



Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales

Cofnod y Trafodion The Record of Proceedings

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Ychwanegol](#)

[The External Affairs and Additional Legislation
Committee](#)

25/09/2017

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Public for the Remainder of the Meeting

Cofnodir y trafodion yn yr iaith y llefarwyd hwy ynddi yn y pwyllgor. Yn ogystal, cynhwysir trawsgrifiad o'r cyfieithu ar y pryd. Lle y mae cyfranwyr wedi darparu cywiriadau i'w dystiolaeth, nodir y rheini yn y trawsgrifiad.

The proceedings are reported in the language in which they were spoken in the committee. In addition, a transcription of the simultaneous interpretation is included. Where contributors have supplied corrections to their evidence, these are noted in the transcript.

Aelodau'r pwyllgor yn bresennol
Committee members in attendance

Dawn Bowden Bywgraffiad Biography	Llafur Labour
Suzy Davies Bywgraffiad Biography	Ceidwadwyr Cymreig Welsh Conservatives
Mark Isherwood Bywgraffiad Biography	Ceidwadwyr Cymreig Welsh Conservatives
Steffan Lewis Bywgraffiad Biography	Plaid Cymru The Party of Wales
Jeremy Miles Bywgraffiad Biography	Llafur Labour
Eluned Morgan Bywgraffiad Biography	Llafur Labour
David Rees Bywgraffiad Biography	Llafur (Cadeirydd y Pwyllgor) Labour (Committee Chair)

Eraill yn bresennol
Others in attendance

Piers Bisson	Llywodraeth Cymru Welsh Government
Mark Drakeford	Ysgrifennydd y Cabinet dros Gyllid a Llywodraeth Leol Cabinet Secretary for Finance and Local Government
Hugh Rawlings	Llywodraeth Cymru Welsh Government

Swyddogion Cynulliad Cenedlaethol Cymru yn bresennol
National Assembly for Wales officials in attendance

Alun Davidson	Clerc Clerk
Gwyn Griffiths	Cynghorydd Cyfreithiol Legal Adviser
Rhys Morgan	Ail Glerc Second Clerk
Nia Moss	Y Gwasanaeth Ymchwil The Research Service
Sara Rees	Dirprwy Glerc Deputy Clerk

Dechreuodd y cyfarfod am 14:05.

The meeting began at 14:05.

Cyflwyniad, Ymddiheuriadau, Dirprwyon a Datgan Buddiannau Introductions, Apologies, Substitutions and Declarations of Interest

[1] **David Rees:** Good afternoon. Can I welcome Members and the public to this afternoon's session of the External Affairs and Additional Legislation Committee, where we continue our evidence-gathering in relation to the impact upon Wales of the decision to leave the European Union? This afternoon I welcome the Cabinet Secretary to the meeting for our further scrutiny of his role. Before that, could I just do a bit of housekeeping? Can I remind Members, please, to turn off your mobile phones or other electronic equipment so that they do not interfere with the broadcasting? There are no scheduled fire alarms this afternoon, so, if one does take place, please follow the directions of the ushers. If you require simultaneous translation from Welsh to English, that's available on the headphone sets on channel 1. If you require amplification of the discussions, that's available on channel 0. We've received apologies from Michelle Brown, and Suzy Davies has indicated she may be late attending the meeting due to other commitments.

14:06

**Bil yr Undeb Ewropeaidd (Ymadael) a'i Oblygiadau i Gymru—Sesiwn
Dystiolaeth
The European Union (Withdrawal) Bill and its Implications for Wales—
Evidence Session**

[2] **David Rees:** We move on to the item on the agenda, which is the scrutiny of the Welsh Government and, for that, could I welcome the Cabinet Secretary Mark Drakeford, Cabinet Secretary for Finance and Local Government, on this occasion, but also represents the Welsh Government on various aspects of Brexit discussions and the Welsh Government on the Joint Ministerial Committee (EU Negotiations)? Cabinet Secretary, would you like to introduce your officials with you today, for the record?

[3] **The Cabinet Secretary for Finance and Local Government (Mark Drakeford):** Chair, thank you very much. So, with me this afternoon, Piers Bisson, who is the director of European transition in the Welsh Government, and Hugh Rawlings, who is director of constitutional affairs.

[4] **David Rees:** Thank you. Clearly, there has been quite an eventful period since we last met, with various activities going on: the various negotiations that have been happening within the EU and the UK; the publication of the European Union (Withdrawal) Bill; the publication of the legislative consent memorandum from the Welsh Government; the indication of amendments the Welsh Government has jointly put forward with the Scottish Government to colleagues in Parliament—so, quite a few things to ask you, I think. Perhaps we can start with the UK Government's position on various papers being produced now, because there were many concerns that we weren't clear as to some of the directions they were going, and they've published, I think, 14 position papers at this point in time. Can you discuss with us what involvement has the Welsh Government had prior to those publications and, post publication, what discussions have you had with the UK Department for Exiting the European Union?

[5] **Mark Drakeford:** Well, Chair, the involvement of the Welsh Government prior to publication was confined in each case to a telephone call from the UK Government, normally at official level, in advance of publication—usually 24 hours or so in advance of publication. So, we did have prior notice of publication, but in none of the papers was there any involvement of the Welsh Government in the preparation of those papers. That's not been part of the process at all. In relation, then, to what has happened post

publication, then, as you will have seen, in relation to a number of papers, the First Minister has issued statements formally setting out our reaction to the papers on the customs union, on the future relationship with the Irish republic, for example. There have been some relatively modest opportunities to discuss the papers in bilateral meetings with UK Ministers and, in a small number of cases, the advance warning of the publication of the paper came at ministerial, rather than official, level. So, there was some opportunity to respond to what we were told about the proposals.

[6] **David Rees:** We'll be discussing the EU withdrawal Bill a little bit later this afternoon, which highlights, clearly, some concerns about devolution and what is deemed to be a power grab. But does this give you confidence in the processes that may be followed in the months ahead of us, where the Welsh Government is not actually actively involved, or their views are not actively sought, in preparation of position papers that, really, affect many of our issues?

[7] **Mark Drakeford:** Well, of course we are disappointed that there were no opportunities to contribute to the development of those papers. Our disappointment really is because we think there is more that we could offer in this whole process. We seek to be a constructive partner in the work that the UK Government has to do in relation to Brexit. Our view has been, over an extended period of time now, that there are offers of help that we have been willing to make, where we would have been able to provide information, suggest ideas, contribute to the pool of possibilities that the papers outline, and that the UK Government would have seen an advantage from that, rather than regarding this as something that only they have an interest in bringing forward. These regrets, I think, are particularly acute and a bit more than regrets, really, when it comes to papers that have a direct impact in devolved areas. We believe that in non-devolved areas there are things we could have contributed and would have wanted to do that, as I say, in that constructive way. Where there are papers, for example, on science and research, where a number of the responsibilities that are discussed in that paper are exercised by the National Assembly for Wales through Welsh Ministers, then the failure to have obtained information from us and to have understood the way that things happen on the ground is more than just regrettable—it just means that the paper isn't as reliable or meaningful as it otherwise would have been.

[8] **David Rees:** In that sense, you've mentioned in your response that the First Minister has written several statements based upon the position papers.

Have you yet organised meetings with the various departments responsible for the information, so that it may be an opportunity to influence changes that may come out of those discussions? Because you've highlighted your regrets; clearly there are areas you feel, on that basis, that could be strengthened, and perhaps for the betterment of Wales and its economy. Is there any opportunity ahead of us for that discussion to take place outside the JMC(EN), to actually get those discussions under way so that we can have an opportunity to influence the positions of those papers?

[9] **Mark Drakeford:** Well, the Welsh Government can attempt to create those opportunities. We have a number of ongoing bilateral relationships with Ministers in areas where this will be important and we can take advantage of those, and we can attempt to secure meetings with UK Ministers above and beyond things that would be more routinely in the diary. We are absolutely willing to do that and we are absolutely prepared to have those discussions. My impression of the UK Government is that they are only marginally open to that sort of discussion. If I'm trying to be as generous as I can be, Brexit is an enormous undertaking for the UK Government, which is stretched in any number of ways, and one of their ways of coping with all of that is to narrow down the range of discussions and interests that they engage with in the production of these papers. It's quite hard, I think, to persuade them to open up those discussions. They are intent on getting them done, getting them published, getting them out, and there is not—. We make the offer, but I'm not sure that the appetite on the other side of the table is very significant.

14:15

[10] **David Rees:** Jeremy, do you want to come in here?

[11] **Jeremy Miles:** Yes. It's interesting that you say that. It seems sometimes from the outside as though the process betrays, I guess, a lack of thought early on enough in the process, so that it's a sort of essay crisis mentality, perhaps—that the thing is published not as a result of policy being formed over weeks and months, perhaps, but because of other political considerations or whatever. Does that sound like a fair characterisation?

[12] **Mark Drakeford:** One of our frustrations, I think, has been in reading the documents that have been produced over the summer and asking ourselves: 'What in this document required 15 months of gestation to get us to this point?' I would have said that, in the majority of cases, I think those

papers could have been published a year earlier. And had they been published a year earlier, as a starting point for discussions, I think they would have been pretty acceptable, really. And the fact that they would have been produced quickly—we would have understood why a plurality of voices hadn't been drawn into their production. But to think that 15 months have gone by and this is the result of that, I think we are disappointed, quite often, at the lack of substance in the proposals, their very general nature, and the fact that it then seems very late in the day to be trying to get drawn into building on them further. This should have been the work of the last 12 months, and we would be in a different position today had that work gone ahead.

[13] **David Rees:** Steffan.

[14] **Steffan Lewis:** You were saying that the UK Government—its willingness to engage and take on board other views from other Governments is marginal and that your approach has been to be a constructive partner in the whole process. As it's quite clear now, with just 18 months to go till separation day, and a year of procrastination on the part of the UK Government, that they're not going to change their modus operandi within the UK and in terms of the relationship with different Governments. How are you going to change your strategy from now on to get the best deal for our country?

[15] **Mark Drakeford:** Well, our strategy, Chair, has been pretty consistent throughout, and I think we would say that we've had some successes in it. In a way, our strategy relies on two or three main things, really. Most of all, it relies on the quality of our argument. If we want to be influential and we want to make a difference then what we have to rely on in the end is the fact that the ideas that we put forward are the right ideas and that if we keep on arguing for them they will find some purchase. So, transition arrangements will be the most obvious example of that. At the very first JMC that I attended, we went round the table; we were asked to say what our key priorities were. I started off, as I always do, by saying that a Brexit that secures the best interests of our economy is the top priority from a Welsh perspective, but I said at that very first meeting that transition arrangements would be necessary.

[16] At that point, Wales was the only voice that put that position. Scotland's position was that Scotland had voted to stay in the European Union; it wasn't going to be exiting and therefore transition arrangements

weren't of significance to them. And the Secretary of State for Exiting the European Union said that he was going to conclude both the divorce and the future arrangements within two years, and that talk of transition was a distraction from his ability to get on with that job. Now, nearly a year later, the arguments that we put forward at that time are now the common currency of everybody. We now know that the ambition is to have a two-year extension of article 50, with a transition period. So, our first strategy has to be to have good quality ideas, thoroughly argued, thoroughly evidenced and to make them influential.

[17] The second way in which we have been influential is by forging alliances with others, where we think that additional voices make it more likely that your views will be heard and heard seriously. That's why publishing our initial White Paper together with Plaid Cymru was very important, and it is what has underpinned a summer where our relationship with the Scottish Government in advocating measures in relation to the withdrawal Bill and others has also been so important. Those have been our approaches since the beginning. You can't expect that you're going to just be able to set every agenda, but we think that we maximise our impact if we continue to work in that way.

[18] **David Rees:** Before I ask Dawn to raise the question of priorities, you just mentioned a two-year extension of article 50. Now, if I'm right, that would actually allow us to remain as members of the EU. So, is it actually a two-year extension of article 50, or more like a transfer, at that point in time, to something with an EEA type of approach?

[19] **Mark Drakeford:** Well, Chair, obviously that is still, to an extent, up for discussion. I was probably being slightly provocative in describing what the Prime Minister said in Florence as a two-year extension of article 50, although I see that that is how Michel Barnier has described it. My reading of the Prime Minister's speech is that her intention is that, for two years—and we are in agreement with this; this is what we've been arguing for all along in terms of stability, for business and the ability to plan and not having cliff edges and all those sorts of things you will be very familiar with—that we will, to all intents and purposes, remain bound by the same set of rules, the same sort of institutional arrangements that we have now with the European Union, albeit that UK Ministers will no longer be in the room and at the table when decisions are being made.

[20] **David Rees:** Dawn.

[21] **Dawn Bowden:** Thank you, Chair. In summary, where I see us at is: we've got UK negotiations with the EU remaining very slow despite the fact that time is very short; we've got legislation, as proposed by the UK Government, suggesting a power grab, but, for a period of time, not determined at all; there's little indication so far that the UK Government are responding to concerns raised with them by the devolved administrations and, as a result, the Assembly might yet have to consider refusing consent in a legislative motion at some point in the future. My question, really, Cabinet Secretary is: in your view, what are the priority steps now that the Welsh Government can take to make sure that we do actually deliver the legislation and the outcomes that are more favourable than they are at present? 'What are the priorities?' really, I guess.

[22] **Mark Drakeford:** Well, Chair, I think there are different priorities against each one of the three strands that Dawn just outlined. Your first strand was the state of the negotiations. We agree with the UK Government that moving on to a phase of negotiations where we can be talking about future arrangements as well as the settling of the divorce is very important. What that means is that, in the round of discussions that has opened today, UK negotiators will have to go beyond the warm tone of the Prime Minister's Florence speech—and we welcome the tone of that speech—to be able to demonstrate the substance of what that tone was meant to be about. Because we know that until there is sufficient progress on the rights of EU citizens, the future relationship between the republic and the north of Ireland, and paying the bills, then we're not going to get to a sufficient progress point. So, on that, I think the priority is for UK negotiators to be able to put some substance on the tone that we saw last week, and to allow those talks to move into that next phase. Those will be very important for Wales.

[23] In terms of the legislation, then Dawn is absolutely right. We say openly—we've said it openly for weeks and weeks, and longer than that—that the withdrawal Bill, as currently envisaged, will not lead to the Welsh Government being able to make a recommendation to the National Assembly to give legislative consent. So, priorities there are very clear. We want to see our amendments taken forward, we want to see the Bill change, and we'd like to be in a position where we can come to the Assembly at some point and say that the UK Government has listened to what we have said and the Bill is now in a shape that we can propose consent. But that's why we've gone to the lengths that we have to explain why the Bill is unacceptable to us as it is

currently drafted. We set all that out in the legislative consent memorandum. It's why we've worked so closely with Scottish colleagues to agree a joint set of amendments that protect—

[24] **David Rees:** We will be exploring that.

[25] **Mark Drakeford:** So, those are our priorities there. In terms of UK responsiveness, our key priority is to get the JMC process back up and working, and working effectively. And, Chair, as you know, straight after the June election, I wrote, jointly with Mike Russell, the Scottish Minister, to the UK Government making a series of practical proposals, positive proposals—not carping, not trying to point the finger at anybody—but just saying, 'Here are a series of ways that we think the JMC would work better—work better for you, work better for us'. Those views were very largely reflected in the House of Lords committee's report and they added some further practical suggestions about making sure that the JMC met at a fixed point in this monthly cycle of negotiations with the EU and so on. So, our priority for UK responsiveness is to create a forum where we can come together on a multilateral basis and have those purposeful discussions.

[26] **Mark Isherwood:** I'll defer talking about the withdrawal Bill until the next section, but in terms of this section, just commenting on an extension of article 50 or not, I can confirm that the term being used up to and including today is a 'bridge' between exit in March 2019 and the end of a transition period, as opposed to an 'extension', but that's up to the negotiators to hammer out.

[27] Where there has been engagement, I've been told from the UK end that officials in different departments have been speaking to Welsh Government officials throughout the summer. You've referred to your overview of what engagement there has been, but have there been—and if so, what—any areas of agreement, any areas of disagreement, or any areas at all where there's been agreement to work together to take matters forward? And related to that, I understand that, I think today, but certainly this week, the Scottish Government is meeting the UK Government to discuss these matters. What dialogue ahead of that have you or the Welsh Government had with the Scottish Government to ensure that they're speaking for both?

[28] **Mark Drakeford:** Thank you, Chair. So, yes, I'm happy to confirm what Mark Isherwood has said—that there's been dialogue at official level right over the summer. Piers can probably give you some more details about some

of the ways in which those discussions have gone ahead, and there have been some ministerial level discussions as well. So, the First Minister and I met with Damian Green here in Cardiff earlier this month, and again, Chair, just wanting to try and be fair in reporting all these things, I would say that, since the general election, the Secretary of State for Exiting the European Union has made a conscious effort to make sure that we are properly briefed by him on the conduct of the negotiations. So, I've had a series of telephone calls from the Secretary of State for Exiting the European Union in which he provides, I would say, a relatively frank account of where he thinks progress has been made, where he thinks more work has to be done, how he thinks that will have to shape the next round of negotiations, and I want to recognise that. I think he has gone out of his way to make sure that those calls happen and that we are well informed, from his perspective, of what he has been doing.

14:30

[29] The frustration, which I've got to share, is that those conversations are essentially about him briefing us. There's very little sense or scope in the discussions that the telephone has been picked up to ask the Welsh Government about things that we think it might be important for the UK Government to know, how the next round of negotiations might be conducted, what will be important from a Welsh point of view, what do you think we ought to be trying to achieve in this area, how will that work out in a Welsh context, and so on. One side of the coin is pretty shiny, because I think genuine efforts have been made to make sure that we have been kept in touch with what they are doing, but the other side of the coin, which is where they would have sought to make sure that those opportunities included a chance to learn from us about things that we could have helped them with, then that isn't, I think, part of the way that they think of doing things.

[30] Finally, in relation to the Scots, we've had very regular contact with Scottish colleagues throughout the summer, and particularly so during September. I've met Mike Russell, the Minister for exiting the European Union, on a whole series of occasions in Scotland, outside Scotland—he was in Wales in August. I had a telephone conversation with him in advance of his discussions this week, as well. Our aim is, where we have an identity of interests, and our interests are not identical on everything, by any means, but where we do have an identity of interest, that we work closely together, and in the way that I tried to say in answer to Steffan Lewis's question, which

is that, where we're able to do that, we think we both get heard to a greater extent. Our voice is louder.

[31] **David Rees:** Before I bring Eluned in, just one point, you just said one of the positives is that you have those frank discussions with the Secretary of State for Exiting the EU, can you confirm or not whether those frank accounts that he's provided you with are the same as the public accounts he provides? Because they've been contended by the EU negotiators.

[32] **Mark Drakeford:** The Secretary of State contacts me on a Minister-to-Minister basis and provides me with an insight into the negotiations on that basis. Had the UK Government simply wanted us to read what was in the public domain, they could, presumably, have just sent us the communiqué.

[33] **David Rees:** I take the point. Eluned—

[34] **Mark Isherwood:** I think you said Piers Bisson was going to—

[35] **Mark Drakeford:** Apologies.

[36] **Mark Isherwood:** If you could. Chair, sorry.

[37] **Mark Drakeford:** So, Piers will just say a little bit more detail about the official-level discussions that have gone on over the summer.

[38] **Mr Bisson:** So, there have been a range of discussions in different formats, whether those are connected to policy areas, whether those are connected to UK Government policy papers, or, indeed, of course, earlier this month, we published our own policy document on Brexit and fair movement of people. So, we would tend to have official-level dialogue in relation to those policy areas, or in relation to the negotiations, if we are given any sense of what has been covered or what might be covered, to make sure that the interests of Welsh Government are clearly reflected in that.

[39] In relation to legislation, then, obviously, there is a fundamental disagreement between the UK Government's view on the EU withdrawal Bill and the Welsh Government's view. So, we are able to have certain discussions around—. They talk in context of UK frameworks. We are able to have exploratory conversations to understand what they mean by that, but it's all done very clearly on a basis of, 'There is a fundamental disagreement and anything that we engage on or discuss is in that context.'

[40] There are some discussions that are happening in individual policy areas. Probably the most well developed are the ones on environment and rural affairs, where there are a set of official-level discussions that happen and, indeed, I think there are ministerial discussions that are in train there as well. But, again, that's still in the context of there being a very different view as to UK frameworks being, in one sense, imposed, as opposed to agreed. So, that's one other area.

[41] The Cabinet Secretary referred to the restart of the JMC arrangements, and clearly that's an area where we've also had discussions with UK officials to try and get those restarts and to get the effective multilateral engagement between the different administrations in the UK. So I hope that's useful in giving you a flavour.

[42] **Mark Isherwood:** Thank you.

[43] **David Rees:** Eluned.

[44] **Eluned Morgan:** I just wonder if you could tell us—. Obviously, these are confidential discussions that you're having in terms of the negotiation itself, but were they restricted to those three priority areas that have been set out, or did they go beyond that? Were they about the Bill and EU citizens' rights in Ireland, or did it go beyond that into some of these areas of creating frameworks? Because my guess is they're not on the framework stage in the negotiation yet, are they? Or the impact of—.

[45] **Mark Drakeford:** Chair, the bulk of the discussion focuses on what has been discussed in that particular round, and the progress that's been made in that. It probably does go a bit wider than that, but that's at the margins of the conversation. If we're talking about the discussions I have with the Secretary of State for Exiting the European Union in particular, then those discussions are pretty much focused on what has gone on during that week, how far progress has been made, where there are areas to be worked on further, and so on.

[46] **Eluned Morgan:** Can I ask you a little bit about the transition, or the bridge, or whatever you want to call it? We leave the European Union in March 2019, so what is the status after that? There are farmers in my constituency who have to decide whether they're going to buy animals now and they don't know what's going to happen 18 months from now. Does that transition

agreement suggest that everything will remain effectively the same for them beyond those two years, and therefore they should be confident that they should be able to effectively invest, or are we talking about creating new UK frameworks during that time that will be ready by March 2019?

[47] **Mark Drakeford:** Chair, I'm going to give you my view, but remember that what happened last week was that the Prime Minister, formally in her speech, said that a two-year transition period is what the UK Government would like to see happen, and there's now a set of discussions with the European Union to see whether that can be agreed. So, I think the idea got a reasonably positive reception from Michel Barnier, but the detail of how that transition period is to be policed, and what it will consist of, I don't think we know the answer to that completely.

[48] At the risk of opening a can of worms that could keep us going, probably, for the rest of the afternoon, some of you here will have seen commentary very recently that suggested it is by no means certain that exit day is 29 March 2019. The withdrawal Bill allows for multiple exit days to be fixed by different Ministers for different purposes, and doesn't identify the date once. It refers to exit day a very large number of times, but never once does it say what that date will be. So, even something as simple as knowing when the UK will leave is not as straightforward as we might think. Part of what is necessary over the next few weeks is a more formal set of agreements between the UK and the European Union on what the parameters of that two-year period will be. My reading of the Prime Minister's speech is that she more or less conceded that the sort of transition she was looking for will be the one I described earlier, where we remain subject to all the things that membership of the European Union would comprise while withdrawing from participation in its institutions.

[49] **David Rees:** On that answer, can I confirm, then, that prior to the announcement on Friday—and we understand it was in the press an awful lot—but formal discussions with the Welsh Government as to the consideration of a transition period hadn't taken place?

[50] **Mark Drakeford:** No, I wouldn't go that far, Chair, because as I say—

[51] **David Rees:** You raised it.

[52] **Mark Drakeford:** —we raised it in the very first JMC. We returned to it in some detail when our White Paper was the subject of a major discussion at

the JMC(EN) back in February. I have met the Secretary of State for Exiting the European Union beyond the telephone calls I've just described in terms of reporting on the negotiations, and we have certainly continued in those discussions to press the case for a proper transition period. So, we've taken every opportunity that comes our way to make the argument for transition arrangements.

[53] **David Rees:** So, the Welsh Government has pressed the case—

[54] **Mark Drakeford:** We have, yes.

[55] **David Rees:** —but the UK Government, as such, hasn't come back to you for further discussions on it. Just for clarification.

[56] **Mark Drakeford:** I think the UK Government's position started to shift before the general election. David Davis certainly started using language about a period of implementation prior to the election, so you could see the impact of some of these arguments, which the Welsh Government by no means makes alone—the Confederation of British Industry and business organisations particularly have been emphasising the need for a transition plan for many months—and I think you've been able to see the UK Government's position move in this direction over a number of months, but it crystallised in a more specific form in the speech that the Prime Minister made in Florence.

[57] **David Rees:** Thank you. Jeremy.

[58] **Jeremy Miles:** You've talked about the discussions you've had with the Scottish Government as part of this process. I just wonder if you might give your thoughts on what you feel is the political impact on these discussions of there not being a Northern Irish Government as part of that broader mix of discussion.

[59] **Mark Drakeford:** Well, we much regret the fact that there isn't a devolved administration in Northern Ireland, while understanding all the complexities and difficulties that people face in that context in creating a new Executive. My experience of being at the Joint Ministerial Committee was that having the four component parts of the United Kingdom all there added considerably to the richness of that discussion, and without Northern Ireland Ministers available there's a whole missing dimension there.

[60] I also represent the Welsh Government on the JMC(E), which is a less high profile part of the machinery of Government, and a much more longstanding one, which is that, every quarter, Ministers from the devolved administrations come together with the UK Government to look at the three-month-ahead work programme of the European Union, and to share perspectives on that. At the last meeting of the JMC(E) Northern Ireland was represented by a senior civil servant. That's an uncomfortable position for a civil servant to be in, but the meeting was, I thought, adeptly chaired and that person was well prepared as well, and they were able to make a contribution to every agenda item, at least making sure that Northern Ireland perspectives just didn't go by default. So, this is by no means ideal and it's a poor second best, but it did at least allow the Northern Ireland point of view to be heard in those discussions.

[61] **David Rees:** Steffan.

[62] **Steffan Lewis:** Thank you, Chair. I just wanted to go back briefly to the question on tactics, and I take the point you make about the concession by the UK Government for a transition or implementation period, and that being something that the Welsh Government, among others, has called for. But I do get a sense that there's a danger that devolved administrations are becoming, not distracted, but so focused on the processes of Brexit and not looking beyond the transition period that we're losing sight of what life will be like outside of the European Union. For all intents and purposes, the mood music may have changed in Florence from Lancaster House, but the lyrics were the same. Would you put on record that the Welsh Government is still committed to the United Kingdom continuing to participate in the European single market permanently after separation day?

14:45

[63] And then, secondly, can you explain to me how your tactics to achieve that are going to be developed and amended? I take on board the point about co-operating with the Scottish Government, but it appears to me that now we have a limp Westminster Government, and a minority Government at that, at Westminster, surely the Welsh Government should be looking at the opportunities now in the Palace of Westminster to secure its No. 1 objective for life beyond the transitional arrangements.

[64] **Mark Drakeford:** Well, Chair, I'm absolutely happy to confirm that full and unfettered participation in the single market remains the top priority for

the Welsh Government. And, again, we never lose an opportunity to explain why we think a set of Brexit negotiations that put top priority on the future of our economy, rather than being obsessed with issues to do with borders and courts of justice and so on, is what will matter most to people in Wales and across the United Kingdom in the years after Brexit has taken place. And, again, I would say—maybe I would—that our consistent emphasis on putting that first, and at the very top of the agenda, has had an impact on some of the language and some of the thinking that UK Ministers use as well. How will we go on making sure that we develop our position on that for the future? Well, I just want to give Steffan an assurance that while we have had to be drawn into some of these process issues in the withdrawal Bill and so on, a very large part of our summer was spent in shaping, and then publishing, the two subsequent documents that have followed on from the White Paper, on which Steffan will have his own views, definitely. But, in my view, what we have tried to do is to provide an elaboration of the basic position that we set out in the joint paper that we published—

[65] **Steffan Lewis:** Sorry to interrupt there, Cabinet Secretary, but just to make the point that staying in the single market—and I'm trying to avoid, intentionally, again going through the very laborious, boring debate about the terminology, but I would call 'membership' and what you call whatever it is that you call it now—is the No. 1 priority for Welsh Government. There's a minority Government in Westminster. Have you managed to exhaust the avenue of persuading parliamentarians on the other end of the M4 that staying in the single market is in the best interests of the UK, and do we now have a greater chance of securing that beyond the transition period?

[66] **Mark Drakeford:** Well, the outcome of the general election clearly means that the position at Westminster, and dealing with the UK Government after June, is very different to dealing with the UK Government before June in a number of ways. What you can be sure of is that the position that we agreed before is represented in the position taken by my party at Westminster, by your party at Westminster, by the SNP at Westminster, by the Liberal Democrats at Westminster. So, in terms of building coalitions for a form of Brexit that puts jobs and the economy first, I think we've done a great deal to try and make sure that there is a coalescence of views around that as a priority.

[67] **Steffan Lewis:** So, the UK Labour Party is in favour of the UK remaining permanently in the single market.

[68] **Mark Drakeford:** The UK Labour Party's position on that is set out in amendments which the Labour Party set down to the withdrawal Bill, and which are absolutely consistent with what I've said.

[69] **David Rees:** Okay. I've got two questions from Eluned, and then Mark, and I've got one final one possibly before we move on to the EU withdrawal Bill.

[70] **Eluned Morgan:** Can I just ask you about the paper you published over the summer on immigration, which I thought was excellent and contrasted massively with the UK Government's approach? It was very firmly based on evidence and lots of really valid statistics. I thought it was an excellent piece of work. I just wondered, in the light of the leaked Home Office report, which did exactly the opposite, whether you've had any discussions with the Home Office following that leaked report, and in particular after your publication of that paper.

[71] **Mark Drakeford:** Well, I wrote to the Home Secretary immediately on publication of our report and to other Ministers in the UK Government, making sure that they've got a copy of our paper. We have followed that up since with trying to get face-to-face meetings in the diary in order to be able to make sure that UK Ministers are aware of the proposals that we are making. Because, Chair, one of the frustrating things in terms of trying to deal with all of this from a Welsh Government perspective is that the UK Government, weak in the way that Steffan described, is a Government that doesn't speak with one voice on almost any aspect of the discussions that we've touched on this afternoon. They don't speak with one voice in relation to these migration issues—these free movement of people issues—either.

[72] So, we think it's really important for us to be able to get our document in front of people, who will find arguments in there that they will find useful, and that we turn up and make sure that we help them in making the sensible arguments that we think are there to be made and—just to go back to the point that I didn't quite manage to finish when I was answering Steffan Lewis's question—that document and the one that preceded it in relation to institutional arrangements in the United Kingdom have been part of, not a focus on process at all, but our effort to put real content into this debate and to contribute evidence and arguments that we think can be influential and then to try and make sure that we get that evidence and those arguments in front of the people who we think are most likely to be willing to take them up on our behalf.

[73] **David Rees:** Mark.

[74] **Mark Isherwood:** Firstly, to explore a little further the question that Steffan Lewis raised about membership of the single market or full and unfettered access, the European Commission have made it quite clear that membership of the single market, in whatever form, means a requirement to meet the membership rules—whatever we individually might think about those—on free movement, the European Court of Justice, financial contributions and also, if we stayed within the European customs union, clearly no member of the customs union can enter into bilateral trade agreements with any other party. So, when you talk about full and unfettered access, is that what you're talking about or are you talking about something where different arrangements might apply to some or all of those other issues?

[75] Secondly, and finally, this committee has taken evidence and had meetings with a range of other member states, but also EU regions, Governments, non-governmental bodies and governmental agencies, European Economic Area members, the European Free Trade Association and Switzerland, and so on. What meetings or discussions have you had relating to the matters before us today with other member states or regions and regional Governments outside the UK or other bodies on this agenda?

[76] **Mark Drakeford:** I'll take them in reverse order, Chair. So, there have been a whole series of meetings, both with EU institutions and at ministerial level—at member state level, but not just member state, but at regional level and with other bodies of the sort that Mark Isherwood described such as non-governmental organisations and so on. I was myself in Brussels back in March. I'll be in Brussels again in October. When I was there, I met a whole range of people heading regional Government offices in Europe who see an identity of interest with Wales and have worked very closely with us on a whole series of regional forums and so on. So, we're very keen to continue to pursue our ability to influence the debate through those networks.

[77] The First Minister, of course, has met Monsieur Barnier earlier in the year. He met the Taoiseach earlier in the summer. A series of ambassadors from member states have been in Wales over this period and the First Minister, again, has met them. So, I just want to provide the Member and the committee with an assurance that we try and take every opportunity we can, and across the broader waterfront that Mark Isherwood outlined, so that

things that matter to Wales, and the arguments that we think we want to advance, we try and push them forward on as broad a front as we can.

[78] On the first question, Chair, I'd hoped not to—in the same way as Steffan said—get drawn into a debate about the nomenclature of membership participation and so on, but it is clear, isn't it? There are different ways in which different countries that are not members of the European Union are able to get full and unfettered access, more or less, to the single market. So, there's more than one way of devising this, and the First Minister's visit to Norway—. The First Minister, in some ways, is someone who has led a debate in the United Kingdom about different institutional arrangements and the way that, both within the United Kingdom and in the United Kingdom's relations elsewhere, there are different models that we can draw on. The UK Government continues to say that it will have a bespoke arrangement—one that it will design just for the United Kingdom. I think time is running out, myself, to be able to bring that off in the months that we have left.

[79] **David Rees:** Just one more question from me before we can move on to the section on the EU withdrawal Bill. As you say, you've published two position papers over the summer. Do you have intentions to publish any more, and if so, in what areas?

[80] **Mark Drakeford:** I think we are open to the idea of publishing more, Chair. I think I've said to you in relation to the inquiry that this committee has carried out in regional policy that we may see some merit in a paper of the same sort and the same substance on the future of regional policy here in Wales. After that, the position is so volatile and changing that I think it doesn't make sense to have a sequence of publications mapped out in too much detail over the coming months, because you want to remain responsive to the issues that come up and become prominent and have a particular relevance to Wales. And if there are issues of that sort, and where we think that we have ideas and evidence and arguments that we will want to contribute to the debate, then I think I'm encouraged by the response that our three papers have had so far. I think they have had impact, but I think their impact is based on the quality of the arguments that we make in them, and we will want to consider future ones, but we will want to make sure that they are at the same level in terms of calibre, so that we can go on having a proper—. We won't publish them for the sake of publishing them.

[81] **David Rees:** I appreciate that, and I'm very conscious of the quality of

the report and important role of the papers, but, obviously, as you say, you'll be reactive. As Michel Barnier says, the clock is ticking. Have you got the capacity within Government to actually deliver such responses in a timely fashion and at the level of quality you require?

[82] **Mark Drakeford:** Well, it's an issue that the First Minister attends to very carefully. I think we've demonstrated that we do have the ability within the Welsh Government to prepare the sort of material that you've seen published by us, very often as a result of extensive discussions with other partners in the European advisory group, through the programme monitoring committee and so on. I think the record so far demonstrates that where we think there is an issue that is sufficiently significant to us in Wales, and where we believe that we have a point of view that we think needs to be attended to and can make a difference in the debate, we marshal the resources to produce the reports that are necessary.

[83] **David Rees:** Okay, thank you. We're going to move on now to the section on the EU withdrawal Bill, which clearly is going to play a major role in the coming weeks ahead of us. If I can ask Jeremy to lead here—.

[84] **Jeremy Miles:** Thank you, Chair. Can I ask you, to start with, Cabinet Secretary, on the question of the legislative consent memorandum and the relationship between that and some of the amendments that have been proposed? I won't ask you to state why the Government feels that a motion is required or why it should not be approved, because that's set out in the memorandum, but what is your current expectation about when the Government will be tabling a motion?

15:00

[85] **Mark Drakeford:** Chair, I think that's quite a difficult question to answer, because I think it is so very much dependent upon the extent to which amendments may or may not be carried during the passage of the Bill. So, we have argued that this Bill could be amended in a way that would allow the Welsh Government to recommend that consent to the Bill should be given, but the timing of that is very difficult to predict. We know that there are eight days, I think, set aside for the committee of the whole House of Commons to debate the withdrawal Bill, but we don't know when that's going to be. We believe one of those days in its entirety will be given to devolution matters, and then of course there is the House of Lords procedure to follow.

[86] I think what we would aim to do as a Welsh Government is to provide the National Assembly with a summary of where we believe matters have got to at the end of the House of Commons stage. At that point, then some of the timing issues may have begun to become clearer. But we will come to the Assembly with that account when some of the imponderables, as they are today, have begun to solidify.

[87] **Jeremy Miles:** Thank you for that. You've talked about some of the discussions you've had with the UK Government on the broader negotiations. What discussions have you had either before or after with the UK Government in relation to the legislative consent memorandum itself?

[88] **Mark Drakeford:** We have had—what's the best phrase—we have had very direct conversations indeed with UK Ministers in relation to this matter, both before the Bill was produced and subsequently. Chair, again, at the JMC when the great repeal Bill, as it was then called, had first been announced, I said, and it would still be our position, that the Welsh Government hoped that that Bill would succeed, that we understood why it was important to have an orderly transfer of law from its current status as we are within the European Union to what we will need after we have left, and we hoped that that Bill would do that on a basis that the whole of the United Kingdom could support.

[89] So, it's been a matter of real disappointment to us that, on these very important issues, the UK Government has decided to turn—. This is what I say to UK Government Ministers—that I am baffled by the way in which they have set about turning friends into enemies. We set off wanting to be a friend of this Bill, we hoped it would be the right Bill, and they could have behaved in a way that would have allowed us to have continued to be in that supportive position. I am baffled by the fact that they have chosen to operate in a way that has forced us into having to oppose the proposals that are now in front of the House of Commons.

[90] **David Rees:** Can I ask you, before I bring Jeremy back in—? You mentioned you've had direct conversations with Ministers. Obviously, this committee is looking at the EU withdrawal Bill. Are you able to indicate as to which Ministers and Secretaries of State you've had direct discussions with? Because we find some difficulty sometimes getting some responses from various departments in Westminster.

[91] **Mark Drakeford:** I'll speak for myself. I have been in the room when

discussions of that sort have happened both with the Secretary of State for Exiting the European Union and the First Secretary of State.

[92] **David Rees:** Thank you. Jeremy.

[93] **Jeremy Miles:** Can I just look at clause 7, specifically? Obviously, it's the Welsh Government's case that clause 7 triggers the requirement for consent of the Assembly, and in your written evidence you also said that, effectively, the provisions in current clause 7 could be used to amend the provisions of the Wales Act, in effect, by changing the devolution settlement. You also say that it's your view that the National Assembly should have its say in that situation. And yet the amendment that you've agreed and sought in conjunction with the Scottish Government is that Welsh Ministers rather than the Welsh Assembly are the body, if you like, whose consent would be required. Could you explain that apparent conflict?

[94] **Mark Drakeford:** I'll ask Hugh to lead off, and then I'll come in.

[95] **Mr Rawlings:** I think there may be a misunderstanding here. What our amendment says in relation to the Government of Wales Act—and, indeed, the Scotland Act 1998—is that the powers available to be used under clause 7 cannot be used to amend the Government of Wales Act and the Scotland Act 1998. The basis of the existing ways of amending those two fundamental pieces of devolution legislation is either by primary Act of Parliament or by Orders under, in our case, section 109 of GOWA, and section 30 of the Scotland Act 1998, which allow for the amendment of the list of reserved powers. But both of those mechanisms will, in one way or another, involve or require Assembly consent for them to proceed.

[96] It would have been possible for us to say, or to put down in our amendments, that the powers to amend the Government of Wales Act 2006 or the Scotland Act 1998 could be used—those clause 7 powers—albeit with the consent of the Assembly. In the event, we decided that it was probably better to limit the number of ways in which the devolution settlements could be amended. So, the amendment under clause 7 simply says that those regulations cannot be amending of those two pieces of legislation.

[97] That differs, if I may extend, to the position we've taken on clause 9, where clause 9, you will recall, is the regulation-making power to implement any withdrawal agreement. There, what we have said in our amendments—or what we have proposed—is that the Government of Wales Act, or indeed the

Scotland Act, could be amended by the regulation-making powers under clause 9, because we envisage a circumstance in which those regulations will need to be made very quickly to implement the withdrawal agreement, and it may not be reasonable to ask for primary legislation to do that. So, there is a distinction between the line that we have taken or proposed in relation to clauses 7 and 8 on the one hand and the amendment that we have put down for clause 9.

[98] **Jeremy Miles:** That's helpful. Thank you for that. The provision in relation to the broader provision in your amendment to clause 7, where it is the consent of Welsh Ministers that's required—. I'm looking at page 5 of the document published in conjunction with the Scottish Government, which says that the consent of Welsh Ministers is required before any provision is made in regulations under this section, so far as provision will be within the devolved competence of the Welsh Ministers.

[99] **Mr Rawlings:** Ah, yes. Yes, indeed. Yes.

[100] **Jeremy Miles:** So, you're distinguishing between that, which applies to matters beyond the constitutional mechanics, if you like, so that it's Ministers, not the Assembly, who would consent under that amended clause 7—.

[101] **Mr Rawlings:** That is—. Yes.

[102] **Jeremy Miles:** And what's the rationale for that?

[103] **Mr Rawlings:** The rationale for that would be this—that it would normally be for Welsh Ministers to make those regulations. Therefore, if the UK Ministers are going to make them, then the Welsh Ministers should agree. But that's subject to the qualification that, if the regulations proposed by the UK Minister were to amend Assembly primary legislation, then, by virtue of Standing Order 30A of the Assembly's Standing Orders, the matter would require the Assembly's consent in any event.

[104] **Jeremy Miles:** Okay, that's helpful. Thank you.

[105] **David Rees:** Steffan.

[106] **Steffan Lewis:** Thank you, Chair. I just wanted to ask, before going on to the LCM, just one question on clause 8: has the Government made any

assessment of possible implications for the Welsh Government on any changes that may need to be made in regard to Wales's international obligations? There are powers conferred on Ministers at UK level to amend legislation that may relate to international obligations and treaties through the European Union. I'm just trying to think in terms of energy, climate change, and other matters—rights of children—would there be any circumstances where devolved functions might come into play?

[107] **Mark Drakeford:** Well, Chair, the single principle runs through 7, 8 and 9 from us in relation to the LCM, because you will see that we take the view that the Assembly's consent is needed across all three clauses, which the UK Government does not believe. But we take that view for the reason that you've just heard from Steffan, because we believe that the way in which clause 8 powers are constructed could allow UK Ministers to reach across and make decisions in areas that are devolved. And, in that sense—

[108] **Steffan Lewis:** Or worse. Or worse. On that point, actually, what I'm trying to drive at is that Welsh Government might find itself in breach of international obligations without having done anything because there's been a Henry VIII exercise at the UK end.

[109] **Mark Drakeford:** Yes. I think that point is very well made.

[110] **Steffan Lewis:** Will there be an exercise within Welsh Government to try and establish whether there might be a case of that arising? I presume that the UK is the signatory on behalf of all of the UK for most, but there might be pre-1999 international treaties that have somehow come under the jurisdiction of the Welsh Government and Welsh Ministers.

[111] **Mr Rawlings:** Go on, Piers.

[112] **Mr Bisson:** Those issues are well recognised, I think, particularly on the environmental side. I know that that policy colleagues are mindful of the interaction between devolved responsibilities and international agreements. So, it's one thing that is firmly on radar. I'm not sighted on exactly where things have got to in discussions with UK Government on that, but it's well and truly recognised.

[113] **Steffan Lewis:** And even, to a lesser extent, memoranda of understanding as well that have occurred between Welsh Government and other Governments and bodies—they might find themselves, I suppose, in

breach of themselves, potentially, through changes at ministerial level at UK that relate to devolved matters.

[114] **Mr Rawlings:** It would depend, wouldn't it, if they entered into international obligations. If they're in memoranda of understanding, then questions would arise as to whether that amounted to an international obligation within the meaning of section 114 and section 82 of GOWA.

[115] **Steffan Lewis:** Okay. Thank you. Moving on to just the point of the LCM, what are the consequences of the National Assembly for Wales withholding consent?

[116] **Mark Drakeford:** Well, the Secretary of State for Exiting the European Union has said very explicitly that he believes that our consent is required and he would take it as a corollary of that that, if he doesn't get our consent, then the UK Government would not go ahead to legislate in the face of that consent being withheld. We know that, in reality, the UK Parliament can go ahead and override any failure to provide consent that we or the Scottish Parliament might make, but then you are into the territory of significant constitutional turbulence, really. If two democratically elected bodies that have competence in an area and have been asked for their consent on the basis that their consent is necessary, and that consent is withheld, and the organisation that asked for that consent decides to go ahead regardless, then there's real constitutional turbulence, then.

[117] **Steffan Lewis:** I'm just interested to try and understand and envisage what constitutional turbulence could look like. The First Minister said last week that there could be a constitutional crisis that the UK Government doesn't need and the Welsh Government doesn't want, but, from where I can see, it's pretty clear in the formation of this state that only one Parliament is sovereign and one Parliament is charged to do whatever it wants, whenever it wants—that there's just a convention in regard to legislative consent from this Parliament, in which case, Wales says 'no', Westminster says, 'Well, we're really sorry that you didn't feel you could consent to this, but we're driving ahead. This is, essentially, not a normal set of circumstances, and this relates, effectively, to foreign affairs and international relations. On we go.'

[118] Now, the Scottish Government, representing a country that (a) voted to remain, but (b) has suggested that it will seek, potentially, another referendum on its constitutional status—. I can see the constitutional consequence of them saying 'no', but what is the Welsh consequence of

Wales withholding consent?

15:15

[119] **Mark Drakeford:** Well, Chair, I just want to take issue, really, with the description that Steffan has offered of the way that the United Kingdom in the year 2017 operates. These are conventions—I'm not claiming more than that—but conventions develop and conventions change. The view of the United Kingdom that he provided is a grace-and-favour view of the United Kingdom that has not been distinguished, quite certainly, from some Government Ministers in the United Kingdom, but I think is not held by all. So, the description that Steffan offered is essentially one in which the UK Parliament remains the sovereign body of a unitary state and doles out bits of power and capacity to some of its component parts, which it can take back, you know, whenever it doesn't like what they are doing.

[120] **Steffan Lewis:** Well, that's what the withdrawal Bill is about, Cabinet Secretary.

[121] **Mark Drakeford:** Well, I have a very different view of where I think the UK rests today, and, yes, its conventions, and, you know, you can view it differently, but my view of where the United Kingdom is, 40 years after we joined the European Union, 20 years after devolution, is that to describe it in those terms is absolutely to act as though history hasn't happened. What we have are four different democratic forums within the United Kingdom that hold their separate responsibilities, and that, where those responsibilities are held in that way, then the way the United Kingdom has to operate is for those component parts to come together, not on the basis of a hierarchy in which Westminster sits back and says, 'Well, in the end if you don't like it we'll just override you anyway,' but on the basis that we are all equal partners in that discussion. This is why we advocate a very different way forward in relation to frameworks under clause 11, because underpinning it is a very different model of where the United Kingdom has got to and the way it now needs to operate.

[122] **Steffan Lewis:** So, just to clarify, you believe that the consequence of this Assembly withholding consent for the withdrawal Bill is that the United Kingdom Government will withdraw the withdrawal Bill and go back to the drawing board.

[123] **Mark Drakeford:** Well, that is—. I'm not going to be drawn into a long,

‘What if something happened here?’ If you’re asking me—

[124] **Steffan Lewis:** Well, no. With all due respect, you have published a draft legislative consent motion, so—

[125] **David Rees:** Let the Cabinet Secretary answer.

[126] **Steffan Lewis:** —I think it’s quite reasonable to ask what the consequence of it is.

[127] **Mark Drakeford:** And it is absolutely a possible course of action that a Government that asks for the consent of a democratically elected legislature, says that it requires that consent—that if it doesn’t get it, it doesn’t carry on regardless.

[128] **David Rees:** Okay, Dawn.

[129] **Dawn Bowden:** Yes, and, on that point, you’ll see the Secretary of State for Exiting the European Union is actually on record as saying that he wants the consent of the devolved nations. Just in this kind of hypothetical situation that we could find ourselves in, although I don’t actually think it’s that hypothetical in terms of the UK Government dismissing the views of the devolved nations, but, should they, I just want to understand the process. Is this something that you see or suggest—and maybe the lawyers can help out here—would ultimately be something that we would look to challenge in the Supreme Court?

[130] **Mark Drakeford:** Well, Chair, specifically on that, I don’t believe it’s challengeable in the Supreme Court, myself, in that way, but Hugh will tell you whether he thinks any different. But, just to be clear, we are missing out a whole big part of the process here, which is that the Welsh Government, together with the Scottish Government, have published amendments that would make sure that we wouldn’t be in that position. So, our actions over the coming months will be to try to build a coalition at Westminster of the sort that Steffan asked me about earlier, to secure the votes to allow our amendment to succeed, because we think that, with our amendment, the constitutional turbulence that we have just described would be avoided, and we will work very hard as a Government to try to build that coalition. We’ve already succeeded significantly in doing so. We have the support of the Labour front bench for all amendments. We have a strategy with the Scottish National Party to share those amendments. We believe they will be supported

by Liberal Democrat Members of the—

[131] **Dawn Bowden:** DUP?

[132] **Mark Drakeford:** —House of Commons. There is a real question for the DUP, no doubt, to explore because the effect of the Bill as it stands is to diminish the status and standing of the Northern Ireland Assembly, just as it has that effect here and in the Scottish Parliament. So, where our attention will be will be on trying to make sure that our amendments are promoted, understood, and supported, because, if they are, then the Bill will be amended in a way that would allow consent to be recommended to the National Assembly and some of this turbulence could be avoided.

[133] **David Rees:** Can I ask—? I appreciate that; I appreciate that your focus has to be on trying to persuade the House of Commons that the amendments are the appropriate amendments for the progress of the Bill. But, in response to Steffan, are you also preparing a contingency plan as to the next steps beyond that if amendments are not accepted, because, as we've seen in recent European legislation within the Houses of Parliament, amendments have been very rarely accepted?

[134] **Mark Drakeford:** Well, Chair, the House of Commons is in a different position—the Government doesn't have a majority, as we pointed out earlier, and it certainly doesn't have a majority in the House of Lords. We will work more widely still in the House of Lords with other parties who are represented there to try and bring the good sense that our joint amendments have into reality. So, you know, I just want to be clear, as I've tried to be clear with UK Ministers, that we are absolutely serious about these amendments. They are not just some sort of debating point. We will work as hard as we can and we will work with whoever we need to in order to try and assemble the votes that are needed to get these amendments passed, because these are the right amendments for the United Kingdom, and that's why we are so determined to work in that way. Do we have contingency plans? Do we plan? Well, of course we plan for different potential outcomes.

[135] **David Rees:** Eluned.

[136] **Eluned Morgan:** I think the whole process throws up again the failings of our constitutional system. If you didn't have any mates in the House of Commons or in the House of Lords, you wouldn't be able to put any amendments down to anything and you would have to rely on a legislative

consent motion and hope that that in itself would put pressure somehow. But I think it demonstrates that there is a flaw in the system if there's no ability for the Welsh Government or the Welsh Assembly to amend something that is going to affect them in such a radical way.

[137] Can I ask you about clause 11? So, what we've got in clause 7 is a two-year limit after exit day, and we've got the same thing in clause 9, but, in clause 11, powers are being taken away from the Assembly but there's no suggestion of a time limit. Now, I haven't quite understood your proposed amendment to clause 11, so I wondered if you could explain that to me.

[138] **Mr Rawlings:** It effectively omits clause 11 from the Bill.

[139] **Eluned Morgan:** Completely. So, that's why—so, you haven't bothered asking for a sunset clause, because it would just simply go. Okay. That's fine. Can I ask you, on the sunset clause situations—there's a suggestion that they could be amended—whether there should be provision in the Bill to ensure that they can't be amended without primary legislative powers? Is that something that you've considered?

[140] **Mr Rawlings:** We did not, because the amendments that we have put forward are specifically about devolution. They're not about the general structure of the Bill so that, for example, the two Governments—the Welsh Government and the Scottish Government—would want to keep the charter of rights and freedoms, and it might have been possible to put down amendments to effect that, but the decision was taken that we had to focus on the specific devolution aspects of the Bill, and that's what our amendments do.

[141] On the powers to amend the existing sunset clauses, there are two points, I think, to make. First of all, the sunset clauses depend or operate with respect to exit day. Since it is in the UK Government's gift to determine what is exit day, then the sunset clauses might be allowed to continue. So, you have that one set of issues. The other thing is that the regulation-making power in the Bill is extraordinarily wide in that it allows the Bill itself to be amended once it becomes an Act by use of the regulation-making powers in the Act. So, the regulation powers can sort of lift themselves up by their own bootstraps to refer back to what would then be the withdrawal Act. So, that is a possibility, certainly. Whether it's any more than a theoretical possibility, I don't know, but I think perhaps the more significant point is the variability of the concept of Brexit day.

[142] **Eluned Morgan:** Can I ask you about this idea of the Government potentially releasing powers to the Welsh Government, if and when they decided that they fancied doing that? Presumably, this would be done via some kind of draft Order in Council. Have you got any idea what that would look like or—? So, they haven't discussed that with you. No.

[143] **Mr Rawlings:** No, Chair. If you look at clause 11 of the Bill, what subclause (2) of clause 11 would do would be to insert a new subsection (10) into section 108A of GOWA. It's expressed in exceptionally vague and general terms. All it says is:

[144] 'Subsection (8) also does not apply so far as Her Majesty may by Order in Council provide.'

[145] Unless you have been involved in the thinking behind the drafting of the instructions that led to the drafting of the clause, it's actually exceptionally difficult to envisage what such an Order in Council might look like. But that would be the clause that would actually confer back the powers that are taken away by the general provision that is going to be added to section 108A.

[146] **David Rees:** Mark.

[147] **Mark Isherwood:** Thank you. On a similar theme, I was going to ask the question—*[Inaudible.]* Last week, in his statement to Plenary, the First Minister appeared to recognise, given the time and resource constraints and the need to provide assurance for business, farmers, and so on, there was a logic in the process described. The concern was no time limit and no agreement on frameworks. Simple deletion of clause 11 still wouldn't address that in terms of providing some form of time limit. So, what sort of time limit or clause relating to an end on this process, and full repatriation, would the Welsh Government propose or find acceptable? And, given that the UK Government stated, when the Bill was published, that it didn't include a time limit because it believed this would incentivise devolved administrations not to agree frameworks, interestingly using the term 'agreed', but now we're talking about UK Government talking about common frameworks, what, if any, engagement has the UK Government had with the Welsh Government over its involvement, if at all, in those common frameworks?

[148] **Mark Drakeford:** Well, Chair, this is a fundamental difference between

ourselves and the UK Government. When the European Union is no longer part of our landscape, we say that the powers that the Assembly has had since 1999 should continue to be exercised by us, but that we recognise, we absolutely recognise, that there will be important areas where common frameworks across the United Kingdom are necessary in order for business to be conducted in an orderly fashion.

15:30

[149] We've no objection, no difference in that at all. And what we have said from the beginning is that we would come to the table, we would come willingly, we would come constructively and we would expect to see those frameworks agreed. That's still our position, we still think that that could be done and we're frustrated that the UK Government is not willing to try the route of agreement, but instead says, 'Rather than try and agree something with you, we'll grab the powers and we'll take them here. We'll give them back to you, but we won't tell you when and we can't tell you to what extent, and we won't tell you what we will have done with them in the meantime, so, even when they are handed back to you, they may already have been tied up in such a way that they are unable to be used by the National Assembly for Wales'. And that's the fundamental point of difference between us.

[150] I think that the Prime Minister's speech in Florence, in which she proposes a further two-year transition period, means that we've now got another two years in which we could agree all these things, because, in the meantime, we will still be operating according to the EU common rule book. So, the urgent need that things are so desperate that you can't afford to find the time to do things by agreement—you've got to legislate and do it that way—that argument, I think, has evaporated. There's a further extended period in which that could be done. We've said it every single time, and the First Minister said it very clearly to the Secretary of State when he came here, that we understand the need for frameworks, we agree the frameworks are needed, and we would come to the table wanting to play a constructive part in doing it that way. We still think that that is the way that things should be done. That's why we just take clause 11 out, because we think that this is the better way to do business and that it can be done.

[151] **David Rees:** I'm conscious of the time, Cabinet Secretary. Have you got an extra couple of minutes for us?

[152] **Mark Drakeford:** Five-ish.

[153] **David Rees:** Five-ish. Right. Suzy.

[154] **Suzy Davies:** I was going to say—if time's an issue, I can speak to the Minister after.

[155] **David Rees:** No, you can ask a question.

[156] **Suzy Davies:** It's just one question, then, about section 11 and subsection (10). In subsection (2)(b), in (8) and (9), where we're talking about the ability or otherwise to modify subordinate legislation, is there a distinction, when we come to subsection (10), between EU retained law that's come through the directives route and is therefore part of our domestic legislation because we've made it, and the regulations that would've come through direct effectiveness or applicability? I'm never sure which is right. Does subsection (10) only really affect the latter, or does it affect both? You don't know. No, that's fine, because you said earlier that it was completely unclear.

[157] **Mr Rawlings:** Well, you're a lawyer, I'm not.

[158] **Suzy Davies:** Well—'was a lawyer' in my case.

[159] **Mr Rawlings:** I mean, if you look at that subsection, it doesn't say anything about the sort of distinction you're talking about. It just says,

[160] 'Subsection (8) also does not apply so far as Her Majesty may by Order in Council provide.'

[161] She might provide something like that. She might provide something utterly different. No-one knows because you can't tell it from the wording.

[162] **Suzy Davies:** I don't disagree with you. I was just curious if there was any kind of interpretation that any of us could understand. Thank you.

[163] **David Rees:** I think the answer to that is 'no'. Cabinet Secretary, a continuity Bill has been raised by Steffan on many occasions in the Chamber. Clearly, there are now amendments that have been submitted to the front benches to be put into place for the Committee Stage in the House of Commons. At what point will you consider laying a continuity Bill and what are the timescales that you think need to be met if such a Bill is laid?

[164] **Mark Drakeford:** Well, Chair, I'm afraid it takes us back into that very uncertain territory that Jeremy Miles asked me about earlier, because the decision on whether or not a continuity Bill is needed will depend very much on how the proposed amendments fare. Because if the proposed amendments succeed, then the case for a continuity Bill recedes. If the amendments fail, then the case for a continuity Bill is strengthened, because in terms of what we're trying to achieve here, it's two ways of broadly trying to secure the same end. Amendments will come first, and we will have to see how far we are able to succeed in getting support for them, and then we will have to assess whether or not a continuity Bill has to be introduced, depending on how that goes. The timing of it is just so impossible to predict from where we sit that all we can say is that we will be engaged in that unfolding process, and we will make a judgment at the point where we need to.

[165] **David Rees:** I understand that, but can I ask then—? You and the Scottish Government have laid these amendments, effectively, with the intention, clearly, of ensuring that the devolution settlement is addressed properly. I am, therefore, assuming that you would expect all those amendments to be successful for you to be in a position to support the LCM. Is that fair to say?

[166] **Mark Drakeford:** I think that's too definitive a statement in a context where there are not simply amendments that the Welsh Government and the Scottish Government have put together, but there are many other amendments that other Members of the House of Commons have laid. There will be further amending stages later on. The sensible position for the Welsh Government to take is to pursue the amendments that we have put down, to remain very closely engaged in the process and to make a judgment, because this picture will unfold in ways that maybe none of us here can easily predict. Trying to say, 'If this happens here, and that happens there, will you do this?'—I just think it's not going to be as predictable or as mechanistic as that. The sensible course for Government is to stay close and stay flexible and make judgments on the basis of how events actually unfold.

[167] **David Rees:** Okay, I accept that point, but can you give us an indication as to the type of timescales in which you would expect the judgment to be made on completion of the Committee Stage in the House of Commons?

[168] **Mark Drakeford:** We are expecting October to be a busy month for the House of Commons in relation to the Committee Stage.

[169] **Mr Rawlings:** It remains unclear what the Government's intentions are. At the moment, the programme motion talks about eight days for committee, but the House is not moving into committee on this Bill in the first week it comes back, so the earliest it will begin Committee Stage will be on 16 October. What is then unknown is how many days a week they will devote to this. If it's one day a week, then it will run for eight weeks into the middle of December, which is perhaps not to be expected. So, it's within the Government's hands as to how they organise the days. But there was then also a suggestion, at the end of the Second Reading debate on the Bill, that the Government might afford more time. Now, if, for example, it agreed with the opposition that there were going to be 10 days rather than eight, then you would need a new programme motion. It's possible that those discussions—I have no idea—are taking place, but you could speculate that one of the reasons why the Bill is not moving into committee as soon as the House gets back on 9 October is that they're going to bring forward a revised programme motion that, if agreed, would then enable them to timetable, for example, 10 days for the following five weeks, six weeks or seven weeks.

[170] **David Rees:** I appreciate, again, that. The question was: on completion of that stage, how long do you think you will need before you can make a decision as to whether you can accept the amendments or not?

[171] **Mr Rawlings:** It's a matter for the Minister.

[172] **Mark Drakeford:** David, I don't have a time frame that I can easily say to you. What I can say to you is that we will follow all this really closely, that we will make the judgments when we need to make them, and we will make them in close collaboration with our Scottish colleagues, given that we've worked so closely with them. And, as I said in answer to Jeremy Miles earlier this afternoon, when we come to the end of the House of Commons consideration, the Government intends to report to the Assembly, giving you our summation of where we think many of the debates that we've talked about this afternoon will then rest.

[173] **David Rees:** Okay. Cabinet Secretary, thank you for staying the extra 10 minutes as well. I do appreciate the time you've given. Thank you for giving your evidence this afternoon. I should have said thank you for the written paper we had as well prior to the meeting. There are some questions,

I'm sure, we'll still want to ask as time moves on. As you've quite rightly pointed out, this is very fast moving, and the committee is very intent to keep a close eye and grasp on the issues. To that end, we will also be visiting Brussels, as to what goes on there. Thank you very much. You will receive a copy of the transcript as usual for any factual inaccuracies. Please let us know if there are any as soon as possible. Thank you all very much.

[174] **Mark Drakeford:** Thank you.

15:40

Papurau i'w Nodi Papers to Note

[175] **David Rees:** Can I take on the next item on the agenda, please, which is item 3, some papers to note? We've received, obviously, quite a lot of papers over the summer period. Are Members happy to note all papers identified on the agenda? And second? Thank you.

Cynnig o dan Reol Sefydlog 17.42(vi) i Benderfynu Gwahardd y Cyhoedd am Weddill y Cyfarfod Motion under Standing Order 17.42(vi) to Resolve to Exclude the Public for the Remainder of the Meeting

Cynnig:

Motion:

*bod y pwyllgor yn penderfynu that the committee resolves to
gwahardd y cyhoedd o weddill y exclude the public from the
cyfarfod yn unol â Rheol Sefydlog remainder of the meeting in
17.42(vi).*

*accordance with Standing Order
17.42(vi).*

Cynigiwyd y cynnig.

Motion moved.

[176] **David Rees:** That takes us to item 4. I'd like to move into a private session under Standing Order 17.42. Are Members content to move into private session? Then we'll do so.

Derbyniwyd y cynnig.

Motion agreed.

Daeth rhan gyhoeddus y cyfarfod i ben am 15:41.

The public part of the meeting ended at 15:41.