

# Select Committee on the European Union

## Internal Market Sub-Committee

### Corrected oral evidence: Discontinuing seasonal changes of time

Thursday 23 October 2019

10.10 am

Watch the meeting

Members present: Baroness Donaghy (The Chairman); Lord Carter of Coles; Lord Lansley; Lord Lilley; Baroness Prashar; Lord Robathan; Lord Russell of Liverpool; Lord Wigley.

Evidence Session No. 3

Heard in Public

Questions 19 - 28

### Witnesses

[I](#): Kelly Tolhurst MP, Minister for Small Business, Consumers and Corporate Responsibility, Department for Business, Energy & Industrial Strategy; Laura Robinson, Deputy Director, Labour Markets Directive, Department for Business, Energy & Industrial Strategy.

### Examination of witnesses

Kelly Tolhurst MP and Laura Robinson.

Q19 **The Chair:** I should indicate that this is a public session. There will be a transcript available for correction, and all the contributions will be on record. Members will declare their interests if appropriate. We are very pleased to see you, Minister, and we look forward to hearing what you have to say.

We have spent some time gathering evidence, which, frankly, has been much more interesting than we expected. I think there is a growing feeling that this needs to be looked at, although we are not sure that

some of it is actual evidence as opposed to strong feeling. We are trying to get a more accurate view in order to help the Government, to see where they go next on this issue.

I will open the questioning. If you want to say a few words beforehand, that is fine. We have received a rather brief and historical document from your department but I am sure that there have been developments since then. Could you update us on the current state of play with the proposal and the timetable as envisaged by the EU?

**Kelly Tolhurst MP:** Thank you for inviting me along to discuss this. I welcome the work of the Committee. It is great that you have spent so much time collecting evidence regarding this issue.

As you all know, the working parties on this proposal proceeded quickly. Originally the timeline was for the new directives coming to us in April this year, 2019, but member states expressed concerns at the time about the timescale, and at the Transport Council in December last year, under the Austrian presidency, they agreed a two-year postponement as well as a postponement of the notification period from six months to 18 months. So as it stands there have been no recent discussions within the Council, and their general approach has not yet been agreed. In the June Transport Council no general approach was taken. We are hoping and expecting that the new Commission under the Finnish presidency will agree some steps later this year, but obviously we are running out of time as the year progresses.

The delays have been focused predominantly on member states expressing concern about the lack of a full impact assessment provided by the European Commission. Obviously the UK Government supports that. At this stage we are unclear on when it could potentially progress or become law, so I am afraid I am unable to give you firm timings here today.

**The Chair:** You will be aware that this Committee issued a reasoned statement about subsidiarity. However, we are aware that, whether we are in, out or in an interim period, there would need to be some work on how we would fit into any future developments on this that might take place. It is not so much about what we would prefer—permanent summertime, or whatever—but about how we would react to a decision that would impact particularly on the border between Ireland and Northern Ireland. That is the kind of area that we would like to explore. It is of course possible that this will be kicked into the long grass by Europe, but if it is not, and it is quite clear that Finland is quite keen on this, it may be that they will try to bring it forward. What are your thoughts about consultation on this issue? Would you think it was premature at this time, or would you think that we should embark on the kind of consultation exercise that Ireland and the Netherlands went in for?

**Kelly Tolhurst MP:** Currently our position is that we are opposing the directive. We are working with members. For example, my former colleague Lord Henley spoke at the informal Transport Council last year

against the directive. Part of the engagement at that time, and this is what he did, was around engaging with member states, having bilateral meetings but also writing quite a lot of letters to our colleagues in Europe expressing the UK's position. That was about trying to build a consensus. We are focused very much on opposing this directive as it stands. A consultation would be premature at this time without a full impact assessment from the European Commission on its proposal. I think you have heard evidence from academics to say that is the case until there is that impact assessment, so that is our position at the moment. If we were to get dates and understand when it was to be made law, that is something that we would need to go away and look at.

**Q20** **Baroness Prashar:** Can we talk about the outcome of the Government's bilateral engagement with the member states? You have been talking to like-minded members. Can you tell me what the outcome has been of that discussion?

**Kelly Tolhurst MP:** We have been working hard to create an understanding of the UK's position. Obviously, we are pleased that the Irish Government have said that they oppose the directive. We continue to work as closely as we can with them; because on the island of Ireland, they are a key member that we must make sure we communicate closely with.

Other member states have also carried out some consultation—for example, Portugal carried out a consultation—but this is really about making sure that our position is clear. There has been consensus where member states have agreed that the European Commission has not produced a full impact assessment. Without that, it is very difficult for member states, not just the UK, to move forward. There has definitely been a position of understanding there across member states, so we are united on that point.

**Baroness Prashar:** Have you or officials in your department had a full discussion with the Irish Government on the outcome of the consultations?

**Kelly Tolhurst MP:** Our officials are in communication on this issue with the Irish Government and the Northern Ireland Department for the Economy. As you will know, the outcome of the consultation in Ireland was, I think, that more than 80% of respondents did not want any developments which would cause a time-border on the island of Ireland—I am sorry; I do not have the figure to hand—so they decided against the directive. Obviously, we support that, because that is our position.

We are in discussions and working with member states to make sure that our position is understood. Our focus will be on working with other member states that have concerns about the directive. That will continue. As I say, because we had no discussion in June at the Transport Council, no general approach was agreed, so work continues.

On engaging with the devolved Administrations, we do not have an Assembly in Northern Ireland, but obviously we have good communication links there.

**Baroness Prashar:** I think that we will come on to that question. I really want to concentrate on the member states because I want to pursue something. You said that you had a response from Denmark and Cyprus. Do you know what they said? You indicated in your correspondence that you have had a response from them but you have not told us what they said.

**Kelly Tolhurst MP:** Those member states are raising concerns about the lack of an impact assessment carried out by the European Commission. That is what we are looking at. The short impact assessment that the Commission released with the directive showed that there would be no significant benefit from the changes. We have, therefore, heard a range of opinions. As we started by saying, there is a lot of anecdotal evidence and emotional feeling. We need the European Commission to follow through and provide us with a robust, full impact assessment so that we can look at how the UK and member states will deal with this. Whether or not member states would be behind this particular proposal, there is agreement that that impact assessment needs to be delivered.

**The Chair:** What indication have you had from the Commission that it is willing to undertake a detailed impact assessment?

**Kelly Tolhurst MP:** That is what we are pushing for, with our colleagues in other member states. At this point, I am unsure of the European Commission's willingness to do so. When it is under pressure from member states saying that this is a requirement of it, my view is that it needs to do so. As I say, under the new Commission and the new presidency, hopefully, with any luck, the pressure that was put on this may, as you rightly outlined earlier, get kicked into the long grass. However, once it gets going, we may be in a better position to understand its general approach going forward. At that point, we should have a clear understanding of whether it will carry out that assessment.

**The Chair:** So it has not indicated anything yet?

**Kelly Tolhurst MP:** Not as far as I am aware.

Q21 **Lord Wigley:** You touched on the devolved situation. Of course, time is a reserved matter as far as Scotland and Wales are concerned. How are you engaging with the devolved Administrations and taking into account the views that they may have on these proposals?

**Kelly Tolhurst MP:** As you will know, there are many things that we in BEIS are responsible for and that cross over into the devolved Administrations. We have quad meetings, not on this particular issue but in general. I would say that our engagement with the devolved Administrations is very good, both at the ministerial level and regarding our officials. Obviously, as you outlined, time is a devolved matter for Northern Ireland. The Scottish Government, where time is reserved, have

been clear with us that they also oppose the directive; we are working and communicating with them on both a formal and informal basis.

The reality is that we understand that any proposed changes to the current system—the status quo—will have a different impact on different parts of the UK and different communities. Therefore, on a subject like this, engagement to understand the full impact does not stop at the devolved Administrations; we will have to continue with it.

**The Chair:** Can I clarify something? When you refer to a devolved issue, I assume that you do not mean that Scotland has the power of decision-making?

**Kelly Tolhurst MP:** Sorry, no. Part of our engagement is engaging with all the devolved Administrations to understand the impact in their areas. You would hope that we would do that as part of being a good Government.

**Lord Wigley:** Yes, indeed. There is no doubt about that. This is a reserved matter as far as Scotland and Wales are concerned. None the less, in Scotland in particular—more so than in Wales—there is pretty strong feeling on this matter. We can understand that, given the geography and the impact that it will have on rural communities, particularly in northern Scotland.

As I understand it, the Scottish Government have argued that the UK Government should publicly adopt a policy that no seasonal time changes will be considered without the specific approval and support of all the devolved Administrations. Has that proposal come to you, and have you responded to it?

**Kelly Tolhurst MP:** I have not seen that particular proposal. However, we oppose the directive. Our focus is on opposing the directive because we do not intend to implement it and change the current system. With any directive of this kind, you would expect us to work with the devolved Administrations, which we are doing at the moment and will continue to do. At the moment, the Scottish Government are clear that they oppose it, so our views are aligned; that is what we are working towards. In future, if the European Commission decided that this was to become law, we would go back and work out how to move forward. At the moment, our position is clear: we oppose the directive and we are working on that.

**Lord Wigley:** So, if the Scottish Minister asked for a meeting with you specifically on this issue, you would agree?

**Kelly Tolhurst MP:** Absolutely, of course.

Q22 **Lord Carter of Coles:** Good morning, Minister. Arriving at the Government's current position, have you had any direct engagement with UK stakeholders—I suppose, specifically, in road safety, farming and aviation—because the impact on them is of course quite serious?

**Kelly Tolhurst MP:** Obviously, because we are without a timescale for this directive, as you would imagine we are having discussions across departments—with transport, Defra, et cetera—to find out what the particular impacts could be.

As for engagement with stakeholders, other than what happens proactively—many people will obviously write to me as Minister or share a view—I go back to the point that we do not have a timescale. We are opposing the directive; we do not intend to change the current system. Therefore, at this point we are not carrying out formal stakeholder engagement because of our position on this matter.

**Lord Carter of Coles:** If you were, would it be your department doing that or would it go to a relevant department that deals with it, say to Defra? How would you see that?

**Kelly Tolhurst MP:** If we were, that engagement would be for us in BEIS to do. I engage anyway with a number of the stakeholders who would be affected on a number of issues across my portfolio, so yes, that would probably be quite—

**Lord Carter of Coles:** How did you arrive at the position not to support this?

**Kelly Tolhurst MP:** Our position is a standing one: we are opposing the directive. As you know, in 1996 following the EU's ruling, we obviously went to changing the clocks twice a year. That is what the position is.

**Lord Carter of Coles:** So it is just an historical position.

**Kelly Tolhurst MP:** The European Commission is saying that times have changed, but there is no evidence to support that without a full impact assessment. Therefore, our position is that we do not change.

**Lord Carter of Coles:** The status quo is how we look at it.

**Kelly Tolhurst MP:** Absolutely.

**Lord Robathan:** We heard a lot from RoSPA last week. I have to say that I found its logic somewhat flawed, in that daylight is finite; we get less as you approach the winter solstice and more as we approach the summer solstice. That is only my view. But have you talked to the Department for Transport about this? Does it have the same view?

**Kelly Tolhurst MP:** We have not done the work on that view, because our position—I apologise if I keep repeating myself—is that we oppose it and are staying with the status quo. We obviously have some great organisations and I engage with them anyway on accident prevention in other parts of my portfolio. They are key stakeholders on safety and they have a position. But as I say, we do not have that. It goes back really to the impact assessment. The fact that there is no impact assessment makes it very difficult for us as a member state, currently, to be able to delve further into it.

**The Chair:** Other countries have carried out consultations without the Commission's impact assessment. Would it not be safer to start some kind of consultation exercise to back up your current position?

**Kelly Tolhurst MP:** My position is this: there are many things that come forward from the European Union, and we are unsure of the timetable in regard to this directive, and unsure as to when it will become law. We have been clear that we oppose it and do not want to change our current system. Therefore, until that changed, we would not want to look at a consultation.

Secondly, we also have a duty—as you have heard, this is a topical conversation, since many people will be thinking about it this weekend as they put the clocks back—to make sure that we do not concern people about something that may never happen. At this time, we have no timescale for this directive. We have been clear that we are not implementing it, so it is not appropriate to carry out a consultation at this point.

We have a duty not to worry people that the current system is not going to change all of a sudden, when we have no timescale and there is no position from the UK Government that we would do so. I think we have that duty to make sure that we do not worry people unnecessarily, but that is just my position on it.

**Q23 Lord Russell of Liverpool:** As you will be aware, the Government in their wisdom decided in August that we would no longer attend most EU meetings. I understand the Government's current position on this issue, but I also hear you saying, "We would be quite keen for the EU Commission to bring forward a proper impact assessment".

How will we do that if we are not present at some of the meetings where one would discuss this with other member states that might take a similar view? How are we going to get our case across if we are not in the room, particularly if, as it appears at the moment, we might be staying as a member state for slightly longer than most members of your party would wish?

**Kelly Tolhurst MP:** We have done quite a lot of work up to now on that, especially my colleague Lord Henley, who took this project on very strongly. He did great work with member states prior to the summer. It is true about the Government's position with regard to attendance at the Council meetings. There are exceptions to it where we have a continued interest with regard to EU exit, sovereignty issues, security or money. We will continue to monitor those things, and those decisions will be taken at the time on the particular issue at hand.

However, that does not stop us, as Ministers and officials, engaging with other member states or with Ministers outside Council meetings. Our officials are engaging with officials in Europe. Obviously, the Office of the Permanent Representative in Brussels has, through its officials, done a lot of engagement with member states. As figureheads attending Council, it might be important, but that does not mean that engagement and

lobbying—speaking and working with member states—is not going on and will not continue. That is my view on it.

**The Chair:** You mentioned some areas that were useful. What we are not clear about, and I think the EU Select Committee has been asking questions about this, is the criteria for engagement or non-engagement at official level. It would have been quite useful to know how the Government decide which officials should attend or have engagement on which issues.

**Kelly Tolhurst MP:** I have not gone through the process yet, so I cannot give you great detail on that, other than that on this issue we are literally without any timetable. No general position was taken in the June Council, so as we sit here today we have no idea. We think that it might be progressed by the end of the year, but we are at the end of October now and have only two months left in the year. It is difficult to understand what may or may not be coming next year with regard to what decisions might need to be taken because of the timescale.

Q24 **Lord Lansley:** The Government have published their proposed deal with the European Union for the withdrawal agreement, which includes a transitional period. Can you guide us through this? If that were to be adopted and the directive were to be progressed—the Finnish Government are quite keen to progress it—and adopted in early 2020, what would the UK Government's position be? Would we simply then not implement it?

**Kelly Tolhurst MP:** I take your theoretical timescale. However, I think it is very unlikely that we would be in a position where we adopted this directive in 2020, considering that the two-year postponement was agreed, and bearing in mind the notification times. But I take your point.

**Lord Lansley:** We have had a delay, which suggests that the directive will be adopted and member states will be required to notify next April on what basis they will proceed from October 2021. Would we simply ignore that? Are we legally able to ignore it, or does it become part of our retained EU law in 2020?

**Kelly Tolhurst MP:** If it were to become law—we hope it will not become EU law, which is why we are continuing to oppose it and are working with member states to do so—we would then have to consider our response to it. I cannot tell you what our response to that would be, because we are opposing it. We are clear that we do not want to change the current system. We are working with a UK voice on this issue. We are clear that we do not want to implement any EU law—

**Lord Lansley:** My question is not about what we want to happen. My question is: if it is adopted into EU law in 2020 and we are in the transition or implementation period, would this not therefore become part of retained EU law? In that sense, we would be required to adopt it, whereas once we leave we could choose not to be aligned with it.

There are two parts to this. First, do we have to say something about it in

2020 if the directive comes in? Would we say, "Yes, we'll do it. We will make a choice and align", or would we simply say, "No, we didn't want it, we don't agree with it and we're not going to do it"?

**Kelly Tolhurst MP:** The position would be that we do not agree, we do not want it and we do not want to do that. That is quite clear. It is clear from the Government's perspective that we do not want to do it.

**Lord Lansley:** Okay. Can I move you on then? One scenario is therefore that we have said that we are not going to do it but the EU carries on and does it anyway. The Norwegians are sort of in our position. The Norwegian Trade Minister said, "I think it would be strange if we continued to change the clocks when the EU stops". So their attitude at present is not, "We haven't decided to do it, we don't choose to do it, we're not members of the EU so we will not do it". Their view is that the question of alignment is an important one to consider. At what point do we end up making the same choice to think about it, even though we did not agree with it?

**Kelly Tolhurst MP:** When we have a clear timetable, we will. Obviously, that is right. We spoke about the consultation, and there are a number of different processes that would need to be gone through. If the EU decided to go ahead, and this was agreed and became law, we would absolutely want to consider the impacts of that directive on the UK, but that does not mean that we would accept it and go ahead and do that.

This comes back to the point, and I was not trying to be facetious when I said it, that under the current programme this has made no progress and there are still many outstanding issues to be resolved, and my personal view is that I would be very surprised if we were in a position where this came into force at that time next year. However, you are right that, if it does become EU law, we will need to go away and consider our response and the approach that we as a Government would then need to take.

**Lord Russell of Liverpool:** There is a school of thought that the current difficulties that we are been enjoying and enduring are partly a direct result of a lack of adequate preparation and forethought. I suggest that the point the Committee is trying to make is that, given that it is probably more likely than unlikely that at some point this will happen, as there seems to be enough volition within the EU to bring it in, it might be a good idea to think through the pros and cons in some detail beforehand rather than suddenly being faced with it and saying, "Oh my goodness, now we've got to make our mind up. What do we need to consider?" That is the point that we are respectfully trying to get across.

**Kelly Tolhurst MP:** Thank you. However, I would say that our position is clear: we oppose it, and we are working to oppose it. I know I keep repeating myself, and I apologise for that, but that is key. As I have outlined, as with any kind of European Commission proposal that comes forward, we are speaking to departments to understand what the potential impacts could be. I refer to my earlier point that without a full impact assessment from the European Commission, it is very difficult for

us to move further. That is something that you would expect the European Commission to provide on a directive that would make significant changes for all the member states.

I go back to what I said earlier: the Commission's own impact assessment which it has submitted shows that there is very little benefit. So our question would be: why are they doing this, and what is the necessity for doing it? Our position is that we do not want to change the current system. If this is passed and becomes EU law, we will of course need to consider our response and do what is necessary.

The department is having conversations with the devolved Administrations. We are talking to the member states, and we are talking to departments about potential impacts. We may need to develop an evidence base and have a position. Clearly, we are not in that space, but I take your point.

**The Chair:** Our difficulty, as Lord Lansley and Lord Russell were explaining, is that in the unlikely event that it becomes law on the timetable set out by Lord Lansley, it is not a question of considering our position if we are in the transition period; we would be bound by that law.

We are anxious to see what thinking the Government have about that and how it will develop. Are you thinking of negotiating an opt-out during the transition period? That would be a nice complication. We are trying to get at what the Government would do to be seen to be obeying EU law during the transition period.

**Kelly Tolhurst MP:** Sorry for repeating myself, but we are working to oppose this directive, and we will continue to do so. We have been clear that we will not change our current system.

Obviously, once we are fully aware of the firm timetable—if this is to become EU law; it is not certain that it will—and once we are certain that that might be the case, we will, quite rightly, look at how we will respond to and deal with that. The point is that we are against it and we will continue to oppose it as vigorously as we can. Our intention is not to implement a change to our current arrangements. Obviously, I cannot give you further information on that at this time. That is the clearest position that I can give you, I am afraid.

Q25 **Lord Robathan:** Quite rightly and sensibly, in my opinion, you said that you want a detailed impact assessment from the European Commission. That has not been forthcoming so that we can have an evidence-based look at this. There is a bit of evidence that we can look at: until 1995, the British Isles as a whole changed their clocks at the end of October, whereas the rest changed them at the end of September. So there was one month when there was a bit of evidence. Did anything helpful or useful come out of that?

**Kelly Tolhurst MP:** Obviously, any differential times would create some kind of burden or impact. The European Commission's point is that things have changed since 1996, when we established the clocks syncing. We

would have to look at how things are today and the impact today. Any big change may create impacts, but I had only just started working and dealing with European countries during that period, so that month with the different clock change was still new—believe it or not, I am old enough to have been working at that time. However, things have moved on. We have to look at the evidence, build that evidence base and look at the evidence from before.

**Lord Robathan:** I was an MP at the time and I did not even notice that we had changed the rules, so there you go. Perhaps I was asleep at the time. I probably voted for it, but I do not remember.

**Lord Lilley:** Your clock did not go off.

**Lord Robathan:** My view is that this is a drive for greater uniformity; that is what this is really all about. So nobody has looked at any economic evidence. I see Laura shaking her head.

**Kelly Tolhurst MP:** No. This is the point about the impact assessment: we do not have anything to show that there is a benefit. By the European Commission's own admission, the benefit is negligible at this point, so we need to see something.

**The Chair:** I think it was people from the aviation industry who told us that any changes would create a deal of complexity and that they were already having to accommodate the difference in the month for arrivals and departures. They are concerned about the impact, and they were keen that we should ask the Government what impact assessment they have done on the various trades in the event that this happens. I take it from your response that there has probably not been any.

**Kelly Tolhurst MP:** Obviously, we are aware of what Airlines for Europe is saying about this. It has been clear about its concern regarding the impact. That is why this goes back to the same point: we really need the European Commission to show the impact that this change will have across the European Union.

Q26 **Lord Lilley:** Sooner rather than later, we will have left the European Union.

**Lord Wigley:** Will we?

**Lord Lilley:** God is on our side. I agree with you that the timetable means that this measure is unlikely to come in before we leave. The witnesses we have heard from have expressed concerns about the impact across the Irish border if Ireland is obliged to cease changing its clocks twice a year, but we continue to do so.

First, have you done, or will you do, any contingency planning, thinking about the impact on the Irish border? Secondly, are you arguing with the European Union that it has claimed to be terribly concerned about the Irish border and the Good Friday agreement, so would it really go ahead, for negligible economic benefits, and create a time border on the Irish

border? Have we deployed that argument, or will we do so in future?

**Kelly Tolhurst MP:** You are quite right: it is an argument that should be deployed. That is why we are obviously very pleased that the Irish Government are with us in opposing this. We do not want this to happen. We will work with our Irish counterparts, particularly in the Northern Ireland Office, to make sure that we present a united front in our wish for this not to happen.

That goes back to the point that we are trying to work to make sure that this does not become an EU directive. Quite rightly, we completely oppose anything that would create a time border on the island of Ireland, as do the Irish Government. That is why, when we understand this timetable—when it is clear—and were this to become law, we would have to consider this extremely seriously. Our engagement will continue. It is very clear that, on this matter, as with most things, we will continue to support our neighbours as strongly as possible and make sure that the position of Northern Ireland is represented.

**Lord Lilley:** Do you know whether, in the event that this goes ahead, the Irish Government have thought about seeking a derogation from it for Ireland? After all, it must be more important to them to have the same time either side of the Irish border than to have the same time all year round as, say, Belgium does.

**Kelly Tolhurst MP:** Yes. I have not had those discussions, but this goes back to the wider directive itself: effectively, if it became law, it would create changes, not just for Ireland and Northern Ireland. We know that the European Commission is in discussion with non-EU countries that neighbour EU member states. My view is that there is a lot of work for the European Commission still to do. Those arguments will need to be heard. I know that the Finnish are keen on this idea but, given the delay and the fact that we have seen no progression this year, I very much hope that this will—

**Lord Lilley:** Still be being considered in the year 2100.

**Kelly Tolhurst MP:** Yes.

**The Chair:** Of course, the Irish carried out a consultation exercise. Ironically, they involved the Northern Ireland Chamber of Commerce in that, so their views are very similar. Their opinion is based on a certain amount of, I would not say evidence but strong opinion. Similarly, the EU did not come up with this; it was the result of a citizens' consultation. Apparently, it had the biggest response of any consultations that have ever taken place.

So it is difficult to gauge whether or not this has legs. The Irish ambassador was quite clear that they were more concerned about any difference between the south and the north than they were about a difference between the EU and Ireland. He pointed out that this would cause problems unless there was further consultation. If the Government

are not going to do it, it just seems rather ironic that the Chamber of Commerce in Northern Ireland is having to go to the Irish Government to get its views expressed.

**Kelly Tolhurst MP:** I take your point. However, this is a European Commission proposal. It is for the European Commission to provide that impact assessment on the impact the directive would have on the EU, and I think that is right. We are opposing it. Anything that would cause a problem on the border, if there was an EU directive, we would have to look at.

I have tried to be really clear about why we have not moved forward with the consultation. That does not mean to say, as I have tried to outline, and I am sorry if I have not done so succinctly enough, that we are talking with stakeholders. We are not doing it formally, but we are doing it informally. We are having discussions all the time with Northern Ireland representatives.

We are also talking to our devolved Administrations, but we are having discussions particularly about the Northern Ireland issue. I was there two weeks ago, speaking to businesses and the Consumer Council. We hear views. I was part of the trade and commerce group in Belfast. While we may not be undertaking formal consultation at this point, that does not mean that we are not engaging, listening and talking to people—mainly listening.

There has to be a strong evidence base, which is why it is the duty of the European Commission to come up with this impact assessment. I keep repeating myself on this point because it is true. I am very disappointed, as a Minister who has had to take through a number of statutory instruments over the past few months, about the complaints that I have had about different levels of impact assessments.

I would like the European Commission to stand up to the same scrutiny as I do as a Minister bringing in small pieces of legislation in the UK, because it has not done what in some cases we as a Government do here. I would really like to see the impact assessment of how the proposal affects the whole of the EU. It is not just about the impact on the UK; there will be impacts affecting other member states and their neighbours, and they will have strong and clear views on this as well. It will not just be the UK with regard to the Northern Ireland/Ireland issue.

Q27 **Lord Wigley:** Perhaps I can ask a question of fact. To an extent, you have touched on this. As time is reserved in the context of both Scotland and Wales but not for Northern Ireland, would a future Northern Ireland Executive be free to choose their own time arrangements?

**Kelly Tolhurst MP:** Yes.

**Lord Wigley:** That being so, have the Government assessed, or do you have any plans to assess, the implications of the time border between the north and the south of Ireland?

**Kelly Tolhurst MP:** We, along with the Irish Government, are clear that we do not want to have a time border. That is why we are opposing this proposal. As I say, we are unclear whether this EU regulation will become law. We are waiting to see what the impacts are and we do not have a clear timetable. We are objecting to any kind of time border, effectively, by our opposition to the whole directive.

**Lord Wigley:** Am I right in interpreting what you say as being that you do not want a time border between the north and the south of Ireland but that, if this comes in in the EU and therefore the Republic is bound by it, you would recognise that in order to reach your objective of not having such a time border, the Northern Ireland Executive would be free to choose, and might well deem it appropriate to choose, to have the same time as the south rather than Britain?

**Kelly Tolhurst MP:** If this law were to come into force, we would of course have to go away and consider our response, as I have outlined. We want the whole of the UK and Northern Ireland to operate within the same timeframe, quite rightly. It would be a decision for the Executive, and we would have to consider that. If that theoretical decision were taken, we would then have to do further work on that. I am not disagreeing with what you are saying with regard to Northern Ireland taking that decision.

**Lord Wigley:** You mentioned that you had informal discussions with business in Northern Ireland on these matters. On the basis of that discussion and your own instincts on this, which would have a greater implication for trade, a time border between Northern Ireland and the Republic of Ireland or a time border between Northern Ireland and Great Britain?

**Kelly Tolhurst MP:** I have not assessed that, because our position is that we will not be doing it. We hope that this does not come forward and therefore we do not need to assess it. It would be very difficult to give an opinion if we had to decide what would be the best way forward. It would have to be backed up with evidence, a proper assessment and a proper consultation, and, as I have outlined, we are not at that point yet.

**Lord Lansley:** Can you remind us what legal base the Commission used for its proposal for discontinuing the seasonal changes of time?

**Kelly Tolhurst MP:** Its legal basis?

**Lord Lansley:** The legal base within the treaty.

**Kelly Tolhurst MP:** It is harmonisation of the single market.

**Lord Lansley:** That is absolutely correct. So if the legal base is a single-market measure, and the protocol as published pursues alignment between Northern Ireland and the Republic of Ireland on single-market measures, if this directive were brought into force the Government's expectation is that there would be alignment between the Republic of Ireland and Northern Ireland. So the Government's expectation in those

circumstances is that, if there were a discontinuation of seasonal changes of time in Ireland but not in Great Britain, there would be a time border between Northern Ireland and Great Britain. Is that not correct?

**Kelly Tolhurst MP:** If it were to become EU law, that could be the case.

**Lord Lansley:** And the protocol came into force.

**Lord Lilley:** And was supported by the Northern Ireland majority.

**Lord Lansley:** As is required under the protocol and the declaration, yes.

**Lord Lilley:** So in those circumstances Northern Ireland would have more say over its time than southern Ireland. Northern Ireland, a province of the United Kingdom, would have more control over its own destiny than Ireland, a sovereign state in the European Union. I hope the Irish people realise that.

**Lord Lansley:** It is a very powerful reason why we do not want this.

**Kelly Tolhurst MP:** Absolutely.

**Lord Lansley:** But we may no longer have any influence in that matter.

**The Chair:** Minister, I am conscious of your time, but we have one more question, if you are able to answer it.

Q28 **Lord Robathan:** I think I know what your answer will be. Nevertheless, we are trying to clarify government positions on this, so that is why I ask it. It is not impossible—I think it unlikely—that we might either choose to fall in line with this directive or be compelled to do so during a transition period, were it to happen and with all those caveats.

You state in paragraph 2.2 of your submission that the Government believe that permanent summertime would pose social and economic challenges for Scotland and the north. Do you have the evidence to decide, were we to have to go down this route, whether permanent summer time or permanent winter time would be better? This is not least because it would probably put us even further away from countries that might be three hours out of kilter with us, rather than as now. I am not sure whether that matters much, but that is the question: permanent summer time or winter time? Choose.

**Kelly Tolhurst MP:** Because of our position, we have not assessed summer time versus winter time.

**Lord Robathan:** I thought you would say that.

**Kelly Tolhurst MP:** The point is that there would be differing views, and if it was ever the case that we had to assess that, it would have to be based on strong evidence.

**Lord Robathan:** Okay, fair enough, thank you.

**The Chair:** Does any member of the Committee want to ask a final

question? Yes, Lord Lilley.

**Lord Lilley:** I doubt if you have done this, but in the process of trying to get the European Commission to take evidence and provide a substantive document, could you ask it to assess what happens at the border between Portugal and Spain, where there is an hour's difference, or within the United States, Canada and Russia where they have time zones within their own countries?

Does it cause the sort of difficulties that I implicitly assumed it would on the Irish border? Does that happen between Minnesota and wherever else—I do not know where the borders are in the US, Canada or Russia—and cause problems there? Are people not able to get to school if their school is on one side of such a border and they live in another state? It would be interesting to know some factual stuff, rather than just assuming it is the end of the world.

**Lord Robathan:** When I took a Greyhound bus from Washington DC all the way to San Francisco, it seemed to work perfectly well.

**Kelly Tolhurst MP:** It is a concern, and I think the EU Commission knows that because it has been speaking to non-EU countries about this proposal too. But you are quite right, so we will continue to oppose and to put those points across. Lord Henley really was extremely robust—

**The Chair:** We know how robust he can be.

**Kelly Tolhurst MP:** He was extremely robust in October last year when he spoke to the Council. He really attacked the proposal with some gusto; as a colleague, I very much enjoyed working with him at that time. I hope that I can continue to make the same strong defence of our position.

**The Chair:** Thank you very much, Minister. You have obviously had a fair grilling on all the aspects of this, and we understand that the Government want this to go away. The only message we are getting from our written evidence is that people would appreciate a bit more information—an idea of what the Government are doing, and what thinking or strategy is taking place. Clearly, we will continue to do work on our report, which is due out pretty soon. We do not know when; I doubt it will be before 31 October, but it is imminent. We are very grateful indeed to you all for coming along and I declare the session closed.