

Public Administration and Constitutional Affairs Committee

Oral evidence: [Devolution and exiting the EU](#), HC 484

Wednesday 20 June 2018

Ordered by the House of Commons to be published on 20 June 2018.

[Watch the meeting](#)

Members present: Sir Bernard Jenkin (Chair); Mr Marcus Fysh; Dame Cheryl Gillan; Kelvin Hopkins; Mr David Jones; David Morris.

Questions 769 - 849

Witnesses

I: Rt Hon. David Lidington MP, Minister for the Cabinet Office and Chancellor of the Duchy of Lancaster; Lucy Smith, Director General of the UK Governance Group.

Written evidence from witnesses:

- [Cabinet Office](#)

Examination of witnesses

Witnesses: Rt Hon. David Lidington MP and Lucy Smith.

Q769 **Chair:** Can I welcome the Secretary of State for the Cabinet Office, and I believe the First Secretary of State, to this session on devolution and exiting the EU? This will be our concluding evidence session. The purpose of this is not to rehash a whole lot of things that have been said before, but to get on record some of the pertinent issues where we feel we have gaps in our evidence in terms of the Government's view. If I can start by talking about the introduction of the EU (Withdrawal) Bill, which was rather peremptorily published with very little consultation with the devolved Parliaments and devolved Administrations, and was drafted in a form, in clause 11, that was regarded as what has been described as "constitutionally insensitive". What lessons do you draw from the reaction that all this has provoked? For the future, rather than just accusing the Government of being antagonising towards the devolved Parliaments and



HOUSE OF COMMONS

devolved Administrations, looking back, what could we have done better, as the United Kingdom Parliament and Government, and what should we learn from this?

Mr Lidington: I should start by saying I am assisted by Lucy Smith, who heads up the constitutional affairs division of the Cabinet Office.

Q770 **Chair:** I beg your pardon; I did not do the usual introductions.

Mr Lidington: You are putting me in a slightly difficult position, because of course those decisions about the introduction of the Bill took place when I was not in my present post. If I reflect on that, the difficulty arose, in part, because of the need for urgency in respect of the withdrawal Bill, given the two-year deadline under Article 50 of the European treaty. That, in turn, meant that the Bill had to be introduced in sufficient time for it to get through all its parliamentary stages, and for consequent secondary legislation then to be taken through, in order for us to have a coherent statute book at the end of March 2019. That explains the urgency with which that Bill was taken. That necessitated greater speed, and less time for reflection and consultation, than one would normally expect to be the case in cases where there was not that kind of deadline.

Looking back, a lesson I would draw is that of the need for intense and frequent consultation after a Bill is published and, obviously, ideally, one would want to know beforehand what the question was. If we look back at the record, there was, at the start, a big difference of principle asserted by the Governments of Scotland and Wales: that none of the powers it was proposed would be exercised under the Bill that touched on devolved competencies should go ahead without consent having taken place, which in my and my predecessor's view went beyond the Sewel convention. But with very intensive work by civil servants on all sides and by Ministers, particularly in the last few months, we have managed to get the Bill to a place that fairly respects the interests of all parties.

As you know, Chair, we completely reversed the presumption that was in the original clause 11 of the Bill. Now, instead of all powers staying at Westminster until they are transferred to devolved level, the statutory presumption is that powers go straight to devolved level unless secondary legislation is introduced under a power in the Bill to hold them at Westminster. We adjusted the provisions of the Bill, in many respects, in order to take into account the views that were expressed by the Scottish and Welsh Governments and by the relevant parliamentary committees, not just on that principle but on the issue of a sunset clause, and on the question of giving statutory protection against amendment to the Government of Wales Act and the Scotland Act, in line with what the Bill had already provided for in respect of the Northern Ireland Act. There are a number of ways I can point to in which we made very good progress.



HOUSE OF COMMONS

I would like to put on record my thanks to not just my own officials but also to the officials of the devolved Governments, who were making contact pretty much daily during the last few months of talks on this. In all my dealings with Mark Drakeford and Mike Russell, despite differences of opinion that we have had and, particularly in the case of the Scottish Government, continue to have, both always approached our discussions in a constructive fashion.

Q771 Chair: Why do you think it took so long for the Government to bring forward any amendments?

Mr Lidington: It is because the Government were seeking to only bring forward amendments when those had been agreed with both the Scottish and Welsh Administrations. We had hoped that we would be able to do that before the Bill left the House of Commons. Indeed, the Secretary of State for Scotland, when he made the original commitment at the Dispatch Box to bring forward changes to what was then clause 11 of the Bill, said that he hoped to bring forward agreed changes. However, we were not able to get agreement before the Bill left the Commons.

Having discussed things further, in great detail, with both devolved Administrations, looked at the representations from parliamentarians and sounded out views in the House of Lords, we then tabled amendments, as you know, Chair, in the House of Lords, but without putting them to a Division, at that point, so that we could reflect further between Committee and Report stage in the House of Lords and then bring forward measures that, by then, had the support of the Welsh Government as well.

Q772 Chair: Of course, the SNP is not represented in the House of Lords, by its own choice, but nevertheless it is not, so its opportunity to debate these amendments was very limited in the exchanges between the Lords and the Commons right at the end of the legislative process. We found that, because of other circumstances, it was then confined to 20 minutes. I do not begin to defend the histrionics that followed, but what lessons did this send to us about how we should handle very contentious matters like this when they arise in future?

Mr Lidington: One hopes that they will not arise in that fashion again. I do not think anybody, certainly not I, was happy with how little time we found ourselves with for that second group of amendments in Commons consideration last week. One can debate whether time was spent unnecessarily on particular amendments that might have been grouped because they, in effect, were saying the same thing. I can point to the fact that considerably more time was allocated to the withdrawal Bill than had been allocated in the Scottish Parliament to the continuity Bill that they took through. We allowed a full 12 hours of not just time but protected time in the Commons for consideration of Lords amendments last week. Nevertheless, I would certainly hope that we can seek to avoid those circumstances again.



HOUSE OF COMMONS

Q773 **Chair:** What if we were to recommend that, on any future occasion, matters affecting the devolved Parliaments should get their own protected time in a United Kingdom Parliament timetable Motion? Otherwise, England being so gargantuan in size compared to the other parts of the United Kingdom, how are they not to feel slighted?

Mr Lidington: If the Committee came to such a recommendation, I and colleagues in Cabinet would want to reflect on the implications of that for the handling of business. We have a lot of business that touches upon devolved matters and most of it is relatively uncontroversial, because most of it has been sorted out and agreed, with LCMs having been passed in the preceding weeks.

Q774 **Mr Fysh:** To go on from what the Chair was saying about the way in which relations with the devolved Administrations are managed in the future, would you be able to say how constructively you think they have acted and operated through this process?

Mr Lidington: Through the process of the negotiations, the conversations were constructive. Very clearly, the Scottish Government, in particular, because they are made up of a party that is committed to separation from the United Kingdom, have a particular constitutional priority, whereas the Welsh Government are in a different position. Lucy may want to say something about the official-level contacts, but the official-level contacts have been constructive, workmanlike, professional all the way through and continue to be. There have been discussions continuing this week on various devolved matters that require civil servants in Westminster to talk to civil servants in Edinburgh and Cardiff.

At a political level, both Mr Russell and Mr Drakeford are from different political parties from me, but, again, it has been a professional relationship and I have always tried to make myself available when either of them has wanted to talk to me. There have been three formal meetings of JMC(EN) so far this year and I hope that we will have another one in the very near future; I have offered one for this Friday in the margins of the British-Irish Council, because that would enable us to meet formally ahead of the June European Council.

In addition, there has been a Joint Ministerial Committee (P) chaired by the Prime Minister with the First Ministers attending. There was the critical meeting in April, when we went through the details of the proposed compromise package. This was not a formal JMC(EN), but where Mr Drakeford, Mr Russell and I went line by line through the text of what we were proposing and we took on board drafting amendments that both of them suggested. I think they have handled it professionally and I was very disappointed when Mike Russell called me to say that the Scottish Government, having considered it in Cabinet, were not able to accept what was on the table. All three of us left that meeting in April agreeing to take the proposals and present them to our respective Cabinets, because they needed collective agreement from all three Administrations. I was very pleased that the Welsh felt able to come on



HOUSE OF COMMONS

board and disappointed that the Scots did not. The conversations I have had with Scottish Ministers and that Lucy has had with officials have been professional throughout.

Lucy Smith: The political contact through the JMC meetings and the bilaterals that the Minister has is all underpinned by a really significant programme of work now at official level. The big policy question, I suppose, that sits underneath the Bill is about UK common frameworks, and that has been a significant programme of work between us and the devolved Administrations over a number of months. We have done 28 different deep dives with them on a whole series of subject areas over the past six months, and we are into a phase 2 of those deep dives now. We know that we need to collaborate together on the statute book and on the secondary legislative programme, and we are set up to do that. Indeed, making sure the devolved Administrations have sessions and are properly briefed in order to participate in discussions on phase 2 of negotiations is another programme that we have underway.

Q775 **Mr Fysh:** Are there things that we are doing or are looking to do to build on this process and foster a constructive atmosphere going into the future? Clearly, we have had to talk in this context about some of these things. It would be nice if we managed to make some of these features of our co-operation more of a permanent thing, perhaps, at that level of depth than has happened in the past, should it be required.

Lucy Smith: That is right. The deep dives, in particular, have given us a really good model that we can deploy in other areas. Over the past 12 to 24 months, what has happened across Whitehall is a deepening of relationships between the devolved Administrations and various Departments. There are some processes that we run centrally, like the work on UK frameworks, but there is also a big read-across to the Departments working individually with the devolved Administrations. For example, Defra is engaged with its counterparts on an area of joint interest. There are definitely lessons to be learned and that we are learning in working out what the successful models are that allow collaboration, even on something that we might not immediately agree all of our priorities on.

Mr Lidington: It is a process of cultural change and it is a matter, in my mind, of just trying to develop and strengthen the habit of working together and consulting, acknowledging that there will sometimes be political differences, particularly when different Administrations are run by different political parties.

Sitting suspended for a Division in the House.

On resuming—

Q776 **Mr Fysh:** Our predecessor Committee produced a report called *The Future of the Union*, and it talked about the importance of developing the atmosphere of trust and good will that we have been speaking about. I just wondered if you could say how important you think that is. How have



you, as a Government, responded to that report?

Mr Lidington: Since December 2016, when the previous Committee made its report, there have been significant steps to take things forward. We have established the JMC(EN) to provide a formal mechanism to enable discussions to take place between Ministers about withdrawal from the EU. As Lucy referred to earlier, we have also now set up a new ministerial forum, which my colleagues Chloe Smith and Robin Walker co-chair, and which meets in different parts of the United Kingdom, in order to engage the devolved Administrations on some of the detail about phase 2 of those negotiations, on preparation for the future relationship that we want to negotiate with the EU 27. That work clearly has to involve Departments right across Whitehall; it cannot be just micromanaged from the Cabinet Office or from DExEU.

That has been taking place. JMC(EN) has now met nine times. I have chaired three of those meetings since January and, as I said, I hope that we will have a further meeting on Friday this week. In addition, there are bilateral meetings of various kinds. My first calls after being appointed to my current office were to the First Minister of Wales and the Deputy First Minister of Scotland. I have been to all three devolved areas of the United Kingdom, to Scotland more than once, since my appointment. That less formal communication—exchanges of letters, phone calls—is part of trying to build up that atmosphere of trust.

Q777 **Mr Fysh:** In your response, you mentioned the importance of acting in good faith and in a constructive manner. Things have been said by some in the political discourse around it that have questioned whether good faith has been used. I just wondered if you had any particular evidence, apart from what you have just mentioned, of the good faith aspect of the Government.

Mr Lidington: I would argue very strongly, as far as the United Kingdom Government are concerned, that we have acted in good faith. We have said from the start that we wanted to seek and secure consent from both Scotland and Wales, in the absence of a Northern Ireland Executive, to the EU (Withdrawal) Bill, since, in the course of it, it intersects with devolved competence. We have followed that up by making radical changes to the Bill. We have supplemented the Bill with an intergovernmental agreement, which was discussed in detail with both Welsh and Scottish officials and Ministers, and which reflects comments and amendments that both those Governments made to us.

In the final resort, the Scottish Government felt that they did not want to accept this, but, for example, that intergovernmental agreement by political commitment binds the United Kingdom Government to continue to apply the Sewel convention to any new legislation brought forward under the aegis of the withdrawal Bill or to further pieces of legislation. To take two topical examples, we are expecting to need to introduce both an agriculture Bill and a fisheries Bill to provide for there to be regulatory regimes after we leave the European Union. Both of those will be subject



HOUSE OF COMMONS

to the Sewel convention. We will seek consent from the devolved Administrations in the normal way.

What I have been unable to accept is that there should be a right of veto for one of the devolved Governments or Parliaments over a United Kingdom-wide framework, or that the Sewel convention should be interpreted as meaning something that it does not. As Lord Sewel himself pointed out earlier this week, the convention named after him is just that: a convention. If one goes back and looks at the text of the Scotland Act 1998, the reference to seeking consent is preceded by a sentence saying that nothing in the Act shall affect the power of the United Kingdom Parliament to legislate for the United Kingdom.

Q778 Mr Fysh: It was said by Michael Russell that a very substantial lack of trust on both sides had emerged, which is evidence that he gave to us when we visited Scotland recently. What is your assessment of the current level? You mentioned earlier the fact that your negotiations with Mr Russell had resulted, perhaps, in what you thought was an agreement that might be acceptable. Did the First Minister of Scotland overrule that?

Mr Lidington: That is not a question I can easily answer. The First Minister has made public statements in Holyrood to say that she regarded insistence on consent, not merely seeking consent, as a red line for her. As I said earlier, Mr Russell, in all his dealings with me, has been completely professional. When the meeting finished on 16 or 17 April this year, all three Ministers—I, Mr Russell and Mr Drakeford—accepted that the texts we had been talking about would have to go back to our respective Cabinets. What I cannot do is know what went on inside the Scottish Cabinet discussion.

Q779 Dame Cheryl Gillan: First of all, Lucy, you mentioned the 28 areas where you have done the deep dives. I wondered if you could just drop a note to the Committee so we can see the 28 areas where you did the deep dives.

Lucy Smith: Yes, we can easily do that.

Dame Cheryl Gillan: I do not want you to list them here.

Lucy Smith: We have published a long list of the different areas, but we can certainly write on that.

Q780 Dame Cheryl Gillan: That would be great. Minister, you have not mentioned yet the Secretaries of State for Scotland and Wales. Are you replacing them in your job?

Mr Lidington: No. That is a very honest answer and I will be in serious trouble if I say anything different.

Dame Cheryl Gillan: How do they come into the equation?

Mr Lidington: The three territorial Secretaries of State remain very important voices for Scotland, Wales and Northern Ireland at the Cabinet



HOUSE OF COMMONS

table. I try to meet weekly with all three of the territorial Secretaries of State, so we have the opportunity to touch base on what is going on and to co-ordinate what we do, not just in terms of our dealings with the devolved Governments, but in what we need to alert our Cabinet colleagues to about the particular interests of Wales, Scotland and Northern Ireland. While Whitehall is getting better at taking note of devolved concerns, sometimes something may not be spotted that needs to be spotted.

Q781 Dame Cheryl Gillan: But why are we reinventing the wheel? You perhaps know exactly what I am talking about, and Mr Jones certainly knows what I am talking about. Back in 2010, I proposed, and it was accepted, a Cabinet sub-committee with a Minister being sent from every Department of State specifically with the responsibility of looking at their Department and how it interacted with the three devolved Administrations. You had a Cabinet sub-committee that was meeting, so you were co-ordinating across Departments and you were co-ordinating with the Secretaries of State and with the Cabinet Office. The Liberal Democrats were in a coalition with us at that stage, and put a veto on it and blocked it after three meetings.

We appear to be reinventing something that is pretty similar, but not quite there yet. That is how you most efficiently co-ordinate both with the devolved Administrations and across Government, because it is a three-dimensional picture where we all need to be singing not necessarily from the same hymn sheet, but with the same knowledge of what is on the hymn sheet.

Mr Lidington: As the Committee will appreciate, it is not a decision for me as to what Cabinet committees or sub-committees are established, but we are trying to ensure that we do not simply rely on a single Cabinet committee to deal with all devolved issues. There is so much business that has to be dealt with that we are trying to be a bit more nimble in dealing bilaterally with the Environment Secretary on fisheries, agriculture and environment, with the Industry Secretary on industrial and energy topics, and so on. The weekly meeting that I have with the territorial offices enables us to ensure that that is being managed.

It remains the case that every Secretary of State, when they wish to bring forward a new policy by way of a write-round, is expected to spell out what analysis they have made about whether this touches on devolved competencies and, if so, how, and what the devolved interests and opinions might be, to show that they have consulted with the devolveds. The territorial Ministers and I are also members of the Parliamentary Business and Legislation Committee chaired by the Leader of the House, so there is the opportunity there, when that committee considers whether to grant approval for legislation to be introduced, to double check whether all the necessary political horizon-scanning, as well as the formal official consultation, has taken place with the devolveds.

Q782 Dame Cheryl Gillan: To take you a bit further on this, would there



HOUSE OF COMMONS

would be some sense in having a forum where you could have the Assembly Members and Members of Parliament together, and Members of the Scottish Parliament and Members of Parliament together as well?

Mr Lidington: I can certainly see the advantage of that. It is not something for the Government to set up. That would be something that this House, or this House with the House of Lords, might wish to approach the Scottish, Welsh and, in due course, Northern Ireland legislatures about. There are obvious logistical challenges, but that is a matter for Parliament rather than for Government.

Q783 **Mr Jones:** Could I come back to the point you made in one of your answers? You said words to the effect that there could be no question of the Welsh and Scottish Administrations vetoing the Bill. Just so I can be clear on this, was there a suggestion at some stage that they had a power of veto?

Mr Lidington: The argument from the Scottish Government in particular—the reason I hesitate is because I feel it is for them to make their case rather than for me to summarise it—has been that it would be constitutionally improper and a breach of the Sewel convention for us to take the withdrawal Bill through all its stages and to Royal Assent, and to implement it, without a legislative consent Motion being passed.

Q784 **Mr Jones:** Yes, it might amount to a breach of the Sewel convention, but as you rightly said that is simply a convention; it would not be thought to give rise to a veto. Am I to understand that “veto” was your word, rather than a word that was used by anybody else?

Mr Lidington: “Veto” is certainly my word, but the argument that was put to me repeatedly and was repeated in the exchanges in the Chamber, both last week in points of order and this week in the Standing Order 24 debate, was that the convention required the United Kingdom Government to not take forward and complete proceedings on the Bill without an LCM having been passed.

Q785 **Mr Jones:** Yes, but that being simply a convention and nothing more.

Mr Lidington: That is and always has been my argument, and I believe that that is borne out by the words of the 1998 statutes, by practice ever since, by the Gina Miller case in the court and by what Lord Sewel said the other day. But the language used by the Scottish Government seems, to me, to imply a wish on their part to make the requirement for legislative consent binding. This is why, since the Scottish Cabinet took its regrettable decision, they have not come forward with further suggested amendments save that we should write into the statute a requirement for consent to be granted before we could introduce a freezing power with a UK framework or, alternatively, to drop the order-making power altogether from the Bill.

Q786 **Mr Jones:** I take it you are not disposed to do that.



HOUSE OF COMMONS

Mr Lidington: I have said, on every occasion, we are not prepared to do that. In my view, that would be a pretty fundamental rewriting of the 1998 devolution settlement.

Q787 **Mr Jones:** Yes, and devolution has, of course, now been an established feature of the constitution of this country for around 20 years. It is interesting that the debates we have been having over the withdrawal Bill tend to indicate that there is no settled agreement as to what devolution means. What would you say it means to the Government when one says that a matter is devolved?

Mr Lidington: It means that powers have been conferred by this Parliament upon a democratically elected body and an Executive in part of the kingdom, together with either a complete or fair degree of autonomy in how those powers should be exercised.

Q788 **Mr Jones:** In this particular case, for example, agriculture is a devolved competence for Scotland, Wales and Northern Ireland. Nevertheless, it is proposed that the withdrawal Bill will, in practical terms, interfere with the devolution settlement to the extent that certain competencies will be retained, albeit temporarily, at Westminster. That, it seems to me, is a slight gloss on the meaning of a devolved competence.

Mr Lidington: There are a number of things to say in response to that. The first is that, as Mr Russell himself has said and Lord Sewel repeated this week, we are not in normal times. The withdrawal of the United Kingdom from the European Union creates a quite exceptional circumstance.

Secondly, when the allocation of powers was debated and embodied in law in 1997 and 1998, the assumption by everybody was that there were certain things where authority would be exercised at European level. Throughout the years in which devolution has existed in this country, we have operated under a UK-wide single market that derived from European-level rules. We have relied, in terms of the negotiation, enactment and implementation of international trade treaties, on the European Commission's exclusive competence for external trade. With those competencies leaving European level, it seems to me it is right to have a way in which to calmly work out which power goes where.

There is only a very small number of those competencies that do intersect with devolved competence, but which also involve something that is of critical importance right across the United Kingdom as a whole. The message that we have had, in particular, from business in Scotland, Wales, Northern Ireland and England has been that they want to ensure that the benefits of the United Kingdom-wide single market, common market or whatever we call it are retained after we have left the European Union.

A significant additional cost to business would be borne in terms of jobs or higher prices were, for example, a salmon processor in Scotland to



HOUSE OF COMMONS

have to face different requirements for food labelling depending on whether the product was sold in a supermarket in Scotland or a supermarket in England. If a customer in Aberdeen wants to buy paint produced elsewhere in the United Kingdom, it makes sense for the same chemicals regulations to apply to the shop in Aberdeen as to the producer in Cardiff. It is in everybody's interest that those are maintained. All we are saying is that the current regime, as it exists at Brussels level and with which the devolved Administrations and the UK Government have all lived for some years now, may continue for a time-limited period while we sit down together, as devolved and UK Governments, to work out what the right UK-wide framework should be for the future.

Q789 Mr Jones: As a matter of clarity, am I right in thinking that, for practical purposes, the devolved Administrations and Assemblies will not be exercising any fewer competencies than they did prior to withdrawal from the European Union?

Mr Lidington: No competence that they currently exercise is being removed. More than that, about 80 new competencies, under the way we have now constructed clause 15 of the Bill, will transfer immediately when we exit the EU from Brussels to devolved level.

Q790 Kelvin Hopkins: If I may ask a supplementary on having a single market for the UK, I basically support the union and so on, but the European Union is very strict about what it allows member states to do. If, for example, we take your case of paints and chemicals, it might just be that one or two of the devolved Administrations want to have stricter rules about what chemicals can go into what than now pertain within the United Kingdom. One can see that those who support the market might say, "No, that is not allowed any more". Could you not see conflicts arising? There is one specific issue, for example, the minimum price of alcohol, where there might be some significant differences too.

Mr Lidington: The minimum price of alcohol has been ruled as within competence already and despite a challenge based upon European law in the last couple of years. Clearly, there is a risk of that, but I would weigh against that two other things. First, we need time, which is what the freezing power is designed to provide, to ensure that we do not have some sudden divergence of regulations within the United Kingdom when we leave the EU, but that we can sit down calmly and work out what the best regime is, including whether that UK-wide framework should allow for a margin of appreciation in terms of divergence.

The other point I would make is that under WTO rules the United Kingdom, in seeking a trade agreement with another country or, on non-trade matters, sitting down to negotiate an international treaty with another country, will need to be able to show that it can implement that treaty or trade agreement across all of its territory. That is a normal requirement of international relations. International relations, of course, are a reserved matter in any case. That is why the need to implement our



international obligations is one of the specified criteria for a UK-wide framework.

Perhaps I could just add this, because Mr Hopkins's point is very pertinent here. Those criteria of preserving the UK-wide common market, enabling us to implement our international obligations, enabling us to negotiate, enact and implement new trade agreements and treaties, making possible the stewardship of common resources, ensuring the security of people throughout the United Kingdom were agreed collectively between the UK and the devolved Governments at a JMC(EN) meeting in October last year, before my time in this office. The Governments of Scotland and Wales accepted the significance of those principles and the need for there to be UK-wide frameworks that took those into account.

Q791 Mr Fysh: Just to clarify, you are saying, if I am right, that in those particular areas where that agreement in October happened, in effect, the UK will permanently retain the competence and the power, for example, in agriculture, to have a common framework that we can say to our WTO interlocutors we can deliver. Is that correct? If so, how will the Government then involve the devolved Administrations in discussions, for example, with regard to future free trade agreements that we might do, which may or may not make changes of one kind or another to what our commitments are in those areas? How will we ensure devolved Administrations are involved in the process?

Mr Lidington: To the second half of Mr Fysh's question, the Department for International Trade, in the particular example he cites, has a responsibility to take devolved interests into account. This happens when we seek to negotiate free trade, because it happens in the EU context. Having been Europe Minister in the past, I know that when it came to CETA, for example, when it came to the EU's negotiations with Korea over an FTA, such interests as Scotch whisky were taken into account. On the other side, in terms of defensive interests of the UK, the interests of Welsh lamb producers were part of the package of considerations that UK Ministers and officials, in talking to the Commission, I suspect, were bearing in mind.

On the broader point, first of all, while the original clause 11 of the Bill imposed no sunset clause, the new clause 15 imposes strict sunset clauses. The power to make regulations to freeze current arrangements only continues for two years after Royal Assent. It is a power to freeze new regulations; it is not a power to diverge from current EU regimes. It is a matter of continuing the existing rules.

Secondly, any regulation made under the freezing power can last no longer than five years, and we have said publicly that our intention would be to negotiate agreed UK-wide frameworks and introduce those on a legislative or non-legislative basis, as appropriate, as far in advance of that five-year deadline as we could. We also say expressly in the



intergovernmental agreement that we will be seeking consent. We will be applying the Sewel convention to all our proposals on future frameworks.

The answer is that I want a UK-wide future framework that is permanent but with some sort of review and amendment mechanism to run into the future, after any temporary freezing power has dropped away. My objective is to seek consent and consensus with the devolveds on this. They have significant interests and it is right that we should be working hard to take those into account and reflect them in the UK-wide framework. It is in all our interests to get this right.

Lucy Smith: Is it worth saying a little bit about where we are on the 24 areas? We have 24 areas listed where we think we may want to explore legislative frameworks in the future, so if we want to introduce those legislative frameworks longer term that will be future primary legislation. But there is a lot more work to do, through this programme of deep dives that I described, to come to a conclusion with the devolved Administrations about what the nature of those legislative frameworks should be and what they mean in competence terms. I do not think we have taken any decisions on how that is legislated for.

We have also not yet determined precisely what we legislate for in each of those 24 areas. It does not mean that we will have one single regulatory framework necessarily covering the whole of each of the 24 areas. We might think that there needs to be a minimum standards regime, for example. We might think that there are some very specific issues to do with the WTO that need protecting. All of that requires detailed further work over the coming months before we can reach conclusions.

Q792 Mr Fysh: How much work have you done so far on thinking about the impact that it will have on future free trade negotiations that the Department for International Trade might undertake if there is the operation of the Sewel convention, which may, in certain circumstances, constitute a veto for certain parts of the UK population?

Lucy Smith: That question is factored into the work that we are doing on UK-wide frameworks. As the Minister set out, the ability to conduct international trade was one of the principles agreed by the JMC(EN) in October. That informs the analysis that we are doing jointly with the devolved Administrations and the Department for International Trade is engaged in that work within Whitehall. These are different interests that need to be balanced with each other as we work out what the future framework should look like.

Q793 Mr Jones: One of the ostensible benefits of devolution when it was first mooted was that it would enable difference to emerge between the various parts of the country and there would be divergence. How do you propose to ensure that the principle of divergence should be maintained, given the fact that it is going to be necessary for these frameworks to be put in place?



HOUSE OF COMMONS

Mr Lidington: The frameworks and the criteria that we are proposing are limited in scope. They are significant areas, but which have a clear UK-wide application. If you look at what has happened in practice, Scotland, with its separate legal system, has decided that it is going to try a different approach from England, for example, in introducing a presumption against short-term custodial sentences, and acting ahead of the rest of the United Kingdom over upskirting. There are various clear areas where there has been difference.

I honestly do not see that as being under challenge. Our objective would be to negotiate UK-wide frameworks that provide a common framework for those things where there is a clear advantage in leaving it at the UK-wide level. The whole point of deep dives and these negotiations is to try to identify where we can agree on those things that are best dealt with in a UK-wide framework, and which things should simply be left to the judgment of individual Administrations.

Q794 **Mr Jones:** Could you describe the process that you envisage for agreeing the frameworks within that five-year timescale that you mentioned?

Mr Lidington: It would involve, first, a lot of detailed groundwork between not just Lucy's team but the teams of officials in the relevant Government Departments. Let us take food labelling. There will be people from the constitutional affairs team; the territorial offices will have to be looped into that in some way, but the key roles are going to be played by officials from the devolved Administrations and officials from the relevant Ministry, in this case Defra. They will have to go through what the current legal arrangements are, what the interests are of the different Administrations and try to find an agreed way forward. That then comes up to political level for discussion and decision at the end of the day.

Lucy Smith: In a sense, there are two stages on each of these frameworks, depending on the use of clause 15. In the example that the Minister gives, Defra might work with the devolved Administrations first, in that particular area, on which regulations we want to freeze so that we have a temporary arrangement that sticks to the current EU rules across the UK, and we have one regulatory regime in place on a five-year basis. It gives us time to work subsequently with the devolved Administrations to say what the future, longer term regime here should look like, how we co-design that, how we come to consensus on it and how we then legislate for that. We would envisage, potentially, that meaning further primary legislation, as I have described, which would be subject to the Sewel convention. A lot of detailed official work needs to happen, but there are two potential stages in establishing a framework.

Q795 **Mr Jones:** What if there is no agreement? What if, for the sake of argument, one of the devolved Administrations does not agree but the other two do? Is this going to be a question of Whitehall being the final arbiter or is there going to be a vote among the Administrations? What has been thought of for that situation?



HOUSE OF COMMONS

Mr Lidington: Our intention will be to work to get agreement, because that is in everybody's interest. Ultimately, the ultimate sovereignty of the Westminster Parliament is a constitutional fact.

Q796 **Mr Jones:** Indeed, but for practical purposes would it be simply a question of Westminster imposing, or will it seek the support of other devolved Administrations to try to get, if not a precise consensus, at least a broad consensus? I have it very much in mind that the Scottish Government have been unwilling to play ball so far as the withdrawal Bill is concerned and, if they maintained a similar stance, you would be having five years of extremely difficult negotiations.

Mr Lidington: I am proceeding on the basis that we can and should continue with the practical and professional negotiations that have characterised the framework discussions so far. The interests of Scottish business and Scottish consumers, as business and consumers everywhere else in the United Kingdom, are what ultimately matter here. The conversations I have had in Wales, Scotland and Northern Ireland have left me in no doubt that businesses in all parts of the kingdom want to see the continuation of UK frameworks.

The most telling example was a public statement from the Scottish Retail Consortium, Scottish Food and Drink Federation and Scottish Bakers about a month ago, which said very plainly that they wanted to see continued UK-wide food standards and food labelling regulations. They regarded those as essential to their business interests and to the interests of their customers.

Q797 **Mr Jones:** Do the Government have a vision for devolution post-Brexit and, if so, what is it?

Mr Lidington: First, I would argue that well before the referendum the Government had established a track record of additional devolution where there is both a clear demand for it and a persuasive case.

Q798 **Mr Jones:** Demand from whom?

Mr Lidington: From the devolved areas themselves.

Q799 **Mr Jones:** Do you mean the devolved Administrations or the people of the devolved areas?

Mr Lidington: You look at both. You obviously take serious account of the views of the Administration; they are elected, after all. You take account of the views of the legislature, and you try to gauge, as we all do on many different issues, the views of the general public.

Q800 **Mr Jones:** They do not necessarily always coincide.

Mr Lidington: We have a track record of having devolved further powers to both Wales and Scotland, very significant powers, in the case of Scotland, over taxation and over some elements of welfare. We do not have a particular end state in mind. Any case for further devolution would



need to be justified in terms of good public policy and in terms of having demonstrable democratic support.

Q801 **Mr Jones:** And benefit

Mr Lidington: Yes, and benefit, in terms sometimes of accountability, as well as in terms of what you think the benefits of allowed divergence might be.

Q802 **Chair:** Just picking up one or two points, is the disagreement with the Scottish Parliament on the EU (Withdrawal) Bill just an event, or does it create a situation that is ongoing, and what are the consequences of that?

Mr Lidington: It is too early to make a firm assessment. My hope is that we can continue with the professional, business-like approach that we have had up to now, because the practical issues about food labelling, fisheries, chemicals regulations and so on are not going to go away. They need to be addressed in a particular timescale, because that is dictated by the EU treaties and by the provisional text of the withdrawal agreement.

Q803 **Chair:** What are the long-term consequences of the disagreement?

Mr Lidington: It is true that this is the first time in which we will have legislated at Westminster despite a legislative consent Motion having been refused. It is also, I believe, the first time in which the Scottish Parliament has overridden the considered view of its Presiding Officer on the continuity Bill, in this case that a piece of legislation was outwith the competence of the Scottish Parliament.

In the immediate term, there will be a hearing at the Supreme Court next month to determine the outcome of the case, which will ask the court to rule on how we deal with the fact that we will have the withdrawal Bill and the Scottish Parliament's continuity Bill, which each legislate for the same areas of competence and contradict each other in a number of respects. That is simply going through the normal process by which we would resolve a serious constitutional disagreement. Not with Scotland, but with Wales, there have been references to the Supreme Court in the past, in comparable cases.

My hope is that the interests of people and business in Scotland, Wales, Northern Ireland and England will mean that all the Governments and legislatures involved will see the importance of working together and getting on with the job on behalf of the people that we represent. At the end of the day, the people in Scotland and Wales, at the moment, have two elected Governments and they have two legislatures. There are Members from Scotland, Wales and Northern Ireland who sit in the United Kingdom legislature.

Q804 **Chair:** It begs the question as to the purpose of enshrining a convention in statute if it, in the end, becomes a cause for fissure and bitter division



HOUSE OF COMMONS

rather than something everybody agrees about.

Mr Lidington: By referring to it in statute, it places beyond any doubt at all an obligation on the United Kingdom Government of the day to seek the consent of the devolved legislatures for something that interacts with their competence. But you have to read that clause of the respective devolution Acts alongside the sentences that also make it clear that nothing in that legislation detracts from the ultimate sovereignty of Westminster to legislate for the United Kingdom.

Q805 **Chair:** What is the point of having a convention that creates an expectation in different parts of the United Kingdom that the Government of the United Kingdom have no intention of honouring?

Mr Lidington: The Government of the United Kingdom have demonstrably honoured it.

Chair: I should have said “fulfilling”.

Mr Lidington: The reality is that the current Scottish Government have a declared objective of seeking to separate Scotland from the United Kingdom, to establish Scotland as a completely independent state. Obviously, the Scottish National Party is perfectly entitled, as a constitutional nationalist party, to campaign for that and to seek votes for that, but that is a very different constitutional objective from that of the United Kingdom Government or unionist Governments in other parts of the UK.

Q806 **Chair:** What alternative mechanism or statement could provide reassurance?

Mr Lidington: In the intergovernmental agreement, we have provided ample reassurance that we will continue, in all respects, to work in accordance with the Sewel convention in every relevant piece of legislation that we bring forward. We have said that, despite the fact that the Scottish Government and Parliament have not agreed to a legislative consent Motion, and have not withdrawn their continuity Bill, in our dealings with Scotland as much as in our dealings with Wales, we will apply the political commitments that we have entered into under the intergovernmental agreement.

Q807 **Mr Jones:** I share the Chair’s concern about incorporating the Sewel convention into statute, because it seems to me that doing so added nothing to its strength. It was purely symbolic and nothing more. It seems to me that the most important word in that particular section is the word “normally”. Do you think that it might be an idea for the Government and the devolved Administrations to seek to arrive at an agreement as to what the word “normally” means in the context of devolution, because it is extraordinarily vague?

Mr Lidington: While I am always willing to look seriously, with an open mind, at any constructive suggestion coming from the devolved



HOUSE OF COMMONS

Governments and legislatures, I suspect that a definition of “normally” is always going to be a matter of judgment.

Q808 **Mr Jones:** It is a pity it was put in the Act then, really, is it not?

Mr Lidington: At the time, the decision was that it enshrined a principle that, other than in the most unusual circumstances, the UK Government would always not just seek consent but would not act without consent. We would not normally act without the legislative consent Motion being agreed.

Chair: We have covered some of these bits already, but we just want to make sure that we have collected all the evidence we want by asking these questions.

Q809 **Kelvin Hopkins:** When will the White Paper on common frameworks be published?

Lucy Smith: We do not have a plan for a White Paper on common frameworks per se. We have published various items on common frameworks to show our progress, like the principles through EN and the list. For consultation purposes, we would expect White Papers, et cetera, on those frameworks to be published by the relevant Departments when they bring forward a proposal that they want to test. We are expecting White Papers and consultation to be done in the normal way, through Whitehall Departments that are responsible for those policy areas.

Mr Lidington: The Government said, “We will publish a White Paper on our ambitions for the future partnership with the European Union”. There will be both White Papers and consultations on different elements of that and, more specifically, on the legal regulatory regimes that we will need post our exit from the EU. Those will have to go for consultation in the usual way with the devolveds. Those will be led by individual Government Departments.

Q810 **Kelvin Hopkins:** I am sure, as a Back-Bencher, I am not alone in looking forward to more detail from the Government. Could you outline in a little more detail the process and procedures for how the common frameworks would operate?

Mr Lidington: That is something that will arise issue by issue from the deep dives and the official-level conversations. Up until now, while the frameworks have been going on, at political level we have been concentrating very much on the wording of clause 11, now clause 15 of the Bill. That is where our focus has been. I very much want to get on to where we go from here. The framework might take the form of a Bill, of primary legislation here. It might be something that you could deal with, in part at least, by secondary legislation, depending on what powers exist under statute. It will be horses for courses.

Lucy Smith: The question that you ask is a very good one, about how the frameworks will ultimately operate. It is certainly something that is



being explored in the deep dives. We are also doing work on cross-cutting themes with the devolved Administrations, and governance frameworks is one of those themes. We recognise that question. It is a work in progress at the moment. We do not have answers to that yet.

Kelvin Hopkins: We look forward to a more British approach to these things rather than the opaque EU approach, I have to say.

Q811 **Chair:** I was expecting an answer more on the lines of, "This is how we will meet and discuss, this is how we will agree and this is the timeframe in which we would expect a framework to be agreed", or at least there would be a timetable for each of the frameworks setting out how they proceed in the discussions and what the timetable is for agreement. Resorting straight to a piece of legislation just echoes what led to the confrontation over the EU (Withdrawal) Bill.

Mr Lidington: Do not misunderstand me, Chair. I was setting out where this might ultimately lead. It might be that it would be a piece of primary legislation; it might be secondary legislation. In categorising the competencies returning from Brussels, we have already tried to distinguish those that need no further action from those where we need a UK-wide framework but it does not need legislation, and from the 24 areas where we think a legislative framework is likely to be needed. But in some, at least, of those it is likely to be only parts of those competencies that will need the legislative framework.

Part of the work that the deep dives and discussions are undertaking is to go with a fine-toothed comb through what each of these competencies means in practice, and challenge ourselves to ask whether we really need legislation for every single aspect of this or whether there are some things where we can simply say, "That we can simply push forward with straight away; that can go down to devolved level" or where we just need a memorandum of understanding rather than a piece of legislation.

Q812 **Kelvin Hopkins:** It seems to me that it is work in progress and you are still thinking about this, but we would like to see the Government's proposals in the end, before we have proper legislation. Is that fair?

Mr Lidington: You will see them, but the precise arrangements are likely to differ from one competence to another, from one Department to another. I want to emphasise that this is something where the lead Departments of policy areas are playing an absolutely key role. You are getting into the stage where you have to have discussions between technical experts when you are dealing with things like food standards or agricultural regulations.

Q813 **Chair:** I would like to see the Government setting out a set of principles, which it would create a much more certain framework about when and how things are going to be discussed. Why should there not be a White Paper on how frameworks are going to develop?



HOUSE OF COMMONS

Mr Lidington: It is for individual Departments increasingly to take the lead on this now. I am slightly reluctant to commit to a White Paper on frameworks generically, because I question whether that would give the Committee and Parliament the kind of detail that people would really want to have, which will be about the content of the frameworks rather than the process by which they evolved.

Q814 **Chair:** It is about having a White Paper on process, rather than policy or implementation. It is about having some clarity. When you go to the European Union, you always know what you are going to discuss. You always know the procedure you are going to be in. You always know the other people who are going to be around the table at the Council of Ministers. Where is the same stability that we are offering the devolved Administrations and the devolved Parliaments in this process? It just does not exist.

Lucy Smith: We have more laid out than that. We have done a lot of work to narrow this down to the 24 areas, which we have published.

Q815 **Chair:** Where is it laid out?

Lucy Smith: We now have the deep dives, which I have promised to write to you to set out. We have the procedure through clause 15, which produces quite an onerous task on us to set out why we are freezing those areas and how we are going to go about that. We have the sunset clause in place, by which time we have to have come forward with a more permanent solution. With the devolved Administrations, in our phase 2 of deep dives, we are now trying to work out where we are in relation to those clause 15 freezes and what the next steps are on the more permanent frameworks. We are in a process on that and we could, perhaps, set that out for you in a bit more detail after this session, so that you can see it mapped out.

Q816 **Chair:** I am grateful for that, but I follow these things quite closely, as do other members of this Committee, and I would suggest that this is a bit of a fog. I do not know how many other colleagues in the House of Commons have the least idea what we are discussing now and yet it is very important. I do not imagine that the devolved Parliaments and Administrations are enjoying much more clarity except, perhaps, the officials you are speaking to and the officials who are engaged in discussions. But where is the openness and transparency of this? I do not see much of it.

Mr Lidington: There has to be a safe space for discussion and for disagreement between both officials and Ministers from different Administrations. I have found at the JMC meetings that it is important for us to be able to have arguments behind closed doors and to test out whether particular proposals would work.

Chair: That is fine, but having some laid down procedure, process and institutional frameworks does not preclude a safe space behind the scenes to have those sorts of discussions.



Q817 **Mr Fysh:** As an expansion of that point, it would be very useful to see the timelines involved in some of these particular areas that you conceive of. Particularly with areas that are going to be of interest within a trade negotiation, if we want to expedite those sorts of processes, we need to understand what the timelines and sensitivities are around agreeing some of these frameworks, to be able to get started in a meaningful way on such negotiations. That would be my request.

Mr Lidington: Of course, one of the limiting factors is going to be that, until we have greater clarity about the nature of the future relationship between this country and the EU, and the consequences that that may or may not have for the framing of particular regulations, it is difficult to be precise about the timeframes. It would also be affected by judgments that the Government have to make about handling a legislative programme overall and what can be accommodated within a particular Bill.

Q818 **Chair:** It has to be said that we have heard a lot of evidence about how unsatisfactory the JMC process is. What has been your direct experience of JMC meetings? How successful have they been?

Mr Lidington: In my experience, in the last eight years that I have been attending them and chairing a fair number of them, they are useful, but they do not work if they are seen as the only mechanism for consultation and discussion between UK and devolved Governments. The JMC, under any format, works best when it is underpinned both by regular professional contact between teams of officials, shadowing and feeding into the work that Ministers consider, but also simply by what I described earlier as a culture of consultation and working together across the United Kingdom.

It is important for UK Ministers not to wait until a JMC(EN) meeting if there is something in their Department that matters to one or other of the devolved Administrations or legislatures. You should instruct your officials to make contact or, if necessary, you pick up the phone to the Minister in the devolved Administration and talk to him or her about what needs to be done. It is a mistake to look entirely to formal JMC(EN) meetings as the way forward.

Q819 **Chair:** The Welsh Government published proposals for reforming intergovernmental relations last summer. What did you make of those proposals?

Mr Lidington: We have just agreed collectively at the JMC(P) meeting that we will have a formal review of intergovernmental relationships. That was something the Prime Minister and the two First Ministers agreed together that we would set in hand now, and that work has just started. Quite a lot of work was done over the previous two years to try to revise the memorandum of understanding that underpins these things. At the end of the day, that fell foul of one of the major parties in Northern



HOUSE OF COMMONS

Ireland when Sinn Féin in basically decided that it did not want to accept that.

Q820 **Chair:** This is not just Welsh work, then; it is being done in parallel.

Mr Lidington: No, we now have work in train across all the jurisdictions. It is the three of us, and I hope Northern Ireland will join us at some stage, who are working together on this review.

Q821 **Chair:** Perhaps in Lucy Smith's letter there can be something of a formal statement of where you have got to and the direction that you are going in. We could use that as part of our evidence base, but we would need it rather quickly, and we will then comment on it. That would be very useful.

Mr Lidington: We would find the Committee's views on that helpful in informing what we do.

Q822 **Chair:** It is not just our Committee; it is committees from the House of Lords, the Scottish Affairs Committee, the Welsh Affairs Committee and committees in the devolved Parliaments. They have all made this plea, very similar to our own, and there is that parallel feeling of a lack of interparliamentary arrangements. We have a meeting of the interparliamentary forum tomorrow, which is an informal mechanism, but I appreciate you said that was a matter for Parliaments and not for the Government.

What proposals would the United Kingdom Government have to more formally notify Parliament what JMC meetings are coming up and what discussions are going on? Looking at the Scottish Parliament and the relationship between the Scottish Government and the Scottish Parliament, the Finance and Constitution Committee receives regular notices of what is going on, so that there can be scrutiny in advance of meetings that you are having.

Mr Lidington: The problem with doing it in advance is twofold. First, sometimes there is a need to have a discussion about matters that are controversial between different Governments; I am back to my case for the safe space. Also, the content of the agenda will change, sometimes at very short notice. That is not simply a matter of me or another UK Minister deciding that we want something on the agenda; we may get a very late request from the Scottish or Welsh Government to say they would like something on the agenda for this. We routinely publish the agreed communiqués at the end of those JMC meetings. If those are not formally shared with the Committee, there is no problem at all with making sure that those get sent to you as a matter of course.

Q823 **Chair:** The last thing anybody wants to do is to put everything in a straitjacket so, three weeks in advance of a JMC meeting, that is it: you cannot change the agenda. I do not think anyone is suggesting that. But, three weeks ahead of your proposed JMC meeting, what is it you are thinking of discussing and where should it be discussed? It is like having



HOUSE OF COMMONS

European standing committees in advance of Council of Ministers meetings that are going to decide things, which are joint frameworks in the European Union. Where is the equivalent? Nobody is really happy with the quality of scrutiny that national Parliaments can give to what the European Union does, but where is the equivalent, even to just make people aware of what is going on and giving people an opportunity to discuss things? It just does not seem to exist.

Mr Lidington: Let me take that one away and reflect on that. I understand the analogy you are making with the EU Council of Ministers meetings.

Q824 **Chair:** Once we are out of the EU we will have some spare committees. We heard very strong evidence in our earlier inquiries about how the devolution settlement was all about law and very little about process and relationships. We have reaped the whirlwind from that in this process of exiting the EU and now is the time to put in the missing component. That was what we very strongly recommended before and it still seems this message has not quite got through to the Government of the United Kingdom.

Mr Lidington: I have argued already that a lot of work has gone into both process and relationships. It is a matter of sadness that the Scottish Government were not willing to agree to the compromise that the Welsh Government accepted.

Q825 **Chair:** That is not the issue. Is it a bandwidth problem that the United Kingdom Government have? We would understand that, if there just is not the capacity to do things in a more deliberate way that would allow for more open scrutiny. Is that the problem?

Mr Lidington: No. The difference, in terms of open scrutiny and the analogy you make with the European institutions, is that the Council of Ministers is a legislature under the European treaties. It is considering documents that have either advisory or legislative status. It is therefore perfectly proper that those are reported formally to the relevant scrutiny committees in Parliament and that Parliament is informed of what is coming up on a forthcoming Council of Ministers agenda. In terms of the JMCs, we are looking at something that is more akin to a Cabinet committee. I am certainly willing to take away and consider whether we can helpfully try to provide more information to you about what is coming up at JMCs.

Q826 **Chair:** And to the devolved Parliaments, because of course a lot of the discussion about frameworks will result in United Kingdom regulation or even United Kingdom Acts of Parliament. While these are being gestated, there needs to be proper discussion about them.

Mr Lidington: I have never noticed an absence of discussion. It sometimes takes place in the committees or debates referring to a particular subject, agriculture, fish or whatever, rather than at some constitutional committee level.



HOUSE OF COMMONS

Q827 **Kelvin Hopkins:** The UK Government have a dual role as the Government of the whole of the UK and the Government of England. How effectively do they represent and advocate for the different interests within England compared with the devolved Governments in Scotland, Wales and Northern Ireland?

Mr Lidington: The so-called EVEL rules have provided a useful additional check in making sure that, where a subject has been devolved to Scotland and/or Wales and the legislation here is England-only in its effect, there is a right for English MPs to have their voice heard and to give agreement to this. Both those tests have to be met: that it must be an England-only piece of legislation, and it must be something that is devolved already to Scotland and, therefore, a matter on which, in respect of Scotland, Members of Parliament here have no say at all.

Q828 **Chair:** It is very interesting that you defaulted to talking about the legislative process when this question was about the process of government and not about legislation.

Mr Lidington: Mr Hopkins, is the question more about how English interests are taken into account within the JMC process, or is it more generally about EU exit and how English interests are taken into account there?

Q829 **Kelvin Hopkins:** It is both, but we do not have the kind of regional representation, for example, that we had—I do not want to make a party political point—with RDAs and the machinery in the regions, which gave them something of a voice. We now have some places, like the big urban conurbations, where this is starting, and we have had Andy Street and Andy Burnham speaking to us very effectively in recent times. But there seems to always be a nervousness at the centre about giving too much of a say to these regional interests and whatever.

Mr Lidington: The JMC structure was set up for a very clearly defined purpose, which is to provide a mechanism for formal engagement at ministerial level between the Government of the United Kingdom and the Government of the three devolved areas. When it comes to how English interests are taken into account, if you look at what happens, officials from MHCLG and from the Department for Exiting the EU have worked with the Local Government Association. There have been EU exit regional sounding boards in Cornwall, Staffordshire, Newcastle and Tees Valley.

Those two Departments have also talked to a number of individual local authorities and representative institutions to try to understand the impacts of EU exit. They have attended events organised by local government interests in England, in Newcastle and in Buckinghamshire. The Secretary of State for Housing, Communities and Local Government has hosted EU exit roundtables in local areas, including Cornwall and Great Yarmouth, to try to talk to them directly. Ministers from DExEU and other Departments have gone to regional sounding boards.



HOUSE OF COMMONS

A lot of that activity has taken place and, when elected mayors or other elected local or regional leaders in England have discussions with Ministers, they have the implications of EU exit on their agendas; that is just a matter of routine. I do not think that they have lacked opportunity to put their point of view to Government.

Q830 Kelvin Hopkins: Moving on, I mentioned Andy Street and Andy Burnham, as well as the LGA. The LGA told the Committee that the voices of English regions outside London have not been heard; it is effectively those of Scotland and Wales. Post-EU, how do the Government propose to include English regional voices in intergovernmental decision-making, including within common framework bodies?

Mr Lidington: I will let Lucy speak about the frameworks. The key thing is that the Department concerned has the responsibility for ensuring that the interests of all parts of the United Kingdom are taken into account. When we are dealing with Scotland, Wales and Northern Ireland, there are properly constituted and, in the first two cases at the moment, elected authorities with whom they can and should be dealing. When it comes to England, the interests of different parts of England may vary.

For example, in looking at what we do about the future of agricultural policy, it is quite conceivable that, in some respects, the interests of upland areas, the Lake District, parts of the south-west in England, may align more closely with some of the interests expressed in Scotland and Wales than with those interests of, say, East Anglia. It is the responsibility of the Secretary of State and his or her ministerial team to make sure that English interests in the round are properly factored into their consideration of what the overall balance of the UK approach ought to be. It is exactly the same as currently applies when any Department is devising and then framing its approach to a particular piece of EU legislation.

Lucy Smith: Following on from what the Minister was saying, underneath all these frameworks there is a big policy question about what we should do in respect of animal health or whatever the other frameworks are. Those policy questions are led on by the lead UK Government Department, which has all the mechanisms of its usual policymaking process in place to consult the various interests and stakeholders, both in England and across the UK. We recognise a need to have stakeholders engaged on the common frameworks question itself and, indeed, Ministers have asked us to bring forward proposals as to how to do that over the summer, so that is something that we will be looking at jointly with our devolved Administration colleagues, to make sure that we have something that can be engaged with by Scottish, Welsh, English and other interests across the UK.

Q831 Kelvin Hopkins: With more time, I would like to, and I am sure others would too, pursue these matters at greater length. Unfortunately, there is a restriction there and I definitely have to stop. A key area for further devolution in England was highlighted in our evidence surrounding skills,



HOUSE OF COMMONS

with a capital S, we say. Do you think there should be an intergovernmental committee on the area of skills on which representatives of English regions are members?

Mr Lidington: It is not a question that I have personally considered and, in fairness, that would be a matter primarily for the Secretary of State for Education and the Secretary of State for BEIS to decide whether and how to take forward.

Q832 **Kelvin Hopkins:** Minister, earlier on, you talked about the Government deciding effectively what is in the interests of the regions. The voice of those who live, work and have their interests in the regions is the voice that is perhaps not as strong. It is all very well having Departments deciding these things.

Mr Lidington: I talk to Greg Clark and James Brokenshire about their diaries, and they spend a lot of time talking to mayors and other elected leaders in England. I know that those colleagues take account of the views that have been expressed to them. Look again at what has been going on, in London, for example. When I was at the MoJ, I went to see Sadiq Khan, at his request. We discussed the possibility of some agreement between the national Government and the mayoral administration on criminal justice in London.

David Gauke, since he took over from me, has concluded a memorandum of understanding with the Mayor of London so that he is getting greater support and greater freedom to influence the provision of centrally provided criminal justice services in London. As far as London is concerned, if there are ideas that the mayor wants to pursue—for example, it is a struggle at the moment for him to find sufficient housing supply in London—again, I am sure that the Secretary of State would be open to a conversation about how we can work in partnership to deliver that. Those opportunities are there.

Q833 **Mr Fysh:** Andy Burnham and Andy Street, when they came before the Committee, gave evidence about what they allege is the over-centralisation of the UK and its governance in England. I just wondered if you could outline your understanding of the Government's current proposals for reform of the governance of England and the devolution of power and authority away from Westminster into the regions of England.

Mr Lidington: If you look at what happened, first, we have had additional powers for the Mayor of London; we have new mayoralities in the west of England, Tees Valley, Sheffield, West Midlands, Greater Manchester, Liverpool and Cambridgeshire. There have been other mayoral projects that have foundered, because some of the local authorities concerned made it very clear that they did not want to take part. My view is that incrementalism is the right way to go, and to learn from experience, from the successes and failures of those early experiments in greater devolution in England.



HOUSE OF COMMONS

One of the biggest challenges is to work out what devolution means in an area where you cannot think of it as a city or a city region. That lies behind the sympathy the Government have expressed towards more unitary local authorities in Wiltshire, in Cornwall and most recently in Dorset. There are ways of trying to devolve more power in rural and semi-rural areas, but the cities almost present themselves as potential candidates if there is sufficient evidence of local support for a mayoralty. The real challenge is what devolution means outside the cities.

Q834 Mr Fysh: Much of it comes down to money. One of the things that we heard was that some of these devolved areas would like to see more of a commitment to the promise of honouring the devolution of the European structural funds once we, in theory, have control of those again. The concern was expressed about whether the Government, by saying that they wanted to check there was good value for money in doing so, in line with domestic strategic priorities, might get in the way of some of those devolution principles. I was just wondering if you are planning to devolve not just in the policy areas but the means of implementing these things and, in particular, the monetary means.

Mr Lidington: The money that is now spent on regional development by the EU we are intending to put into a UK shared prosperity fund. There are discussions ongoing between Ministers about precisely how that should operate when it comes into being. Clearly, there is a responsibility to ensure that money is well spent whoever it is who takes the spending decisions. There is merit in looking at the case for devolution of funds, because that enables people who are on the ground, understanding particular local challenges, to take spending decisions. Against that, if we have, as we do, an industrial strategy that applies nationwide and is designed to try to help, in particular, those areas that have been in danger of being left behind economic growth elsewhere in the country, as a matter of national policy we need to take some decisions about how we deliver on our promise to give priority to those left behind areas. These are ongoing discussions.

Q835 Mr Jones: We have had several pieces of evidence suggesting that there is a tendency for Whitehall to hoard power rather than to devolve it. Would you say that that was a fair assessment?

Mr Lidington: It is an unbalanced assessment. I doubt that there are that many examples in history of systems of government that have not wanted to accrue power to themselves, at whatever level those governments operate. Look at the track record. Departments across Whitehall are working with the Scottish Government to implement the Scotland Act 2016, which was the biggest transfer of power to devolved level since the 1998 legislation. Implementation of the Wales Act 2017 is underway. The new reserved powers model came into force on 1 April this year, along with many of the new powers being devolved, and that means there is a far clearer boundary now between those matters that are a UK responsibility and those that are a Welsh Government and Assembly responsibility.



HOUSE OF COMMONS

As I said earlier, the repatriation of powers from the European Union is going to lead to a very significant and immediate addition to the powers exercised at devolved level in both Scotland and Wales. There are something like 80 powers that will go to devolved level.

Q836 Mr Jones: We have also had evidence that, although there has clearly been a lot of constitutional change in the UK since 1997, there has been no adaptation of the architecture of government in Whitehall to accommodate and reflect these changes. Would you accept that criticism?

Mr Lidington: I am willing to look with an open mind at suggestions about how things could be further improved, but I would point to the creation in 2015 of the UK Governance Group, which leads cross-government work in the UK on constitutional and devolution issues. That supports me and the Minister for the Constitution, the territorial officers and the Advocate General for Scotland alike. Its purpose is to try to ensure that strengthening the union is a shared responsibility across all UK Departments. I am sure that there are ways in which we can continue to strengthen that habit of working together and of being alive to devolved issues, but there have been some quite significant changes.

Q837 Mr Jones: We are repatriating all the powers that reside at Brussels very shortly. Is there any merit, for example, in creating a Whitehall Department for the union, which might fulfil or exert the functions previously exerted in Brussels?

Mr Lidington: My initial starting point would be scepticism about that, because it is quite hard to see how that model sits alongside the separate territorial Departments. People in Scotland, Wales and Northern Ireland prefer to have a designated voice for their interests at the Cabinet table and within Government.

Q838 Mr Jones: Has any research been done on that?

Mr Lidington: Not to my knowledge. I would argue too that the responsibility the Cabinet Office has for constitutional affairs overall and for the devolution settlement overall delivers most of what a Department for the union would achieve. Such a Department ought not, in my view, to be looking at only those things that are returning from the European Union. There are many things about how we operate as a United Kingdom at the moment that already require co-operation and discussion between the UK and devolved Governments, whether or not they involve European Union competencies.

Q839 Mr Jones: Your Department clearly is going to have more pressure, I would have thought. Have you thought about redesigning its structures?

Mr Lidington: Every Department in Government, frankly, at the moment is under pressure, not just the Cabinet Office.

Q840 Mr Jones: I am thinking about in the medium to longer term.



HOUSE OF COMMONS

Mr Lidington: In the medium to long term, it is not something to which I have turned immediate attention. At the moment, I am satisfied that the structure enables me to have access to the advice that I need on constitutional matters. The challenge is ensuring that Departments across Whitehall are giving sufficient attention, at all times, to the specifics of devolved interests.

Q841 **Mr Jones:** We need effective, interconnected government across the UK and that is going to be a further challenge once we have repatriated powers from the EU. Functions that were previously delivered by the European Union will have to be delivered in whatever way is agreed with the devolved Administrations. Do you not think that, given the repatriation of those powers, given the additional functions that will be brought back onshore, it is necessary to change the architecture of government, perhaps in concert with the devolved Administrations, to provide the effective, interconnected government that I mentioned?

Mr Lidington: First, let us not forget that most of those repatriated powers are going straight to devolved level where they involve devolved competence, in any case. We are back to the list of 24, where we think that there is a need for some kind of UK-wide legislative framework in whole or in part.

Q842 **Mr Jones:** Those are clearly the most important competencies.

Mr Lidington: There are some very important competencies, for example environment, that do not—

Q843 **Mr Jones:** Forgive me. When I say “important” I mean to the extent that these affect the UK as a whole.

Mr Lidington: Yes, I will not quibble with that. My preferred model would not be to have a shakeup at the centre. It is more about ensuring that both the culture and the organisational structure of the relevant lead Departments around Whitehall are taking full account of the fact that we are no longer dealing at EU level, but we are dealing with the different devolved Administrations.

Now, of course, it is also true that those Departments—and probably Defra and BEIS are the most obvious examples—at the moment devote a considerable amount of capacity to their EU business, and that already requires them to consult the devolved Administrations. If you go to a Fisheries Council meeting, you will find that there are Ministers and officials from all the devolved Administrations in the delegation room with the UK Government’s team there. This way of working is already there in Whitehall. I would agree with Mr Jones that we need to make sure we are strengthening that and developing it further, so that we are able to have the sort of co-operative relationship that he, rightly, argues for in the new context.

Q844 **Mr Jones:** Agriculture is a very good example, because it is the most obvious area that is going to be affected by our departure from the



HOUSE OF COMMONS

European Union. Defra's function, I would suggest, is going to change very extensively. At the moment, it exists as a Department that simply processes regulations and directives that emanate from Europe. It is going to have a policymaking function, which, I would guess, is going to affect the whole of the UK. Has any thought been given, for example, to maybe embedding officials from the devolved Administrations in Defra, to work with Defra in order to develop joined-up policy?

Mr Lidington: That is a matter for the Secretary of State for Defra to decide.

Q845 **Mr Jones:** Forgive me for interrupting, but is it? Is it just up to the Secretary of State for Defra or is it not a question of development of policy at the centre?

Mr Lidington: It is primarily a matter for the Secretary of State for Defra, because what we are looking at is devising a new agricultural policy for England. There will be aspects of agricultural policy that, given what the description and allocation of competencies in the devolution Acts say, will be for the Governments of Scotland and Wales respectively to determine. The things that have to be negotiated are the extent to which some areas of agricultural policy, perhaps not all, need to be covered by a UK-wide legislative framework, what provision is made in that framework for there to be a measure of divergence and the right balance in that framework between divergence and conformity.

When the Secretary of State is preparing new policy but we have not yet come to an agreed Government position on it, it is wrong of me to speculate too much about how that would operate. He is very well aware of the importance of taking seriously the interests of the devolved areas of the country.

Q846 **Mr Fysh:** We have had various discussions in the media, et cetera, about Northern Ireland, but there has been less focus, perhaps, on some of the citizenship and identity issues that arise because of the ideas around devolution and the border, in particular. I was just wondering if you might say a bit about how the Government propose to deal with those issues. In particular, maybe you would comment on the issue that came up of Whitehall not realising that, when recruiting for the UK Border Force, it was not going to be a good idea to say that only British passport-holders need apply. Could you say a bit about how Whitehall is going to come to grips with some of these nuances and differences of how to work with the devolution settlement in Northern Ireland?

Mr Lidington: That last point was something the Home Office, as soon as it was drawn to its attention, took action to correct. In terms of the negotiation, there have been some very positive steps. We have agreement on the continuation of the common travel area between the UK, Ireland and the Crown dependencies. There has been some very good progress in the last couple of weeks on the single electricity market, which is very important to Northern Ireland. The priority remains for us



HOUSE OF COMMONS

to deliver on the joint report commitments that we entered into in December last year and that means avoiding a hard border, but maintaining the constitutional and economic integrity of the UK as part of that overall UK-EU partnership.

I have been out to Northern Ireland and what I pick up from business very plainly is that maintaining no hard border between the two jurisdictions on the island is of enormous importance. This is something that matters to businesses both large and small. Equally, the free passage across the Irish Sea and having no customs checks in the Irish Sea is also hugely important economically, because the trade north-south is dwarfed by the trade that both Northern Ireland and the Republic of Ireland have with the rest of the UK, but also it is politically important. Both the Belfast agreement and the joint report of last December were very carefully, delicately balanced documents that seek to protect both north-south and east-west relations. If you look at the joint report, paragraph 50, which is the one often quoted, says that there will be no border in the Irish Sea. Paragraph 42 says, in terms, that both sides, we and the EU, commit ourselves to upholding the "totality of the relationships" embodied in the Belfast Good Friday agreement. "Totality of the relationships" is every bit as much north-south as it is east-west. All those strands were very carefully knitted together.

Q847 Mr Fysh: Once we, hopefully, get a power-sharing Executive back in place in Northern Ireland, how much power and authority will the Northern Ireland Assembly have to make its own decisions once the various other parties have made their arrangements?

Mr Lidington: I preface what I am going to say by saying it is very frustrating and unsatisfactory at the moment that there is no elected Executive and Assembly in Northern Ireland with which we can deal. While we keep the Northern Ireland Civil Service fully informed of our conversations about devolved matters and the Northern Ireland Civil Service attends JMC meetings in an observer capacity, it is not the same thing as having Ministers around the table. The Secretary of State for Northern Ireland holds briefing meetings from time to time with the different political parties in Northern Ireland, but again that is not the same as having an Executive and Assembly. The sooner devolution can be properly restored in Northern Ireland, the better.

As soon as that happens, we will see Northern Ireland Ministers formally involved in the JMC and they will be able to give political direction to their officials, which means their officials in the Northern Ireland Civil Service can play a more creative part than they are able to do at the moment, when they see their role as basically trying to maintain the position that the last lot of Northern Ireland Ministers had managed to agree upon.

Q848 Mr Fysh: How does that interact with this process of establishing common frameworks that we talked about before? Is the lack of ministerial input from Northern Ireland holding up that process in any way?



Lucy Smith: It is not holding up the official-level work, which takes place with officials from the Northern Ireland Civil Service as well as from the Welsh Government and the Scottish Government. But, as the Minister says, it means that when these come back to political-level conversations the Northern Ireland Civil Service is only there in an observer capacity and you do not have politicians engaged in that debate.

Q849 **Mr Fysh:** Will we have to set those frameworks without political input from Northern Ireland itself?

Mr Lidington: I hope we will not, but we will have to have that risk in mind. Part of the problem we have at the moment is that the Northern Ireland Civil Service does a professional job attending the meetings that we have described, but it will say that it does not have power to initiate. We need elected Ministers to give it direction under the terms of reference of the Northern Ireland Civil Service.

There is a court case that is ongoing at the moment, and there will be a hearing in the Supreme Court next month, where the Northern Ireland Civil Service is being challenged on the grounds that it is doing more than it is empowered to do in the absence of an Executive. That is not in respect of anything to do with frameworks. It is a completely separate matter, but there is quite an important principle involved in that court case.

Chair: You have exhausted us, Secretary of State, Lucy Smith. Thank you very much indeed. You have contributed a great deal to our evidence and we now look forward to drafting our report, which I hope you will find interesting and helpful. Thank you very much indeed.