

Committee on the Future Relationship with the European Union

Oral evidence: Progress of the negotiations on the UK's future relationship with the EU, HC 203

Tuesday 15 September 2020

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Members present: Hilary Benn (Chair); Mr Peter Bone; Joanna Cherry; Mark Eastwood; Sally-Ann Hart; Antony Higginbotham; Nigel Mills; Nicola Richards; Mr Barry Sheerman; Dr Philippa Whitford.

Questions 714 - 785

Witnesses

I: Mike Russell MSP, Cabinet Secretary for the Constitution, Europe and External Affairs, Scottish Government, and Jeremy Miles MS, Counsel General and Minister for European Transition, Welsh Government.

Examination of witnesses

Witnesses: Mike Russell and Jeremy Miles.

Q714 **Chair:** Good morning. Can I express a very warm welcome for our two witnesses this morning, Mike Russell and Jeremy Miles, to this session of the Committee on the Future Relationship with the European Union? I wonder if I could just begin by inviting both of you to introduce yourselves for the record, together with your responsibilities, starting with you, Mike.

Mike Russell: I am Mike Russell. I am the Cabinet Secretary for the Constitution, Europe and External Affairs in the Scottish Government, and Member of the Scottish Parliament for Argyll and Bute, from where I am speaking today.



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Jeremy Miles: Good morning. I am Jeremy Miles. I am Counsel General and Minister for European Transition in the Welsh Government, and Member of the Senedd for the constituency of Neath.

Q715 **Chair:** You are both very welcome and we are extremely grateful to you for giving up your valuable time to assist the Committee with its work this morning. We have a lot of ground, as always in these sessions, to cover. If colleagues will direct their questions to one or other of you or to both, and if you could give as succinct an answer as possible to enable us to cover all the ground we want, that would be extremely helpful.

With that, can I begin by asking both you, beginning with you, Mike: we will get into the detail of the Internal Market Bill and the issues that it raises, but I just wanted to enquire about what consultation there was with you and your respective Governments in the drawing up of the Bill. In other words, when it appeared, how much of it was a surprise? What discussions took place behind the scenes prior to its publication?

Mike Russell: I will be very succinct. There was no consultation on the content of the Bill. It was all a total surprise. I saw the Bill at just after 10 o'clock on the morning on which it was issued, so we had a pre-release copy. Just to make it clear, there was discussion of the issue of internal or single market for some time. My own view was that this would lead, inevitably, to legislation that would diminish the powers of the Scottish Parliament and undermine the devolution settlement. Therefore, we made it clear that that was not something in which we felt could participate. Regrettably, my view was borne out by the facts.

Jeremy Miles: There were discussions for about a year in relation to the broad question of an internal market, but we were clear throughout that we would not contemplate the sort of mechanism that is being provided for in the Bill. That level of engagement dried up at the start of this year. I would not have been able to tell you, before the White Paper was published, whether it was going to be a White Paper or a Green Paper, nor what it contained. There were three official meetings between the publication of the White Paper and the publication of the Bill, dealing with very specific matters, despite our efforts to broaden out the discussion. I did not know what the Bill would contain in detail. I had a conversation with Alok Sharma the night before it was published, but at that point the UK Government had not shared a copy of the Bill with me. It was, however, evident from that conversation that it would reflect the terms of the White Paper to which we had already said we were opposed.

Q716 **Chair:** Thank you very much. You implied a moment ago that consultation and discussion has been less since the start of the year. Is that compared with previously on matters to do with Brexit?

Jeremy Miles: My reference was specifically in relation to the Internal Market Bill, but the point is also of broad application. It was certainly the case during 2019, and under the May Government in particular, that



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engagement with us as a Government was significantly better than it is now in relation to Brexit matters generally.

Q717 **Chair:** Have you been given any explanation? Do you have your own assessment as to why it is less now than it was before under the previous Prime Minister?

Jeremy Miles: I suppose it is a matter of choice. Certainly, as we got to the end of last year and the prospect of leaving the European Union without any sort of deal was looming large, as that prospect was looming into view, naturally minds are focused. It may be that there is a different risk assessment in Westminster and Whitehall in relation to that, but certainly we think much closer working is necessary at this point, given how close we are to the end of the transition period.

Q718 **Chair:** Thank you. Mike, would you like to comment on the level of engagement overall?

Mike Russell: I think I am the only person to have attended all 25 of the Joint Ministerial Committees. Over the past four years, there has tended to be a view from the UK Government that, as long as meetings took place, this was consultation and discussion. It was not. The quality of the dialogue has been poor throughout that period, but has certainly got significantly worse since Boris Johnson became Prime Minister.

There is, in my view, hostility towards devolution in the current Government. That hostility shows in the quality of engagement. Engagement at the ministerial level and at the official level is poor, and those who have held ministerial office will know that, often, the ministerial engagement is not nearly as important as the official engagement. The official engagement has simply been deteriorating over the last four years. The flow of information is particularly important if there is to be, as is now inevitable, either a low deal or a no-deal, and it has been very difficult to get the information that is required in order to prepare for that.

That was not true in the previous dispensation. There was a recognition, for example, between David Lidington and myself and, first of all, Mark Drakeford and then Jeremy—I am sure Jeremy will confirm this—that whatever our political differences on the issues of Brexit, which are very substantial indeed, there was a need to work constructively on the issues raised by no deal, so that we protected, as far as possible, the people we represent. I do not read that at the present moment.

Q719 **Chair:** Thank you very much for that. There is just one other issue I want to raise before I bring colleagues in. Clearly, moving from circumstances in which trade relationships were determined by the European Union to the United Kingdom becoming a country that would negotiate its own trade deals, on the question of what products can be placed on the market, the devolved Governments might have a different view from the Westminster Government as to what is acceptable or not. There has been



a lot of discussion through the common frameworks, which we will come on to.

When push came to shove, I just wanted to understand from each of you, if your respective Governments said, "There is a particular product here that we do not want in our part of the United Kingdom." How exactly do you envisage that operating in circumstances where the United Kingdom is negotiating trade deals with other countries who assume that they are negotiating one deal for one country as opposed to a deal with different bits for different constituent parts of that country, if you follow the argument? I am just trying to understand how that could work in practice.

Mike Russell: We have a very useful example of how it works in practice elsewhere. There are two possible lessons that you could draw from the experience of the Canada-EU trade deal. There is a lesson that I would like to draw, which is the lesson that the Canadian Government demonstrate. They brought the Canadian provinces into the room to discuss and to negotiate the trade deal. Where there were areas of provincial responsibility, the provinces were there and were able to take responsibility and to discuss them. For example, on food standards, let us refer for the first but not the last time to chlorinated chicken. In those circumstances, food standards being a devolved matter, we would be involved with the UK Government in discussing that and finding a way, so that the person with whom one was negotiating did not expect to sell chlorinated chicken in every part of these islands, although they might sell it in one part of these islands. That is what happened with the Canadian trade deal with the EU.

However, another lesson that has been drawn from it is the lesson that the UK Government have taken from it. It is at the very end of the process, if you recall, that one of the devolved Parliaments in Belgium, the Walloon Parliament, almost upended the treaty because they had an objection to an item in it. The lesson the UK Government drew from this is, whatever you do, do not have the devolved Administrations anywhere near the negotiation of a treaty. Indeed, do not do it in any public sense.

I was very struck yesterday by what Liz Truss said about the UK-Japan trade deal, which is minuscule in terms of EU trade. She said that the terms of that would be supplied to the Trade Committee in confidence. There needs to be an open discussion of trade because modern trade should be subject to all sorts of discussions, such as the highest of ethical standards and the ways in which trade impinges upon climate change. Those are all matters for discussion, but the UK Government seem determined to keep it secret and to, essentially, simply say at the end of the process, "Devolved Administrations will do as they are told." Of course, this Bill is part of the process of telling the devolved Administrations to do as they are told and that is one of the more offensive parts of it, although there are many offensive parts.

Q720 **Chair:** That is very helpful. My question was slightly more specific. To



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take the example you have given of chlorinated chicken, if there was a world in which, for the sake of argument, the Scottish Government said, "We do not want chlorinated chicken to be sold in Scotland under a potential future deal with the United States of America," how would that operate in practice? Would the law in Scotland say to retailers, "You cannot sell this product"?

Mike Russell: Yes.

Chair: It would be as simple as that?

Mike Russell: Yes, it would, because food standards are devolved. Food standards are a matter of joint competence between the EU, Scotland and the UK. In the devolution of food standards, we could simply say, "That is not permitted within Scotland." That is not an unrealistic thing to do. The point I was making, with respect, Chair, is that you do not have to get to that stage. If you are negotiating and drawing up a trade deal effectively, you do not get to that position.

Jeremy Miles: I will echo but not repeat the point that Mike made, just to say that we have always argued that involving devolved Governments in negotiation in some way enhances the credibility and deliverability, in practical terms, of those international trade agreements. As a Government, we recognise that that is a reserved competence. There has always been a degree of divergence throughout the period of devolution in relation to these matters.

On the specific point that you are asking, Chair, the Welsh devolution statutes provide a mechanism for the Secretary of State, in the context of international trade agreements, to provide a direction to Welsh Ministers to align the law in order to be able to comply with those international trade agreements. That mechanism exists on the statute book already. It has never been used and it would be constitutionally very controversial if that were to happen, but the mechanism that the Internal Market Bill provides is a backdoor mechanism, effectively, which would not attract that level of attention, no doubt.

Chair: That is very helpful. Thank you very much indeed. I am now going to turn to Sally-Ann Hart.

Q721 **Sally-Ann Hart:** Thank you, Chair, and good morning to our two witnesses. Thank you for joining us. I just want to look a bit at the consultation. While the Westminster Parliament can legislate on all matters, it did promise a UK-wide approach to Brexit, even though Brexit is not a devolved matter. I have listened to the conversation and you feel you have not been consulted properly. How would you have expected to be consulted on this issue? Can I go to Mr Russell first?

Mike Russell: This goes a very long way back. I am sorry to have to go back into the mists of time, but this really goes back to the start of the process. At the very start of the Brexit process, it was clear after the June referendum that there was a difficulty because Scotland had voted so



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clearly against withdrawing and the rest of the UK was determined to do so. At that stage, we worked as closely as we could with the then UK Government to try to find a compromise. Indeed, we published a paper called "Scotland's Place in Europe" in December 2016, and we have published regularly since then, pointing out where the compromises could lie. First, the compromise would have been continuing membership of the single market and the customs union. That was not ruled out until the Lancaster House speech, if I remember correctly.

Progressively, we have moved through discussions of compromises, none of which have been found. There has been no attempt, I believe, at any stage to take seriously the objections that we have in Scotland to this process, and simply an attempt to make sure that that process continued and has continued in a harder and harder expression, until we find ourselves in the position that we are in now. In a sense, you cannot get there from here. We have been in such a difficult set of circumstances for so long that it would be difficult—and I do accept this—to find a way in which we could work constructively together. There is absolutely no trust in the relationship now.

On this issue of the internal market, however, there was an alternative. It was a very clear alternative because one area, the jewel in the rather tarnished crown of all this, was the frameworks process. We agreed very early on that we would endeavour to put together voluntary frameworks that would allow us to work together on the areas of intersection. These mythical 150, 160 or 111 extra powers, depending on who you believe, are places where the EU, Scottish and UK competences come together. We worked very hard to see where the problems are in that. We identified, out of the 150 or so, between 25 and 30 areas where we would need a new structure. That is what we have been working to put in place. That is still there. We and Wales have made it very clear that to complete that process would be to have the acceptable and agreed substitute for what is a very heavy-handed Bill that puts all the power at Westminster and none to the devolved Administrations. We can still do that. It is still perfectly possible to do.

It is not a question of consultation. The consultation took place. It was a month's consultation on something that was a very radical proposal. Much of the Scottish response did not believe this was necessary. That has been completely ignored. We really need two things: first, to have an element of respect and discussion in this, rather than simply being told; and second, to accept that there is an alternative to this, which can be put in place as a compromise and which will work.

The final point that I would make on that is that I and my Government have said, and we will stand by this, that we will work to put that in place. We will also operate as if it is in place. There is, then, no threat to the internal market and that is a really important point. Nobody has yet given anybody an explanation of what this mythical threat to the internal market is. There are no new barriers and devolution already operates in a



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way that takes account of differences. To a great extent, then, the Internal Market Bill is about inventing a problem so that you can impose a solution. The solution is not to the problem of trade within these islands; the solution is to try to enforce all the details of bad trade deals on the devolved Administrations.

Jeremy Miles: On the broad point of engagement in Brexit as a broad project, if you like, we have always felt that we have put forward constructive proposals for how the devolved Governments can be properly engaged in that, where devolved questions arose. As a Government, we have never sought a veto. We recognise this is a reserved competence, but where there are devolved matters, consistent with how things have worked throughout the period of our membership of the European Union while we have been devolved, there has always been close working in relation to the development of UK-wide policy positions in devolved areas. Broadly speaking, we were seeking a similar set of arrangements in relation to the negotiations, and that has never been available and never been offered.

The JMC end terms of reference say that its objective is to “provide oversight of negotiations to ensure, as far as possible, that outcomes agreed by all four Governments are secured from these negotiations”. Not only were they not secured, but they were not pursued; not only were they not pursued, but agreement has never been sought. The JMC has never lived up to the terms of reference that it set for itself.

On the specific point in relation to this piece of legislation, if that is the context for your reference to the consultation, as a Government we accept the principle of an internal market. We accept that some aspects of the common frameworks may indeed require some sort of legislation to underpin it. The issue here, though, to echo the point that Mike was making, is that there was a mechanism in which all Governments had engaged that would have led to, and may still I hope lead to, a process for managing divergence across the UK, giving businesses certainty and all those things that we want to see, while also respecting the devolution settlement.

One of the most striking things about this is that Government have not published the responses to the consultation. This is a far-reaching and controversial piece of legislation and I would have thought that a Government sure of their footing, if I may say, in that context would publish the responses. I have no confidence that the points that we made have been taken seriously at any point, given the contents of the Bill.

Q722 **Sally-Ann Hart:** Thank you. Looking at your written evidence to the Committee, you said, Mr Miles, that “UK Government engagement with the devolved governments on the negotiations has been woeful”. How does the UK Government’s approach to the consultation in these matters differ from the approach they usually take to consulting your Government on other matters?



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Jeremy Miles: Can I just clarify for my own purposes: when you say “consultation”, do you mean in relation to the Bill?

Sally-Ann Hart: Yes, for the internal markets.

Jeremy Miles: It is of a piece, broadly speaking, with its approach across anything that has a Brexit context, if I can put it in those terms. The consultation and development of the withdrawal legislation was similarly very challenging, for reasons that perhaps we all understand and are certainly aware of. As I say, there is a much better alternative to the way in which the Government have chosen to pursue this. We have tried to be constructive throughout, despite starting from a point that was very different from the UK Government’s political point here.

Even if you were to accept the political declaration as the starting point for the discussions, we have sought to engage even on that basis. I have written maybe 10 or 11 letters to Michael Gove outlining our position in relation to the range of matters that have been negotiated, and I have not had the kind of substantive engagement that I would have expected. Chair, I would be very happy to share those with the Committee, if you would find that helpful.

Chair: It would be.

Q723 **Sally-Ann Hart:** Mr Russell talks a lot about a compromise, but bearing in mind that we have devolved Parliaments with different political parties in charge and with a different view of Brexit, how possible, Mr Miles, is it that the compromise that you would want would be achieved in these circumstances? Is a compromise impossible? Someone has to take the lead.

Jeremy Miles: The very point of robust intergovernmental relations is to be able to deal with circumstances that are difficult to resolve. When everything is saying the same thing, it is easy. The whole point of what we are talking about today is, in fact, to resolve those challenging circumstances. Our position as a Government would be to say the following: I am sure that, on many issues, compromise would have been very difficult and impossible, no doubt, but not to engage in a process that properly sought to understand and seek to address legitimate concerns in devolved areas seems to me fundamentally wrong.

Q724 **Sally-Ann Hart:** Thank you. Mr Russell, have you yet met with David Frost, the negotiator?

Mike Russell: I have known David for a long time. He was, of course, in Scotland when he worked for the Scotch Whisky Association. He attends the JMC from time to time. He has attended a couple of other meetings that have taken place. He has briefed the JMC. I have to say, as I have said publicly before, I do not think we have ever learnt anything that we have not also seen in the newspapers, but yes, I know David.

Q725 **Sally-Ann Hart:** Did you find the meetings useful?



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Mike Russell: No, I do not think I said that. The meetings took place. The big question that I indicated at the start is that there have been many meetings. Those meetings have not been improving in quality over the last four years. I believe that a compromise is possible, but I do not believe, with respect, that the phrase you used that "somebody has to take the lead" is the issue. The issue that we have is four Governments that are trying to work together in difficult circumstances. There is a huge political difference, particularly on this issue, but that does not mean that we should not, first of all, show each other respect. I do not think that there has been any respect in the relationship in terms of trying to take part properly, on the basis that Jeremy has indicated, with what the agreed remit was, nor has there been any attempt to move even an inch towards the position of the devolved Governments. That is regrettable because I do believe that compromise was possible and I still believe, on the Internal Market Bill, that ensuring that the frameworks operate is the best way forward.

Q726 **Mark Eastwood:** Good morning. Thank you to the two witnesses for coming today. My question is to Mike Russell. Since the 2016 referendum, the Scottish Government has published several papers on Scotland's place in Europe. To what extent have these been successful in shaping events over the last four years?

Mike Russell: The fact that we are where we are speaks for itself. I do not think that we have done that, regrettably. We have tried to do so. We have informed the debate, particularly in Scotland, and we will continue to publish. In terms of the UK Government taking the points onboard, we are disappointed. We published the first of those, as I said, in December 2016. I was assured by David Davis that there would be a constructive response to it. Of course, there have been many Ministers who have come and gone during that period with responsibility for Brexit and for working with us, and we discussed it in detail. I was told that no decision had been made, for example, on the issue of the single market and customs union, and then the Prime Minister announces the decision without any discussion with anybody else.

That set the scene for what has taken place, but we continue to argue the case and argue it very strongly, and we will go on doing so because the people of Scotland have indicated that they do not wish to leave the EU and we believe that the right solution now is to re-enter the EU as an independent nation.

Q727 **Mark Eastwood:** Thank you. In those papers, the Scottish Government, as you mentioned before, argued that the UK Government should remain in the EU customs union and single market. It also mentions in there that you have argued for independence. Is it also the Scottish Government's position that an independent Scotland would seek to remain in the UK internal market?

Mike Russell: The understanding of the term "internal market" in the UK needs to be broadened out. If you require to be part of the same political



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unit in order to trade successfully, one has to ask why that point is not being made by those who support Brexit in the UK context, because they will be distancing themselves from their EU customers. We want to be able to trade freely everywhere, and the best way to have done so, and I believe the best continuing way to do so, is to remain within the EU single market, which is a view that is not as outlandish as some may have said. I believe Boris Johnson was espousing it during the referendum and, indeed, most of the people who campaigned for Leave seemed to believe that staying in the single market was an inevitability.

A sense of perspective and history on this is quite important. This debate has moved enormously to a very hard position over the past four years. The Scottish Government has stood still and said, "What we voted for in 2016 is what we believe in." The way we are being pushed at the present moment is constantly out of that reasonable position and we want to hold that reasonable position.

Q728 Mark Eastwood: As a scenario, in terms of that position, if you were in the single market, if Westminster did not like, for example, the sort of paperwork that you were using, would you allow Westminster to prevent food from mainland Scotland going to places like the Shetland Islands, for example?

Mike Russell: I cannot see that, if I may describe it, very fanciful view ever holding true, nor would it hold true that the items that come from Shetland—and it is "Shetland"—would stop going anywhere. I represent a constituency that has a very large shellfish-processing and shellfish-catching industry, a very important part of the fishing industry that is not talked about much, regrettably, in the debate that takes place. I have boats here that may have to base themselves in Northern Ireland because of the arrangements that have been come to, so the disruption that is taking place as a result of Brexit is absolutely enormous. It is fanciful to imagine that there is other disruption that is put in the balance against that and somehow cancels it out. There is not.

Q729 Mark Eastwood: You would not accept a border between Aberdeen and Lerwick, then, for example?

Mike Russell: I am one of those people who do not want to see borders at all. I am one of these people who want to join in rather than cut myself off. That is certainly not part of my political philosophy, nor has it ever been.

Q730 Mark Eastwood: Why would you expect the UK Government to let Brussels potentially blockade food imports from Great Britain to Northern Ireland?

Mike Russell: That is not what is being said nor threatened. I am really interested in all the discussion on that. I was very impressed by Simon Coveney's position on *The Marr Show* on Sunday. He made it absolutely clear that that is not what is taking place, and it does nobody a service to claim that it is.



Q731 **Mark Eastwood:** If Scotland gained its independence, could you give me in precise detail what customs procedures would be put in place?

Mike Russell: That would depend entirely upon the circumstances at the time. I should make it very clear, you having given me the opportunity, Mr Eastwood, thank you, that I am certainly not here to discuss independence in detail. I would be happy to do so on a future occasion. When we have the section 30 order granted, which we should have, in order to hold a referendum, which the people of Scotland said they wish to have, we can enter into a full-throated and very detailed discussion of independence. I look forward to doing that with you.

What I am addressing at the present moment, as Scotland is addressing at the present moment, is the biggest threat to devolution that we have ever seen, undertaken by a Government that has not listened to the people of Scotland these past four years. The crisis that has occurred is nobody has a clue what is going to take place in the next four or five months in terms of regulation, trade or standards. Those are all completely unknown. I am addressing a real and present danger and I am trying to do that in as constructive a way as possible.

Q732 **Joanna Cherry:** Good morning, Mr Miles, and good morning, Mr Russell. It is very nice to see a little glimpse of Argyll behind you, Mr Russell. I want to explore some of the comments that Michael Gove made in his speech in the Chamber yesterday when we were debating the Second Reading of the Internal Market Bill. First, however, I want to briefly look at the common frameworks. If I may start with you, Mike, it is often suggested by Michael Gove that this process of leaving the European Union will result in what he describes rather curiously as a "power surge", and many additional powers coming to the Scottish Parliament. Can you tell us whether the common frameworks will result in greater devolution of power to Scotland and Wales? If so, what do you expect to gain? If not, which powers do you think will be lost? I will start with you, Mike, dealing with Scotland, before coming to Jeremy to deal with Wales.

Mike Russell: Thank you. I am very familiar with power surges. We have problems with the electricity supply here in Argyll all the time, and they just tend to knock things out and wreck things rather than contributing positively. The reality is that the frameworks process will put into an orderly way the structures that are needed to continue with the relationships in these islands. They are not about massively increased powers. The reality is, as I have said several times, that to try to claim that the issues that have been identified as being the intersections between EU competence, Scottish competence and UK competence are, in some way, a gift of powers to Scotland is simply untrue.

You could interpret it the other way. You could say that they are being taken as powers by the UK and being held there, so there is no correspondence in that argument at all. What they will do, however, is regularise the situation. We have accepted, from the very beginning, that



you will need to regularise the situation, because devolution took place when the UK was in the EU and the structure of the devolution recognised the importance of those structures. If those structures are not there, you have to replace them. The frameworks process, first of all, identified all those areas where it would be necessary to have a replacement and whittled them down because there were a lot that you did not need to do anything with and you simply accepted that a new dispensation would go into place. The ones that are left are those that have required work with stakeholders and others in order to create a new structure.

As Jeremy rightly says, in one or two of those areas, legislation will have been required. Some of it is already obvious. Both Scotland and the UK have put in place agricultural legislation, part of which is to do with continuing agricultural subsidies. There is environmental legislation that the UK has and we are taking it forward. There are other areas where you simply need a new working relationship. There are some areas, for example, in emissions trading where there are some big issues still to be resolved, but we recognise the importance of getting them resolved together. Frameworks are the way in which you do that; frameworks are the way in which you regularise the process within these islands; and frameworks are what we agreed to do. The principles on which frameworks are based are clear and published, and include, right at the start, respect for the devolved settlement. What we have with the Bill is no respect for the devolved settlement and, indeed, a desire to undermine it.

Q733 Joanna Cherry: In relation to the Bill, it was repeatedly claimed by Conservative Members of Parliament yesterday that this Bill was somehow delivering more powers to Holyrood. What is your response to that?

Mike Russell: It just is not true.

Q734 Joanna Cherry: Mr Miles, can I ask you the same questions in relation to Wales? Will the common frameworks result in greater devolution of power to Scotland and Wales? If so, which powers do you expect to gain in Cardiff? If not, which powers do you expect to lose as a result of, specifically, the frameworks process, although you may wish to relate that to the Bill as well?

Jeremy Miles: The channel by which the Welsh Parliament and Welsh Government have enhanced powers is not the common frameworks mechanism and it certainly is not the Internal Market Bill; it is the operation of devolution legislation and the effect of leaving the European Union. That is the mechanism by which powers return to the Senedd and the Welsh Government.

What the common frameworks programme was envisaged to do, as Mike was saying, was to enable Governments to work in those spaces, to get spaces together and to manage policy divergence as part of that. It is also a mechanism by which the UK Government decided not to stop



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powers coming to Wales as a consequence of leaving the European Union, incidentally.

When the common frameworks programme was originally conceived, the list devised as the agenda for the common frameworks work was, essentially, intended to cover the areas relevant to the internal market. When we started out on this process, the objective was that internal market questions would be resolved by agreeing common frameworks. That is still the position of the Welsh Government. The legislation in front of us at the moment in fact reverses some of those questions, so it enhances the number of reservations in the Government of Wales Act, for example. It provides spending powers in devolved areas. I have heard the argument repeatedly made that the Bill enhances the devolution settlement, but I do not accept that for a second and I have not heard anybody point me to a section that describes where those powers are conferred.

Q735 Joanna Cherry: Mr Russell, going back to the institution of devolution in Scotland, Donald Dewar's scheme of devolution, which the Scots voted to support in 1997 by a majority of three to one, was that all powers should be devolved unless they were expressly reserved to Westminster. Do you agree with Mr Miles that the effect of the Internal Market Bill and the abandonment of the attempt to have common frameworks enhances the reserved powers that are retained by Westminster?

Mike Russell: Yes. I express what might be called a sneaking admiration for the drafters of the Bill because, essentially, what the Bill has done is undercut the existing settlement. The exercise of the power may continue, but it is pointless because it can be set at nought, essentially.

The Internal Market Bill is sneaky in another way. It is true, and I noticed Michael Gove made this point yesterday in his summing up, that there are exemptions within the Bill, but the Bill also has a blanket power given to the BEIS Secretary of State to disregard those exemptions and to act as he or she saw fit. You can list as many exemptions as you wish in a piece of legislation, and I am somebody who has dealt with a lot of legislation over the past 13 years with the SNP in government, but at the end of the day it does not matter if that can be overwritten, and it can be overwritten by the whim of a UK Secretary of State. This Bill is a clever Bill. It is a Bill that undermines devolution.

I would, of course, go back to something else that Donald Dewar memorably said, which is that "devolution is a process, not an event". What we have seen over the last 21 years is the evolution of devolution as it has grown and developed, and I do not think that that point has been missed by the UK Government either. This is the first attempt, and a very serious one, to row back on devolution and to create the circumstances where it is impossible for any of the devolved Administrations, not just Scotland, to operate as intended. There is also confusion about devolution in the minds of many politicians outwith Scotland and Wales. David Cameron talked about devolving and



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forgetting and there is an element of that. I do not think there is a knowledge of how devolution works, but what is here is, undoubtedly, without a shadow of a doubt, an enormous assault upon the devolved powers. It is very difficult to find anybody outwith the Conservative party who does not believe that.

Q736 Dr Whitford: If I could start with Mike and then Mr Miles, it is clear that the elements and the non-discrimination clauses within the Bill relate to imports as well as UK products. It talks about things that are imported to or pass through other areas. Can you touch on what concerns you regarding that? It also talks about having an unelected body that sits above the Scottish and Welsh Parliaments to rule on policies that are acceptable. What kind of policies would both the Senedd and the Scottish Parliament lose the ability to enact if this goes through?

Mike Russell: On the second question, it is not appropriate that anybody can second-guess the devolved Administrations and the powers for which they have competence. That is basically undemocratic and should not be taking place. Devolution has always been a delicate dance around Westminster sovereignty. We understand and accept that, but this is a new imposition because somebody else is set up around whom one has to dance as well, and that is getting a bit complicated.

In terms of importation, there is a general objection to any rules and regulations that essentially limit the powers that are granted already—these are not new powers—to the Administrations. There is also the very complicated issue of the Northern Ireland protocol, which we have not addressed yet, and the way in which the UK Government are reneging on international obligations, as well as the operation of the protocol. In Scotland, and even more so in Wales, there are ports where goods are transferred, possibly coming in from mainland Europe and going to Northern Ireland, and sometimes going to the Republic of Ireland. I had a fascinating conversation last week with a logistics expert talking to me about the way in which, essentially, everything was up in the air and nobody knew how the systems would work. There is still no information about the designation of Cairnryan, for example, as a border port. Without that designation, it is extraordinarily difficult to see how the systems will operate.

One of the biggest objections that you could have over what is taking place at the present moment is simply an organisational one. It is absolute chaos. Nobody knows what the situation will be and that applies right across the board in almost every part of national life. We have put in place, once again, our preparations for what will happen on 31 December, but it is wandering about in the dark, waiting to find out what conclusions will be drawn. That is no way to run a complex modern state.

Q737 Dr Whitford: Would you have a concern about some of the public health policies that Scotland has enacted, such as plain cigarette packaging? Packaging is mentioned, as is minimum unit pricing etc. They are very clearly around public health and are utterly a devolved competence and



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referred to in Mr Miles' letter to the BEIS Secretary. Do you also have concerns that this would limit the actions of the devolved Governments?

Mike Russell: I have concerns with all public services, because I believe that all public services could be opened up to a variety of tenders and influences, which the current Scottish Government would not wish. Other Scottish Governments might change their view on that. You of all people, I have to say, know very well that the health service in Scotland is not devolved as a result of devolution. The health service in Scotland was established as a separate health service when the NHS was established. This is subsidiarity. The separate way of meeting the needs of the people of the area is well established. The current Scottish Government are very clear about how they wish that service to operate and, in those circumstances, they do not wish some of the things that have happened elsewhere.

That is entirely legitimate within that area. I believe that it will be very seriously undermined and that, for example, an American health company that wished to operate in Scotland in a certain way and was not able to do so under current regulation could successfully go to law under this Bill and force its way in. That is a real concern and that will apply not just to the national health service, but to every area of public regulation or contracting.

Q738 Dr Whitford: Are you concerned about the financial assistance parts that are in clause 46 that very clearly give UK Ministers the right to directly spend? Of course, who pays the piper calls the tune. It is literally almost a complete list of devolved competencies.

Mike Russell: I have seen a very ill-judged and intemperate, in my view, letter from the Secretary of State for Scotland to the First Minister that claims that these powers are simply mirroring what takes place within European spending, and the UK is putting itself in the position of Europe in terms of spending. I understand that as an argument, but it is not one that holds much water because, of course, these EU funds being spent on Scotland are spent alongside and with the involvement of the Scottish Government, just as that is true with the Welsh Government and those funds in Wales. There is no such proposal on this occasion. These are funds that are to be directly delivered by the UK Government in key areas.

If the Internal Market Bill were to be amended to say that these funds would be spent in consultation with the devolved Administrations—in other words, if we were to do what the UK said it is doing and simply placing itself in the position of the EU—that would be, of course, something that we could discuss, but that is not what it says. Regrettably, I think the use of these funds will not be positive or beneficial. I love to see money spent in Scotland. Nobody would be happier than me seeing that money spent in Scotland, but I believe it should be spent wisely and in collaboration with the Scottish



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Government. It could be spent in opposition to the Scottish Government and that would be a shocking waste of public resource.

Q739 **Dr Whitford:** If I could come to you, Mr Miles, on the same concerns about imports, public health policies and the financial assistance elements.

Jeremy Miles: It strikes me that, with a piece of legislation like this, it would be good to be able to talk about the drafter's intent, but since it was developed without any reference to us, I do not have any insight into the intent behind the language. The effect of it is certainly clear. In relation to food standards, for example, which are devolved to Wales, and there is a provision in the Government of Wales Act that enables the Welsh Government to regulate the import of foods to comply with those standards, that would be rendered impossible as a consequence of the mutual recognition principle in the Bill.

The point that you made about the non-discrimination provisions is particularly egregious because they extend so far as indirect non-discrimination, which is the broadest possible application. A range of policy areas comes into focus there. For example, we are likely to want to be more ambitious in controlling single-use plastics in Wales, than the UK Government's ambition currently states they are, so it is going to be very difficult, if not impossible, for us to deliver on that policy in Wales if the non-discrimination provisions go through in the form that they are now. There is a list of things in that area. We are concerned about building standards. We are concerned about waste recycling and processing. There is a whole list of them. As you have mentioned, I have drawn some of them to the BEIS Secretary's attention already.

In relation to clause 46 provisions, there is a Government in Wales that already has those powers, and it is the Welsh Government. A Government in Westminster that seeks both to control the powers of spending in devolved areas and, essentially, to have a hand on the tiller when it comes to setting the Welsh Government's budget are a Government who seek to neuter devolution.

As Mike was saying, this is quite smartly drafted. Effectively, you can circumvent the democratic institutions in Wales as a consequence of some of these provisions. Not to wish to make a party political point, but the areas for which the UK Government are already responsible for funding in Wales are areas where there is significant underfunding. If there is money to be spent in Wales, my strong advice is that it should be spent in areas that are currently reserved, not areas that are devolved.

The other obvious anxiety is the strong possibility, if not likelihood, that these funds will effectively operate by way of a reduction in the block grant, the budget the Welsh Government have available to them. It will effectively operate as a redirection of resources away from the priorities of the Senedd and the Government of Wales to UK Government's priorities, and that is obviously unacceptable.



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Q740 **Mr Bone:** Could I start with Mr Miles? Would this be a fair way of putting it? There are a lot of powers that are at the moment exercised by the European Union that will return, in principle, to the United Kingdom. I understand the Government's position is that they then cascade down, for instance, to Wales, so that, whatever happens, Wales is going to have more powers after 31 December than it does now, or am I wrong on that?

Jeremy Miles: Where I would disagree with your analysis, Mr Bone, is the mechanism by which the powers for Wales are enhanced. It is not by way of cascading down from UK Government; it is by operation of the devolution statutes. It is true to say that, as we leave the European Union, the powers available in the Senedd and the Welsh Government will be enhanced, but that is by way of operation of the devolution settlements, not by way of this or other legislation.

Q741 **Mr Bone:** That is good, though, is it not? It is good that you are going to have powers that at the moment are exercised by the European Union?

Jeremy Miles: My preference is to operate within the framework of the European Union, which has delivered huge amounts of benefit to Wales during the period of our membership. I know we are not going to agree on that, but clearly if powers are reverted as a consequence of leaving the European Union, where they are in devolved areas plainly they should be exercised in Wales.

Q742 **Mr Bone:** I guess that is the position of the United Kingdom Government and, of course, there are representatives in Parliament from every part of the United Kingdom. Michael Gove has said, "Holyrood, Stormont and Cardiff Bay will soon have more powers than ever before and there will be no change to the powers the devolved administrations already have". We talked about the first part of that sentence, but do you agree with the second part, that you are not going to lose anything?

Jeremy Miles: No. Clause 48(3) of the Bill directly extends the list of powers that are reserved to Westminster. It enhances the powers of Westminster at the expense of Wales, in terms. When you look at the provisions in clause 46, providing the UK Government with powers in devolved areas plus control of the budget, they effectively operate to circumvent devolution. As I mentioned earlier in response to Philippa Whitford, the operation both of the mutual recognition principles and the non-discrimination principles effectively means that, whereas currently Welsh Ministers have the power to regulate imports into Wales, for example, that would not be possible.

Q743 **Mr Bone:** Sorry, we might be talking at cross purposes here. You are assuming, I am guessing, that a comprehensive free trade agreement is not done with the European Union and, therefore, the Internal Market Bill has effect. It seems to me that, if there is a comprehensive free trade deal, most of the Internal Market Bill is, therefore, irrelevant.



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Jeremy Miles: The Internal Market Bill does not simply regulate products coming into the UK; it regulates the movement of products and services across the UK. It is not contingent, as I understand it, on any particular outcome in relation to the European Union or elsewhere. As I mentioned, there are already, in my view unfortunately, provisions in the devolution statutes that enable the UK Government to direct compliance in that sense. This also principally regulates the internal market in the UK and, therefore, standards being reduced in another part of the UK would, effectively, play through into the Welsh market as well in a way that we find unacceptable.

Q744 **Mr Bone:** Given that you have concerns that you just expressed, and given that there are also benefits coming down the line by getting more powers that the EU exercises at the moment, overall do you think Wales is going to have more devolved power or less devolved power, if everything happens?

Jeremy Miles: I am not clear why you are inviting me to look at those two things in the round, because they are quite distinct.

Q745 **Mr Bone:** I was trying to make you be happy about what is about to happen, rather than concentrating on the things you do not like.

Jeremy Miles: I have put forward very constructive and, I think, positive proposals by which the internal market could work very effectively across the UK, and work in a way that is collaborative and works for business, for consumers and for devolution. My strong hope, although perhaps I should not describe it as a hope, is that the UK Government engage with those proposals. As Mike was saying earlier, we have been working on them together for some years and they offer a compromise outcome to some of these very difficult challenges. As I said earlier, the powers are reverting by virtue of leaving the European Union, and the common frameworks process and mechanism provide a very constructive way of managing divergence into the future as a consequence of those enhanced powers.

Q746 **Mr Bone:** Mr Russell, the same sort of questions: do you see any advantages to Scotland with the process that is happening?

Mike Russell: No, I do not. While I very much admire you wanting to make me and Jeremy feel happier, I suspect that may well be beyond you today. None the less, I am grateful for the effort.

Q747 **Mr Bone:** I have to say I lived in Wales for 13 years, so I know a little bit more about Wales than I do about Scotland. I understand that there will be differences between the devolved powers in Scotland and Wales. I just cannot get past the point that either the Government are telling porky pies or you do not want to accept a gift horse. If there are powers in the European Union that are controlled by the European super-state and are now going to be given to Scotland, that must be fundamentally better. It does not matter how they get to Scotland. If you have those powers, it must be better, must it not?



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Mike Russell: No. I think you and I would profoundly disagree, a, about the European super-state, which I do not think exists in that regard, and, b, what powers are coming and how they would be exercised. In terms of who is telling porky pies and who is not, that will in the end be up to you and others to decide. Scotland has a bit of a tradition of being told porky pies by a number of people. I would, for example, quote the campaign for Brexit in June 2016, where a very senior UK Minister—let me name him, Michael Gove—pledged new immigration powers for Scotland, saying that it would be for Scotland to decide how many immigrants it admits in the event of Brexit. That is a commitment that was made. I am happy to give you the source of it. It did not happen. It would really be up to others to decide whether that was a porky pie or not.

Q748 **Mr Bone:** As to your concerns, Mr Miles gave me an answer, but it was a fairly general one. I am trying to get at what you are going to lose come 31 December. Mr Miles gave me a general view, but is there something specific that you can say, "I can do that now, but I am not going to be able to do it on 1 January"?

Mike Russell: Absolutely. If the Internal Market Bill goes through, the exercise of any of the significant powers in favour of the Scottish people, for example, on food standards, would not be possible without them being completely put at nought by decisions of the UK Government. You pointed out that there were representatives of the other parts of these islands in the UK Parliament, but of course these decisions applying to England initially would presumably be undertaken by English votes for English laws.

For example, let me bring chlorinated chicken back on to the stage for the second or third time today. If the UK Parliament were to decide that chlorinated chicken was acceptable for England, that could be sold in Scotland, to Scottish consumers, no matter what Scotland said, no matter the standards that existed. For chlorinated chicken, read GM crops. Read a whole range of areas like some of the public services, as Philippa Whitford has indicated. Those are real things that people experience. The Government they elected to administer those, which is the Scottish Government, which has the competence for those, would not be able to exercise those powers. That is incontrovertible in the nature of the Bill you are considering.

Q749 **Mr Bone:** I was listening to you earlier. I thought you said you would still have the power to ban the sale in Scotland. Is that wrong? Did I misunderstand you?

Mike Russell: We would have the power, but it would be completely ineffective because it could not operate. The moment you tried to do so, the manufacturers of chlorinated chicken, if there is such a thing, or those who treat it, would go to the courts. They would be able to say, "Hang on a minute. We can sell this in England. Therefore, we should be able to sell it in Scotland," and they would succeed.



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I notice this point was made in the House of Lords during the consultation on the UK Internal Market Bill. It was made absolutely clear that the power of the courts could be used in these circumstances. That would be the situation. As Jeremy indicated, and I have also indicated, this is a cleverly drafted Bill and the effect it has is to undermine and to set at nought vast amounts of power that are presently exercised in the interests of the ordinary Scottish citizen.

Q750 Mr Bone: Why do you think that is happening? Normally, any Government wants to devolve matters because, a, it is the right thing to do and, b, they do not really want to deal with it. Why do you think they would want to take powers back?

Mike Russell: That is an interesting situation. May I go off on a tangent on that? I promise I will come back to the main stream. The reason that we have been able to work together on the issue of no deal better than anything else is precisely as you have indicated. In the end, the UK Government could not do it. They did not have the roots in Scotland, or the Welsh Government's roots in Wales, that were necessary to deal with that crisis.

There is a fear that the devolved Governments will use their powers, and I have indicated some of them, in a way that will interfere with the type of trade deal that the UK will have to do to have trade deals. It is not in a strong position. There is a dislike of devolution in the minds of many of the current Government, particularly those who are very keen on Brexit, because they do not like to have others exercising powers in areas they think they should exercise power.

Devolution has become clouded and confused in the minds of some people. It is a curious thing. I gave evidence on the questions of PACAC some time ago, as did Jeremy. I was very struck by the fact that, on that Committee, there were only two people who had any practical lived experience of devolution, David Jones and David Mundell. Almost everybody else had no such practical experience.

I am long in the tooth. I lived through the establishment of devolution. I understand that it was not a construct of the SNP, although we have been in power in Scotland for 13 years. It was something that was worked on by the Scottish people together and ultimately delivered by a Labour Government. That is all very confused now. In some people's minds, devolution means independence, means the SNP, means trying to exercise powers that you do not want to exercise. It is a complex business. We could probably debate it for a very considerable period, but the atmosphere has been poisoned and the current Government have poisoned it even more over the last year.

Chair: Fortunately, time does not permit us to debate it now.

Mr Bone: Chair, I must apologise to our two witnesses for failing to cheer them up.



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Chair: That is duly noted, Peter.

Q751 **Nicola Richards:** How confident are you that a future relationship agreement will be reached between the UK Government and the EU by the end of this year?

Mike Russell: On a scale of one to 10, where one is the lowest confidence, about minus five at the moment.

Q752 **Nicola Richards:** You are not optimistic at all. I noted that you said there has been good communication with Government and the Scottish Government over no-deal preparedness.

Mike Russell: There was. With respect, there was that relationship. It is not there at the moment. It is slowly improving, simply because of the necessity that is upon us. The point I made is that before this Administration that was something that was treated as being essentially apart from the politics of the situation. That was why we worked very closely with David Lidington, for example, to make sure we were prepared for it. We have only just seen, I think in the last week, the reasonable worst-case scenario, which is something that we had to see to be able to move forward. We are doing a great deal of work on it, but the flow of information is not nearly good enough, no.

Q753 **Nicola Richards:** Is there any level of consultation that would be acceptable? Can you describe what that would be?

Mike Russell: If you are talking specifically about no deal, we need to be absolutely certain what the preparations and plans of the UK Government are in every area, so that we can either replicate them in Scotland or change them and develop them in Scotland. There is a separate resilience structure. The Government's resilience structures north and south of the border are slightly different. We have always worked very much hand in glove in those. Indeed, in times of emergency some of our Ministers will attend COBRA. We make sure our resilience structure is open to the UK Government, so that leads to the absolute transparency.

In terms of other consultation, I think I answered the question very fully earlier. You cannot get there from here. We have had four very difficult years and that trust in that cannot be rebuilt quickly.

Q754 **Nicola Richards:** Given that Scotland sells more to the rest of the UK than the whole rest of the world, is it not a priority to protect the internal market?

Mike Russell: Absolutely, and I know of no barrier to the internal market that presently exists. As I said earlier, if you have to be in exactly the same legislative structure to sell anything to anybody, the UK should not be leaving the EU, something that many of us believe. In all those circumstances, I do not see the parallel at all, unless you are threatening a trade war.



There is a very interesting paper that the House of Commons Library has produced, which is very much worth reading, on the history of the trade relationship between Ireland and the UK. It indicates that overdependence is not a good thing in terms of national prosperity and that Ireland's prosperity has increased as it has reduced its dependence and broadened the basis of its trading. That paper is very much worth reading and I am happy to provide the Committee with a reference to it, so that you can look at that and perhaps think about the way in which this issue is not precisely as it has been represented.

Q755 Nicola Richards: Could you outline the key consequences of a deal being reached that does not meet your priorities?

Mike Russell: I am afraid that would take me most of the day. We have not been consulted on any of the detail or any of the issues. We believe that the only acceptable alternative to not being in the EU, and we want to be in the EU, would have been a single market and customs union solution. I think a deal is still very unlikely and being made a lot more unlikely by the events of this last week and what is now in this Bill. Anything that comes out will either be what I called earlier a low deal or a no deal. Those are the only options that in actual fact are being gone for, because the level of ambition from the UK in its negotiations is so low.

Q756 Nicola Richards: In terms of the economy, which of your sectors do you believe are most at risk? What would be the implications of disruption at UK-EU borders and ports, for example between Holyhead and Dublin?

Mike Russell: I cannot talk to Holyhead and Dublin. That is for Jeremy, as it is a Welsh port. I can talk of Cairnryan, where there has been absolutely no preparation put in by the UK Government. It has been impossible to get any information that would allow us to make some sensible decisions and to see investment take place within that. In terms of sectors, pick any one you like. They are all going to be in considerable trouble as a result of Brexit.

Indeed, the papers that we have published have indicated that. Again, I am happy to provide the sources for those papers. We published two this year that I think are of importance. One was on the additional effect of not seeking an extension for the transition period, which showed how the cumulative effects work. Then we published a comprehensive response to what was the consultation on the UK Internal Market Bill. We will publish a very comprehensive response to the Bill too.

Q757 Nicola Richards: I am now going to turn to Jeremy, if I can ask you similar questions. How confident are you that a future relationship agreement will be reached by the end of this year?

Jeremy Miles: Can something be arrived at that can be called a deal? Possibly, but that is not really the test. The test is whether a deal can be reached that does not damage the economic wellbeing of the UK. I have no confidence at this point that that is going to be capable of being



reached, unless there is significantly more flexibility in the negotiations than there appears to be.

Q758 **Nicola Richards:** Is that on the EU's behalf or the UK's?

Jeremy Miles: I would call for flexibility on both sides. I have not been persuaded that the UK Government's stance on the negotiations is putting jobs and livelihoods above sovereignty. If they chose to do that, it would create much more prospect of a deal.

Q759 **Nicola Richards:** Can you outline any of the key consequences of a deal being reached that does not meet your priorities?

Jeremy Miles: Yes, economic impact on our businesses in Wales. You asked about the sectoral exposure in the Scottish context. We are very worried about our automotive and aerospace sectors. A larger proportion of our exports than any other part of the UK goes to the European Union, so we are particularly disproportionately exposed there. There is also a grim complementarity between those sectors that are currently impacted by covid and those sectors that are impacted by a no-trade-deal Brexit. Many of those sectors cover quite a lot of employment in Wales, so there is a significant set of risks. That is before you start looking at the logistical aspects around borders, around data issues—the fundamental backbone question to protect, I would suggest, each part of the UK.

Q760 **Nicola Richards:** In terms of the economy, which sectors specifically do you think are most at risk out of the ones you just mentioned?

Jeremy Miles: The ones I mentioned are the ones I think are most at risk.

Q761 **Nicola Richards:** What would be the implications of disruption at the EU-UK borders and ports?

Jeremy Miles: In relation to the work we are doing with regard to Holyhead, which is obviously a very significant ro-ro port across the UK, we do not yet have the information we need, in terms of the most recent traffic modelling, for example, across the UK, or the most recent reasonable worst-case scenario. I think officials are meeting today as it happens, so it may be that by the end of the day we will be given that. It is pretty fundamental to our ability to be able to cope with disruption at Holyhead.

On business preparedness, in terms of exports, we are still a long way from where we need to be in relation to that. We have a significant concern about ferry owners not accepting freight from companies that do not have the right paperwork. That would cause significant disruption right across the north Wales transport corridor, conceivably. There are significant questions outstanding.

In terms of the border operating model and so on, we have had some engagement on that and some effect, I think. We are talking of a matter of days to consider quite significant implications for the Welsh economy



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and Welsh infrastructure. I hope that, when the new border operating model comes out in a few weeks' time, it will show that we have had some influence on it, because it is certainly an area of very significant concern for us.

Q762 Mr Sheerman: Can I thank the witnesses, first Mike, for reminding me of the happy days when I worked with my very good friend Donald Dewar, and Jeremy, for reminding me of my lovely years in Wales when I was a councillor for Gowerton, not far from Neath? Thank you to them for that, but also the quality of the evidence they have given. I am always the tail-end Charlie on this Committee; I am the newest member. Reading all the briefing and listening to the evidence, it seems to me an appalling quality of treatment that the devolved Administrations have had from this Government. Is this what you often think about with this Government? Is it a dastardly plot? Is it clever, orchestrated and higher level, or is it incompetence? Which is it, in your opinion?

Jeremy Miles: I do not want to speculate on the motive of the UK Government. All I will say is that an alternative path is obviously very readily available and is not being chosen. It is not as though there is a lack of appetite on the part of the devolved Governments to seek to make intergovernmental relations work. Indeed, on a benign view, it is immensely frustrating that we see occasions where intergovernmental relations can and do work well.

It is frustrating for a Government such as ours, which believes in a well-functioning Union. Sometimes, I think we believe in that more than the UK Government believes in it, frankly. To think that we are not engaged in trying to make it work as best we can is not right. We have consistently put forward constructive proposals, evidenced, reasoned, or alternative ways of running intergovernmental relations and occasionally we see progress. I do not want to paint a bleak picture of every aspect of this. There are aspects we could all point to that demonstrate pretty good intergovernmental relations. From our Government's point of view, it is immensely frustrating that is not the organising principle for all intergovernmental relations.

Mike Russell: I do not want to be drawn into speculation on motivation. I have been doing this job, in terms of responsibility for Brexit policy in the Scottish Government, for four years. There was an early period in which I thought things were being kept from us and there was some dastardly plot under way. Then I had a blinding revelation after about 18 months, which was that, actually, many of the UK Ministers I was dealing with knew no more than I did. They simply were not being told things. It was a dysfunctional system and it was unable to cope with the complete chaos that Brexit had produced. That has simply got worse and worse. A policy of this complexity, which, in a good and well-functioning Government, could have been delivered, has simply been very badly delivered. It has got worse with passing times.



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There is also a hostility to devolution now at the heart of the current UK Government. That is bound up with the confusion about what devolution is, what independence is and what the constitutional settlement is. Frankly, it is all a mess. The real problem in this is not only that it does a real disservice to the people of Scotland, Wales and Northern Ireland, but that it does a considerable disservice to the people of England. I was born in that nationalist hotbed, Bromley. The reality of the situation is there is no great hostility and should not be. There are political decisions that need to be come to in the modern world, and it has all got immensely mixed up with a variety of feelings that are not helpful.

If the current UK Government wish to diminish the devolved settlement, as they clearly do, they should do so honestly and above board. They should come to the House of Commons and the devolved Administrations and say, "We do not like this. We want that." To do so by sleight of hand, with a Bill that they deny the truth of, does a disservice to everybody, but particularly a disservice to democracy.

Q763 Mr Sheerman: Thanks so much for both those answers and those replies. Can I push you a little? I am getting the real sense that you want, as we want, the very best for the whole United Kingdom. We are approaching this cliff edge of leaving the European Union on 1 January. What is retrievable at this stage? Could there be an effort from the Government, from the devolved Administrations? Is it a retrievable situation? I have read the evidence, as I said. It is an appalling story of miscommunication and poor treatment among people who should have been negotiating as equals. At this last stage, is there something Government could do to put things right?

Mike Russell: There is an initial step that needs to be taken. There is an intergovernmental review going on at the moment. It has been going on for ages. It is not going to come to a successful conclusion at the present moment. There is an initial step that could be taken that would at least stop things getting worse in the interim, at a time when things are very serious, in terms of the impact on ordinary citizens that is likely to take place over the next few months. That is to withdraw this Bill, to accept that there is a framework process that can be used to achieve whatever the UK Government wishes to achieve with this and, essentially, in the massive hole that the UK Government is in, to stop digging.

That would make sure we could then step back from this and focus on the challenges that lie ahead. The UK is outside the EU. Regrettably, that is presently a done deal and we only want to find a way back in for Scotland. We need to accept that we need to focus on getting to the end of this year without the damage to citizens that we see is coming, and it is coming. The warnings are stark and clear. You cannot listen to the hauliers or the medical professionals without knowing it is coming. We need to step away from the cliff edge in that regard.

Rather than do that, the UK Government seem to be determined to lean as far over the cliff as they possibly can. That is what they are doing.



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That would be step that needs to be taken now. I do not believe the UK Government are listening, but I hope they would listen, and perhaps they would be forced to listen by parliamentary process. I do not know.

Q764 **Mr Sheerman:** Jeremy, can you comment on that?

Jeremy Miles: There are two things the Government will not want to do and two things they ought to want to do. Of the two things they will not want to do, first is to put the common frameworks at the heart of intergovernmental relations on the internal market and not the Internal Market Bill. At the end of the day, that puts you in a position where, once that Bill is in the form it is in, it not only undermines your credibility with partners internationally, but, in this context, it undermines your credibility with partners in other parts of the UK. Once that is in place, it is going to undermine any attempt to improve relations, it seems to me. The second thing is to change direction in relation to the negotiations. Plainly, they are not intending to do that.

On the things that they ought to be prepared to do, they ought to be working more closely with us now in relation to the work of preparation for the end of transition, a real stepping up of that, so we work hand in glove, open book, in a way that puts differences aside and recognises the practical implications of the end of the transition period. It is way past time that we should be working in that way. That would be one significant step they could take.

The other point is the point that Mike was making, which is the intergovernmental review—to make that the centrepiece of where we are and to try to put in place a four-nations way of working into the future. A Unionist Government across the UK ought to have that pretty close to the top of its agenda if it wants the Union to work well. Mike and I have a different view of that obviously, as we share that with the UK Government, wanting the Union. They should want it to work better than it does now, and they will not achieve that unless we can have a step change in the approach towards devolution.

Mike Russell: I wonder if I might make one final point. Jeremy makes a very important point about the differences that exist. Jeremy and I have different political viewpoints about the constitution. I very much respect the work of him and, particularly, Mark Drakeford, my former counterpart in this who is now First Minister of Wales, and the way they have treated this matter. Very early on, we came to a clear understanding. We do not agree on the final destination, but we are able to work together and have worked together to try to get the best for both our nations and to try to help get the best for everybody else. It is possible to work together. It is the refusal to do that that we have seen from the UK Government—the refusal to consider it is even possible—that has been immensely damaging.

Q765 **Mr Sheerman:** On that point, we all want what is in the best interest of the population of this United Kingdom, all our citizens. It is a very



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worrying period that we are going to go through, coming to leaving with no deal or with a hastily constructed semblance of a deal. We have taken a lot of evidence about ports, transportation, food supplies and all that. Are there arrangements that have happened in Scotland or are happening in Scotland, and in Wales, that are foreseeing the likely problems? When we took evidence, I got the feeling everyone was only thinking about Dover, Kent and the south of England. I found it very difficult to get answers as to what is happening in Wales, the north of England and Scotland. Are you making preparations that the rest of us could learn from?

Mike Russell: We are making preparations. I do not know whether other people can learn from them. We are making preparations. We are very concerned about the status of the ports and work has been done on that. We could do more if we had more information and more exchange of information.

This is the third time we have had to prepare for the unknown, essentially. In so doing, we think we have an effective structure. We have developed that structure. We have a number of senior officials working constantly on this. I report to our Cabinet on a fortnightly basis on the arrangements we are making. I think we have a hundred areas of sensitivity that we are working our way through. We are working very hard, employing substantial resource and a considerable amount of time on something that we should not have to be engaged in, but we are engaged in it and continue to be engaged in it.

Nobody wants to be in this position at all. I believe that the right solution for Scotland is to be an independent member of the EU. The people of Scotland support that, the majority at the present moment. The really important thing at this particular moment is to make sure that the tremendous damage that is going to be done and is being done, because we are seeing some of that damage now, is reversed in as quick and as effective a way as possible.

Jeremy Miles: Holyhead is the second busiest ro-ro port in the UK, so it is at the top of the list of things we are concerned about. As I said, we are hoping to get more information very imminently around the reasonable worst-case scenario there. It is a very complex set of relationships, some of which are devolved and some of which are reserved. That is very much the top of our list of concerns.

Q766 **Antony Higginbotham:** I wanted to stay on the theme of the UK Internal Market Bill. It is a broad, shared aim that we do not want to see borders in the UK. The Institute for Government, which I think we would all agree is quite a well-respected thinktank, said that, without common rules that apply across the UK, it would become more difficult for producers or service providers in one part of the UK to sell their product in other parts. Jeremy and Mike, do you agree with that broad statement—that without a form of common rules that apply across the UK we would be introducing unnecessary barriers?



Jeremy Miles: The common frameworks process is designed to achieve exactly that, which is why the CBI, for example, supports its continuation to a fruitful outcome.

Mike Russell: The common frameworks programme is designed to do that. It is important to recognise that we live in a unitary state, but not a uniform state, and therefore there will be variations. Variations have been proved, wherever they exist, to be beneficial in terms of both competition and economic growth. For example, it is like saying in the United States that there should be a single set of rules right across the United States. That does not happen. It is like saying in the EU that there should be a single set of rules across the EU. That also does not happen. There is variation and there is permitted variation.

The Internal Market Bill says that there is no permitted variation. That is what it does and it is very heavy-handed in that regard. It has none of the checks and balances that exist, for example, in the EU single market. It simply says it would be as if, in the EU, Germany said, "We are setting the rules. Nobody is to have a say in those rules at all and nobody is to depart in any way from the rules we have set." That is what we have. The Institute for Government is right. It is the UK Government who are wrong, because they are not imposing that in the way that works.

Q767 **Antony Higginbotham:** We are all agreed that we do not want to do anything that could result in trade in one part of the UK not being able to take place in another part. Mike, I wonder, then, why the Scottish Government walked away from talks on the UK Internal Market Bill, rather than actually trying to be constructive in negotiations.

Mike Russell: With respect, we have been tremendously constructive. We have indicated that we believe strongly that there should be common frameworks, that they should operate well. We have put a huge amount of work into those common frameworks. I go back to the point I just made in response to your first question: a uniform approach to this is not acceptable because it is not going to help anybody. There will be differences. Those differences will be dictated by a variety of things and they are not barriers.

Let me give you an example of a difference that existed for a very long time, which is in buildings standards. Buildings standards have been different between Scotland and England since long before devolution, and they are different because of the circumstances. That is called subsidiarity. We use different materials. Our weather is different. In all those circumstances, we have different buildings standards. That is not a barrier to anything. That is simply as things are.

In the EU, the system that the UK is endeavouring to replicate is built upon two principles: subsidiarity and proportionality. Both of those are missing in the internal market proposals. We do not have, as the UK Government are claiming, an approach to making sure there are no barriers. It is an attempt to impose uniformity with no debate and no



discussion, to the detriment of business. Scottish business will suffer from it. Scottish business will suffer from unfair competition and the competition will arise out of individual companies in the bigger market. This is, I am afraid, damaging, not helpful.

Q768 Antony Higginbotham: I do not think it is fair to say there is no debate and discussion. We have a United Kingdom Parliament that debated it yesterday and is continuing to debate it. There is not a lack of discussion. If we take one of the hypotheticals, we have spoken of chlorinated chicken a little bit during this session. If the EU decided tomorrow that chlorinated chicken was safe for sale across the European Union, would that result in it being safe for sale in Scotland?

Mike Russell: No, because it would not so decide. Secondly, if it did decide, there would be a variation permissible. That is the misunderstanding of this situation. There would be a variation permissible. Alcohol unit pricing is an example of where variation is permissible. Minimum unit pricing for alcohol was put in place in Scotland because we believed our relationship with alcohol was such that we needed not to have what existed elsewhere. That is perfectly permissible under the European system and was indeed confirmed by European law. That is not what is being proposed in the UK Internal Market Bill. What is being proposed—I want to stress the point—is something very different. It is the imposition of a single standard that cannot be changed.

With respect, this has not been adequately debated, because there has not been enough time for it. The Bill is being taken through very fast. In addition to that, the Scottish Parliament voted by 92 votes to 31 to oppose this. There is very substantial opposition to it by the very people who are being disadvantaged.

Q769 Antony Higginbotham: There is an inherent tension in what you are saying, in that you want greater devolution and powers for the Scottish Parliament, but, at the same time, you are wanting to give them back to the European Union at the earliest opportunity. I will turn to just one other point, because I think we are out of time. That is on fishing. I wonder whether the Scottish Government have undertaken any impact assessment. We know fishing is one of those things where there appears to be a bit of friction. It is one of the last remaining barriers to us getting an agreement. Has any impact assessment been done on the impact of continuing the common fisheries policy on Scottish coastal communities?

Mike Russell: I am in favour and have argued for, as the Scottish Government has argued for, a strongly reformed policy for many years. It is in fact the current Westminster Government that has refused to reform that policy. Within the documentation that has been published, you will find much assessment. There has also been assessment of the impact on, for example, and I said this earlier, the shellfish industry within my own constituency here, and the fact that what is being proposed is immensely damaging.



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I have to point out very strongly to you that the reality of this situation is the imposition of standards on other people, without involvement. That is entirely wrong and will continue to be opposed.

Q770 Antony Higginbotham: Sorry, I did not get a clear answer to that. There is the common fisheries policy that already exists, rather than talking about what we would like to do in the future. Has an impact assessment been done on what impact continuing with it would have on Scottish coastal communities?

Mike Russell: The impact assessment of that is within many of our documents. I would be happy to send them all to you so that you can understand the continuing impact of having a situation that is not the situation we wish to have and that an independent Scotland will be undoubtedly able to move on from with some rapidity. It is the imposition of the current policy by the current UK Government that has been the problem. We should say that very loudly and very clearly, even if the current Government do not want us to.

Q771 Nigel Mills: Can I start with Mr Russell? We are in what we hope is a delicate stage of the negotiations. Is your Government on team UK or team EU in these negotiations? It is not always clear that you are really supporting the UK trying to get the best possible deal here and you are rather hoping it goes wrong.

Mike Russell: No, I want to see the best possible deal. On the other hand, I do not think you can get there from where we started from and where we have got to. I am a Scottish Minister. I am on team Scotland. I want to make sure that Scotland gets the best that it possibly can out of the current situation. I am very happy to work with the other nations of the UK in mutual respect. Unfortunately, that does not seem to be reciprocated as often as it should be. I regret that.

Q772 Nigel Mills: As Scotland is part of the UK, I will assume you are on team UK. Would you now perhaps be urging the EU to modify some of its negotiating positions to try to make a deal possible? Would you accept that some of their demands are inconsistent with the political declaration of last year and are not making this as easy as perhaps it could have been?

Mike Russell: In terms of the political declaration, I was not a party to any of the negotiations, but I remember that the UK Government signed it, agreed to it and indeed described, in an election campaign, what had been done as "oven-ready", and I believe it was getting on with it. In those circumstances, if there is any criticism of the political declaration and the withdrawal agreement, that should surely come from those who previously supported it.

Q773 Nigel Mills: You would not call on the EU to move its negotiating position to try and achieve a deal? You are happy with them perhaps wanting to keep us within their state aid process, so they could veto help for Scottish businesses through the current crisis in theory?



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Mike Russell: That would not be the effect of remaining aligned on state aid. For a start, state aid is a devolved matter and is being reserved by the UK Government for whatever reason. I do not know. The UK indicate that they want to initially follow the WTO state aid regime, which is very weak. State aid is very important in terms of protecting fair competition and I do not think anybody is going to benefit if we do not recognise how important that is. Our view is that state aid is something that has allowed prosperity to grow within the single market, for example because it has been a set of rules that has allowed prosperity to grow and allowed fair competition. I do not accept the characterisation that the EU is trying to tie anybody to things. I think it is trying to, as has been indicated, have fair competition. We should all be in favour of fair competition.

Q774 **Nigel Mills:** Absolutely, but you would simply want legal certainty around state aid. You would not want there to be some lingering doubt that, because there was some indirect benefit in Northern Ireland, there might be a European court case turn up in a few years' time to try to reverse perfectly reasonable state aid in Scotland. Presumably it is perfectly reasonable for us to want clarity that it is only state aid directly in Northern Ireland that would be covered by the approach.

Mike Russell: I am sorry, I do not understand that at all. I do not want to see any lingering uncertainty about anything. The lingering uncertainty would come if the Government did not have the reputation of being willing to abide by the rule of law. That is not lingering; that is pretty rapid uncertainty.

Q775 **Nigel Mills:** I am struggling to get you on to team UK. Perhaps I will try again on fishing. There is the proposition put forward by some of the EU nations that there should be no change on fishing—that, effectively, the UK should continue to follow the common fisheries policy rules in terms of quota allocation. Would you accept that that is not in Scotland's or the UK's interests and we need to make some changes on how we allocate quota?

Mike Russell: It is important that the negotiations take place in the spirit of mutual trust. I would not help that by saying in either way that one side or the other was completely correct. The Scottish Government and I have said that we think it is possible to get a reasonable solution so that everybody feels they have benefited from it. The coastal state protection will be one that will allow that to happen. The mistake made on fishing was not to recognise that the most substantial interest in this was the Scottish Government's, as indeed it did, and that it was a devolved matter. The failure to engage the Scottish or Welsh Governments in any process of negotiation has been a major contribution to making this process more difficult than it should have been.

Q776 **Nigel Mills:** I am still unsure which team you are on here. Mr Miles, perhaps you could tell us. Are you on team UK or team EU in these negotiations?



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Jeremy Miles: I am on the side of the team that wants to get a deal that prioritises access to EU markets, no tariffs, no tariff barriers, co-operation and access to programmes. Anybody whose view that is, I am on their team.

Q777 **Nigel Mills:** That sounds a lot like the UK Government's approach as well. Would you be willing to perhaps urge the EU to modify some of its more difficult negotiating stances to make a deal easier to achieve at this stage?

Jeremy Miles: I already have made it clear in answers earlier today that I think both sides should show more flexibility. The challenge, from my personal point of view, is that the Government that, in theory, I have most chance of influencing is the one that has excluded me from the opportunity of doing that. I would suggest that, had the UK Government shown slightly more foresight in relation to that, some of the criticisms you have heard today would not be ones that were made in this kind of forum. That is the real missed opportunity that the UK Government, by pursuing these arrangements, have regrettably brought about.

Q778 **Nigel Mills:** Do your Government have a view on the EU's positions on fishing and state aid, which seem to be two of the sticking points? Do you think what they are asking for is reasonable, or are you minded to agree with the UK that there needs to be some movement from the EU there?

Jeremy Miles: You will have perhaps seen from my letter—in fact, you will not have seen that yet; I will make sure the Committee sees it—on the question of fisheries that we think more attention needs to be paid to access to markets. In our particular case, we feel we have had opportunities to discuss that policy with the UK Government. On the question of state aid, I have asked for clarification about whether this is a question of principles from the UK Government's point of view or a question of practical application. I am not entirely sure I have that answer yet.

State aid is devolved. I myself, and the Welsh Government, accept the need for a UK-wide approach to this. The way of doing that is to agree a position across the UK where state aid is devolved, so that we can achieve common arrangements. That would be our preferred outcome.

Q779 **Nigel Mills:** It is further on in the Internal Market Bill perhaps. Presumably the Welsh Government would agree that recognising professional qualifications mutually across the whole UK is a sensible provision. You would not want a Welsh auditor barred from auditing in England or something?

Jeremy Miles: The point we have made in relation to qualifications is the same as that with relation to goods and services. We can see the benefits of having recognition principles, but they need to be done on an agreed basis and not on an imposed basis. I find no possible justification for imposing those standards. There is a perfectly sensible set of pragmatic



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outcomes to each of these questions. That involves sensible negotiation and agreement between the Governments.

Q780 **Nigel Mills:** You roughly agree with what the Bill does? You just wish it was being done in a different way? Is that fair enough?

Jeremy Miles: No. I agree with the principle of the internal market. That can be best achieved through common frameworks, not a unilaterally imposed heavy-handed piece of legislation.

Q781 **Nigel Mills:** You agree with the outcome of mutual recognition of professional qualifications around the UK?

Jeremy Miles: I agree that that would be a desirable outcome. The principle by which you reach that is an agreed principle, rather than an imposed principle.

Q782 **Nigel Mills:** Would you agree with the outcome of goods produced in one part of the UK being eligible to go on the market in the whole of the UK? That does not seem contentious as a principle, does it?

Jeremy Miles: I am not sure I can clarify my position much more. It would be desirable to minimise trade barriers within the UK, as we have managed successfully to do during the period of devolution. In Wales, for example, we are very mindful of the fact that consumers are used to very high standards and businesses in Wales have been very happy to meet those standards. The business community in Wales is very keen that we continue with the process of common frameworks. I think they, like us, share the view that that is the best way of minimising trade barriers within the UK while also respecting the devolution settlement.

Q783 **Nigel Mills:** I am trying to separate process from outcome here and work out whether your objections to the Bill are with the process rather than what most of it actually achieves in the end. That is a coherent internal market, which seems a reasonable objective for the UK Government to have.

Jeremy Miles: I do not think we should dismiss process in this. You are talking about the devolution settlement. That is important in delivering standards, but also recognising the constitutional role of different parts of the UK. I will just say again that I think it is important. My own view is that the principle of the internal market is a good principle and the common frameworks deliver the best means of achieving the outcomes that the Bill describes itself as wanting.

The tension in the Bill is it describes a world that it does not seek to bring about. We have a mechanism already for managing divergence across the UK, as we have done successfully during the periods of devolution and membership of the European Union. This Bill does not do any of that. You might ask whether the fact that the Bill was not shared with us in advance and we were not consulted meaningfully is not evidence of that.

Q784 **Nigel Mills:** I have one final question. This is probably a bit beyond my



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technical knowledge. On the goods section, the Bill allows for differences if there is a need for those for human, animal or plant health. Would that not cover your food regulation standards, which I assume you put in place either for animal welfare or for human welfare in that situation?

Jeremy Miles: The exceptions in the Bill are narrower than the current exceptions and are capable of unilateral variation by the Secretary of State without consultation with the devolved Governments. That is plainly unacceptable.

Q785 **Nigel Mills:** The objection that has been quoted most in this session is around food safety. As the Bill is drafted, that one seems to be taken account of.

Jeremy Miles: As I say, it is narrower than the current exceptions and not in any way a set of exceptions that are devised with reference to the devolution settlement. It effectively gives unilateral powers for variation, which I think we would all accept are not appropriate.

Chair: That brings our evidence session to an end. On behalf of the Committee, can I express our thanks to you, Jeremy Miles, and to you, Mike Russell, for giving up your valuable time this morning and for answering the many and varied questions we have put to you? It will certainly help the Committee in its work. We probably will not see you again, because we have a short life left, but we wish you well with your work.