Wales and Scotland, but it is the same sort of thing; you look at the original devolution scheme and the things that went to Brussels. I suppose you might look at other things coming back from Brussels and ask, "Should this operate on a UK basis, or could it operate on a regional basis?" There would be a discussion about that. We regard the use of the word "right" twice as euphemistic.

Lord Alderdice: David has made the point that there were powers. There are all sorts of interesting powers, some of which were never taken up. For example, Northern Ireland had the right to have its own general medical council. If you are looking to greater freedom of movement within Ireland for various professionals, there may be issues to look at there. The one that comes immediately to mind is agriculture, which is our biggest industry. I mentioned earlier that it is a virtual quarantine island. It seems to me that one of the areas people in Northern Ireland would want to take back is some say over how they conduct agriculture. That could be done in a way that was not identical to England, Scotland and Wales. We are much more of a food and agriculture economy. That is one area where it would be possible.

There are substantial issues for farmers on the funding side. That is an area where one could have a negotiation between the Finance Minister and Agriculture Minister in Northern Ireland and the Treasury here. It would be very important for people at home to have the capacity to undertake those fairly tough negotiations themselves, rather than for it to be decided over here.

Lord Trimble: There is a great temptation for the Government. Once you were outside the European Union and no longer subject to the common agricultural regime, and if you decided not to have charges on food, it is said that living standards in the UK as a whole would rise by about 7% to 8%. That is huge. Therefore, there is a huge temptation for the Government suddenly to make themselves very popular—outside the agricultural sector of course, which would have to do a New Zealand-type adjustment.

Mark Durkan MP: We need to recognise that different types of powers and functions will come with what I call the great download and save Bill. The question afterwards is who controls the delete button once the download and save on day one has happened. Clearly, there would be sensitivity on the part of the devolved Administrations that there was a temptation for Whitehall and Westminster essentially to keep powers in a holding pattern, and maybe dilute rights and standards first and then devolve. That could be a particularly sensitive issue in Northern Ireland.

It could be even more sensitive if a single party had 30 seats and, therefore, had the power of a petition of concern. If prior to devolution there was dilution of what people regarded as EU rights on labour law and employment law, because that is devolved in Northern Ireland, or environmental standards, you could top up to EU standard again only with cross-community support, whereas if on day one the EU powers went straight to devolution, and did not pass go and did not collect £200, those standards could be diminished only with cross-community support. That the Agreement is framed on the basis of rights, and promises of certain protections and all the rest of it, becomes more than just a pedantic procedural question around the proprieties of devolution; it becomes quite loaded.

The area where there is a more technocratic and financial workout to be done is agricultural payments, which are administered as AME and not as part of the discretionary devolved budget. Would there be a transitional arrangement where you still managed a degree of continuity around AME, or are you trying to find a new way of Barnettising that? Of course, the normal ratios for Barnett do not apply to agricultural spending, given the high profile of the agricultural sector in Northern Ireland.

Baroness Armstrong of Hill Top: All of this is looking much more complex than people had appreciated. The issue of how the Executive are allowed to behave, given the Good Friday Agreement, is not well understood here. I want to ask about the integrity of the UK's single market, which seems to me quite important to the agricultural business in the north. Do you have any views about how the devolution of the sorts of powers you have been talking about can be reconciled with the need to protect the integrity of the UK single market? Does a lot more work need to be done on the idea of shared competence between the UK and the devolved Governments? I ask that because Mark was talking about some of the institutional bodies set up post the Good Friday Agreement being largely about regulation, and that is where competence

will come in.

Mark Durkan MP: There are challenges. I go back to what I said earlier. Where problems are potentially created, we need to see whether the Agreement and previous experiences and understandings give us a context for handling and managing them, as well as strand 2, which allows us to do stuff on a north-south basis. As John touched on earlier, one of the underdeveloped aspects of the Good Friday Agreement is strand 3: the British-Irish Council. If there is to be a Brexit bonus for some of the institutional arrangements under the Good Friday Agreement, it may well be for strand 3.

When various Whitehall departments are not so busy sending all their officials to attend various European Council meetings in Brussels or wherever, they may actually have more time and interest in meeting their counterparts in Dublin and the various devolved regimes, and the island Administrations, to manage some of these issues, to help to decide on best practice and try to make sure, as far as possible, that there is reasonable consistency of market conditions within these islands. For some sectors, these islands really are one market anyway. We have developed—not as an area of co-operation under the Agreement—a single energy market in Ireland, so the reality is that we will end up increasingly with an island market in energy terms. That is also the case in a number of other sectors, so to make sure that with all this devolution we do not end up with a complete political tower of Babel, with everybody going off doing different things, maybe we could use things like the British-Irish Council, not just the JMC, to maintain more coherence and convergence where it really matters.

Lord Alderdice: There are some areas where it is more problematic in theory than in practice. To take agriculture, say Northern Ireland decides to have different but higher-standard regulations for the production of some kinds of food. There is relatively little food going from this side of the water to Ireland. It comes mostly from the other direction; there is not a superfluity of food being produced here—there is at home. In practice, it is not that much of a problem if what is coming from Northern Ireland to the rest of the United Kingdom has a higher-quality bonus. The reverse is not happening anyway. It is probably a question of taking each of the areas and seeing how it works out. As to a single market in the UK as a whole, it is a complicated network rather than a simple homogenous market.

Lord Trimble: I mentioned earlier that, as regards things coming back from Brussels, one could look at the original devolution to Northern Ireland under the 1920 Act and how it was pre-1972, but I want to put in some caveats. The original devolutionary arrangement in the 1920s should not be revived wholly, because there were things that subsequently became UK-wide. One of them is commercial law. Commercial law was devolved in 1922, but we need uniform commercial law throughout the United Kingdom, preferably throughout the British Isles as a whole. That is a matter for the folk in Dublin to settle. We

should make sure that, when it comes back, commercial law is UK-wide; it has to be. Devolved commercial law will do a lot of damage to business and trade.

We should also tidy up finally the benefits situation. That was devolved by accident. It did not exist in 1920 so it fell into the transferred ones, and came back to bite us a year or so ago. We should take advantage of this to tidy up those things.

Lord Alderdice: Will those be things coming back from Brussels?

Lord Trimble: Commercial law is, not benefits, but we need to look again at some areas and take advantage of the legislation that will be going through to do some serious tidying up. It will be easier for the devolved Administrations to accept things like benefits going UK-wide because they will be getting some other things back, so it would be an appropriate time to do that.

Baroness Suttie: I think you touched on this in an earlier answer. How do you see this being negotiated in practice if there continues to be no Executive in Northern Ireland?

Lord Trimble: We will work around that.

Lord Alderdice: In practical terms, as I said earlier, if you have no Executive, you must try to keep the Assembly in being and use the leaders of the parties in the Assembly to engage with and be closely linked to not just the Northern Ireland Office and the Secretary of State but other relevant departments; for example, if something came up about agriculture, the Agriculture Minister would go over to the Assembly in Northern Ireland and meet various party leaders. If you just wipe out all of that and have no proper infrastructure, what is difficult at the moment becomes almost impossible.

Mark Durkan MP: We should use a creative approach to try to deal with these issues as a way of encouraging and incentivising the creation of an Executive, such as the use of the British-Irish Intergovernmental Conference where devolved Ministers could be involved as well. If there is a delay in forming the Executive, I do not see any reason why the British and Irish Governments should not involve the parties and say, "This is how we would like to do it".

It is important to set some positive headlines around the negotiations at EU level as well. For instance, one of the points I made to Secretary of State Davis last week was that, as he reported, Michel Barnier talks in very warm and positive ways about his personal experience of the peace process. I negotiated with Michel Barnier, first as Finance Minister and latterly as deputy First Minister, along with David, on the various EU PEACE programmes. He opened the Northern Ireland Bureau in Brussels.

Given that he has such an emotional investment, maybe there is a way of using the Northern Ireland position to help to open up some of the conversation with Brussels about a difficult phrase in Article 50, which

seems to be subject to various interpretations, about taking account of the framework for future relationships between the state and the EU. We could say, "Let's look at what might be the framework for future relationships". Should the Good Friday Agreement not be named specifically as a feature in that framework for future relationships? Should not the common travel area, which is mentioned so much by the Prime Minister and the Taoiseach, be named as a specific feature? It might be, given that Barnier is so positive, that he is open to talking about those aspects possibly being in the framework for future relationships, and maybe we will get out of the rut about what has to come first and what has to come second.

The Chairman: A small upcoming matter is the forthcoming great repeal Bill. We will turn to that.

Q145 **Baroness Wilcox:** What role do you envisage the Northern Ireland Assembly playing in connection with the forthcoming great repeal Bill? Will it need to indicate its assent and, if so, how?

Mark Durkan MP: It would have to indicate its assent in any area affecting its powers. If it is asked to pass up or await later devolution, for example because of some more technocratic financial issues being ironed out in the agricultural area, or if it is about taking direct powers in respect of labour law—because trade union legislation is different in the north—environmental standards or whatever, specific consent should be required as regards those powers. I do not see that as a negative point of view; I see it as the Assembly assenting to take on those wider powers. I see it as part of incentivising the parties as well, to say, "You are sitting with a devolved prospectus at the minute. You do not want to pass that up; you do not want to forfeit what you already have. What can come in addition?" I would use it in that positive way. Obviously, there will be different arguments and added reasoning in respect of the devolved interests in both Scotland and Wales, but the principle should be that, where something is adding to or, arguably, qualifying powers under devolution, the devolved institution itself should vote on that.

Lord Trimble: My understanding of the great repeal Bill is that the first big thing it will do is take existing EU law and turn it into UK law. We will be taking existing EU law, in whatever form it is, and by converting it into UK law we are not in the first instance changing anything, so no issue arises on that. Issues would arise subsequently if the Government decided they wanted to amend that law, because part of the reason for bringing existing EU law into UK law is to give us the power to amend or repeal it.

The questions that then arise will depend very much on what policy choices the Government make as to what to do, and what sort of policies to pursue once we are outside the European Union. We would need to know what those policies are and which provisions are to be repealed; whether people should be consulted as part of the process depends on the nature of what is going to be amended or repealed.

Lord Alderdice: When some of the repeal Bill clauses come through, it will become clear that they will require the setting up of new institutions, because some of the regulatory bodies we will need will not exist. In that situation, it is possible that it will be necessary to consult the Assemblies. As I said earlier, my experience is that it should be sooner rather than later. In the case of the NCA, it was a security issue so it was especially sensitive, particularly where it moved into intelligence, but in any situation where people feel they have a stake and you propose something and go ahead without consulting them, you create unnecessary resistance.

It is not just a question of whether in Northern Ireland there are the resources in the Civil Service to address it. People on this side who are thinking about what they need to do should be aware that there may be issues—particularly with things such as regulatory bodies—on which they should be consulting at an early stage. It may very well be that the Assembly will say, “We are not interested in being involved in setting up a body. You fire ahead and we will go along with it”; or it may say, for some particular reason, “We would like to have such a body in Northern Ireland itself”. We experienced that in the past, with driving licences, for example, where we had our own agency. Consultation should be sooner rather than later, and there may be some unexpected issues.

Lord Whitty: If it is right that the great repeal Bill translates something into UK law and bits of it are already devolved or, you could argue, should be devolved because of the pre-1972 situation, it will impose a significant additional burden on the Administration. We have been talking about the breakdown at the political end. It is not just about regulation; it is also money, because in relation to CAP and structural and regional funds there will presumably be an expectation that some of that will be administered within Northern Ireland. Do the Administration in Northern Ireland have the capacity to take that on in terms of competence and resources? Given the fact that, unlike the other devolved areas, there is such political uncertainty in Northern Ireland, the weight on the Administration, and effectively the Civil Service in Northern Ireland, will increase. Do you think the Administration are up to it?

Lord Trimble: We will be disadvantaged if the Assembly and Executive are not functioning. We talked about the possibility of new institutions being created. Leaving aside the question of whether they are regional or national, there will be competition as to where those institutions are located. If we do not have a functioning local administration, we may not get a very good deal in what comes out.

Another factor is that bringing these things back opens up the possibility of developing new policy areas. Northern Ireland is under a disadvantage because it is so much smaller. We do not have terribly good capacity in formulating policy. That is part of the reason why Northern Ireland always tended to follow the national pattern of legislation. The Scots may think they have the capacity to develop policy, but they do not appear to be doing very much in that line, and the Welsh are in between. The

Whitehall departments have better capacity for policy formulation than the regional ones, and that is part of reality.

Lord Whitty: Does the Northern Ireland Civil Service have people who are plugged into the Whitehall end of the Brexit negotiations?

Lord Trimble: I would be very disappointed if they were not.

Lord Whitty: Are there secondments?

Lord Trimble: I am not on the inside now.

Mark Durkan MP: I have no great sense that there are people who are well clued-in or plugged-in at Civil Service level; certainly, that did not seem to be the impression Ministers from the north had when attending the JMC. Although Arlene Foster was obviously very happy to be there and felt included, I did not sense from other Ministers that they rated the meetings particularly highly, and they did not speak any better of them than their Scottish or Welsh counterparts. When I talked personally to Martin McGuinness, he asked me how things were on the Select Committee. Was I getting any better clue on the Select Committee than he was getting from the JMC as to whether London had plans? The same goes for his party colleagues who have attended more latterly. If they had had more confidence that the Civil Service was in the circuit, they might not have had such misgivings at ministerial level.

On the wider issue of capacity, if more powers are to be shared across more of the Administrations on these islands, rather than allowing things to disintegrate, such that people go off, do their own homework and do not share it, it would make sense to use things like the British-Irish intergovernmental council as a vehicle for sharing the learning, to join each other in piloting policy initiatives and being more creative in those sorts of areas. At the very first British-Irish Council meeting, I remember the late Donald Dewar saying he had always thought plagiarism was an undervalued art form and that he wanted the Council to be used in that way.

The Chairman: That opens a wide philosophical horizon. We have three more questions, beginning with Baroness Browning.

Q146 **Baroness Browning:** I was reminded of the 1990s, Lord Chairman, when you and I were sitting in the Ministry of Agriculture during the BSE crisis. One of the things I was reminded of by all our speakers today was the fact that at very short notice not only did we need people who could draft policy but those who could draft legislation. We need people of the right calibre to do that. I was reminded of it in the context of our discussion about agriculture, but clearly it could cover a much wider brief than that. What sort of contingency arrangements are needed, and at what stage would the Assembly feel it needed to get the right people in place rather than being behind the curve? I imagine the Government here are snapping up a lot of the people who are able to do that, which may mean fewer for Ireland, Scotland and elsewhere.

Lord Alderdice: Yes, but it is not only a question of London and London-based people. When we were setting up the Assembly and looking for people who had skills and experience, from attendants through to *Hansard* editors, legal advisers to government and so on, we came here, but I also went to Cardiff, Edinburgh and Dublin to try to build up a cadre of people. A range of relationships are required to make it work. Sometimes people in Edinburgh, Cardiff or indeed Dublin have more understanding of the scale at which we operate than people operating in London, where it is such a large machine. Often a lot more develops by way of personal relationships because it is a smaller outfit. In saying that, I do not want to diminish the challenge; it is absolutely enormous, although sometimes if you give people a challenge they live up to it.

The Chairman: If I might respond to the comment you just made, Lord Alderdice, it enables us to say that those on this Committee who participated in the ECUK consultative machinery, which goes out to the devolved Assemblies, have always found their contacts with the Northern Ireland Assembly, and the welcome they have received in Stormont, extremely helpful, and that it gives a very good perspective. Perhaps you can all take that back. It is much appreciated here. We move on to Baroness Falkner.

Q147 **Baroness Falkner of Margravine:** There has been quite a lot of discussion about specific circumstances and concerns in relation to Northern Ireland vis-à-vis the Republic. Are you taking the temperature of how the member states view the specific circumstances as we go forward into the negotiations? Do you have a line of vision as to how the institutions in Brussels and individual states are looking at this, particularly in terms of a bargain? In your opening remarks, Lord Trimble, you talked about a hard Brexit meaning a very small amount of money, depending on how large one considers £3 billion in the overall game to be. You considered that would be an important consideration. How would you take the temperature in relation to the other countries?

The Chairman: The 26.

Lord Trimble: I find it quite difficult to deal with that. We have had contact with the Commission and Commissioners over the years. In some cases we have had contact with Governments, but it was fairly sporadic. I do not know whether we will have sight of that. Until we see what happens when the negotiation begins it is very difficult to know what we will get sight of. I know the Government have given various undertakings that Parliament will be kept informed and we will obviously want to piggyback on that, but I am not sure how significant it will be. As to what the EU either has done or will shortly do, it will arrive at a common position of all the existing members. Once they form that common position, it is difficult to see an occasion when we would want to go past the Commission to one of the 26 other countries.

Lord Alderdice: The difficulty for us is that, first, the Northern Ireland Assembly most of the time did not engage with sovereign states but with regions. The countries varied a great deal. The regions in Italy were very

interested in engaging; some of the Spanish regions were interested in engaging, but Madrid was not at all keen on it. The German Länder had a different perspective. My feeling is that we will find it very difficult to get any look-in at all, first, because the whole focus will be on England, particularly on engagement with London. That will be quite a challenge to work with. Secondly, many European countries and institutions are now heavily focused on difficulties themselves, whether it is elections in France, recent elections in Belgium or elections coming up in Germany, and all sorts of other challenges. When you start talking about regions, the Spanish tend to come out in funny pink spots anyway, and that is not getting any better with recent events in Catalonia.

My sense is that we will find it difficult to get very much from Brussels, because it will focus on doing things for England and, apart from that, it has its own internal problems. People will say nice things; they will say they are terribly keen to do nice things for Northern Ireland and so on, but whether or not there will be much focus on that, I am not sure.

Lord Trimble: We have to try to keep a tighter focus on what the Government are doing. That is the primary thing we have to deal with.

The Chairman: We note that.

Mark Durkan MP: Based on experience some years ago with Michel Barnier, I know he is a man of particularisms in the way he does things. His officials were always very clear that there would be particular issues on which he would want his personal stamp, to do things in his way. In an early statement after his appointment, he volunteered a lot of warm memories of his experiences and involvement, and the value he puts on the Northern Ireland experience and the contribution the EU has made there. I know several members of the team working with him. Some of those people have that sympathetic insight in relation to our experiences.

In the other member states, the whole problem is that everybody is waiting for the second shoe to fall. People are waiting for negotiations to get real, but from our limited contact with people in different parties in different countries, there is a sense that the more the British and Irish Governments and parties here can show they have a prefab idea in and around taking the Good Friday Agreement forward, they can go along with that. The more we can agree and explore ourselves, the better.

Baroness Falkner of Margravine: I think you said earlier, Mr Durkan, that there was an expectation on the part of the Republic that, in a future treaty with the United Kingdom, there would be an attempt to allow Northern Ireland, if it wished, to be able to join the EU. You said that in the discussion earlier today. How would that sit, for example, with the Spanish, who have an issue with Catalonia and a very large veto in place?

Mark Durkan MP: That is exactly one of the reasons why the Taoiseach was right to say that it needs to be specifically in the EU-UK treaty, so that people know that it dates back to the Good Friday Agreement and it is not a wider precedent. The Good Friday Agreement provides that the

question of a united Ireland is a matter for the people of Ireland, north and south, by agreement, and without external impediment. The key words in the Agreement are “without external impediment”.

We cannot have a situation where in future the feelings of the Spanish Government, or somebody else, raise doubt, in the event of a referendum for a united Ireland, about whether it would mean a negotiation for Northern Ireland to be an incoming territory, or whether it would affect the south’s existing terms of membership. There must be no doubt about that, otherwise it would constitute an external impediment. Brexit would give rise to a potential external impediment that would breach the Agreement. That is why it should be covered in any treaty, so that it is clear and explicit that Northern Ireland is the only part of the UK that, if it elected to have a united Ireland, would join the EU without having to go through Article 49 negotiations, whereas the UK as an exiting state could go back into the EU only after Article 49 negotiations. As we have also been told, if Scotland becomes an independent state, it too would be subject to Article 49 negotiations. Northern Ireland would not be becoming an independent state. It does not have the right to be a separate state under the Good Friday Agreement; it has only the right to elect to be in the United Kingdom or in a united Ireland.

Q148 Lord Teverson: I have a very straightforward question in the context of the United Kingdom. At the moment, there are a number of existing inter-parliamentary mechanisms for dialogue. Are they sufficient for getting through Brexit, or do they need to be changed, improved or given more power? We have mentioned intergovernmental. Perhaps we could throw that in as well as inter-parliamentary. What do we need to do if anything, or are we okay on that?

Lord Alderdice: For me, it depends on what happens back home over the next month or so. If the institutions are back up and running, I think we give all support to them and try to make that work, because that is absolutely the best way. If an element of the Executive, or all of them—Executive and Assembly—go into some kind of suspension, there absolutely has to be some other form of engagement. It will not be enough simply to leave it to civil servants. Whether that involves MPs and Peers from Northern Ireland or some other kind of mechanism, there has to be something, and the answer to your question might be more thoughtfully given in a month or so.

Mark Durkan MP: I indicated earlier that the British-Irish Council may have been underutilised and underdeveloped. It might come into its own in the Brexit context. The same could be said for the parallel body—the inter-parliament arrangement—the British-Irish Parliamentary Assembly. There might be a case for looking again at some of its sub-committee structures, scoping out more work specifically on Brexit. A number of the committees have done very useful work.

One of the sub-committees of the British-Irish Parliamentary Assembly has probably done better work than anyone else in relation to truly understanding the history of the common travel area and the fact that it

has not been a static, linear, perfect and consistent feature at all. More work could be done there, particularly if we see more powers and functions distributed across devolved bodies. The devolved Assemblies seem quite comfortable working in the context of the British-Irish Parliamentary Assembly.

The Chairman: May I begin to wrap up the session? Lord Trimble, Lord Alderdice and Mark Durkan MP, I am sure that all members of the Committee have been very grateful for your attendance this afternoon and for the contribution you made. It characterises engagement with us, thoughtfulness and very deep experience of problems that are well understood in the island of Ireland and not always well understood in GB, but will need to be in the very testing circumstances of Brexit. I hope you will take that as an expression of our appreciation. We will be back in touch with a transcript, but if at any time you want further points to be drawn to the attention of the Committee, we will be keeping an interest in this case, as with other aspects of Brexit, through the process. We would very much welcome the opportunity to keep in touch with you about it, but for this evening thank you very much. The formal evidence session is closed.