

Select Committee on Exiting the European Union

Oral evidence: The European Union (Withdrawal) Bill, HC 373

Tuesday 17 October 2017

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Members present: Hilary Benn (Chair); Mr Peter Bone; Joanna Cherry; Mr Christopher Chope; Stephen Crabb; Mr Jonathan Djanogly; Richard Graham; Peter Grant; Wera Hobhouse; Stephen Kinnock; Jeremy Lefroy; Mr Pat McFadden; Mr Jacob Rees-Mogg; Mr John Whittingdale; Hywel Williams.

Questions 69 – 109

Witnesses

Laura Dunlop QC, Convenor, Faculty of Advocates Law Reform Committee; Dr Jo Hunt, School of Law and Politics, Cardiff University; Dr Kamala Dawar, UK Trade Policy Observatory.

Examination of Witnesses

Witnesses: Laura Dunlop QC, Dr Jo Hunt and Dr Kamala Dawar.

Q69 **Chair:** Good morning. I begin by welcoming our three witnesses here today: Laura Dunlop QC, convenor of the Faculty of Advocates Scottish Bar law reform committee and a former law commissioner at the Scottish Law Commission; Dr Kamala Dawar, senior lecturer in commercial law at the UK Trade Policy Observatory; and Dr Jo Hunt from the School of Law and Politics at Cardiff University. You are all very welcome.

Can I begin by asking this question? The Scottish and Welsh Governments take the position that as we leave the European Union the powers that are currently exercised in areas that are otherwise devolved should come direct to them. The UK Government clearly take the view that that should not happen; they want to hang on to them until such time as they feel able to pass them over. Do you think that the UK Government have any legitimate grounds for concern about adopting the proposal of the Scottish and Welsh Governments that the powers should



just pass straight to the devolved Governments in the first instance? I am trying to get a sense of your perception of the position that the UK Government have taken in the Bill.

Dr Dawar: There is a real concern for fragmentation of the economy with devolution, and there is a real concern that international competitiveness could be compromised by a non-harmonised UK position. The UK Government have a point, when they want to look at the laws and regulations that have been made in Brussels, given that a lot of these rules have not been looked at, at the UK level, at all. There is a good argument for saying that all the goods should come back to one place and then be parcelled out once we have seen what the goods are.

However, there has to be so much assurance and confidence by the devolved Governments that that is going to happen, in terms of timeframes, in terms of decision-making routes, which are not clear from the withdrawal Bill. The UK Government should take more steps to reassure the devolved Governments that there is more power-sharing about what happens once the regulations come back to Westminster.

Laura Dunlop: I would put it slightly differently. It is a question of trust. Certainly the Scottish and Welsh Governments accept that there will be areas where a common framework is required. There does not seem, to me, to be self-evident difficulty in returning the powers in the first instance and thereafter having discussions among all four of the home nations as to where the common frameworks should lie and what they should be.

Dr Hunt: I concur absolutely. The starting point could be reversed. Clause 11—that is, the requirement that in future the Welsh and Scottish legislatures and Ministers legislate in line with retained EU law—could simply be removed, as has been suggested by the Governments in Scotland and Wales. There could be an understanding—given this idea of trust that the UK Government is asking for—that, similarly, there is trust that the four nations together would work in such a way for the continued betterment of the United Kingdom. Why would there be an impetus to diverge?

The existing structure of the constitutional settlements, the devolution legislation, already provides an opportunity for intervention if it looks like there is going to be legislative action on the part of any of the devolveds that might put the UK outside its obligations in international law. There are already structures and systems that could be used and we could be using those existing approaches, rather than turning this thing on its head in such a way that simply does not give respect to the constitutional status of the devolution legislation and the devolution process.

Q70 **Chair:** Do you think the current drafting of the Bill is the product of a lack of trust?



Dr Hunt: It is indicative of a desire. We hear that the Government want to ensure continuity, certainty and control going forward and we very much see that this is an approach that will achieve maximum control over where things go. Ultimately, though, it goes too far in requiring that degree of control over how these things play out.

Q71 **Chair:** Does either of our other witnesses want to comment on that question about trust?

Laura Dunlop: I would like to pick up the notion of trust and go a little further back. Perhaps I could mention this, which is the 1997 White Paper on the basis of which people in Scotland voted in the referendum. In fact, it specifically lists, for example—I am quoting here from page 6—as devolved areas the environment, agriculture, food standards, forestry, fisheries; I could go on. I am sure you are all familiar with the fact that the structure, certainly as far as Scotland is concerned—my understanding is that Wales is now on the same basis—is that everything that is not specifically reserved is devolved. That is the starting point. That is the basis on which the Scottish Parliament was established in 1999 and one might have expected that some respect towards that fundamental principle would be maintained.

Dr Dawar: One of the problems that I see, from an international perspective, is that the UK Government are still responsible for international relations and treaty-making. For example, in the WTO, the UK Government are going to have to do those negotiations. When you look at complying with international obligations under Clause 8, the sequencing is not clear. For example, the Government might put in place a mechanism whereby they could be first among equals, or some sort of acceptable way of discussing these issues with the devolved regions before they make these international agreements and negotiations. At the moment, it is not really clear whether the UK Government are going to make these international negotiations on issues that touch on the devolveds.

Take government procurement and the GPA. It is stated in the Trade White Paper that the UK Government want to go into the GPA. Now, procurement is very devolved, so if the UK Government are going to go into negotiations on a topic like procurement without having set up some body with the devolved regions, we will have real problems, because all the devolved regions have very different interests. It is not as though we can say they all want to support X, Y or Z. They all have different interests, so I cannot see, from Clause 8, how the sequencing gives devolved regions any reassurance at all about this.

Q72 **Joanna Cherry:** Ms Dunlop, I believe the Faculty of Advocates yesterday published a response to the House of Lords Constitution Committee call for evidence on the European Union (Withdrawal) Bill. Is that correct?

Laura Dunlop: Yes, that is right.



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Q73 **Joanna Cherry:** Would it be possible for you to provide to this committee a copy of the response you provided to the House of Lords?

Laura Dunlop: Yes. As it happens, I have it with me, so I could leave that, if you want the old form hard copy.

Q74 **Joanna Cherry:** Thank you very much. You were asked a question by the Chair about the Scottish and Welsh Governments' view of this vis-à-vis the British Government's view. Last week, we heard evidence from Richard Ekins and Sir Stephen Laws, who said that they felt the devolved aspects of the Bill were reasonable and a placeholder. We heard alternative evidence from Dr Charlotte O'Brien, who felt the approach was rigid and retrograde. Can I ask each of you which of those two statements you agree with and why: reasonable and a placeholder versus rigid and retrograde?

Dr Hunt: From a perspective that would endorse and acknowledge the constitutional practice of the past 20 years, the number of referenda that have taken place within Scotland and Wales to confirm these devolved powers and the range and scope of powers for the devolved Parliaments and Governments, to have that not recognised and acknowledged within this Bill, in such a way that could answer that need for continuity, certainty and control but also give due acknowledgement to that constitutional status of the devolveds, I would say is more retrograde.

Laura Dunlop: First, I do not and cannot speak for the Scottish Government. The Faculty of Advocates is an entirely separate body. I recognise the descriptions in the question, but these are the polarities. I am wary of adjectives. Adjectives usually get us into difficulty. I would not, in an unqualified sense, agree with either of the propositions. If we were to characterise this as a negotiating process, the two extremes outlined are the two hardest line positions.

I would probably characterise them as the UK Government saying, "We are appropriating all the returning powers and, in due course, we will decide which ones might be devolved". The Scottish Government are saying, "We really should have back all the powers and then we will decide which ones should be shared". I suspect that the territory in between, which is wide, is where compromise lies.

Dr Dawar: I agree completely. You could say it is a retrograde placeholder. It certainly is a standstill and that gives legal certainty, but it looks like bargaining brinkmanship. It is almost designed to raise the hackles of the devolved Governments, so I wonder why that was not anticipated more in the drafting.

Q75 **Joanna Cherry:** Paragraph 36 of the UK Government's explanatory notes endeavours to offer some reassurance by saying, "The UK Government hopes to rapidly identify, working closely with devolved Administrations, areas that do not need a common framework and which could therefore be released from the transitional arrangement" by the



power that they have by Order in Council. Do you think that the matters that could be agreed without a common framework are likely to prove clear in practice? What about this transition and do you think the transition period should be time-limited?

Dr Dawar: It is very difficult to separate the devolved powers out in practice. For example, as I mentioned, government procurement—public spending in local authorities, school, health—is a devolved power, but it is the UK Government that will have to renegotiate their membership of the World Trade Organisation's government procurement agreement. It is even more complicated than that: before they can do that they have to renegotiate their services schedule, because that is what the GPA is dependent upon. How can procurement, which is devolved, be at all separated out from these international discussions, which involve the GATT agreement as well as the GPA?

Dr Hunt: We have often been told the story that the devolution process we have seen in the UK has not really known shared governance; that we have drawn a line and things have either been devolved or reserved. Of course, particularly in these areas we are seeing now that have been heavily Europeanised, that is shared governance in practice. In these policy areas we see a lot of interlocking, overlapping and it is very difficult to draw bright lines. Whether we are talking about transport or about GM regulation, there are various layers of legal responsibility and powers within that. This plays into the idea that, going forward, we need to be sure about the structures that allow for the different parts of the UK to come together in those law-making processes.

Laura Dunlop: I would like to highlight that there are really two aspects. Kamala makes the point that there will need to be international negotiations upon particular areas, and that these will cover a number of areas that are presently dealt with by the European Union. I think everyone would be agreed about that. It seems to me that one obvious solution is to have full participation by the other three in the negotiations and then the positions can be agreed with full participation by all the devolved bodies. It would then necessarily flow, one would imagine, that it is easier to maintain that framework within the UK.

At the moment, there is a sense of a double-whammy: that the international arrangements, whatever they are going to be, will be negotiated by the UK Government, and then the UK Government will be telling the devolveds what they have to do to comply with them. The participation is minimal.

Dr Hunt: Just to reiterate, as things stand at the moment in those Europeanised areas of shared governance, we should recognise the powers and roles of the devolved Administrations, the Governments, the Assemblies, their own MEPs from those areas. They participate in those decision-making processes in various ways, through both formal structures and a variety of soft governance structures, working with other regional Parliaments and Governments to ensure that that regional



dimension is recognised within the legislative output of the European Union. That will be lost moving forward.

Q76 Joanna Cherry: The Government refer, in the explanatory notes to the Bill, to a transitional arrangement, implying that at some point powers will be passed back to Holyrood and Cardiff. Do you think such a transition should be time-limited? We see sunset Clauses in other parts of the Bill, but there is no sunset Clause in relation to this transitional period. Could you comment on that?

Dr Hunt: The fact that this is not sunsetted in the same way seems like an anomaly. It should start from the default that these powers are devolved and that they will be returning to the devolved level at a point in the future. It seems like an anomaly that these are not sunsetted.

Laura Dunlop: A sunset provision may be part of the solution. I suspect that a compromise on these issues will have to draw on several different tools in order to achieve an agreed position, but some kind of time limit would seem to be a likely component of a solution. My only concern about it is that it will have to be very carefully framed so that the starting point is linked to something else that is currently uncertain: two years from a point where something else has become clear. Otherwise we will run into the same sort of difficulties as we are running into with Article 50: if you start the two years running, it could then be over very quickly and you would not have made the necessary progress. That, in turn, makes the point that, because the first phase of negotiations to get a new framework for the United Kingdom internationally will take an uncertain period of time, even if you make it a two-year period, you are postponing commencement of that for an uncertain time.

Dr Dawar: Throughout this whole draft Bill it is not really clear. It refers to the end of the period of two years beginning from exit day. It is not clear at all what they mean by "exit day" and that reflects the Government's inability to understand. In Brussels, they think that withdrawal is about divorce. In the UK, in Westminster, they seem to think that withdrawal is about a new trade agreement. Right from day one we had a fundamental problem with this, and I am sad that the guy from Northern Ireland is not here, because for Northern Ireland this is a really big issue. It seems like there are two mind-sets going on. Westminster does not understand Brussels-speak and Brussels is saying, "Talk about the divorce and then we will talk about what we do with the house and kids".

Chair: I should just add for the record that the reason Tony O'Neill, who was due to join you in giving evidence today, is not able to be with us is because of transport difficulties resulting from Hurricane Ophelia.

Q77 Joanna Cherry: On the effect of Clause 11 as a whole, in the explanatory notes the UK Government say, "The devolved legislatures or Administrations may only modify retained EU law to the extent that they had the competence to do so immediately before exit. This means that



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devolved institutions will still be able to act after exit as they could prior to exit in relation to retained EU law". Do you think that is an accurate statement?

Laura Dunlop: We are getting into the territory of the "power grab", which, for the avoidance of doubt, would have inverted commas around it. In preparing for coming here today, I noticed that as long ago as March 2017 it was Gordon Brown who used the expression "power grab". Trying to eschew tendentious language, it is incontrovertible that there are powers leaving—I envisage them coming in a labelled box from Brussels—and, at the moment, under Clause 11, those powers are destined solely for London. There are no boxes to go to Edinburgh, Cardiff or Belfast.

Q78 Stephen Crabb: Aside from the sense of offence or lack of respect that at least two of the panel see in the Bill towards the established constitutional position with regards to the Scottish and Welsh Governments, does the panel think that the Bill, as currently drafted, creates new legal risks as far as the devolution arrangements are concerned, aside from the political considerations of a feeling of lack of respect towards current settlements?

Dr Dawar: It creates a problem about competence in terms of what is going to happen to the four nations afterwards. Economically, we could have a situation where there is no co-ordination between the four nations because of the political fallout, which means that the UK will find it very difficult to do anything at the international level. Going back to Clause 8, we do not have a clear idea of the sequencing of these international obligations with the devolution discussions. The worst scenario is that we have four different sets of economic models of what the nations want and no single coherent one that the UK can push forward at the international level. That would undermine the message the UK Government are trying to give out about being a trading nation, outwardly focused. We would become very internal and very protectionist, because businesses would not know what our trading terms were.

Q79 Wera Hobhouse: In your opening statement, you said that a lot of this was a matter of trust. I am not a lawyer, but trust is not a legal term. How far could the law make sure that the trust does not get further undermined, as there is not a great history of trust between the central and the devolved Governments?

Dr Dawar: We have good faith in international law. We have good faith in treaty-making. There are ways of bedding down good faith within provisions that are not very clear. It really depends on the communication channels and the decision-making. We could say, okay we are going to have a council of Ministers, which is a Welsh proposal, and the decision-making is going to be based on qualified majority. There could be solutions. All these political problems are faced by the EU and its member states every day, and they manage to find ways of power-sharing and discussion to get a position through on an EU level.



It is not impossible to do that and there is lots of distrust within EU member states as well, so it is not as though this is a unique situation. It is about creating a situation where good faith is built into these Bills and the good faith is on all sides. There may be some dispute settlement mechanisms, maybe arbitration, if there are problems with those fora.

Laura Dunlop: One can try to discuss whether there currently is or is not trust and I suspect that opinion would be split. It is possibly not a particularly useful debate, but you can say, at least from a Scottish perspective, that the current framework where there is a stipulated list of reserved matters has, to outside eyes, held up pretty well. As evidence for that, I would say that very little legislation of the Scottish Parliament since devolution has been challenged as trespassing on reserved areas. In fact, there have only been three successful challenges of an Act of the Scottish Parliament and all of them have been on human rights points rather than saying, "You are getting into reserved matters". At the moment, the two Administrations, Edinburgh and London, find solutions to practical difficulties.

One thing that concerns me about the future is that we have an indicative list of areas where a common framework is thought to be or might be required—this is the list of 111 areas, which comes from the Cabinet Office—and some of them are extremely broad. One that leaps out at me, and we put this in our response, is land use. If it is to be suggested that from now on there will be a common framework on land use across all the four parts of the United Kingdom, that is very difficult to understand on its face and will be extremely complicated to negotiate.

Dr Hunt: From a Welsh perspective, while Wales has quite recently gained those powers to make primary legislation, it has had more experience of actions before the Supreme Court where there have been issues around competence questions. In part, that is a reflection of the indeterminacy of the conferred powers model that we have had in Wales, rather than the reserved powers model. Wales has had the power to do explicitly those things that have been conferred upon it rather than the other way around, which is that all powers lie there apart from those that are explicitly reserved. In Wales, next year, when the Act comes into force, we are moving to a reserved powers model, so we have a coming into line across the UK. However, this piece of legislation essentially moves us back to a conferred powers model: these things are taken back to the centre and then handed down piecemeal. There are issues about that shift.

Coming back to the trust thing, this is the time when institutional structures are so important. The existing informal structures that we have, around JMCs and the memorandum of understanding, work fine when relations are fine, but we need the institutional structures for when things get difficult. That is missing here at the moment.

Q80 Stephen Kinnock: Following up on this issue of the institutional



framework, I am particularly looking at how to arbitrate between the UK Government and the devolved Governments as to whether the UK framework is the right way to go and where matters should be devolved. Assuming for the sake of argument that the EU (Withdrawal) Bill goes through unamended, which is a pretty big assumption but let us just assume that for the moment, how would you advise that that arbitration process be set up? In an ideal world, what sort of institutional setup would you recommend? If the 111 powers are the basic framework, how would that arbitration process be carried out?

Dr Dawar: The key word would be “independent”. The devolved powers would be very wary of an arbitration system that was organised by Westminster. They would want to see something that was much more independent. Much of this can be negotiated, so it would be quite good to have good offices and conciliation, to go through the whole process before coming to remedies and so forth. All of this is possible; it is just how many moving parts the Government are able to deal with at the same time. Just in this one Bill, I see so many moving parts. We are talking about standards, mutual recognition, competition, state aid, procurement, environment. Logistically, given resources and capacity, how many moving parts can the Government deal with? That is the real problem, so you need to have places to park issues which all the devolved regions feel comfortable with.

Dr Hunt: Again, the question of what our arbitration framework is plays with the idea that it is a binary choice: this is either here or there. That is not how competence is going to, or necessarily needs to, play out across so many different policy areas. We have to recognise that interlocking and overlapping, and the sharing of competences, with due respect for the different voices in that process. Yesterday we had the JMC. There looks to be something of a breakthrough coming there, and some of that is an acknowledgement that when we are talking about common frameworks it is not necessarily a top-down imposition of one uniform legal rule for the whole UK. It is looking to the sorts of things that we have seen for decades from the EU, and looking at the space there for flexibility and diversity. There are all sorts of ways that you can bring a market together. There are legal and extra-legal techniques that can be used to create a common market.

The statement that came out after the JMC yesterday talked about common frameworks, that they “may consist of common goals, minimum or maximum standards, harmonisation, limits on action, or mutual recognition”—recognising different techniques. It is a move on from what we saw before, which was the UK Government simply saying, “Post Brexit, there will be no new barriers”, which seems to potentially lock things down in a very absolute way. Now, we see that the common frameworks are going to enable the functioning of the internal market while acknowledging policy difference, policy divergence, so acknowledging that there is space for difference within these frameworks. That is an important move forward.



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Recognising that the arbitration process will still be necessary, we should not see it in binary, black and white, here or there terms. We should ensure that we have the frameworks for shared governance to take place and recognise that there will be different roles and responsibilities. It will differ from one policy area to another, of course.

Laura Dunlop: I would like to go back to the question and say that, to me, there is the slight elision of two distinct stages. Stage 1 should be a negotiation about the common frameworks, in what areas they are and how they are to be expressed. Stage 2 is implementation, so in the future, where one of the devolved Governments is trying to reform a particular area, there may be disputes about whether they are or are not trespassing on something that is to belong in the centre. At that point, you need a dispute resolution mechanism, and of course I agree that it needs to be independent, whether it is the Supreme Court or a bespoke arbitration mechanism, but something of that sort. The first stage, where the common frameworks are identified and, so far as possible, expressed clearly, I am afraid, seems to me to require negotiation and agreement. I, too, looked at what was said after the meeting yesterday. That body, perhaps adapted, perhaps beefed up in some way, seems to be the forum in which that kind of negotiation should take place and agreement should be reached.

I will give another example from the 111 list, with which I am not, in fact, obsessed, despite appearances. One of the things on the list is harbours. With no further stipulation it says "harbours". In future, if this list has become more concrete in some way, there is more flesh on the bones, and the Scottish Government are trying to put a measure through in Edinburgh about harbours, as in fact they did in 2015, is somebody in Whitehall going to say, "Well, you cannot do that, because harbours is a common framework"? These are likely to be the sorts of practical difficulties that arise. That is the point at which, yes, I absolutely agree, you need an independent dispute resolution mechanism.

Q81 **Stephen Kinnock:** Following up on that, in terms of the risks, to coin a phrase, of there being no deal in this particular area, how would you relate that to where we might be on 29 March 2019? In other words, if there is no progress from where we are now in this particular area by the time we get to 29 March 2019, what impact do you think that would have on the overall viability of the Brexit process, in terms of the levels of certainty or risk that business is experiencing, for example, or the issue of harbours or land ownership? What level of risk do you think that poses in terms of factoring that into the overall Brexit process?

Dr Dawar: If there is no deal in less than two years' time, we fall back on the WTO rules and regulations. Our tariffs are going to spike, we are going to be locked out of EU markets to a considerable extent and there is going to be some real economic hardship. I do not know how you can sell that package to make the regions come into line and think, "Well, we



are going to do this for the greater good, because we do not want to stall the chance of a deal". It seems a nasty piece of game theory.

Laura Dunlop: The risks are enormous. First, on the no deal hypothesis, Kamala has indicated what that would be like facing outward from the United Kingdom. What things would be like internally is very hard to predict, but possibly slightly chaotic, I suspect.

Q82 **Jeremy Lefroy:** Following up on this idea of a harder institutional framework, would you see perhaps one possibility to overcome this period where you have, on one hand, the hard reality of bringing law on to the United Kingdom statute book, which has to be done, and, on the other hand, quite rightly, the aspirations of devolved powers that were recognised in the 1997 White Paper for Scotland, and subsequently for Wales and, to some extent, Northern Ireland? One way to do that might be to have a fairly general but hard agreement between the Westminster Government and the nations, which sets out some basic principles, without, of necessity, going into a great deal of detail, but saying, "This is our intention. We would like to make the JMC a harder body to deal with these kinds of matters. It is our intention to see as much devolution as is possible".

On the other hand, one has to recognise that the United Kingdom, as a state, will have to deal with certain outward-facing competences on its own. It cannot be four different bodies negotiating with the United States, China or whatever else. Some kind of broad-ish agreement that does not need a huge amount of detailed work on it might be a way of covering this period and giving confidence to all parties that their concerns are going to be taken note of, with, perhaps, a parliamentary authority given to that.

Dr Hunt: This should be a profound constitutional moment, where the nature of the UK is properly addressed, and a debate and discussion is had about what the United Kingdom is for and what the roles of the various parties in the United Kingdom are. We have had any number of Select Committee reports from the Commons and the House of Lords dealing with interinstitutional relations, intergovernmental relations, devolution, which have, over the past few years, suggested various principles, various approaches. We have looked at the essential parts of the union: whether the UK should be an economic union, a social union. We have searched for principles that could underpin this. This seems to be an absolute, critical moment to bring these things forward and bring these things out.

One thing we are still not seeing, in yesterday's principles and the debates we are having, is the language of subsidiarity. We are still not seeing explicit confirmation of that principle. Devolution, having taken place within the context of EU membership, has had written through it for 20-plus years the EU principle of subsidiarity: that decisions are taken at the lowest effective level but it is not simply decentralising; where appropriate, things are taken at a higher level. That principle we have



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because of EU law. From this legislation, there is no guarantee that that principle is going to roll over.

There are limitations in the legislation to do with certainty in the way that some of these things are framed. When we talk about general principles that have been recognised by the Court of Justice, why is there no explicit statement of what they are? What do we want to keep? Which ones do we not want to keep? Subsidiarity has a vague existence. It is used by the Court of Justice, against which things can be questioned and legislation can be set aside, but we have rarely, if ever, seen the Court of Justice explicitly saying it is a general principle. It plays into that sort of concern about certainty.

Back to the point that this should be a moment for having a constitutional discussion and seeing those principles set out, if not now, then when? This seems to be the absolutely critical time to do it, but as to whether there is the energy, the space or the time to do that, unfortunately, probably not.

Jeremy Lefroy: Just to amplify that, I am not suggesting a massive constitutional discussion at this moment, but this could be the start of it. This could be the opportunity to have a transition between what we have now and what we may have in the future, and be used as a vehicle for ensuring that these discussions can take place in an orderly way as we leave the EU, rather than in the very fragmented way they seem to happen at the moment.

Q83 **Hywel Williams:** On that last point, can I refer Mr Lefroy to the communique yesterday from the JMC, which is very interesting and wide-ranging?

Good morning. Can I ask you about legislative consent motions? What will be the consequences of a Bill being enacted without legislative consent from the devolved institutions and is this really a legal challenge or a political one?

Laura Dunlop: The consequences will be largely political.

Dr Hunt: We know, from the Miller Supreme Court judgment and the interpretation that the judges gave to the constitution and the constitutional convention at that time, that as things stand the civil convention that the Westminster Parliament will not normally legislate in devolved areas without the consent of the devolveds is not, in itself, legally enforceable. It cannot be taken before a court. It says it operates in the political realm.

We have the situation where the UK Government have made explicit that they understand that these things require a legislative consent motion. If that legislative consent motion does not come, it would be rather perverse to fall back on the "not normally" language, which might be suggested. They would be going forward without legislative consent, and there would be a very explicit statement and, again, a continuation of the



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quite confrontational approach to the devolveds that we have seen in the process so far. Playing then into the realm of politics, what we know from statements in the Assembly and are seeing increasingly from Scotland is that there is the possibility that this continuity legislation may come forward.

Dr Dawar: I have nothing really to add to that. The faith, the goodwill and the trust that we have been talking about would just fly out of the window if there was not consent from the nations.

Q84 **Hywel Williams:** I refer to this communique from yesterday, which takes forward the point that Dr Hunt has made, where it says, "Frameworks will respect the devolution settlements and the democratic accountability of the devolved legislatures" and will "be based on established conventions". Then it says "not normally be adjusted without their consent". That, to me, seems to be a step forward in some respects, but just states the status quo ante very clearly.

Dr Hunt: These are not general principles for how we do shared governance after Brexit, because they are only in respect to those areas that fall within devolved competence, rather than more general principles about how we operate across the UK in the future.

Q85 **Hywel Williams:** Can I just ask about a point that Dr Hunt raised? Professor Sionaidh Douglas-Scott has suggested that an EU continuation Act may be used by the devolved legislatures to produce their own legislation on devolved matters formerly the province of EU law. What are your thoughts on this?

Dr Hunt: We have now had a number of debates in the Welsh Assembly and there has been support from the Assembly Members for the Government to take that further if it is deemed necessary. The fact that we could be in that situation, that it is deemed that might be a necessary step to take, is so unsatisfactory for the state of our constitution. We have been talking about trust; if that is where this ends up, it is a particularly sorry reflection on the state of the UK constitution.

Laura Dunlop: I would echo that that is technically possible, yes, and given that we would be in, I suppose, a near emergency situation at that point and some continuity has to be maintained, resort would probably have to be had to that.

Q86 **Hywel Williams:** Mr O'Neill is not here, so I will ask you a general question on Northern Ireland, which you may or may not wish to respond to. Currently, there is not a functioning Executive or a working Assembly in Northern Ireland, whatever happens in the next few days. How serious is it that the process is going ahead without a structure in Northern Ireland to allow the Assembly to discuss and make its position known?

Dr Dawar: Fortunately, I was in Belfast a couple of weeks ago talking about something similar to this and that is a real worry for the Northern



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Ireland people: "We do not even have a functioning Assembly to take our voice forward." If you think of Northern Ireland and Southern Ireland, if we have no deal, they get their border with Southern Ireland. The supply chains between these two economies are very interlinked, so all these businesses are extremely nervous that they do not have a Government to put their voice forward in a unified approach to Brexit, given this border issue is so difficult for them.

Laura Dunlop: I do not want to presume to speak about Northern Ireland. I have looked at the report of the European Union Committee of the House of Lords on the devolution aspects of Brexit. It has a chapter on Northern Ireland, which I have read, and I could not identify anything in their conclusions with which I would take any issue. I would rest with that.

Q87 **Mr Chope:** Can I ask you some questions about the devolved nations and trade? Dr Dawar, the UK Trade Observatory has analysed the exposure of the four nations to changes in EU trade across different sectors. What were the key findings and what do you think are the implications?

Dr Dawar: There are so many areas of this. Obviously they are talking about tariffs and the whole point with agriculture. To break down your question a bit more, I do not have their report here and I was involved with it on the side-lines, but the overall conclusion of that report is that Brexit is going to create non-tariff barriers as well as tariff barriers. There were not many positive outcomes from that report.

Q88 **Mr Chope:** You will have heard about the discussions in the EU over splitting the quotas based upon traditional market share and the problems that some members of the WTO seem to be raising in respect of that. What do you think about that issue? Surely it would be helpful to split the quotas, would it not?

Dr Dawar: The value of the quotas will have to be divided up somehow. Internally, with the devolved regions, every nation has a different interest in agriculture, for example. The problem at the WTO is that the EU was hoping that it could go to the other members, especially the Cairns Group, and say, "We have taken out the value of the UK from ours and it is approximately 15% or 20%" and it thought that it could carry on negotiating. Then Argentina, Australia and New Zealand said, "Well, we have lost 15% of value from reciprocity with you, so can you please compensate us?" The EU is thinking, "Well, we have also lost 15% of value because of the UK, so why should we compensate?" It has become a quagmire in terms of agricultural quotas and tariffs, because the EU did not think that it would be penalised for taking out the UK's value.

Q89 **Mr Chope:** Your report seems to be very much centred on producer interests rather than the consumers'. Surely it is in the interest of consumers right across the UK that we should be able to reduce the cost of agricultural products, but it does not seem as though that features in



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your considerations at all.

Dr Dawar: There is another paper coming out now on consumer interests. One of the projects of Europe was to create efficient, fair markets for consumers and producers, so just coming out of the EU is going to detract from that, particularly if we have not organised internally what a consumer is, whether it is a vulnerable consumer or an average consumer. Again, they are very complex areas, and businesses and consumers are clearly going to be affected by this. If businesses' costs go up in Northern Ireland because they have to cross a border now or because they face new regulatory standards, they are going to pass the cost on to consumers. That is how it works, so I do not think consumers are necessarily going to have anything good to say about this.

Q90 **Mr Chope:** Would you not accept the basic proposition that free trade is an economic good?

Dr Dawar: Yes, I do.

Q91 **Mr Chope:** Therefore, the more we can develop free trade as a result of leaving the European Union, the better.

Dr Dawar: Trade is always regulated. When people talk about free trade and talk about the WTO, we forget there are food standards and technical barriers to trade. There are so many things that do not make trade free. Trade is highly regulated. If there is good competition policy in place, trade is good for consumers.

Q92 **Mr Bone:** I am trying to follow the argument that having powers in Brussels that the devolved nations do not have at the moment, which come back to the UK as a placeholder and then go down to the devolved nations, is somehow a United Kingdom power grab. I am sorry; I am struggling with that aspect, but that is the view of our experts today, not the view of the experts we had before, ignoring the fact that all these issues were discussed in the referendum, a great democratic process for this country.

I had the pleasure of travelling around all the nations of the United Kingdom as part of the "go" movement and none of these issues were brought up. Issues about Northern Ireland, the border and agriculture were brought up, but the matters about this somehow being a power grab were not brought up. Putting all that aside, I am going to give you some fun now. Ignore the fact that you have to put things through legislation, through Parliament and all the people. If you had a magic wand, how would you amend the Bill in respect of the devolved Assemblies?

Dr Dawar: I did not say the words "power grab". I said this, as it stands, does not give enough security on what is going to happen to those competences that were previously devolved. For me, it is about the lack of explanation and the lack of discussion of those areas. Potentially, you could interpret it as a power grab, but you could also say it is a placeholder and we need this. A whole load of regulation is coming



back; we cannot divide it out until we look to see what it is and what we want for our future. That is fine, but that is not explicit enough here and there are not enough mechanisms to reassure the devolved Governments that they will have a place at the table to discuss this equally, *primus inter pares*.

Q93 Mr Bone: Hang on a minute, though. Every Government, whether they are Labour, Conservative, coalition, have always wanted to devolve as much as possible to the nation states, because, let us face it, the Government do not want to deal with stuff, so if you can get rid of it, it is better. Why is there suddenly this break in trust that you are suggesting?

Dr Dawar: I am not saying there is a break in trust. I am saying there is not enough detail in here to reassure the devolved regions that they will have a say in what goes on with this regulation. It is more about the fact that, as it stands, this Bill does not give reassurance to those people who fear there is going to be a power grab. That is my line.

I believe in liberalised markets that are well regulated and are overseen by a competition authority. Obviously, it would be a terrible thing for the UK economy if we had subsidies flying around in the different regions that were not co-ordinated, if we had some strange binational and local policies that were not co-ordinated, and the UK Government were trying to negotiate international agreements on these very topics. Of course, this would be a terrible, terrible situation, which is why you have to give reassurance to the devolved nations that they have some say at this table.

Q94 Mr Bone: With a magic wand, what would you do?

Laura Dunlop: First, on the matter of subsidies, in a discussion like this it may not even be possible to agree, but doing one's best, it is not possible to identify what sort of position one would be looking for on subsidies. On the one hand, yes, there has to be a co-ordinated approach, but on the other hand, the conditions for hill farmers in the north of Scotland are very different from the conditions for farmers in Kent. The subsidy framework, quite naturally, will have to take account of local differences and this looks back into the principle of subsidiarity, which Jo was mentioning.

I infer from your question that you are looking for some suggestions, so perhaps I could say that a very helpful comment is from Mark Lazarowicz on the Scottish Centre on European Relations website. He includes some suggestions about things that could be included. The options on the list are not mutually exclusive, but, first, there is the point we have already discussed, which is that in the first instance these powers that—you might not accept the word "notionally"—notionally at the moment belong to Edinburgh, Belfast and Cardiff, albeit they are shared with the EU, return and there are then discussions as to where the common



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frameworks should be and negotiated agreements ensue. That is the first option.

Q95 **Mr Bone:** Just on that point, "shared with the EU", does the EU not tell us what to do at the moment?

Laura Dunlop: The EU produces legislative provisions, directives and so on, which are agreed among all the member states. It is a participatory process in which all member states take part.

The second of the options would be to devolve some powers in this Bill as a sign of good faith. There may be some things that can be included in this Bill.

The third option would be to give powers to the devolved legislatures and have a right of veto at the UK level.

The final option that Mark includes in his suggestions, and obviously there are others, is this question of a sunset clause, or maybe one would call it a sunrise clause, if one were living in Belfast or Cardiff.

Dr Hunt: I will respectfully take issue with a couple of those comments there and come back to that idea of Brussels imposing solutions that then need to be implemented. We sometimes find, in the language in the Government White Paper on legislating for Brexit, this idea that it is the UK Government who do the work in Brussels and bring it home, and the devolveds just implement. Quite simply, that is not the way it works. There are various channels for involvement and participation in the making of these rules.

Also, in the Welsh context, policy priorities are very much aligned with concerns that the European Union has and that are guaranteed, whether that is the mainstreaming of environmental concerns, human rights requirements, mainstreaming of gender. There is that body of focus on the continuation of a common agricultural policy, on subsidies, which may not fit with what might become the prevailing UK perspective on various things. Therefore, I question the idea that these powers are somehow just up there in Brussels and that there is no involvement and participation in that process.

Q96 **Mr Bone:** On that point, I hope you would agree that surely it would be easier to deal and have an input with the UK Government than it would be with the European Union. It must be closer to home for the UK rather than the European Union.

Dr Hunt: One would hope that that was the case. One would hope that the structures are there for proper intergovernmental and inter-parliamentary discussion between the devolveds and the centre on those things. We know that we have seen the movement there yesterday in the JMC. There is also now the beginning of inter-parliamentary committees meeting on Brexit issues, so there are various ways that these things could be coming together, but there could be greater



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formalisation and recognition of the devolved dimension, in the way that we see within the existing EU structures.

I would also mention that debates about what this means for devolved powers took place before the referendum in Wales and in Scotland. Plus, we had ministerial statements: "This will signify powers coming back"; "You can now create your own common agricultural policy and fisheries policy".

Q97 Mr Bone: Were those ministerial statements?

Dr Hunt: Yes.

Chair: Who said that?

Mr Bone: I may well have said that, but—

Dr Hunt: I can supply that information.

Mr Bone: That would be really useful for the Committee if we could have that. Thank you.

Dr Hunt: Yes, I am very happy to.

Dr Dawar: Northern Ireland has a very different relationship with Westminster from Wales and Scotland, so maybe the EU was more of a cohesive element for Northern Ireland and it found devolution much easier under the EU rather than Westminster. I do not think we can say the nations have the same relationship with Westminster.

Q98 Mr Bone: Could I move you on, as time is getting on? At the last count, the Scottish and Welsh Governments had proposed about 38 amendments to the Bill. Could I have your views on those amendments, as briefly as possible?

Laura Dunlop: I am not sure that numerically they are as numerous as that. The main one, in the context of the discussion we are having this morning, is to remove completely the references in Clause 11 to not being able to legislate incompatibly with retained EU law, not being able to modify retained EU law unless permission is granted by Order in Council. The Scottish and Welsh Governments are proposing that that be removed completely, and the effect of that would be the powers returning to the devolved Administrations. That is the discussion we are having. As I said at the outset, it seems to me that these are the two polarities and that a workable solution must lie somewhere in between.

If I could return to the point you made, sir, about your vision of Brussels simply imposing on the UK and telling the UK what to do, I am sure that will make you very motivated to avoid the same thing ensuing within the United Kingdom.

Q99 Mr Bone: It inevitably does. You are quite right. I have much more faith in all British Governments that they want to devolve matters as



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much as they can. History says that that has happened and it has been a very successful devolution process. I am not gloomy, as you are, on that issue. It is very difficult, Chairman, because we have not got the representative from Northern Ireland and I hope maybe we could have someone back later from Northern Ireland, if at all possible, in the process. Amendments have been suggested by the Welsh and Scottish Governments, but there are not any from Northern Ireland. If you were to take the Welsh and Scottish amendments and not apply them with any relevance to Northern Ireland, do you think that would be a problem?

Dr Dawar: It would be a real problem. As I have said, the devolved nations have very difficult economies, histories and cultures. To assume that one size fits all for all four nations is just erroneous. Northern Ireland is a very special case and the border question is at the top of the list in Brussels.

Q100 **Richard Graham:** Can I come back Northern Ireland? Dr Dawar, you were quite gloomy about what would happen in Northern Ireland, in the event of the UK leaving the EU without some form of agreement. I just wanted to clarify from you a bit what your concerns were. First, since both the Republic of Ireland and the United Kingdom have said very clearly they do not want to have any physical borders between the two countries, can you just confirm that you are not implying that the EU would physically impose border controls?

Secondly, if your concern is more focused on the implications of what would happen when reverting to a WTO tariff regime, presumably the costs for both sides of the border would increase, but given that the Republic of Ireland imports considerably more from the United Kingdom than the other way round, presumably the greater part of that cost would be incurred by the Republic of Ireland. Could you just confirm your views on those?

Dr Dawar: First of all, I want to talk about rules of origin. Even if there is no physical border there, there will have to be some proof that goods are not coming into the UK and then getting into the EU without meeting the minimum standards that they have to meet to get into the EU. Certification will have to be there, whether it is in the same way as Sweden and Norway; they have a light touch. There are sophisticated ways of doing it, but they are expensive. That is on rules of origin.

On supply chains, it is very difficult to say that something in Northern Ireland is made completely in Northern Ireland, the UK or anywhere anymore. Even in agriculture, the inputs come from all over the world. To say that Northern Ireland will be better off than Southern Ireland is not really going to help us, because so much goes back and forward just to produce one good or one agricultural output.

Economically, it is going to be very difficult for Northern Ireland to work out how it has to relate to the EU when it is part of the UK and there is not a physical border, but there still is a customs border. If we are not in



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the customs union, it will check. In any situation, if there is no customers union, it will check. It has to; otherwise, how can it guarantee that it is not getting goods from Guadeloupe that have come to the UK and then are being pushed into the EU? There will have to be some system of certification

On standards, for example if farmers say, "All the bureaucracy is too much; we want to roll back on that", maybe they are not going to conform to EU standards, so we lose the EU market. There are going to be costs.

Q101 Richard Graham: To summarise, your concerns are similar to what they would be if you were answering the same question in terms of the United Kingdom leaving the EU without an agreement.

Dr Dawar: We do not have Ireland.

Richard Graham: I do not really see what is particularly different for Northern Ireland, other than that you have a land border.

Dr Dawar: The economies are much more integrated.

Richard Graham: You have a land border, and therefore you need the sort of technology that is deployed between Norway and Sweden.

Dr Dawar: Their economies are much more integrated than the UK and the Republic of Ireland.

Q102 Mr Djanogly: I come back to Ms Dunlop's concerns that the laws applying in different parts of the UK could diverge to a greater extent than at present, undermine the UK's internal market and complicate trade deals and talks with other companies. We have heard in evidence so far, I think I am fair in saying, that existing EU practice is for these things to be sorted out when there are problems. In terms of existing devolved practice, when we have problems these issues get sorted out. Ms Dunlop gave three instances where that had not happened.

Standing back, are we slightly overegging the legalities of this? Will it not just happen as it has been happening in Europe and on a devolved basis so far? If there are individual issues coming out of existing practice in Europe and in existing devolved practice, are those not the types of issues we should be concentrating on, rather than the scattergun approach we have been talking about this morning?

Laura Dunlop: There is of course a key difference. You are saying that within the EU at the moment these problems are sorted out, and so far in in the devolution packages difficulties have been sorted out. For clarification, the three instances I mentioned were all occasions where the courts held that ECHR was not being complied with, so they were human rights concerns rather than reserved or devolved concerns.

The big difference is that, in the European Union, each member state has a participant in the negotiations. In our prototype framework—whatever



our internal market is destined to look like—at the moment, there is one party in the discussions that is wearing two hats, and that is the UK Government, who are also required to speak for England. That is a significant difficulty, in my view.

Dr Hunt: To follow up and to reiterate a point that has already been made, the things we saw yesterday from the JMC are quite reassuring about where we are going to go in the future and reaffirm the idea that there is space for diversity and difference. EU law does not require uniformity, and the idea of an EU internal market is not one that is made simply through the top-down imposition of uniform regulations. There may be some demand for clear regulations on certain issues, where we do need commonality, consistency and uniformity, but in a lot of areas there are other ways of achieving that.

We have seen within the UK that we have been able to be a member of the EU, comply with internal market requirements and still have space for difference at a devolved level, whether that is one part of the UK introducing plastic bag charging before the rest. There can be different approaches taken. Certain products have been banned in different parts of the UK. We have experience of that. Looking to the future, would we still have space for different parts of the UK to ban GM production?

At the moment, EU law provides that framework. There is space for those negotiated outcomes within the framework of EU law. It is ensuring that that rolls forward to the future and there is not simply an expectation of a top-down imposition of these solutions. The statements yesterday suggest that that has been acknowledged and recognised, but, again, it is now grounding that in something more and something that could be enforceable going forward.

Q103 **Wera Hobhouse:** This participation model that you have been talking about is the way that Europe operates, and it has possibly been misunderstood or deliberately misinterpreted, but good practice has possibly come out of it. Are there other approaches that could be replicated within the UK that could be recommended as good practice, in order to facilitate and make it easier for us to move forward as a country outside the EU?

Dr Hunt: We have seen a suggestion from the Welsh Government's First Minister of a UK Council of Ministers, the council being, as in the EU structures, the representatives of the member state Governments. It exists in different formations; there is not just one Council of Ministers. It meets together to discuss issues on agriculture, on environment, on fisheries and on social matters. There could be that meeting of ministers, which we have to some extent with JMC, but made into a decision-making body. There are suggestions too about giving that a statutory basis, so there would be an Act of Parliament to settle those structures.

Q104 **Wera Hobhouse:** Is that not exactly the setup that so many people see



as undemocratic within the European Union? It would be democratically quite difficult to establish something like this in the UK. Is that exactly the reason why people wanted to come out of the EU?

Dr Hunt: Within that, we also need to have proper scrutiny and parliamentary involvement. We need inter-parliamentary structures. We have seen something of those now evolving. We have meetings of the chairs of the different EU committees, and that could be replicated in different ways, with different systems for scrutiny around that.

We could look for something different, whether that is something more like the German situation, where we have a house of the Parliament that represents regional interests. There are different ways that this could be done, but it needs to be grounded in a range of different accountability frameworks and we need the involvement not just of the Ministers.

To follow up, yes, we have had Welsh Government and Scottish Government proposals. The committees of the Welsh Assembly have also come forward with their own suggested amendments, which recognise that the devolved Parliaments and Assemblies should have greater involvement in some of these decision-making processes, giving not just greater power to ministerial decision-making, but roles for Parliaments too.

Q105 **Mr McFadden:** Dr Dawar, can I ask you a question about the report out today from your trade institute and the Resolution Foundation on the impact of WTO trading rules? It is very hard for the public to make sense of this, because there are some voices telling you, "There is absolutely nothing to worry about. You should be completely relaxed. This is no problem". However, your report today says clothing prices will go up 2.4%, vehicles 5.5%, dairy products 8.1% and meat 5.8%, with an overall impact on household spending of an increase in costs of somewhere between £250 and £500 a year, with most of that impact coming on low income households in the midlands and north of the country.

How are the public supposed to make sense of a report with these claims on one hand and political voices saying there is nothing to worry about in all of this? What is your response to the view that we should be completely relaxed about trading under the WTO rules and there is nothing to worry about?

Dr Dawar: I could not say that. Even if we just fall back on WTO rules, we have a lot of work to do to reset our schedules and our market access offering in the WTO, so that is not going to be a straight walk anyway. If we are talking about the fact that we are not going to have our preferential tariffs with the EU, that is the real problem. Those are the gains from trade that countries go for. This is why countries try to negotiate mega-regionals. They want to pull all these things down, so that consumers benefit and supply chains are easier. We live in a world that is so integrated, and to fall back on a protectionist model is very



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much like shooting yourself in the foot these days. You will end up producing nothing because you need inputs from the outside world.

There is a real problem with falling back on the WTO, just because we have to reset our membership there anyway. We are not a party to the GPA without the EU. We did not sign as a 1994 signatory. We have to renegotiate everything with all those parties again. Just falling back on the WTO is hard work in itself. That is one thing.

It is a shame that it is so difficult to put consumer interests forward and to get consumers together to have a lobbying voice. Disadvantaged and vulnerable consumers always lose out the most, unfortunately. There are various ways of dealing with certain things internally, but tariffs are something you negotiate with other countries. Unless we quickly work out our trade relations with the EU we are going to suffer, businesses as well as consumers, because businesses are consumers.

Laura Dunlop: Can I perhaps offer an answer to that? I was having this conversation with somebody serving me in a shop. I said I was a lawyer when she asked what I did, and she then asked me to explain Brexit. The problem you are articulating is a real one. It is very difficult for people, as it is very difficult for us, to have an understanding and an awareness of what is going on. Yes, there are claims and counterclaims. The only answer that can be given is, if something specific comes out saying these look to be likely results, one would expect the person saying that everything is going to be alright to have specific answers as to why these results will not flow.

Q106 Chair: If possible, could you give us an example, on this question of the issues we have been debating today and negotiating international trade deals, of where you think the UK Government might be worried that one of the devolved Governments could take a policy decision that would create a difficulty for concluding an international trade deal with another country, whether it is the United States or otherwise?

Dr Dawar: I can think of many. If we start off with subsidies and state aid, at the moment we are regulated by Article 107 of the Treaty on the Functioning of the European Union. State aid comes into so many areas of government. In procurement, you can give too much and then you are providing state aid. We have been heavily dependent on the EU's rules and case law, but there is also the subsidies agreement in the WTO.

For example, take the area of feed-in tariffs. This is something that Wales and Scotland are probably interested in, in renewable energy. Cases are continually coming to the WTO on these areas of renewable energy because the law is not clear, so the clarity comes from the interpretation and dispute settlement. For example, in the case of a harbour in Scotland, if the Scottish Government decided they were going to put in some large amount of state aid or make changes to that harbour, it would not affect just the UK, because a harbour is quite an



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important piece of the infrastructure of a country. It might violate WTO subsidy rules.

At the moment, the EU has been dealing with all that. You have to notify your subsidy to the EU. It has a look at it, to see if it is compatible and whether there are exceptions for various reasons. The rules are very different in the WTO. There are no exceptions for subsidies. The idea of a benefit is very different from the idea of a benefit in the EU. Suddenly, we are talking a different language and we have not learned that language yet. There are certain people who have learned that language, but government has not learned the language of the WTO because the EU has been speaking that language for us.

That case of the Scottish Government deciding to put state aid into one harbour could potentially become a problem in the WTO, and because we have been looking for the EU to sort us out on that front and defend us in the WTO, we are in a whole new ballgame. The UK will suddenly have to be in dispute settlement with, for example, the EU.

Q107 Chair: The Institute for Government has suggested that one way to handle negotiations in respect of international trade deals in future would be to create a JMC specifically for international trade. Do you think that would be helpful or not?

Dr Dawar: It would definitely be helpful. What is a subsidy? What is a procurement? What is just a regulation? They are all overlapping now. Trade is very complex. When the Government act, are they acting with a partner, as a market operator or as a benevolent subsidiser? We need joined-up thinking on these issues.

Q108 Chair: I have one final question, which was touched on briefly earlier, but just to be absolutely clear. In the event of the kind of transitional arrangement that the Prime Minister announced the UK is going to seek in her speech in Florence, what is your understanding of how that will impact upon the issues that we have been discussing today? Would it put all of this on hold for length of that transitional arrangement?

Dr Dawar: No, not all of it. It is difficult because, when you look at the clauses here on transitional arrangement and the Government's ability to make secondary legislation to deal with it, we are in the dark with this transitional arrangement. It does not help businesses or devolved nations. More clarity is needed on that, definitely.

Q109 Chair: It is not clear. Is that a view our other two witnesses share?

Dr Hunt: I cannot add any clarity to that, other than to ask, when we are talking about a transitional period, whether we are talking about a continuation of the status quo or whether there will be a staggering of different rights and obligations within that period. We still are unclear about what that means, so on the legal consequences of that we are in the dark.



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Laura Dunlop: There is a huge difference between a transitional arrangement that is expressly time-limited—it will last for two years, three years or whatever—and a transitional arrangement that is framed around, “This is how it will be until everything else is fixed. Effectively, this problem is last in the queue”. That could mean that the period is very long indeed.

I would take issue with some of what Kamala said about harbours. Harbours have come up as an example. That sounds to me to be a scenario in which the Administrations in Edinburgh, Cardiff and Belfast cannot do anything during this transitional period, however long it is, because the UK Government are going to say to them, “You cannot do something in Lerwick Harbour because that might trespass on WTO provisions”, so the UK Government are pronouncing on what the WTO might or might not do. It sounds to me as if, during the transitional period, there will be a considerable reduction in what the Administrations in the three devolved parts of the UK are practically able to do.

Dr Dawar: I have to underline that. That is the real problem with Clause 8. It really does not tell us where the devolved nations are when the UK is dealing with its international obligations, and there is no mechanism, discussion or negotiation forum for discussing with the devolveds. I have a real problem with the lack of clarity of Clause 8 in that regard.

Chair: Okay. Thank you very much indeed for coming today. Your evidence has been extremely helpful and, with that, we conclude the session.