

Select Committee on the European Union

Corrected oral evidence Brexit: Devolution

Wednesday 20 December 2017

2.10 pm

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Members present: Lord Jay of Ewelme (The Chairman); Baroness Armstrong of Hill Top; Lord Boswell of Aynho; Baroness Brown of Cambridge; Baroness Browning; Lord Crisp; Lord Cromwell; Baroness Falkner of Margravine; Earl of Kinnoull; Baroness Neville-Rolfe; Lord Selkirk of Douglas; Baroness Suttie; Baroness Verma; Lord Whitty; Baroness Wilcox; Lord Woolmer of Leeds.

Evidence Session No. 1

Heard in Public

Questions 1 - 10

Witnesses

I: The Rt Hon Damian Green MP, First Secretary of State and Minister for the Cabinet Office; Ms Lucy Smith, Director-General, UK Governance Group, Cabinet Office.

Examination of witnesses

Rt Hon Damian Green MP and Ms Lucy Smith.

- Q1 **The Chairman:** Welcome, Mr Green. Thank you very much for coming to give evidence to the Committee today. We are extremely grateful to you and to your colleagues. A transcript will be sent in the usual fashion, and this is of course a public session.

Since the referendum the Committee has focused on aspects of devolution. The first report that we produced after the referendum was on Ireland, which showed the importance the Committee attaches to the implications of Brexit for the island of Ireland, both Northern Ireland and the Republic of Ireland. We subsequently produced a report on Brexit and devolution, which also shows the importance we attach to the implications of Brexit for devolution. Given that background, we are grateful to you for agreeing to give evidence to the Committee today. Would you like to start by making a preliminary statement? If not, we will go straight into the questions. It is entirely up to you.

Damian Green MP: Let us start with the list of questions.

- Q2 **The Chairman:** I have a general question to start with. Can you explain to us your role in relation to the Government's Brexit strategy, with particular reference to your rather heavy role in the different Brexit committees and sub-committees, in particular your responsibility for overseeing the devolution consequences of Brexit.

Damian Green MP: Thank you, Lord Chairman. As First Secretary of State, one of my overall responsibilities is the oversight of intergovernmental relations within the UK and leading engagement with the devolved administrations. My role in the internal UK Brexit process derives partly from that. Also, as you say, there are a number of Cabinet committees and sub-committees. The European Union Exit and Trade Committee is the overall committee overseeing the negotiations on our withdrawal from the EU. I am the deputy chair to the Prime Minister of that committee. I also chair two of the EU exit and trade sub-committees. One is on international trade, which is obviously looking forward to potential new trade deals we could sign. The other is the EU Exit and Trade (Domestic Preparedness, Legislation and Devolution) Sub-Committee, which is snappily titled. I am also a member of the EU Exit and Trade (Strategy and Negotiations) Sub-Committee, which is a general sub-committee of the Cabinet looking in particular at the negotiations.

That is my role in Whitehall, but, as I say, I am the lead for the Government in negotiating with the devolved administrations, so with that in mind I have revived the Joint Ministerial Committee on EU negotiations—the JMC (EN)—which had not met since February, a point which I think the Committee made in its report; it noted that the committee had fallen into disrepair. It has been repaired and we have had two useful meetings. I am also holding a lot of bilateral meetings with both the Scottish Government and the Welsh Government, which I

started back in the summer. We have had four meetings with each bilaterally since then.

Also, because I am spending quite a lot of time in Scotland and Wales, and in Northern Ireland, although obviously it is different there because it does not have an Executive to hold those sorts of bilateral meetings with, I am also spending as much time as I can with other stakeholders in Scotland, Wales and Northern Ireland in the form of businesses, charities, farmers and so on, which are the particularly important economic areas.

The Chairman: Could you say a word about how all that relates to what David Davis is doing? He has helpfully given evidence to the Committee as well. I am sure that the co-ordination between you is seamless, but I just wonder how it works.

Damian Green MP: In practical terms, he has come to both Joint Ministerial Committee on EU Negotiations meetings so that he can hear the views of the Scottish and Welsh Governments, as well as those of the Northern Ireland Executive, on what they want to see in the negotiations, and he reports back to that meeting. Obviously he and I meet all the time both in various committees and less formally. We try to work together as seamlessly as possible. He is also plugged into the process through the various meetings under my chairmanship, where he can talk and listen directly to the devolved administrations.

The Chairman: Thank you for that. Finally, this has clearly been an important week for the Cabinet and its sub-committees. Can you say how much further advanced we are as a result of this week's meetings from where we were at the beginning?

Damian Green MP: The largest advance has been made not from this week's meetings but from the agreement that we had made sufficient progress. That was obviously a hugely important step forward in the negotiations. Therefore, the Cabinet sub-committee and the full Cabinet have discussed what we see as the desirable end state and the desirable position of the implementation period between 2019 and the end of that period after roughly two years. Those have been the discussions, and as has been reported they have been given a very full airing at Cabinet and at the sub-committee meeting the day before.

Q3

Lord Selkirk of Douglas: The first question is about the Joint Ministerial Committee. Evidence that we have had in the past suggests that it has not been tremendously successful. Where does the balance lie between inter-institutional dialogue through the Joint Ministerial Committee mechanism and the separate bilateral dialogue with each of the devolved administrations?

Damian Green MP: They are both essential. Over the past few months I have tried to establish a proper rhythm whereby I have bilateral discussions between the Joint Ministerial Committees. Because the devolution settlements are different, inevitably some conversations will have to be had on an individual basis, but obviously there is a large

degree of commonality in the approaches of the devolved administrations, as indeed there is in the approach that we want to take to them.

You are completely right, and the Committee was right in its report, that the history of the JMC (EN) is not a glorious one, and we have taken several steps to make it better now. It is a smaller and much more focused meeting, and it is more of a business meeting. We have things that we need to achieve, and indeed we have achieved them. The underlying purpose of these negotiations, which is really important for the Committee to bear in mind, is that we want to ensure that there are no new barriers to trade and therefore no brake on growth and prosperity within the UK after Brexit. We have a UK internal market—a UK single market if you like—and it is absolutely essential that we keep it.

The frameworks that we are negotiating in the JMC are precisely to enable us to say which parts of the competences that were held in Brussels need to be held at a UK level, and which can be devolved down to the devolved administrations. It is our belief, expectation and hope that there will be more powers be devolved at the end of this process than there were when the central powers were held in Brussels rather than at a UK level.

Lord Selkirk of Douglas: Can I ask two associated questions? First, how can the overall referendum result be respected while at the same time taking account of the divergent views of the different nations of the UK—I am obviously referring to Wales, Scotland and Northern Ireland? Secondly, is it possible for the nations to have differentiated relationships with the EU, or is a consistent approach across the UK the only viable solution? Have you come to a view on that, as yet?

Damian Green MP: Yes, I have a very firm view on that. It was a UK-wide referendum and the votes were counted on a UK-wide basis, so the negotiations have to take place on a UK-wide basis. Therefore, that result should not be used as an excuse to say that there are fissures within the UK. Indeed, Scotland had its own referendum on that. The Scottish people voted to stay part of the UK, and the British people then voted to leave the EU, so the Government takes the very firm position that they recognise and respect the results of both those referendums. Therefore, we are acting on that basis.

This is a UK-wide negotiation, and, as I say, one of our essential principles is that we do not want the act of Brexit to entail any obstruction to trade within the UK. We think that would be very bad for the UK economy and, I suspect, particularly bad for the devolved administrations—for the people of them.

Lord Selkirk of Douglas: Can I follow that up with a quick question on immigration? The view taken in northern English cities is very different from the view taken in Scotland, for example, as to the capability to accommodate a greater number of refugees. Do you see any possibility for a differentiated solution?

Damian Green MP: It is difficult to have a differentiated solution purely geographically unless you have a border, which clearly we do not want. But I agree that it is a complex issue. Obviously, the question is what kind of post-Brexit immigration policy would best serve the needs of the whole of the UK, including areas where, particularly in economic terms, there may be a sparsity factor in play. That is more common in areas like the Highlands and Islands, although of course it is not unknown in parts of England as well.

That is why we have commissioned the Migration Advisory Committee to do a very full report that will take altogether 12 months or so to complete, and I am pleased that the devolved administrations are already putting in quite weighty tomes of evidence to that committee so that their voices can be heard, because it is clearly not a simple task to devise an immigration policy.

On the question of refugees, I feel that I should speak up at this point for Sheffield, remembering my time as Immigration Minister. You say that the attitude in northern cities is very different. Sheffield, for example, deliberately sets itself up as a city that welcomes refugees and has many refugees there. So the binary distinction between Scotland and northern England is, in certain cases, perhaps unfair.

The Chairman: You mentioned earlier that the JMC has had a bit of oomph in the last little while. Could you tell us a bit about how the last one went? We have seen the minutes of it, which have been published, but we have also seen the remarks by the Scottish Minister about it. What is your view on how successful that was? How much togetherness arose at the end of it?

Damian Green MP: We did not agree where we had got to as an endpoint in the negotiations on frameworks but I do not think anyone expected us to. This is a series of meetings, and we are moving towards finding a common set of frameworks that will mean that the areas that need to be held at UK level will be. The discussion was in two parts. The first was about the negotiations, and we discussed a lot there with the Secretary of State for DExEU. Then we had a special session on immigration with the Immigration Minister, which was an interesting discussion. As has been said, different parts of the UK have different perspectives, which is precisely the use of the JMC.

The overall tone of that meeting and the previous meeting was constructive. In the space of the two meetings, we have agreed principles, which we have all now signed up to, on which the common frameworks will be based so we know what principles we are operating when we say, "This can be devolved straightaway, this can be devolved without legislation, and a small number of matters will need to be held in a UK framework". We will proceed with that work as we go.

It is often understated that between those meetings officials are doing big, technical amounts of work on the individual areas, again on an

agreed basis; we agree which areas should be done first. I will ask Lucy Smith to explain what is happening there.

Lucy Smith: As the First Secretary has set out, the first renewed meeting of JMC (EN) in October agreed a set of principles to guide the work that we are doing on UK-wide frameworks, and it commissioned us to go off and do three deep dives, which we did jointly with the Scottish Government, the Welsh Government and indeed, officials from the Northern Ireland Executive also attended. One was on agriculture and agricultural support, one on justice and home affairs, and one on public health.

The idea of the deep dives is to test out and work together on where in those areas we will need UK-wide frameworks and future co-operation and where things might be done better at a devolved level because we will need to reflect differences in interests. The deep dives are also looking at cross-cutting issues, such as future governance, which you raise questions about in your report. Obviously we can report back to the JMC (EN) just past on 12 December to say, "This is the progress that we've made in these deep dives", to record that with Ministers across the administrations, and then receive our commission for the next phase, which is obviously to follow up those three and to start building in discussions on many of the other areas, because ultimately there are 142 different areas that we need to work through. It is an intensive project that we have, but there are good official arrangements in place to work through those.

The Chairman: That is very helpful. Thank you.

Q4 **The Earl of Kinnoull:** I will follow up a bit again, I am afraid, on the JMC (EN), particularly the concerns expressed in our report for Scotland and Wales and the fact that it did not appear in the evidence we received that things were working well. I am very grateful for the various things that you have said today about the two meetings, the fact that the business meetings were now smaller and more focused, and the deep dives. Did you do anything more structural with the JMC (EN) to try to address concerns further? I am thinking particularly of continued negative comment from the Scots today on the structure and future plans. Are there other things that you have not told us about that are structural changes?

Damian Green MP: As I understand it, it is inevitable that in meetings like that we will not all agree on everything. At the end of a meeting, people will come out and say, "We didn't agree on this". That does not necessarily reflect a failure of the structure; it just means that there was a disagreement between two parties, and if we all agreed on everything we would not need to hold the meeting. So to some extent that is inevitable.

As I say, having a much more focused agenda and regular meetings so that the devolved administrations can play a significant role, as they have done, in bringing forward acceptable frameworks has proved useful.

It is certainly the case that, now we are moving on to phase 2 of the negotiations, the focus of the meetings will inevitably change anyway. We are now considering the best way of engaging the devolved administrations in the detail of the trade negotiations. That is a hugely important part of the end state; that is, the end of the phase 2 negotiations about to start in 2018. That I see as the big challenge facing the JMC as well as everything that happens in between. There will be a level of expertise in certain areas of the devolved administrations that we will want to tap into. We want to make sure in particular that officials with specialist knowledge in those administrations can work with officials in Whitehall to make sure that the whole of the UK is contributing to our negotiating process.

The Earl of Kinnoull: My concern is about what underlies the JMC (EN), which of course is the Memorandum of Understanding. The current iteration of that is from October 2013, and in fact I believe that it is only a draft document, not a finalised one. Since October 2013, we have had the Scottish referendum and the Smith commission stuff. A huge amount of additional devolution has gone on and now we will have fresh powers coming back into the UK. It seems that it is time for quite a major review of the MoU structure. To be operating from a draft document from 2013 structurally does not feel right. I wonder if you have a comment to make on that.

Damian Green MP: That is a perfectly fair point. We would like there to be a new and updated Memorandum of Understanding. One of the steps forward we will make is through holding another plenary meeting of the JMC early next year. That is where things like the Memorandum of Understanding might well be a useful discussion. You are right that it was before my time that the Memorandum of Understanding was not approved at a meeting. Clearly, that is something we will return to in 2018.

Q5 **Baroness Brown of Cambridge:** Can we move on to the principles for the repatriation of powers to the devolved Governments? The Prime Minister has committed to working carefully to ensure that, as powers are repatriated from Brussels back to Britain, the right powers are returned to Westminster and that the right powers are passed to the devolved administrations of Scotland, Wales and Northern Ireland. We are interested in what the Government's key principles are in their discussions about the repatriation of powers.

Damian Green MP: The key underlying principle is that withdrawal needs to be a successful and smooth process for the whole of the UK. What that entails is that there is a functioning statute book in all parts of the UK from day one. That seems to us to be absolutely essential. What we have had for the past 40 or more years are EU rules creating a consistent approach across the UK in a range of policy areas. Even today, while in different parts of the UK there are different choices on implementation, the common rules obviously provide a number of benefits, not least making it simple for businesses in different parts of the

UK to trade with each other as well as ensuring the UK meets its international obligations and protects our common resources.

One of the very significant advances we have made in the first couple of JMC meetings, and in various other meetings, is to agree that UK frameworks are required in some areas. That is why we have Clause 11 in the EU (Withdrawal) Bill. It replicates the current frameworks under the EU rules through UK legislation. Essentially, what that part of the Bill does is make sure that they cannot change the frameworks, just as they cannot with EU law.

That is the starting point. From there, we are now reviewing the areas where frameworks are and are not needed. As I indicated briefly in an earlier answer, by far the biggest majority either can be devolved straightaway or do not require legislation or any kind of legislative framework. They can be dealt with in different ways including guidance notes, memorandums of understanding and so on. However, a small core will require UK-wide frameworks.

I am conscious that I am being slightly abstract, so let me be a little more concrete. Let us take something like flood control, where how it is dealt with in Scotland will not affect how it is dealt with in Cornwall. I think we would all agree that that can be passed through. On organ donation, we probably do not need a new legal framework because we all know what the existing framework is, but we would need a memorandum of understanding so that it can be done in any part of the UK. For something like pesticides control, we will want to have a UK framework. If we do not, we might find that wheat grown in Scotland is unable to be made into bread in England, which clearly would be disadvantageous. Those are three real-life examples of where the different areas fall.

Baroness Brown of Cambridge: I suppose that that follows on from the government response to our report on devolution, which states that powers currently held by the EU that support the single market at the domestic level, "are not, and never have been, within the competence of the devolved administrations". That does not seem to reconcile with the explicit devolution of, in that area, say, environmental policy.

Damian Green MP: It is an interesting example. The point your report brought out very well is the interesting intellectual challenge that all three of the devolution settlements were written without any notion in mind that Britain would ever leave the EU, and therefore we have embarked on a journey for which no one had provided a map beforehand. That is why we have to start from first principles. The environment is an interesting example. There are a lot of environmental regulations which Britain has signed up to through its membership of the European Union, and yet within those you can have devolved competences. The exercise we are going through looks at where we need UK-wide regulations and where we do not need them. As I say, the majority of regulations will not be needed UK wide, but where we do need them they are vital to promote trade and prosperity within the UK, so it is very important to get them right. Equally important is that the purpose of Clause 11 is to do

that: it is not designed as a permanent state of affairs; it is designed to get us to a point at where we have replicated the current situation where some powers which are held at the EU level are held at the UK level. We can then, as it were, all proceed with our lives.

Baroness Brown of Cambridge: Is there an assurance for the devolved nations that this will come to an end at some point?

Damian Green MP: When we have agreed all the frameworks. The negotiation is a two-way process. As I say, we have already agreed the principles of the frameworks and I would hope that, fairly quickly, we can agree on where the frameworks are needed. At the point at which we are all signed up to those, the purpose of Clause 11 will have been served.

Baroness Brown of Cambridge: Lucy mentioned that there are 142 areas to work on, which is a huge work programme. Are they 142 sectors and policy areas where you think that UK-wide frameworks will be needed?

Damian Green MP: Lucy, would you like to talk about the numbers?

Lucy Smith: No. There are 142 areas in total, and that number has been generated through a fairly technocratic exercise just to try to examine the intersection between devolved law and EU law. That is how they were generated as a set of lines. Our job is then to work through all of those and ask what sort of category each fall into. Do they fall into the sort of category that the First Secretary has been talking about in relation to flood control, where things can be done in different ways in different parts of the UK and they do not have a knock-on impact on others? Do they fall into a category where we do think there should be a common approach but we already have mechanisms in place to do that, or we think we can agree protocols or memorandums of understanding and that will serve our purpose? Or are there more serious regulatory issues for some of them, which is the harder end of this where we want to think through what a UK-wide framework would look like in a more legislative manner? Obviously, those need to be a particular area of focus because those are the areas where we need to agree what they look like and then how we put them in place.

Baroness Brown of Cambridge: Is there a shortlist of key sectors and priority areas to look at?

Lucy Smith: Yes. We are working through the list of areas with the devolved administrations to try to categorise them. But as I set out earlier, we are trying to take them piece by piece and go through this deep-dive process so that we actually understand, within the area that we have identified through this technocratic analysis of the intersection of law, which specific bits should be subject to a common framework and which do not need to be. It is not that we would just put a tick against some and not against others. Within each one there is a big piece of policy analysis to be done because there are shades of grey within those as well.

Damian Green MP: Agriculture is the prime example, which is important to all three of the devolved administrations as well as to England. Agriculture is run essentially by the rules of the CAP and yet it is a devolved competence within the UK. In this key area you have to have a bit of both. You have to get quite fine-grained before you can decide what can be devolved and what needs to be retained at the UK level.

The Chairman: Would it be possible for you to write to us giving a little more detail on the various categories—on the 142? I hesitate to ask for more things with numbers on because they tend to get rather confused. However, it would be very helpful if you could write.

Lord Boswell of Aynho: I have a very small point on the First Secretary of State's comment on flood defences, which I hazard to make only as a former Minister in that area, but it may be illustrative. If one were to take a shared river like the Tweed, typically, there will be a common interest in ensuring that neither Coldstream nor Wooler floods as a result of decisions that have been taken, perhaps not under the entire control of either the devolved administration or the UK administration. Would it be useful at this point to be clear that, notwithstanding the frameworks which are designed to deal with things at the macro level between the devolved administration and Westminster, this would not preclude the continuation or indeed development of bilateral arrangements for river management to deal with flood defences which may need to be agreed and done at the local level?

Damian Green MP: Of course, it is to be hoped that common sense will kick in in areas like that. On a wider point than flood control, one of the growth deals that we hope to sign is the borderlands deal covering the southern parts of Scotland and the northernmost parts of England.

Q6 **Baroness Neville-Rolfe:** Still in the same general area, First Secretary of State, how do you respond to the vocal concerns that have been expressed by the Scottish and the Welsh Governments about Clause 11, which they feel undermines the devolution settlement? Is that right? Could trying to meet their concerns, which you were perhaps hinting at, undermine the UK's negotiating position? To my mind, the key thing at present is to get a really good deal with the EU 27, and elbow room in any negotiation is often very important. After that, we can work out what needs to be delegated in Scotland, Northern Ireland and Wales while obviously maintaining the devolution settlements. Also, as you have rightly implied, the single market is very important across the UK. I know that it is important because I have run food and other businesses that operate right across the UK and indeed in the Republic of Ireland.

Damian Green MP: The short answer is that Clause 11 does not undermine the devolution settlements as they currently stand. As I have tried to explain, within our guiding principle that there should be no new barriers to people living in and doing business within the UK, Clause 11 is designed to address precisely the issue that the Scottish and Welsh Governments have brought up. There should not be any kind of power grab, but it should leave us with both a properly running statute book

and the powers held at the appropriate level to make sure that we meet the guiding principle of no new barriers.

Part of your question was whether we have addressed their concerns. That is precisely what the JMC is doing, along with what the various deep dives with officials are doing. From the early days when the negotiations started up to now, we have made very significant progress on agreeing principles which cover some of the issues you have raised in your question. They have been agreed by all the relevant administrations and we are now building on those so that we can get to the nitty-gritty of a number of the different areas. That is exactly what this process is about.

We hope in the end to get to a point of agreement where we will all agree that we are doing the right thing at the right level and that therefore the Scottish and Welsh Governments will grant Legislative Consent Motions for the EU (Withdrawal) Bill.

Baroness Neville-Rolfe: That is good news, but what are the implications if they do not agree to those Legislative Consent Motions?

Damian Green MP: Let me not hypothesise about something which I hope does not happen. I am not just being hopeful because I have observed over the past three months the degree of progress that we have made. It is clearly not in the interests of people in Scotland, Wales or Northern Ireland for there not to be a working statute book, and equally it is not in their interests for there to be barriers to trade between the different parts of the United Kingdom. In a sense we have a common interest; that is, we as the UK Government and all the devolved administrations want to make sure that we get to a satisfactory position.

The Chairman: As I understand it, at the moment the Scots and the Welsh are being quite difficult about agreeing legislative consent. Is that really a negotiating tactic?

Damian Green MP: I am sure that they think I am being difficult as well. We are in a negotiation. As I said in answer to a previous question, if we all agreed we would not need to have any of this because we could just draft a document and sign it. There are obvious differences of emphasis, but I genuinely think that we can come together in common agreement.

Q7 **Baroness Suttie:** I turn specifically to the question of Northern Ireland. It is now almost a year with no Executive in Northern Ireland. I have read in the communiqué from 12 December that at the JMC (EN), "In the absence of Ministers from the Northern Ireland Executive, a senior civil servant from the Northern Ireland Civil Service was in attendance". What measures are you taking and what measures do you expect to take to address this democratic deficit to make sure that on the critical issue of Brexit, the voices of the people of Northern Ireland are heard? Further, have you considered the kind of creative solutions that have been put forward by Lord Alderdice and Lord Trimble about involving the elected representatives of the Northern Ireland Assembly in some capacity at the

JMC (EN)?

Damian Green MP: The first thing we are doing is that, in particular, the Northern Ireland Secretary is working tirelessly to try to recreate the Executive. That is overwhelmingly the best way to solve not just this issue but many other important issues as well. We are working very hard on that.

In terms of the JMC (EN), it would obviously be a problem if, effectively, the UK Government started picking and choosing who should represent the different parts of the communities in Northern Ireland, so our solution, if you like, is to have the Northern Ireland Civil Service acting as a voice—almost by definition a neutral cross-community voice—for Northern Ireland at the JMC. But nobody thinks that that is the most satisfactory solution. By a mile, the most satisfactory solution would be to have the Executive back up and running. That is what we are expending all our efforts on.

The other point I would make is that outside the JMC process, even though there is no Executive for me to talk to as I do with the Scottish and Welsh Governments, obviously there are people from Northern Ireland with interests who need to be represented. I have made efforts to make sure that that happens. I have been to Derry/Londonderry and to Newry as well as making various visits to Belfast and elsewhere taking the views of local people, particularly from communities close to the border, on this very sensitive issue so that they are having a direct input into this part of the negotiating process. We are working hard to make sure that as many voices as possible from Northern Ireland are being fed into the process.

Baroness Suttie: Specifically on the other political parties in Northern Ireland, have you put mechanisms in place or are you considering mechanisms to reach out to them, not least because of the way the Northern Irish people voted in the referendum?

Damian Green MP: Sorry, let me refer narrowly to the JMC process. As I say, there would be something wrong if we started to pick and choose who should go. Absolutely, the British Government as a whole, and in particular the Northern Ireland Secretary, are fantastically assiduous at taking the views of all the parties in Northern Ireland, whether or not they are currently in the House of Commons, and they will continue to do so.

Baroness Armstrong of Hill Top: I remember very well from my time in government that, when we were negotiating the Belfast Agreement, folk like me and those in various other positions in Government—including, I have to say, the Minister in the Cabinet Office—were all expected to be part of delivering and moving the Belfast Agreement forward, even though it had not yet been completed. Not every aspect of the Good Friday Agreement has yet been delivered, which is a bit worrying. However, the whole of the agreement was based around both countries, the Republic of Ireland and the UK, being part of the European

Union, and much of the guarantee of independence was at the European level. We are now in a position where we do not even have an Executive and where the Government has a very close and special relationship with one party, which is not a majority party in that it does not have much more than 50% of the vote. In my view, that puts the Belfast Agreement in a bit of peril. Given the role of the DUP at the moment and in the run-up to the crucial European Council where it appeared—whether it was real or not, this was the perception—that the DUP was in charge, how is the Government going to make sure that they are absolutely perceived in Northern Ireland, in Europe and over here as neutral, as playing the role that the Belfast Agreement has set out for them, and that they recognise the current absolute lack of a nationalist voice anywhere in the process?

Damian Green MP: The answer to that important question is that, as we reiterated both in the agreement reached at the recent summit and in all the other fora we can, the Government is completely committed to protecting the Belfast Agreement in all its parts. That includes the principle of consent, citizenship rights and human rights provisions.

That is at the heart of our approach to the wider Brexit negotiations. We have made and continue to make clear that we will avoid a hard border, that we want to preserve North/South co-operation and funding, that we want to preserve the Common Travel Area, reciprocal rights for UK and Irish nationals, as well as respect the constitutional status of Northern Ireland and the provisions of the Good Friday Agreement that established the principle of consent. That has been consistent since the Lancaster House speech through to everything we have produced in this area. Clearly, it was a tough negotiation, but in the end we agreed a text which allowed us to declare that we have made sufficient progress on this important part of it.

I think that the future negotiations will get to the nub of the border question. Obviously, we respect the desire of the European Union to preserve the integrity of the single market but, equally, we need to preserve the integrity of the United Kingdom. The trade negotiations will come to a conclusion as to how we respect both of those integrities, if you like. Within the overall framework of preserving the constitutional and economic integrity of the United Kingdom, there is clearly a unique context for Northern Ireland. It is the only part of the UK which has a land border with the EU, or it will have once we have left the EU, and we have said that we need to find a creative solution to that particular issue of the border. I cannot emphasise enough what we have said at every stage and which we will continue to say because it is really important: we will keep to the Good Friday Agreement.

Baroness Armstrong of Hill Top: When we took evidence for our report from politicians in Northern Ireland, a couple of the nationalists were particularly concerned about the issue that you were talking about before, in terms of Scotland and Wales, regarding the devolution of powers from Europe. To me it seems clear—indeed, this is what they were talking about—that when something is devolved from Europe, they

get on with it, but that if it is devolved from Westminster, en route from Europe, the administration in Northern Ireland, if we ever have another one, will have to reach cross-party agreement. For example, they raised in particular something which has been an issue this week: workers' rights. Their position was different from the unionist position, so if the Government does anything with the social clauses in devolution, and particularly workers' rights, there is the possibility that that would leave the nationalist community high and dry and not able to get the agreement they want because the DUP would have already done the agreement with the UK Government. What can you say to reassure the breadth of the community in Northern Ireland that that will not happen?

Damian Green MP: There are multiple hypotheses in that proposition. Cutting through them, the best thing I can do is reiterate what the Prime Minister said strongly on the Floor of the House of Commons earlier this week. The Government has no intention of diluting workers' rights, and it is a canard to say that they intend to do so. We have been very clear about that.

Baroness Armstrong of Hill Top: I gave that as an example.

Damian Green MP: Yes. As I say, the solution is for there to be a functioning Executive so that those issues that need to be debated between democratically elected politicians representing people in Northern Ireland are debated. We all know that Northern Ireland is in a unique position within the United Kingdom, but it is within the United Kingdom and there is a devolution settlement that can work and has worked for a number of years. We all hope that it will start working again. It seems to me that at the point of devolving powers from Europe through to a local administration, that is precisely what should happen. When it is decided that this is an area that can be devolved through to a devolved administration, in the end it is for people and political leaders in Northern Ireland to take those decisions. That is the solution to that conundrum.

Baroness Armstrong of Hill Top: Except that if they cannot reach agreement in Belfast and the UK has changed anything that has come from Europe, they feel that, even with an Assembly, they will be in a very much weaker position.

Damian Green MP: If the Assembly and the Executive were up and running, I do not think they would be in a weaker position. It would be for them to take the decisions that should properly be taken by them. I can only keep repeating that this is the solution. The political leaders in Northern Ireland, I hope fervently, will be able to come to an agreement so that they can take up their responsibilities. These decisions are better taken by those who have been elected by the people of Northern Ireland, with their different points of view, rather than by people in Westminster.

Baroness Armstrong of Hill Top: Do you accept that there is a real problem in Westminster in that there is now not a single nationalist voice in either House?

Damian Green MP: That is asking me to comment on what the people of Northern Ireland did at the last general election.

Baroness Armstrong of Hill Top: I repeat: in either House.

Damian Green MP: Putting people in the House of Lords is above my pay grade.

Baroness Armstrong of Hill Top: Not by much.

The Chairman: There is Lady O'Loan.

Q8 **Lord Whitty:** Perhaps we can move on to Wales. Wales sometimes gets overlooked in the Brexit campaign because it voted in more or less the same way as England. However, the reality of its relationship with the EU is very different. Wales benefits disproportionately from EU policies, particularly in the farming sector but also in infrastructure and other areas.

We have talked quite a lot about powers, but this is also about money. If, for example, Welsh hill farming does not receive the equivalent of what has come from Europe hitherto, and/or at the same time there are any trade barriers to the export of Welsh lamb and other products, there would be a terrible situation for agriculture in Wales. Have the Government recognised that they are going to have to disproportionately replace what has hitherto been EU funding and support for Wales not only up to 2022 but in the long term? Has that been spelled out in the JMC or in bilateral talks with Welsh Ministers?

Damian Green MP: The JMC has not discussed money yet.

Lord Whitty: Right. That is a bit of an omission.

Damian Green MP: Money is being discussed in many other areas. It is not under-discussed in these matters. Absolutely, the Welsh voice is not being forgotten, not least by me because I am Welsh. It is always represented, and not just by the Welsh Government, at the JMC and in our negotiations.

You mentioned farm payments specifically. As you know, we have guaranteed that the current level of funding under pillar 1 of the CAP will be upheld until the end of the current multiannual financial framework period in 2020. More widely, not just in relation to agriculture but on the general funding for areas of disadvantage, we have said that we will create the UK Shared Prosperity Fund so that the structural fund money that comes back to the UK following Brexit will be used specifically to reduce inequalities between communities across our four nations.

Inevitably, we are at the early stages of establishing the principles on which that will be done, and from that will be derived the actual amounts that will go to the different areas. However, it does give us a chance to look at the current support arrangements and to ask whether they are as effective as they can be in raising up communities that may have been at a disadvantage for generations and actually making a real difference for

them. I am struck by the number of colleagues not only in Wales but in places like Cornwall as well who have said to me, "Yes, we have been receiving these European funds for a long time, but, you know what, nothing has changed over 20 or 30 years".

In other areas, there has been a palpable change. The last time I was in Cardiff it was pointed out to me that Cardiff itself is, by any standards, a success story, but other parts of Wales are less so. Local people themselves want to look at how regeneration money can be spent more effectively so that it can make a long-term difference. This gives us a chance to do that.

Lord Whitty: Would that be discussed by the JMC or in the bilateral arrangements between the Treasury, perhaps BEIS, and Welsh Ministers?

Damian Green MP: The JMC (EN) is specifically about the negotiation process, and the JMC (P) meets less regularly. Apart from anything else, the territorial offices in the form of the Wales, Scotland and Northern Ireland offices will have a very significant role to play. Of course, some of those funds will also be spent in England. Again, we need to bring into alignment both the distribution around the UK and the capacity to get the biggest bangs for our buck. As I say, we are in the early stages of doing that.

Lord Whitty: Likewise, not as much attention has been paid to Consent Motions in relation to Wales as there has been for Scotland, but it could become a significant factor.

Damian Green MP: Indeed, but, from where I sit, just as much attention has been paid to Wales as to Scotland.

Baroness Falkner of Margravine: I do not particularly want to labour the Scottish point too much, but I understand that Clause 11 has gone through the Commons unamended. Given the Scottish discontent with that, is the Government minded to try to do something about it in the Lords? More broadly, what are your thoughts in terms of engaging more effectively with Scotland at this quite critical point in time?

Damian Green MP: Today is the last day for the Bill in Committee, but Report stage is still to come, so we have one more Commons stage to come before we hand it over to this end of the Palace. The Secretary of State for Scotland said that we would look to improve it at Report stage, so by the time it arrives with you it may have changed. We are obviously talking to both the Scottish and the Welsh Governments about this. Indeed, it was one of the things that was discussed at the last JMC meeting. There will be contacts between us between now and the Report stage in the Commons. Then, as you rightly say, the Bill will also go through its various stages here in the House of Lords. We are always listening to the potential for improvements, as long as the principles that we need a working statute book and that nothing should put trading within the United Kingdom at risk are maintained.

Baroness Falkner of Margravine: I am reminded that the Scots often tell us that they had the highest remain vote in the referendum, although London, for example, had a similar count. I would suggest that the unity of the United Kingdom is quite important to remembering all the bits of the United Kingdom, including the English bits, in this discussion. That is a leading question that I am putting to you.

Damian Green MP: Indeed, and that is one of the reasons why it is extremely important that we approach the negotiations with a view to listening to the voices of all parts of the UK, given the overwhelming fact that, in the end, the British people voted 52% to 48% to leave, and that is what we are doing.

Q9 **Lord Boswell of Aynho:** First Secretary, taking this discussion a little wider, I appreciate that you do not have direct responsibility for the other dependencies of the United Kingdom, which as you know this Committee has been taking something of an interest in. I am thinking specifically of the dependencies of the Crown, Gibraltar and the other dependent territories. Your colleague in DExEU, Robin Walker, gave us helpful evidence in the preparation of our reports on those subjects. It was obvious that we both acknowledged that we owe those territories the same duty of care as you have identified for the people in the devolved administrations of the UK and that we need to see that the process works in a coherent way.

Within that constraint, can you do two things for us? First, can you give some flavour of your approach to the principle under which collectively the Government will approach this? Are you trying to produce at least equality of representation and an acknowledgment of the integrity of the local legislatures in those cases and so on, and to try to get them the same sorts of outcome? I make particular reference to Gibraltar where, as I understand it, there is an outstanding issue left from the negotiations and the agreement with the Council to initiate the second stage.

The second point is one which you might like to comment or reflect on and write to us. Can you say something about how the different bits of the machinery—the different JMCs—articulate and the efforts the Government will be making to ensure that they all sing from the same hymn sheet, and hopefully get to the same sorts of conclusion in the interests of the people in those territories as well as the UK generally?

Damian Green MP: I will take up your kind invitation and answer the second part of your question in writing, because the machinery of the JMCs is complex.

Lord Boswell of Aynho: I acknowledge that, and I recognise that that is a bit off piste in terms of your preparation for this session.

Damian Green MP: I should say that so are the dependent territories, which are not represented at the JMC and which Robin Walker will know a lot more about than I do. You are right to identify that there has been interest in Gibraltar this week, and you may have heard the Prime Minister addressing it directly at Prime Minister's Questions today. She

gave reassurances that were sought about the treatment of Gibraltar in the final deal. Obviously, we will want to negotiate a good deal not only for Gibraltar but also for all of the other Crown dependencies as well.

- Q10 **The Chairman:** I have one final question, First Secretary. The Government has helpfully sent to Hilary Benn's Committee in the House of Commons and to this Committee here the various sectoral analyses which have been prepared on the effect of Brexit on different sectors. Is the Government in a position to share those with the relevant committees of the devolved legislatures? They have written to me, among others, and I have asked a couple of House of Lords Parliamentary Questions which are waiting for a reply. Do you think that the Government would be prepared to do that? It would be greatly welcomed by the devolved legislatures in Scotland and Wales.

Damian Green MP: I know the issue is being addressed, but to my knowledge no decision has yet been reached. Presumably, that is why you have not received a reply to your letter yet. I do not know. As I say, the decision has not yet been taken. However, you will be the first to hear when we do take it.

The Chairman: Thank you very much. There is no doubt that it would be welcomed by the devolved legislatures if they were able to see them, and it seems very sensible to me.

On behalf of the Committee, I thank you and Lucy Smith very much indeed for the evidence you have given us. It has been extremely helpful to the Committee. We have managed to complete the evidence session before a Division is held, which is always a good thing. I wish you and your officials a very happy Christmas.