



Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales

Cofnod y Trafodion The Record of Proceedings

[Y Pwyllgor Materion Allanol a Deddfwriaeth
Ychwanegol](#)

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

15/05/2017

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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
Michelle Brown Bywgraffiad Biography	UKIP Cymru UKIP Wales
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

Asger Andreasen	Danish Regions Danish Regions
Yr Athro/Professor John Bell	Prifysgol Caergrawnt University of Cambridge
Yr Athro/Professor Paul Craig	Prifysgol Rhydychen University of Oxford
Mark Drakeford Bywgraffiad Biography	Aelod Cynulliad, Llafur (Ysgrifennydd y Cabinet dros Gyllid a Llywodraeth Leol)

Assembly Member, Labour (The Cabinet Secretary
for Finance and Local Government)

Dr Jo Hunt Prifysgol Caerdydd
Cardiff University

Michael Koch-Larsen Danish Regions
Danish Regions

Hugh Rawlings Llywodraeth Cymru
Welsh Government

Peter Slater Cynghrai'r Cymunedau Diwydiannol
Industrial Communities Alliance

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

Alun Davidson Clerc
Clerk

Elisabeth Jones Prif Gynghorydd Cyfreithiol
Chief Legal Adviser

Rhys Morgan Ail Glerc
Second Clerk

Nia Moss Y Gwasanaeth Ymchwil
Research Service

Sara Rees Dirprwy Glerc
Deputy Clerk

Ben Stokes Y Gwasanaeth Ymchwil
Research Service

Dechreuodd y cyfarfod am 13:17.
The meeting began at 13:17.

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

[1] **David Rees:** Good afternoon and can I welcome Members to this afternoon's session of the External Affairs and Additional Legislation Committee? This afternoon, we'll be undertaking two aspects of our work: we'll continue our inquiry into the implications of regional funding on regional policy following the exit from the EU by the UK; then, in the second part of this afternoon, we'll start our work on the great repeal Bill and the implications for Wales of that once it is introduced, following basically at the moment on the White Paper that was published by the UK Government prior to its dissolution on 3 May.

[2] Can I remind Members that the meeting is bilingual; headphones are available for translation from Welsh to English on channel 1, or for amplification, if that's required, on channel 0. Please turn your mobile phones off or put them on silent, or any other electronic equipment that may interfere with broadcasting equipment. There are no scheduled fire alarms this afternoon, so, if one does take place, please follow the directions of the ushers. We've received no apologies for this afternoon, but we are aware that one or two Members may be arriving a little late due to other circumstances.

13:19

Ymchwiliad i Bolisi Rhanbarthol—Beth Nesaf i Gymru?—Sesiwn
Dystiolaeth 10
Inquiry into Regional Policy—What Next for Wales? —Evidence Session
10

[3] **David Rees:** We move on to our first evidence session this afternoon, and can I thank Peter Slater, on behalf of the Industrial Communities Alliance, for his paper? And, obviously, you're welcome, and you will be receiving some questions based upon that paper as we continue our session into the inquiry into future regional policy. Perhaps I can ask the first question in relation to the work. We've had evidence that has identified that EU structural funds have not necessarily been transformational per se, but they have been able to allow Wales to develop a little and to sustain Wales over the time and to reduce the impact. What is the industrial alliance's view of the structural funds' effect on the communities it represents? Because, clearly, those communities are former heavily industrialised communities, and we've seen

the demise of those industries and those communities, and, as a consequence, a loss of economic power in those regions. So, how do you see the way in which EU structural funds have benefited, or not, those communities?

[4] **Mr Slater:** Well, as you know, we draw on our representation from Scotland, England and Wales, so we can draw on quite a lot of experience on this issue. Our view is a very clear one. We regard the European Commission as being the driver of regional policy for the last 30 years or so, often at a time when various administrations in Westminster have not had a clear regional policy driver, if you like, in terms of what they're trying to do.

[5] So, I think the view that we have is that the structural funds, generally, have been beneficial. It's very difficult to prove whether things would have been better or worse but, I think, looking around the country and looking at the impact of some of the projects, and perhaps I could—. I mean, I can draw some direct experience from some work I did in Ebbw Vale on The Works project there, on the redevelopment of the steelworks site there, and, if you look at projects like the reopening of the railway line from Ebbw Vale to Cardiff, there's no doubt in my mind that, for the princely sum of about, I think, £7 million or £8 million of European regional development funding, I think that has transformed the labour market in Ebbw Vale, particularly for youngsters. And, I think, if you look at some of the projects that Welsh Government are promoting: Jobs Growth Wales and the apprenticeship scheme, both of which have benefited from about £100 million of European social fund money, I think the evidence is quite clear there that those projects are making a big difference in terms of the opportunities for young people and youth unemployment. So, I don't think there's any question in our mind that, generally, the structural funds have been very, very beneficial, and that, without them, the regional prosperity gap would have been much bigger, and I think our main concern is that that gap is still widening.

[6] **David Rees:** Before I pass on to my colleagues, article 50 has obviously now been triggered. Have you seen anything in the article 50 triggering that causes concerns for the continuation of regional funds between now and 2020?

[7] **Mr Slater:** Well, the undertaking is only to fund existing commitments. It only goes up to the time of exit, which theoretically is March 2019, whereas the current programmes don't finish until 2020. So, there's the issue there of what happens in the interim in terms of the transitional

arrangements. Coincidentally, I think the exit date will coincide with further public expenditure cuts coming in, of about 6 per cent, which could mean the loss of about £800 million to Welsh Government, which could make life difficult in terms of funding some of these projects. And I think there are also issues beyond 2020 as to what will be put in place in terms of regional policy, because history will tell us that there's no quick fix here; it's a long-term process. And we haven't seen anything yet, really, in terms of the article 50 negotiations, that reassures us that (a) the transitional arrangements will be in place, and (b) what the long-term impact will be of the loss of structural funds.

[8] **David Rees:** Thank you. Your papers had actually highlighted some proposals in where we may wish to consider going forward, so, my colleague, Steffan Lewis, wants to start looking at some of those proposals.

[9] **Steffan Lewis:** Thank you, Chair, and thank you, Mr Slater, for the paper. I wanted to look, first of all, at proposal 1 to establish a new UK regional development fund, which would take over the responsibilities of the EU structural funds. Can you clarify—? Is this UK regional development fund, therefore, going to be more than a fund, and actually it will be the body that sets the frameworks for future regional policy in the United Kingdom?

[10] **Mr Slater:** Well, I think, the way we're looking at this—. I mean, obviously, the fund is critical, and it's a minimum fund—£1.5 billion just to cover existing levels of expenditure. But I think what we're looking for is a change in the mindset as well, to go with it, particularly in Westminster. And we would like to see regional policy almost being a cross-cutting theme within Government decision making, so that, whenever they make a decision about whatever, they ask the question: 'What are the regional implications of this decision? How will it impact on the regions?' So, it's not just about the fund, it's about the way of thinking, and, if the Westminster administration are serious about closing the prosperity gap, then I think they do need to have that change in mindset. It will also require a collaborative approach between the devolved administrations and the Westminster Government, because, obviously, devolution is not a substitute for regional policy. Passing the responsibility to someone else will not solve the problem. It does need a twin-track approach in terms of—

[11] **Steffan Lewis:** So, just to be clear then, the UK regional development fund that you propose won't just be the fund, it will be a Whitehall department or a department within the Treasury.

[12] **Mr Slater:** I think that's partly—. That's an interesting question, because I think at the moment it does tend to be the responsibility of a department. I think, almost, it has to be a Cabinet commitment, if you like, to closing the regional policy gap. You take for instance the recent decision to establish the cyber security agency, say, in London: did anyone ask the question, 'Well, does it need to be in London?'

[13] **Steffan Lewis:** Yes, I did, the week later. But that was another question. *[Laughter.]*

[14] **Mr Slater:** It's a good example, actually.

[15] **Steffan Lewis:** But, sorry, what I'm trying—. Just to come back to the—. Because this is quite important in terms of one of the big tests of our withdrawal from the European Union will be the ability of the UK Government, and other devolved Governments as well, to come to a realisation that there will have to be some sort of shared competencies between the Governments of the UK, and regional policy is one of those areas where a European Union ceiling will be lifted, potentially, in which case then there's the question of what replaces it. Seeing as economic development is a devolved matter, and, by implication, therefore, regional policy is devolved, but the funding, of course, wouldn't be, I'm trying to get to the point of: is this, in your view, therefore, going to be a matter for the UK Government, and therefore we will have the money passed on to us in Wales as you suggest in proposal 1, but that the frameworks themselves will be set by UK Government? Because that's where—. The crucial line in your point is that the regional development fund will take over the responsibilities of the EU structural fund. So, that sounds to me like you want the Whitehall department, or the Cabinet Office department, to assume responsibility that is currently exercised by the Commission.

[16] **Mr Slater:** Well, in terms of distributing the overall envelope of funds, I suppose the answer to that is 'yes'. But, I think, as I've said, it goes much further than that, and it will require an agreement between the devolved administrations and Westminster Government in terms of what the overall framework is, because although Welsh Government has its hands on quite a lot of economic levers, it cannot operate in isolation. If Westminster is running a policy that overtly supports further development in the south-east, for instance, then a lot of what Welsh Government, and, in fact, the Scottish Parliament, are doing will not be effective. So, there has to be a joint

approach and there has to be an agreed set of priorities in terms of readdressing the balance.

[17] **Steffan Lewis:** So, the frameworks, then, should be agreed between the four Governments of the UK and regional partners in England, rather than imposed from Whitehall.

[18] **Mr Slater:** Yes. Yes.

[19] **Steffan Lewis:** Okay. I'm glad of that.

[20] **Mr Slater:** I think we're coming from a very simple position that, by 2022, something like 41 per cent of GDP will be accounted for by the south-east of England, and Wales will account for something like 3 per cent. The Welsh share is going down and the south east of England share is going up. So, it's a very simple calculation, and that's why we need a framework in place.

[21] **Steffan Lewis:** I'm glad you mentioned the fiscal levers as well, because this is a crucial point. In regional policy almost everywhere else in the European Union there is almost always a marrying-up of fiscal levers in addition to the money itself. Have you looked into your paper in terms of that element of fiscal levers as well—not just the cash being handed over, but further levers? For example, parties in Northern Ireland have proposed that they should declare Northern Ireland an enterprise zone in its entirety, and that would then give them fiscal levers on top of the regional aid as well.

[22] **Mr Slater:** We haven't looked at that.

13:30

[23] **Steffan Lewis:** Okay. Just finally, Chair, if I may, in terms of proposal 6, talking about exploiting the opportunity provided by major revision of regional policy, you've mentioned in your paper as well about the opportunity to get rid of this dreaded European red tape. What is the—you know, if you were there writing—

[24] **Mr Slater:** I don't know whether we've used that actual phrase. *[Laughter.]*

[25] **Steffan Lewis:** Not 'dreaded' maybe; 'dreaded' might be hyperbolic on

my part. But, in terms of red tape, can you give me an example of where in regional policy European red tape is? Because quite often it's actually—the frameworks set by the Commission are pretty straightforward; it's what member states and regions themselves do and interpret that develops the red tape. But I just wondered if you could give an insight into the red tape that you think in regional policy has been unhelpful.

[26] **Mr Slater:** In terms of the dispersal of the regional funds? I think some people get overexcited about the level of audit, I think, but I think there is a responsibility on the part of the European Commission and taxpayers to make sure that the money is spent effectively. My experience over the last 30 years with European regional funds is that the main problem, I think, with the people that are trying to make use of them is that they can be over-prescriptive in terms of how they're used, and they don't always match the local priorities. You can describe that as red tape or not, but I think that's been where the main contentions have been, that—

[27] **Steffan Lewis:** Are there any examples you could give?

[28] **Mr Slater:** —they are over-prescriptive. Well, I think, for instance, if you look at the emphasis on—. Well, if you look at research and development, which is a very important area in which Wales needs to raise its game—. But I think there are probably examples, particularly in the Valleys, where it's been difficult for companies to access some of this funding because they haven't even got their foot on the bottom rung of the ladder, and yet there's a big allocation of funds for research and development, which, in practical terms, is often quite difficult for companies and training institutions to access. I think that's one example where I think we'd like to see perhaps more flexibility. So far as the ICA is concerned, we'd like to see more emphasis on supporting industrial and manufacturing policy, for instance, which is very important in south Wales, whereas there isn't any explicit recognition of that in the current programme.

[29] **Steffan Lewis:** Thank you very much.

[30] **David Rees:** Can I ask you—? You mentioned in earlier answers to myself, and, in a sense, the answers to Steffan Lewis, in relation to the impact currently the south east of England is going to have on the economy—clearly, that has a knock-on effect on lessening impact on the areas that your alliance represents, effectively, and refers to. Are you worried that, without any form of regional policy across the UK, that's going to

worsen the regions, and therefore we're going to see a greater impact upon the traditional heartlands of the industry in the UK, compared to the future direction we seem to be seeing of the south-east generating the economy?

[31] **Mr Slater:** It's a complicated question, that. I think, on one level, obviously, we wouldn't wish to see any actions taken that in any way prevent the south-east from producing the wealth that it obviously does, because the whole country benefits from its buoyant economy. But, clearly, the current growth rates are not sustainable. As an area, if you look at the infrastructure that's trying to support the economy in the south-east and London, it's straining at the leash, and every time they provide new capacity—at vast cost, I might add—such as Crossrail 2 or whatever, then it immediately becomes overloaded and they're looking for the next infrastructure project. So, it's draining masses of public investment into what is like a black hole, really.

[32] So, I think we need to ask questions as to whether that is a sustainable economy, and, obviously, if you start then looking at the relationship with the less well-off regions such as Wales, then, clearly, in economic terms we have vast spare capacity in terms of our labour force, our land, our cost of production, which we're not making use of. Again, that doesn't make sense in terms of running an efficient and productive economy. So, from a UK plc perspective, it would make sense to make use of those under-resources.

[33] I think the difficulty here is that history would tell us that it's a very long process, and no-one has actually come up with a solution yet to deal with these post-industrial communities. Wherever you look, really, there are very few examples of regions that have had an over-dependence on coal and steel and heavy industry that have managed to make a complete transformation into an efficient and modern-day economy. I'd just remind everyone, really, that south Wales was first declared a special development area by the Government in 1934. So, we're 80-odd years into the process and we're still making the same arguments, in a way, that the Welsh economy and other regional economies are lagging significantly behind the best-performing parts of the UK, and certainly the best-performing parts of the European Union.

[34] **David Rees:** Clearly, the UK Government has highlighted the Northern Powerhouse as an area of their interest. Has the Industrial Alliance looked at the suggestions for Northern Powerhouse to see as to whether that fits into the regional policy agenda, or whether that's simply been something that has been left alone to get on with it?

[35] **Mr Slater:** Well, we have been involved in that process, and I think—. First of all, as I said earlier, devolution is not the same as regional policy. So, they devolved quite a lot of responsibility and funding to the Northern Powerhouse, although it's not additional funding. And I think the other issue is that we're concerned that the peripheral areas of some of the big cities, which are mainly the areas that we represent, won't necessarily benefit from that process, and we've expressed similar concerns over the city region concept in Wales, as well. Although, I have to say, looking at what's come out of the Cardiff capital region report, we've been reassured that there will be a spatial element to that plan and that there will be spatial priorities, which will allay some of our fears. But I think a lot of it is dependent on whether we can get good connectivity in place in terms of enabling the labour market to function properly. But, certainly, I think in terms of the Northern Powerhouse, we remain to be convinced that it's not just a simple case of devolving responsibility, rather than driving regional policy from Westminster in terms of how are we going to make use of these under-utilised resources in the poorer regions, and how are we going to benefit the UK as a whole from the investment in infrastructure and everything else that we need.

[36] **David Rees:** Thank you. Eluned Morgan.

[37] **Eluned Morgan:** I wanted to ask you about—just to press a bit further on the bidding system for the projects. So, it's quite a complicated, heavy administrative burden at the moment. How would you feel about a very clear strategic view of 'this is what we're going to do', and then just put that out to tender. Wouldn't that just simplify the process massively?

[38] **Mr Slater:** When you say 'put it out to tender'—

[39] **Eluned Morgan:** Well, so that, if we say, 'We are going to develop, we're going to make sure that 10,000 people in Blaenau Gwent are going to be trained. Who wants to train them?' So it's absolutely clear where we're going. So, the strategy is clear, it's not a bidding process, and the people who put in the best application—.

[40] **Mr Slater:** Yes. We do need a strategy. We need a spatial strategy as well, because I think, again, some of our concerns over the European programmes, and indeed with the policies of the devolved administrations, is that there's not enough geography in the decision-making, not enough spatial thinking, so that's the first thing. So, we certainly need some sort of

spatial strategy to make sure that the funds are targeted on the right areas. I think competitive bidding can be—well, it is—very wasteful, and it's very inefficient. I was looking at some research that had been done into the Ruhr valley in North Rhine–Westphalia, where one of the—I mean, they haven't made a complete transformation there in terms of the economy, but they've made a lot of progress, and I noticed that one of the key factors was that the federal Government has put in place a framework that minimises the competitiveness for funding between regions and areas. I'm not quite sure how they do that—obviously they manage the priorities in some way—but that to me seems to be a pretty fundamental point, really, in terms of moving away from the current system to the new system: that we want to avoid wasteful competitive bidding and basically come up with a system that enables us to exploit the strengths of individual economies and particular regions and fits into this overall regional framework that we were talking about earlier. So, I would agree with the general principles. I don't think I can give you any detailed answer for that because I haven't really thought it through in those sorts of terms, but certainly, in terms of the principles, I think you're right there, yes.

[41] **Eluned Morgan:** Can I ask you about where you see the role of the private sector in future funding?

[42] **Mr Slater:** Well, the reductions in public expenditure are going on as we speak, with more in prospect. It has to be a given that we have to have a framework in place that is both attractive to the private sector and beneficial to the private sector. I think the city region and city deal arrangements may give us some insight into how that's going to work because, again, the city deal allocations are expecting significant leverage of funds from both public and private sector. So, I think the frameworks are in place and it's up to the city region board, Welsh Government and others to make sure that they have the necessary policies in place that will enable that to happen. But it has to be a given. This is not just a public expenditure exercise. Of course the European Commission always had great expectations as well from the private sector, but it never proved to be a particularly attractive proposition, did it, for a whole range of reasons.

[43] **Eluned Morgan:** Can I ask you about delivery? Are you suggesting that there should be more local authority control? Do you think they've got the capacity to do this?

[44] **Mr Slater:** Well we would say that, wouldn't we, because we're a local

authority network.

[45] **Eluned Morgan:** Yes, but are you setting yourself up to fail here, in the sense that—?

[46] **Mr Slater:** I think it's more of a problem in Wales than it is in other parts of the UK because we have relatively small authorities. A lot of the capacity, I think, has been lost over the years. But I think with the city region boards, the potential there is for local authorities to reinvent their strategic capacity, if you like. So, I think it can be done via that process, but I think trying to do it at an individual local authority level is probably not feasible. But, bearing in mind that some of our members are metropolitan areas, and that we do cover a very wide range of local authorities in the Industrial Communities Alliance—the city of Glasgow, for instance, is one of our members—it's chalk and cheese, really. I think there are particular issues in Wales because of the scale of local authorities and because a lot of the expertise has been lost. But I think the city region boards could develop—

[47] **Eluned Morgan:** But the city region boards won't have, for example—I don't know, maybe you've got some ideas on this—the authority to get involved in planning. But if you look at the capacity within the planning system at local authority level, it's already up against it. The absolute cry from the private sector is 'For God's sake, sort out your planning', and we simply don't have the resources or the capacity, already, to deal with this, and now we're saying, 'Give us more power'. Why should we give more power to—?

[48] **Mr Slater:** Well, I think there are governance issues, anyway, about city region boards that perhaps need to be revisited, because it's not clear how they're going to operate. I think there's a general feeling that, perhaps, over the years, Welsh Government and Scottish Parliament have drawn things into the centre and that perhaps we can achieve some rebalancing. It's not either/or, it's just a bit of both, really—a bit more influence from local authorities, because this is about local priorities, local targeting and local jobs.

[49] **Eluned Morgan:** I represent a very rural area, and if you look at somewhere like Powys or Pembrokeshire, they've got six people in their economic development department. They simply have no capacity to deliver anything like a regional policy. Is that the same situation in urban areas?

13:45

[50] **Mr Slater:** Well, not to the same degree, I don't think. As I say, because of the size of the local authorities in Wales—we've got 22 unitary authorities and they're all quite small—they haven't got that capacity. I don't think they've ever had it. After the last reorganisation, I don't think that capacity was transferred, so to speak. I don't think it was ever there anyway amongst the unitaries. But I'm not saying that they should be responsible—or we're not saying—for regional policy, but they obviously have an input in terms of determining the way it's framed and how it's delivered and where it's delivered. So, as I say, it's not an either/or process. Again, if we're serious about closing the regional prosperity gap then perhaps we ought to ensure that they do have more capacity and that it becomes a priority, because we are talking about the social justice agenda, really, and making sure that all of our communities are able to prosper and improve their well-being.

[51] **David Rees:** Based upon your comments on the city region boards and the Welsh Government's proposals for greater regionalisation of some of its services, is that the right direction in Wales, which will allow a greater impact upon regional policy than we currently would be able to have under our existing system?

[52] **Mr Slater:** Greater regionalisation? I think so, yes. Most certainly, yes.

[53] **David Rees:** Eluned, any more?

[54] **Eluned Morgan:** I don't want to hog—

[55] **David Rees:** Jeremy.

[56] **Jeremy Miles:** I'll come in on this, if I may, because my questions are on this topic as well. You concede, if you like, or you acknowledge, in your answer to Eluned, that it isn't feasible to do this at a local authority level. But there's a question about whether it's actually desirable as well, isn't there? Because it seems to me that one of the potential benefits of a city region approach or a regional approach is that there's likely to be, within the footprint of that delivery body—and we can come back to the correct caveats that you've identified around governance and accountability, which are significant—but that you have areas where there is more prosperity as well as, sadly, less prosperity. One of the risks that we face, even with staffing up of economic regeneration departments, if that were possible, is that that mix

is lost, in a sense. It's surely possible to make positive use of that mix across a larger footprint. Would you agree with that?

[57] **Mr Slater:** I think we're getting a little bit tied up here in terms of where the responsibility lies. What we had in mind really was that, in terms of targeting and trying to get some spatial dimension into policy making, there needs to be some dialogue or some mechanism whereby a local authority that's working collaboratively can have some influence on the outcome of that process. I'm not saying—

[58] **Jeremy Miles:** You're not wedded to a particular level of—*[Inaudible.]* You did mention that your initial reservations, if I can characterise them like that—and if I'm mischaracterising them, let me know—about the city deal and city region approach have been, at least with regard to the Cardiff city region, slightly ameliorated because of their spatial planning, which presumably includes the connectivity around the metro and so on. I'm assuming that's shorthand for that, partly. Would it be fair to say that you have similar concerns around the Swansea bay region, which may not have been allayed because of the transport issue there?

[59] **Mr Slater:** I have to say, I'm not that familiar with the Swansea bay proposals.

[60] **Jeremy Miles:** Okay.

[61] **Mr Slater:** But I know there have been connectivity issues with regard to Swansea bay, because they haven't got the benefit of the railway system and the metro.

[62] **Jeremy Miles:** No, indeed. That's really where I'm kind of leading you, in a sense. I represent industrial communities in the Swansea bay region that don't have the benefit of that transport package, if you like, that the Cardiff region does. You would acknowledge that that's an issue, effectively.

[63] **Mr Slater:** Yes. Can I also say as well that it's a question of definition? We're talking here largely about sub-regional issues. When we're talking about the regions, we're talking about Wales a lot of the time, or Scotland, or the north-east of England or the north-west of England. We mustn't forget that particular aspect—that when we're talking about regional policy, we're talking about the regions of the UK, rather than sub-regions. Unless we can get the right mindset in Westminster in particular about Wales as a region,

Scotland as a region, or the north-west of England as a region, then the options for dealing with the sub-regional issues in Swansea bay and south-east Wales will be necessarily limited, because there won't be that policy framework that says, 'Well, actually, we want to see the whole of Wales doing better and having more resources'. So, again, we're coming at it from a slightly higher geographical level, I think, rather than looking at it from the perspective of south-east Wales or south-west Wales.

[64] **David Rees:** And, of course, north-east Wales.

[65] **Mr Slater:** Yes, north-east Wales.

[66] **David Rees:** Okay. Jeremy.

[67] **Jeremy Miles:** Not on that topic.

[68] **David Rees:** Another topic, Jeremy?

[69] **Jeremy Miles:** Just in general, yes, if now is the right point. You mentioned the work that you looked at in the Ruhr valley in particular. Are there other parts of the EU, for example, where there are other post-industrial communities where you feel that structural funding and regional funding has worked particularly effectively, which we could have learned from here, or we may learn from in designing a new system?

[70] **Mr Slater:** Well, I had a look at this a couple of weeks ago. I kept coming back to North Rhine-Westphalia. That does seem to be the one. Strangely enough, a lot of the work had been done by a think tank in Washington. But I think it may be worth having a look at it from the committee's perspective, because some of the figures are quite impressive. Again, as you know, it was a sort of monolithic economy back in the 1950s, with 70 per cent of the workforce being employed in coal and steel. Now, it's 78 per cent or 80 per cent in the service sector. They've created over a million jobs in the region over the last 30 years or so, and they've invested very heavily in universities and technical education. There's a high level of graduate employment. I think they've invested a lot of money in inter-regional and intra-regional public transportation systems. I think one of the crucial success points is that there's been a very close working relationship between the federal Government state of North Rhine-Westphalia and local authorities. A lot of their small and medium-sized companies have had a lot of support from the development bank, which enables them to access quite

low interest rates over much longer periods. So, yes, I think there are certain pointers there, which may be worth while looking at in more detail. I think what they've managed to achieve is revitalising large parts of the economy from within, rather than relying on mobile inward investment. I think there are some important markers there. I'm not an expert on that area, but it seemed to me that there were some key points there that might be worth looking at in more detail. I'm not aware of many other examples of best practice, really, because I think, if there were, we'd probably know about them.

[71] **Jeremy Miles:** Okay. Thank you very much.

[72] **David Rees:** One of the other proposals is about the actual reform and the rules on financial support. You mentioned the state aid rules within the EU and the shortcomings. Now, clearly, if we are looking at such reforms, there needs to be a consideration, perhaps, of the internal single markets within the UK, and the consequence. That doesn't seem to be on many people's agendas in the UK Government at this point in time. Is that a concern to you and your organisation? Because if you are talking about these opportunities to support the regional areas that have declined over the years because of the change in industry, then if you're talking about state aid rules, it needs to be ensured it's fair and balanced across those areas. So, how do you address that point?

[73] **Mr Slater:** Well, the single market's a double-edged sword, isn't it, in terms of the less well-off areas because, on the one hand, when you're trading off equity versus efficiency, it gives areas such as Wales access to much larger markets, but on the other hand, it exposes them to much more efficient economies and regions. That's where the state aid comes into play, I suppose. It's not clear what's going to happen on state aid, obviously, after exit. I think in terms of the general issue of providing support for companies, it is an area that we can revisit. I think some of the thresholds are probably too low to support some of the larger companies and some of their existing operations. Again, it's a very broad-brush approach. The whole of west Wales and the Valleys is tier 1. I think there are arguments to suggest that, perhaps, we could, again, have higher rates in some areas and slightly lower rates in other areas, to target those areas that we feel would benefit more significantly from company support. I suppose a case in point might be the enterprise zone on the Heads of the Valleys. There may be scope there for perhaps having a larger enterprise zone with more generous allowances, and perhaps state-aid allowances and what have you. But I think in terms of your

original question of how it meshes with the single market, I don't have a—I don't know. I can't answer that question.

[74] **David Rees:** Do any other Members have questions? Steffan.

[75] **Steffan Lewis:** I just wondered if you'd formed any view on our future relationship with the European Investment Bank. That's been something crucial to the regions of Wales and Wales as a national entity, and obviously there's huge ambiguity around our future relationship. But I wondered if you'd considered that as part of your proposals for a new UK regional policy.

[76] **Mr Slater:** It's got lost in the wash, really, hasn't it? It's an important institution, and we are shareholders in the bank. If you look at—let me think; the new Swansea bay campus has had £60 million of EIB money, and they're the sort of projects that I think can be truly transformational. So, I think it's important that we maintain our involvement with the European Investment Bank, because, again, it's an institution that takes a slightly different view of investment in infrastructure and economic development, which a lot of banks wouldn't entertain. So I think it's absolutely critical that we maintain some sort of access to EIB facilities—you know, preferably in conjunction with the new regional fund. Because, again, going back to the Swansea bay example, I think they had £40 million-worth of European regional development funds and £60 million-worth of EIB funding. That's a significant contribution to an important project. So, we support that view very strongly.

[77] **David Rees:** Okay, Steffan? There are no other questions. Can I thank Peter Slater for his evidence this afternoon? Thank you very much for your time. You will receive a copy of the transcript. If you identify any factual inaccuracies, please let the clerks know as soon as possible so that we can get them corrected. Once again, thank you very much for attending this afternoon.

[78] **Mr Slater:** Okay. Thank you.

[79] **David Rees:** For Members, we will now take a short break whilst we arrange our connections for our next witness. We'll recommence at 2.15 p.m.

*Gohiriwyd y cyfarfod rhwng 13:58 ac 14:15.
The meeting adjourned between 13:58 and 14:15.*

**Ymchwiliad i Bolisi Rhanbarthol—Beth Nesaf i Gymru?—Sesiwn
Dystiolaeth 11
Inquiry into Regional Policy—What Next for Wales?—Evidence Session
11**

[80] **David Rees:** Can I welcome Members back to this afternoon's session, where we will continue our evidence collection for the inquiry into regional policy and what next for Wales? And can I welcome representatives of Denmark's regions? Would you like to introduce yourselves for the Record?

[81] **Mr Koch-Larsen:** My name is Michael Koch-Larsen, and I'm a senior adviser on regional development. I'm especially engaged with affairs of European funding, and also regional development in general, and business development and other tasks within regional development. We'll carry out a session where we introduce you to the situation post the reform we had in 2007, and the present situation.

[82] **Mr Andreasen:** My name is Asger Andreasen, and I am the chief adviser for Danish Regions EU affairs, dividing my work partly between Copenhagen and Brussels. I will give the part of our presentation that deals with our growth forums, explaining to you a little bit about the set-up and the organisation of these.

[83] **David Rees:** Thank you very much for that. If I open up the questions, perhaps—I'd like to start with a very simple question. Clearly, since the reorganisation, you know represent the five regions within Denmark, and I just wanted to know what relationship exists between the regions now and the state itself.

[84] **Mr Koch-Larsen:** Yes, so there are, of course, many relations. The first relation is that the regions are financed—they don't have the rights to levy any taxes, which means that they are financed by state block grants, and by development contributions from the municipalities. So, the financing of the regional development tasks are 75 per cent from the state as a block grant, negotiated every year, and 25 per cent from the municipalities, as contributions for regional development and also a contribution to show their engagement with the regional development. The local contribution is set at around €17 per inhabitant per year. So, of course, the independence is not as broad as we would like, since we don't finance ourselves through taxes. But besides that, we have directly elected parliamentary politicians like you. We

have regional presidents, we have a regional board, and regional committees on subjects under chairs.

[85] **David Rees:** So, the regions are block grant funded, effectively, from the state, plus some contributions from the municipalities. And the elected representatives set policies within those regions.

[86] **Mr Koch—Larsen:** Yes. There is a direct regional election every four years.

[87] **David Rees:** Thank you. And you said you negotiate your block grant. Is there a formula for that, or is there literally a negotiation process?

[88] **Mr Koch Larsen:** It's a genuine negotiation process. It's taking place right now in the month of May. There will be a final agreement in the beginning of June. If you have a look at one of the pages, you will see that regional development is not the most important task of the regions—it's healthcare, for sure. Regional development accounts for only around 3 per cent. If you go to slide number 12, you can see the share between healthcare and regional development. So, that is to say that regions in Denmark, they have two legs, but they're not equally long or strong; the healthcare leg is around 97 per cent, and 3 per cent of the budget is financing regional development. These two budget boxes cannot be merged, which means that we are actually making two negotiations each year, and our association of Danish Regions is taking care of the negotiations with the Government on behalf of the five regions. That's what we're doing right now—so, especially on healthcare, and separately on regional development—separate negotiations.

[89] **David Rees:** Okay, thank you. Jeremy.

[90] **Jeremy Miles:** Could I ask you about the—? One of the issues that we've faced in Wales is that we've had evidence that the structural funds that we've had from the European Union over the years of our membership have not been transformational in their impact on our economy. What has the experience been in Denmark?

[91] **Mr Andreassen:** A very good experience. If you take—I don't know if you've had the chance—. Just recently, just shortly, we sent out a small leaflet that actually pinpoints some of the effects of the regional investments, and you can go to page 22 in our slides, and there is also—. Page 22.

[92] **Jeremy Miles:** It's not on our slide. There's effectively a blank box.

[93] **Mr Koch-Larsen:** Oh, that's unfortunate. If you get any chance of printing—. I don't know if it actually comes up on the screen, but this is a small leaflet that was sent around as well, because some of the same figures are in this leaflet.

[94] **Jeremy Miles:** Okay.

[95] **Mr Koch-Larsen:** You may also turn to pages 23–24, because there is some of the, you could say, visible outcomes. So, in Denmark, we have prioritised to spend all EU funding from the European regional development fund and the European social fund for business development and job creation—purely that. So, that's the entire focus, and that's why we have set up a system measuring the impact of the EU financing. As you see, we're—

[96] **David Rees:** Jeremy.

[97] **Jeremy Miles:** Okay. You said that only 3 per cent of the regional budget is spent on economic development and regional development. Does that include the moneys that you receive from the European Union for that purpose?

[98] **Mr Koch-Larsen:** It does not.

[99] **Jeremy Miles:** Right. So, that's—

[100] **Mr Koch-Larsen:** The amount from the EU is around €50 million a year for Denmark as a whole. So, if you compare it to Wales, that's not so much.

[101] **Jeremy Miles:** Okay. So, it's in addition to that budget line.

[102] **Mr Koch-Larsen:** And that €50 million, it includes ERDF and ESF of 50:50—in total, €50 million.

[103] **Jeremy Miles:** Okay. And the reforms in 2007, have they impacted on the way in which the structural funds are spent? So, were they spent differently previous to the reforms from how they are now?

[104] **Mr Andreassen:** You can say that in the set-up that has been created,

when we move into the growth forums, it's slightly different. There was a need for a new set-up after the reform. So, having bigger units, moving from the 13 or 14 smaller regional county units into a set-up of five regions, that entailed as well the creation of the growth forums and thereby a new structure.

[105] **Jeremy Miles:** Okay. So, the growth forums effectively have become the bodies that spend the EU funding in the regions to which they relate. Is that a fair summary?

[106] **Mr Koch-Larsen:** Yes, that's true, but you may say that legislation on business development and regional development is purely set out according to and fitted to the EU structure of structural funds, and also the set-up of the growth fora from 2007, are a result of the requirements from the EU that they need to include partnership. So, the growth fora are actually at the same time acting as the EU partnership.

[107] **Jeremy Miles:** That's helpful; thank you. And just one final thing. There's also a Danish growth council, I believe it's called, which liaises between the regions and the central state, presumably. How does that work in practice? If there's a regional economic strategy and then a Denmark-wide economic strategy, how does the growth council liaise between the two strategies or make sure the two strategies are consistent? How does that work in practice?

[108] **Mr Koch-Larsen:** In practice, there is no national business strategy. There are regional strategies that are approved by this national growth council.

[109] **Jeremy Miles:** Okay.

[110] **Mr Koch-Larsen:** And each regional business development strategy has to be approved by this council. And normally—I'd say 'always'—they are in line with national politics and national strategies in general, but there is no such thing as a business strategy. There might be a strategy for green growth and there might be a digitalisation strategy, but they're different strategies that, in total, encompass a business development strategy.

[111] **Jeremy Miles:** Okay.

[112] **Mr Koch-Larsen:** I would say it's not been an entire success setting up

this national growth council, because they don't have financial means to carry out any policies.

[113] **Jeremy Miles:** Right; okay. I'm going to leave my questions there because I know another colleague wants to ask questions that may relate to this, but I may come back later. Thank you.

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

[115] **Eluned Morgan:** Can I ask you about the delivery mechanisms? What's the capacity of the delivery bodies in terms of bodies on the ground making sure that you deliver your strategy? What are we talking in terms of numbers of people in each of those areas? If we take the smallest one—if we take Jutland, is it? Northern Jutland. About how many people have you got to actually make this happen?

[116] **Mr Andreasen:** The actual number of people represented, or the number working with the growth fora?

[117] **Eluned Morgan:** So, on those local government bodies, effectively. On the regional bodies, how many people would be employed in the economic development department?

[118] **Mr Koch-Larsen:** I would say from 15 to 30 [correction 30 to 40] persons in total, but very little, actually.

[119] **Eluned Morgan:** Okay, and that would be for a population of about 0.5 million people, yes?

[120] **Mr Andreasen:** Okay, but they would not be administering business development and regional development. They would be the people employed by the regional authority in the regional development department, as such. And then you would have other initiatives, perhaps conducted by the municipalities. You would have people engaged and working together with the growth forum as well, from the different partners. So, all in all, if you talk about the number of people working full-time or part-time, or just being engaged with regional development in one of the smaller regions, then the number is going to be bigger than between 30 and 50 [correction: 30 and 40] people.

[121] **Eluned Morgan:** Okay. And can I just ascertain that the method of

ensuring that projects happen, that what you have is a bidding process and that people bid into the process, or is it more driven from the regions setting out a strategic plan and then people basically being procured to carry out that regional plan? Which one is it?

14:30

[122] **Mr Andreassen:** They're not being procured to carry out the plan. Effectively, you set out the priorities of the region—so, what are the main tasks or the main priorities that we want to fulfil? And then you have a bidding process. So, the projects can actually bid in and say, 'We think we can do this in this respect' and projects are then selected by the growth forum to receive money, both from the regional body, and of course from the EU structural funds.

[123] **Mr Koch-Larsen:** But, actually, you see both types of announcement, because more and more, the regional councils are steering the implementation of the strategy through specific ideas on what is needed for business development. And sometimes they do ask the right organisations, the right educational bodies or labour market representatives, or the right businesses, 'Could you be interested in being behind this kind of set-up we want to make? Would you bid for this set-up?'

[124] **Eluned Morgan:** Okay. And how successful have you been in attracting the private sector to become engaged in regional development? Has that been difficult? In particular, in the rural development area.

[125] **Mr Andreassen:** I can't say, you know, specifically for the rural development area, but the private sector is represented in the growth fora. So, as such, they are partners, as well as social partners and so on. So, you have a number of partners. Let me see if I just have a slide on that; that will give you an idea. If you turn to page 18—and I hope it's not a blank page. On page 18 you'll see the distribution of seats in the growth forum. So, you have six seats for business—private business; six seats for the municipalities; three for the regions; three seats representing the labour market; and three seats for education—so, people from educational institutions. That's kind of the set-up, allowing and ensuring a good partnership between the various sectors of society.

[126] **Mr Koch-Larsen:** As for the projects, very often the projects insist on [correction: the projects have the character of being] business development

schemes. That means that these schemes are entitled to deliver services or provide services to private business. So, the main target is private business. So, in that sense, you include private business. They're not always co-financing the projects, but they're always the final beneficiaries. And that's why we can share with you these figures of 13,000 more new jobs and an increased turnover of £34 billion Danish kroner, as you've seen on pages 22, 23 and 24. So, actually, what we're doing is we are monitoring those private companies that are participating in European projects. After the finalisation of the projects, National Statistics Denmark still follow these private businesses to see what the development of that particular business is. One year after the finalisation of the project, two years after, three years after, they are measuring the development in the number of employees and in turnover. And then, as a control group, you have the same kind of companies, within the same sector, of the same size, to control whether there is a difference between the companies that took part in the European projects, and the companies that did not take part. And what these statistics mean is that we can show that we actually created these 13,000 more new jobs in companies that took part in the projects, compared to the same kind of companies that did not take part in the projects. So, we monitor several years after the companies have participated in these projects for business development. This is required to monitor the outcome.

[127] **Eluned Morgan:** Okay. Can I ask you what aspect of investment has produced the best results? We have been told, for example, by academics that the most notable success usually, in terms of regional policy, is if you invest in education and in people—that that gives the best results. Is that your experience as well?

[128] **Mr Koch-Larsen:** [*Inaudible.*] Human resource development, education and skills development, that's what our impression is. That gives the most value for money. We have a figure in the leaflet, on page 7, if you also want to look at it. It is the estimated number of jobs created through these interventions. Especially within education and skills development, you see a high number of created jobs. Almost half of the jobs are created within there. That means through the European social fund, of course.

[129] **Eluned Morgan:** Can you remind me what the balance is between ERDF and the social fund? What is it, about 40:60? I can't remember what it is now.

[130] **Mr Koch-Larsen:** Okay. The European social fund are interventions towards individuals and regional development fund towards enterprises.

[131] **Mr Andreassen:** How much are we getting? Social fund—

[132] **Mr Koch-Larsen:** Well, 50:50, so €25 million from each fund every year.

[133] **Eluned Morgan:** Is that true for the rural development funding as well?

[134] **Mr Koch-Larsen:** No. Rural development funding is, unfortunately, out of our hands. It is handled nationally and is taken care of by the ministry of agriculture and food, which means that we don't have a lot of influence. The regional politicians are members of the LAGs, the local action groups, in their areas, but that's only a small part of the budget for rural development. For the rest, it's mostly for nature preservation.

[135] **Eluned Morgan:** And in an ideal world, would you prefer to see that being run by the regions as well?

[136] **Mr Koch-Larsen:** Of course. [*Laughter.*]

[137] **Eluned Morgan:** Good, thank you.

[138] **David Rees:** Jeremy.

[139] **Jeremy Miles:** Can I just clarify what is included within the regional development budget that you've talked about? On the slides, page 12, you've got the 97 per cent and the 2.7 per cent figures between healthcare and regional development. Then, on page 14, you include, within the regional development tasks, education and culture, but presumably we aren't referring to education as in the provision of schools there, are we? That's a different kind of—

[140] **Mr Koch-Larsen:** It certainly is.

[141] **Jeremy Miles:** I'm sorry?

[142] **Mr Andreassen:** Yes, it is. I mean, it's not public schools or anything, no, or even secondary schools; it's the fact that regions do have some monitoring tasks towards education, primarily on upper secondary and tertiary education.

[143] **Mr Koch-Larsen:** On slide 26, you'll actually find what the regions are spending money on within education.

[144] **Jeremy Miles:** Okay. That's very helpful; thank you. And then lastly, on page 16 of the slides, there's a breakdown of the regional development budget, and most of that is spent on public transport. So, that's all within that 3 per cent figure, is it? So, half of that 3 per cent, more or less, is spent on public transport. Is that the only source of public transport funding or is there money coming from the central state as well, or from the risk penalties?

[145] **Mr Koch-Larsen:** This is why we call it regional public transport. Regional public transport is transport that is cross-bordering municipalities. So, the transport within a municipality is financed by the municipality.¹

[146] **Jeremy Miles:** Thank you. That's helpful.

[147] **Mr Koch-Larsen:** And it's designed—[*Inaudible.*]*—national state—[Inaudible.]* [Correction: And railways are additional to local and regional public transport.]

[148] **Jeremy Miles:** Thank you very much.

[149] **Mr Andreassen:** [*Inaudible.*]*—please see the slide on page 16. You can also see that we have approximately €400 million as an annual regional development budget. On top of that, there are the €50 million for structural funds. So, that gives you that ratio between the total regional budget and what we actually receive in Denmark from the structural funds, which is a little more than one tenth of the total budget. So, it's not a lot—just to give you some idea of comparison.*

[150] **Mr Koch-Larsen:** As I told you, the EU money is purely co-financing activities within business development. The regions also have their own budget for business development, which accounts for around €70 million a year. So, you could say that, for business development, the total is around €120 million.

[151] **Jeremy Miles:** Thank you.

¹ Eglurhad/Clarification: Passengers—that is, tickets—finance approximately half of the cost of public transport.

[152] **David Rees:** Can I ask for clarification? You've answered Eluned Morgan's question relating to that deal, saying that the rural development fund is totally controlled by the Danish government and that the ERDF and ESF are allocated to the regions. Can I just confirm that the €50 million that you identified is all the European structural funds received by Denmark? Or does the state keep something back?

[153] **Mr Koch-Larsen:** The state keeps a little bit of it back. That's true. We have, as everyone has—. We have a national fund, which accounts for 7 per cent of the funding. Besides that, there is this ring-fenced funding for sustainable city development, I think, that accounts for 5 per cent. I would say that this is [that the regions have] around 85 per cent of the total funding for Denmark. Around 85 per cent.

[154] **David Rees:** Thank you. Steffan Lewis.

[155] **Steffan Lewis:** Thank you. I want to go back to the relationship between central government and the regions, particularly the annual negotiations on the fiscal frames, or the financial frames. I wonder whether you could talk us through how those negotiations tend to go. Do they hit a stalemate, or are they pretty mature negotiations that end with everyone happy at the end? How would you characterise the process?

[156] **Mr Andreassen:** I think you can say that, normally, they don't come out of the meeting room with the ministry of finance having smiling faces, neither from the regional side or from the state side, simply to show that they're not quite satisfied—none of them. I think that's more of a political game than anything else. It depends, from year to year. Sometimes we are quite satisfied indeed, and, in other years, we don't really obtain as much as we want to. But it's very small; you're not dealing with a huge amount of difference from year to year. So, everything is not up for negotiation. There are, of course—if you have a budget of more than 100 billion Danish krone to spend for hospitals, [correction: hospitals gives some room for negotiation, but] the vast majority of that amount of money has to go on to the next period [correction: go on fixed activities]. Otherwise, you simply don't run the country. So, it's small bits that are up for negotiation.

[157] **Steffan Lewis:** The regions negotiate together. Is that true, or do the regions negotiate separately with the ministry for finance?

[158] **Mr Andreasen:** Well, the whole point of having an association like Danish Regions is that we can negotiate on behalf of the regions. So, it's actually negotiation that is all the regions together facing whatever requirements or wishes the regions may have. So, it's all the regions together.

[159] **Steffan Lewis:** In the event of there being—. Sorry, you carry on.

14:45

[160] **Mr Koch-Larsen:** I just wanted to add that, of course, regional development is something that is only a very small share of the entire budget. Then, of course, the negotiation on regional development does not account for a lot. Very often, actually, the only result is a general text on the regional development continuing, like today. There is very little negotiation on the money for regional development.

[161] What is on the agenda this year is that the Government cuts 1 per cent off the grant for business development every year, and we want to stop that.

[162] **Steffan Lewis:** And what happens in the event of there being no agreement? Is this a process that's set out in statute, where there has to be an agreement within a certain time frame, and, if not, then it goes to independent arbitration, or the Minister for finance has the final say? What would happen if you were all playing poker and everyone runs out of chips?

[163] **Mr Andreasen:** Has that ever happened? I am wondering. There is a deadline.

[164] **Steffan Lewis:** I would take any ideas.

[165] **Mr Andreasen:** Thanks.

[166] **Mr Koch-Larsen:** I would say that, in general, the regions do play the role of being more positive than municipalities. I don't know why. Healthcare is a very big factor in national politics, which means that healthcare responsibility is very important, and there will always be some money for healthcare. The municipalities have a broader variety of responsibilities, which means that they can more easily prioritise between the tasks. So, the municipalities this year have a harder job in obtaining additional funding. So, a few years ago the municipalities refused to sign the agreement, but then

what happened was that they extended the negotiation period and, within two weeks, they finally agreed also. Normally, the regions conclude before the municipalities.

[167] **Steffan Lewis:** I wonder if I can come back to the point again on—it's interesting that you have healthcare at a regional level that's tied into regional policy. I wonder if you could explain to us how that came about, presumably from the 2007 reforms—why it was seen as so important to put regional policy and healthcare together. Was it just a matter of scale?

[168] **Mr Andreasen:** The regions, even before, when they were counties, always had the responsibility for managing the healthcare and the hospitals. So, that went years back and had nothing to do with the reform. The reform was really to create bigger entities for economies of scale, especially also on the healthcare sector. So, those were the reasons. Healthcare has always been the vast majority of the regional budgets, even back in the 1970s and so on. So, yes, that's really been the big issue for the regions always.

[169] **Mr Koch-Larsen:** But, especially after 2007, there was a general agreement that the hospital sector needed budget changes and structural changes, meaning merging hospitals, closing down some hospitals, making bigger departments in the hospitals, closing down emergency centres, which were very unpopular decisions to make, of course. So, I think national politicians never really thought of taking that task to become a national task—the hospitals. They actually wanted this distance for those decisions—unpopular decisions—to be taken.

[170] **Steffan Lewis:** That seems to be a common thing across health policy across Europe. Just finally from me, obviously the Danish state includes the regions that you represent, but also the autonomous countries as well—so, the Faroe Islands and Greenland. I wonder if you could shed some light on how they do regional development, and the differences between the regions that you represent and their approach. I presume they have their own bilateral relationship with the Copenhagen Government.

[171] **Mr Andreasen:** Yes. We actually know—at least, I don't know much about it; I don't know about you, Michael—obviously, they have their autonomy in the Faroe Islands and Greenland as well for that state. Even though, in some publications, I know they figure as regions belonging to Denmark, and being part of a Danish regional level, in real life there is nothing that compares the five regions in the territory of Denmark with the

kind of regional development you see in the Faroe Islands or in Greenland for that matter.

[172] **Mr Koch-Larsen:** They are purely autonomous decisions that they take, and it's not co-ordinated with initiatives in Denmark.

[173] **Steffan Lewis:** Thank you.

[174] **Mr Koch-Larsen:** They also have annual—. I don't know if it's annual or—. But they have, of course, economic negotiations about the state grant that they receive from Denmark, but, from then on, they can prioritise the grant as they want.

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

[176] **Jeremy Miles:** Apologies, it may be that I didn't hear the answer because the line isn't hugely clear, but did you say in answer to the question whether there's a statutory basis for the funding negotiation? Is there a statutory basis, or is it an administrative negotiation for the annual funding?

[177] **Mr Koch-Larsen:** It's laid down in an Act.

[178] **Jeremy Miles:** Okay, thank you.

[179] **David Rees:** Can I ask a question? Economic prosperity is critical to the regions, particularly here in the UK, and particularly here in Wales. And you represent five regions, and I see, on page 25 of your presentation, there are clear variations as to the amount spent on different areas. But there is a lot of similarity in those areas across the regions. How do you address competition between the regions?

[180] **Mr Andreassen:** We, from the association of Danish Regions, don't really address it. We have to be very careful not to give priorities to some regions at the cost of others. So, therefore, we don't do so much from the association side. Of course, between the regions, they do look at themselves and ask, 'Why can't we do it just as good as our neighbouring region?' But, on the other hand, they're very much aware of the fact that conditions in the Copenhagen region are very different to conditions in the northern part of Jutland—the size of companies and the size of population and so on, the level of education of the population. So, the differences are big and, therefore, they try to focus on the points of strength that they have in each

region, instead of trying to compete within the same areas. And I think the slide and points on page 25 show quite nicely what the different areas are in which the different regions actually invest.

[181] And just to come back to a previous question of what areas are best to invest in as regards education, but, apparently, from the slide on page 25, you don't see this included. We expect all regions then to invest massively in education, but this is actually not what is happening. They try to see where the points of strength are and this is where they are investing most. There are a few other slides that show some of same data actually. In our leaflets, on page 4, there is another map with some red dots, and there you can see that, for example, tourism is a major issue in one region, and creative design and industry is a major issue in another region. So, they are different.

[182] **David Rees:** So there's a recognition, an informal agreement effectively, of co-operation and working together.

[183] **Mr Andreassen:** It's informal if it is anything, and what they try to do is they try to draw on each other's resources, to say, 'Okay, if you've got a good idea there, can we perhaps use it somehow? Do we have the competence to use it, or is it not for us?' It's very hard, for example, to say in the region of Zealand, where they have the lowest number of universities. If they don't prepare themselves and come to a region where they have a lot of universities, they will have a problem.

[184] **Mr Koch-Larsen:** One interesting thing that happened recently is that all regions, they agreed on opening up their regional schemes for businesses from all over the country. So, if you have some kind of initiative for the maritime industry, then the maritime industry from all over the country could apply to become a member of this initiative, even though it's initially from only one region and financed by only one region. So, there is huge co-operation between the regions.

[185] **David Rees:** So, there is a big partnership existing.

[186] **Mr Koch-Larsen:** Yes.

[187] **David Rees:** Michelle Brown, did you want to ask—?

[188] **Michelle Brown:** Thank you, yes. Absolutely, it leads very much on from what you've just been saying. I just wondered: how do you balance the

different interests of the different regions when you're coming up with—? I'm wondering whether you come up with a common negotiating position when you're negotiating the grant with central Government. How do you go about doing that, and how do you balance the interests of the different regions, which are going to be slightly different?

[189] **Mr Andreassen:** How's that actually done? We have a board in Danish Regions, and, of course, it'll be where all the regions are represented, and that is a local board, and, during the negotiation process, they do meet a little more often than usual. So, there is a chance to co-ordinate things. And I think there is a—. What we do is we don't negotiate in detail, so it's really the grand amounts for the different areas, for health and for regional development. Those are negotiated. And then, how do you spend them, how are they distributed between the regions, that comes in the phase afterwards. That's not actually included in these—not as far as I know. Or are they?

[190] **Mr Koch-Larsen:** No. There is a key of distribution of the state grant.

[191] **David Rees:** Okay?

[192] **Michelle Brown:** Okay.

[193] **David Rees:** Any other Members got any other questions? Before I ask finally, can I just ask you one final question? Based upon your experience to date, are there any areas you would think do not work, rather than those that do, because, clearly, if you are developing policies, you want to identify the pitfalls that might exist?

[194] **Mr Andreassen:** Hmm. [*Laughter.*] You see, that takes some reflection.

[195] **David Rees:** Well, rather than giving us an answer now, perhaps you'll send us a note with something, if that's easier for you. Because, clearly, we're looking at best practice across regions across Europe, and perhaps across the globe, and we always look at best practice, but it's sometimes also important to notice when poor practice exists so we know what not to do, in one sense. So, if you have some areas that you think perhaps didn't work and you want to reflect upon that, please let us know.

[196] **Mr Koch-Larsen:** If I can, I'll check with colleagues. What really works well is that we co-ordinate the effort from the social fund and the regional

development fund and the regions' own funds. That is, three funds, and the prioritisation of these three funds, are done in the same body, within the regional growth forum, which includes all partners. So, that's really strong, and you get very focused spending of all the funds that are available for regional development, and that can only be done, I think, through the fact that, in Denmark, these two EU funds are administrated in the same ministry. So, they have the same perspective—business development and job creation as their only goal. If you have one ministry of business and another of, I don't know, it could be a labour market or an industry or something, they would have different goals. That are even more difficult [Correction: That would be even more difficult to co-ordinate.] And, as I told you, we had difficulties in aligning the effort from the rural development fund, partly because these decisions are taken in another ministry. Going across ministries is really difficult, and that is what the regions can do; they can go across sectors.

[197] **David Rees:** Okay, thank you. Eluned Morgan.

[198] **Eluned Morgan:** Could I just ask you one more question? Have you broken down how much it costs to produce a job? You've got an analysis here—13,500. How many euros would that be per job? Have you got that information somewhere? If you could send us that, I think it would be very useful.

15:00

[199] **Mr Koch-Larsen:** [*Inaudible.*]

[200] **Mr Andreassen:** It would be less, I hope. Are we're talking about forty or more—²

[201] **David Rees:** Perhaps, to clarify—

[202] **Mr Andreassen:** —€60,000?

[203] **Mr Koch-Larsen:** Essentially.

[204] **Mr Andreassen:** Okay. Sixty thousand euros, but that seems a lot.

² Eglurhad/Clarification: €40,000 to €53,000 per job created.

[205] **Mr Koch-Larsen:** Sixty thousand euros. That's true.

[206] **Eluned Morgan:** Sixty thousand euros per job?

[207] **Mr Koch-Larsen:** Yes, per permanent full-time job.

[208] **Eluned Morgan:** That's a lot of money.

[209] **Mr Koch-Larsen:** It's an expensive country.

[210] **David Rees:** Can I ask you: is that 60,000 krone or €60,000?

[211] **Mr Koch-Larsen:** Unfortunately, euros.

[212] **David Rees:** Okay. Thank you. [*Laughter.*]

[213] **Eluned Morgan:** Wow. Thank you.

[214] **Mr Andreassen:** So, when you get to the—[*Inaudible.*—that might be an answer to your question just before: well, it doesn't work. That may be the amount of money that is spent creating one job for us, and we have to just check that figure. But if you then look at it in the long run, because welfare benefits in Denmark are also immensely expensive and costly for the Government—so, if you can just get one person out of unemployment and into a job, that's going to pay off in the long run.

[215] **Mr Koch-Larsen:** And he will pay taxes on his income. So, it generates within less than two years.

[216] **Eluned Morgan:** So, the welfare benefits you would get if you were unemployed are about €30,000, are they, a year?

[217] **Mr Andreassen:** No, no.

[218] **Eluned Morgan:** How much, then? About how much—€15,000?

[219] **Mr Andreassen:** Fifteen thousand euro—I don't know, I think—. Well, that depends what kind of job you were in beforehand. It also depends on your family situation, if you get, say, free access to kindergarten for your kids, or nursery or something. So, you have a number of factors that will influence that. Yes. There's been debate in Denmark as to whether it's

actually better to be unemployed sometimes or if it actually pays to have a job. So, for the lower salaries, you are perhaps within a boundary where you could discuss, for some people, whether actually it pays for them to have a job or not.

[220] **David Rees:** Thank you. Any Members got any questions? No?

[221] **Eluned Morgan:** Just one more thing. What's the minimum wage in Denmark?

[222] **Mr Andreasen:** There is no minimum wage by law. It's a negotiated wage, and we say it's what, maybe €15, €17 [correction: €15, €17 per hour]?

[223] **Mr Koch-Larsen:** [*Inaudible.*]

[224] **Mr Andreasen:** [*Inaudible.*] That's going to be probably a little more than €2,000 a month.

[225] **David Rees:** Okay.

[226] **Eluned Morgan:** Thank you.

[227] **David Rees:** Thank you for that. Can I also thank you both, Michael and Asger, for your evidence this afternoon? It's very appreciated. It's been interesting to understand how Denmark is operating, and the regional development in Denmark. So, thank you very much for your time. Thank you for the presentation as well. We'll be putting it on our website. You will receive a copy of the transcript. If you find any factual inaccuracies, could you please let the clerks know as soon as possible so that we can get them corrected? So, once again, thank you very much for your time this afternoon.

[228] **Mr Koch-Larsen:** Thank you.

[229] **Mr Andreasen:** You're welcome. Thank you.

[230] **David Rees:** We are now moving again to have our next break before we go on to the next session. But, before we go on to the next session, I just remind Members that this was the last session on regional policy. We now move into the following sessions on the great repeal Bill, and we start off with the witnesses from the academic world, and then we finish off with the Minister for finance and local government this afternoon. Thank you. We'll go

into break.

*Gohiriwyd y cyfarfod rhwng 15:04 ac 15:20.
The meeting adjourned between 15:04 and 15:20.*

**Ymchwiliad i Fil y Diddymu Mawr a'i Oblygiadau i Gymru—Sesiwn
Dystiolaeth 1
Inquiry into the Great Repeal Bill and its Implications for Wales—
Evidence Session 1**

[231] **David Rees:** Can I welcome Members back to the next session of this afternoon's meeting of the External Affairs and Additional Legislation Committee? We now move into our inquiry into the implications for Wales of the great repeal Bill and the White Paper that was published by the UK Government prior to the dissolution of Parliament. Can I welcome Professor Bell, Professor Craig, and Dr Hunt this afternoon? Would you like to introduce yourselves and your professional status, in a sense—who you're representing?

[232] **Dr Hunt:** I'm Dr Jo Hunt. I'm a member of Cardiff Law School and also Wales Governance Centre at Cardiff University.

[233] **Professor Craig:** Professor Paul Craig, from St John's College, Oxford.

[234] **David Rees:** Professor Bell.

[235] **Professor Bell:** John Bell from the faculty of law, University of Cambridge.

[236] **David Rees:** Thank you very much. Your input has been very helpful to date. I know that you have also presented evidence to other bodies in the UK that have taken an interest in the implications of the decision to leave the EU. Perhaps I can start the first question before I move on to my colleagues, and ask for your initial thoughts on the White Paper and the likelihood, in your view, of having a draft Bill post general election, or whether we will be moving straight into a Bill post general election. Anyone want to take it up? Professor Craig.

[237] **Professor Craig:** Thank you. I think the White Paper has quite a lot in it, and I also think there's a lot that is actually not touched by the White

Paper. I think one gets that sense when one juxtaposes the White Paper to the report of the House of Lords Constitution Committee on the great repeal Bill, and that report gives a wealth of analytical detail and goes into a whole range of issues that the thinner—and I mean that merely descriptively—White Paper does not touch. It seems to me that pretty much everything contained in the House of Lords Constitution Committee report will have to be addressed in one way or another in a Bill or draft Bill that comes before Parliament post the election.

[238] **David Rees:** Thank you. Professor Bell.

[239] **Professor Bell:** If I can just take two points, at the end of the paper it is extraordinarily thin on the devolution aspects in that it's not very clear to which type of Ministers powers will be devolved in the great repeal Bill itself. I think that is an important question that needs sorting out—precisely who gets the powers when various issues of, currently, European Union law are repatriated.

[240] The second thing that I think is important in the White Paper is the fact that there will not be one Bill, but several. They've already identified that customs and immigration will have to be dealt with separately. Given the timetable for funding, things like agricultural funding could wait until 2019, because they've got bridging finance for 2019–20. So, there may be a number of areas that are not going to be covered in the great repeal Bill, and that is certainly something to watch.

[241] **David Rees:** Dr Hunt.

[242] **Dr Hunt:** Just to reiterate things that we've already heard: that it is a thin document. There are things that perhaps we'd have expected to see in there that we don't see in there. In relation to the interaction with the devolution settlements, there's very little information about these common frameworks that are highlighted that will be replacing the current EU frameworks, and that the UK legislator will sort of stand in for the EU in these places. In terms of the exercise of delegated legislation, it's not necessarily clear, when it talks about devolved legislation, whether it's referring to legislation that has been actively passed at a devolved level, or that could be passed at a devolved level. There are a lot of things that are not explicitly articulated here.

[243] **David Rees:** Thank you. Obviously, several Members have questions. If

I move on to Steffan first, because he asked questions in relation particularly to the devolved issues. Steffan Lewis.

[244] **Steffan Lewis:** Thank you, Chair. You mentioned the lack of detail in chapter 4 of the White Paper particularly, which relates to devolved functions. Paragraph 4.2 in particular I think is insightful because it tells a story of how the UK Government is interpreting current arrangements. I just wondered whether you felt that that was a complete and accurate reflection of how European frameworks are negotiated at the moment, and applied. Specifically, the suggestion in paragraph 4.2 is that

[245] ‘the UK Government represents the whole of the UK’s interests in the process for setting those common frameworks and these also then provide common UK frameworks, including safeguarding the harmonious functioning of the UK’s own single market.’

[246] That isn’t really quite true, is it, how that operates in practice when it comes to the Council of Ministers negotiations?

[247] **David Rees:** Dr Hunt first, and then perhaps we can go back to Professor Bell.

[248] **Dr Hunt:** Absolutely. One reading of this gives an image of participation in those law-making processes being taken—it’s the UK Government that participates, and it’s simply an act of implementation on the part of the devolveds following up on that. We know that the devolved administrations—the devolved bodies—are involved in very many other ways in terms of both feeding through the UK Government line, and also participation in the JMC Europe, but also the more direct engagements that the devolved bodies—the devolved nations—might have. So, we know that there are MEPs that are representatives there from Wales that participate in law making; also, the critical role that has been played by some AMs when they’ve been representatives on the Committee of the Regions, and the importance of the networking that goes on. What it fails to capture is a lot of that institutional but perhaps more informal networking and that important region-to-region sort of networking that might take place, and those opportunities for the devolveds to feed in. So, there’s the formal—both direct and indirect—ways that the devolved nations are involved in law making, but also the informal processes that simply aren’t captured there.

[249] **David Rees:** Professor Bell.

[250] **Professor Bell:** I think Dr Hunt is absolutely right about the informal [correction: informal side of the European legislative process], but there is also the very important point that European legislation is slow in its development and is based on the model of consensus building, which is radically different from the winner-takes-all model that the Westminster Government operates with the Westminster Parliament. So, it is that consensus building across the Committee of the Regions, the European Economic and Social Committee, the Parliament and the Council of Ministers that is not going to be in any way replicated in the very quick process of legislation that is envisaged in the great repeal Bill. What it is thinking of doing—and the model it's got in its head—is that the European legislation remains unchanged when it comes back, and that is not actually going to be the case, because there are a number of critical policy decisions that may need to be made in a number of areas. And then the question is: how does that get done? Is it done by the Westminster Government, essentially, with powers delegated from the Westminster Parliament, or does it involve the other potential lawmakers in that field?

15:30

[251] **David Rees:** Professor Craig, would you like to add anything?

[252] **Professor Craig:** Thank you. Two points really: one of which is a temporal point and one of which is a substantive point. In temporal terms, it seems to me that, howsoever the relationship has worked in the past with ideas feeding in from the devolved legislatures and governments into the UK policy in these areas—however it's worked in the past doesn't necessarily provide a sure guide as to how it's going to work in the future. What I mean in this respect is that there's already quite a lot of evidence out there about tensions within JMC Europe in terms of the extent to which Westminster is taking seriously the views of the particular devolved administrations. And we've seen quite a bit of that, which has become public, as it were, in one way or another. And it seems to me, therefore, in a post-Brexit world—the idea that there's going to be a simple commonality of view about the way in which these common frameworks should be resolved or dealt with moving into the future does not seem to me at all apparent. And therefore, when you've got this magic phrase at the end of 4.2,

[253] 'allowing these rules to be set here in the UK by democratically-elected representatives',

[254] it's wonderfully ambiguous, and I think intentionally so, about precisely who the democratically elected representatives actually are who are going to be making those determinations. I think that, probably, that's reflective of disagreement or tensions at the Whitehall level about exactly how much is going to be done in Westminster and how much is going to be actually allowed to the regions.

[255] **David Rees:** Dr Hunt, do you want to come back?

[256] **Dr Hunt:** Yes. I just wanted to follow up on—again, just to highlight one of those things that is missing at this point: there's no specific reference in this chapter to the concept of subsidiarity. And if we look at the EU's constitutional principles, we understand how it proceeds. Subsidiarity is one of those principles against which legislation can be tested, and it runs through the activities of the European Union. We have no similar constitutional principle that works outside of that at a UK level. So, again, when these powers are brought back, when those processes are brought back, there are things that are guaranteed and entrenched as far as European Union governance is concerned that we don't have at a UK level.

[257] **Steffan Lewis:** You've pre-empted my second question, which was the ending of paragraph 4.2, in that it refers to allowing rules to be set here by democratically elected—. I suspect the councillors of Blackwood Town Council won't be the ones setting the frameworks. But I wonder—you make a valid point; I think there's consensus in terms of the difficulty in getting the common frameworks agreed. Based on what has been revealed by UK Government so far, do you think that the common frameworks for the governance of the UK's internal market are likely to be set for the foreseeable at Westminster level, with consultation, perhaps, with devolved administration, but that we certainly won't go to a model of shared competence, say, on a common agricultural framework for the whole of the UK?

[258] **Professor Craig:** Well, I think 4.2 does need to be read with 4.3, and 4.3, I think, on my reading—I can see that it might be taken in another way, but my reading of 4.3 is taking the ambiguity of the last line of 4.2, and giving it a Westminster-type spin, if you see what I mean. How I read 4.3, is: 'We need common frameworks in a number of these areas'. Then, the subtext for me is: 'those common frameworks are going to be substantively common and are going to be decided predominantly at the Westminster

level’—yes, with consultation with the devolved regions, but I think with Westminster in the driving seat. That’s how I read 4.3.

[259] **David Rees:** Professor Bell.

[260] **Professor Bell:** Just to take that point on a bit, the great repeal Bill is written with the background that there are three different processes that have got to go on, not necessarily at the same time. The first is withdrawal from the EU, the second is to manage a transition and the third is to create a long-term relationship. What is not clear from the way the White Paper is drafted is whether it is really focusing on the transition, namely the common frameworks that we have to have in place by the end of March 2019 in order to manage the day-one problems that will come up, or whether it’s a long-term solution.

[261] I think, if we’re looking at the day-one problems—the transition and the withdrawal—then it is much more likely to be resolved at Westminster, simply as a matter of timing, because, as Professor Craig pointed out, there is otherwise a lot more discussion that needs to go on about how you deal with the long-term implications. And that is why I mentioned earlier that areas like agricultural subsidies and so on might well be parked and don’t need to be handled by day one. They could be parked because of the Treasury’s agreement to pay 2019–20—that they could be dealt with post Brexit. And so, I read the consultation paper very much as ‘how to deal with the transition; how to get to day one’.

[262] **Steffan Lewis:** I just wonder, though, doesn’t that—? What usually happens in the absence of a proper written constitution in the UK? Isn’t it usually that how we start things off is how we go along until some incremental change leads us somewhere different? So, we might end up, in 30 years’ time, with a UK council of Ministers that sets UK frameworks for the governance of the UK’s internal market, but because we started off on day one, where Westminster was solely responsible for the UK’s internal market, that’s how it will be for a generation. Wouldn’t that be a fair assumption to make?

[263] **Professor Craig:** It may be. But I think it’s also the case, as Professor Bell was saying, that one does need to disaggregate different stages of this process that’s going to be taken up or contained within the great repeal Bill. I think it’s important to just put on the table the fact that, other things being equal, unless the substantive legislation—the Government of Wales Act, the

Scotland Act et cetera—is modified in some way or amended in some way, the effect of that legislation is that, post Brexit, the matters that are within your competence remain within your competence. What that means is that, in a post-Brexit world, if a matter remains within your competence, unless there's an amendment, then you change—or not change, or adapt—your law in any way you wish.

[264] So, to take an extreme example—perhaps it's not an extreme example—if there are regulatory provisions on topic X—and those regulatory provisions on topic X are the ones that EU law stipulate—if you think they're great and you want to continue with those regulatory provisions and they're within your devolved competence, then you're allowed to do that. And, short of any amendment to the Government of Wales Act that would alter your competence in that regard, then you continue to be able to do that, subject to, of course, the trump power—excuse that term—that exists within the Government of Wales Act, which allows Westminster to pass legislation notwithstanding the fact that it's within devolved competence. So that, as it were, forward-looking area about what you can do, post Brexit, needs to be disaggregated, as John said, from the transitional issues about who does what, to ensure the absence of a black hole and a smooth transition at the time when we exit.

[265] **David Rees:** Professor Bell, do you want to add to that?

[266] **Professor Bell:** I very much agree with that analysis, but I think the difficulty is going to be that to manage the transition is going to require a lot of working together of the different administrations, and it probably will be at executive level and civil service level in order to identify where there will be difficulties, because if we take any piece of European legislation, there are three options you have with regard to any provision. One, it falls by the wayside; it is automatically repealed by the fact of our withdrawing from the European Union. So, if it gave powers to the European Commission or it required reporting to the European Commission, it goes anyway. Or it might well need editing to give competence to an appropriate Minister at devolved or Westminster level, or to make adjustments in some way. Or there may be, thirdly, choices of policy that have to be made about whether we continue this or not, and it's at that third level that the need to work together most comes, even if we're working on transition, because there's a policy choice to be made about whether you want this particular thing to continue or not.

[267] **David Rees:** Dr Hunt, do you want to add?

[268] **Dr Hunt:** I think it's a fair comment, the idea that these transitional arrangements may end up being something more than transitional. And if these powers are—. The White Paper talks about the UK Government replicating what we already have, but acknowledges within that that that might not be a mirror-copy image, a photocopy image of what currently exists under EU law, and that there may be policy choices that operate even before that Brexit moment. If we take something like the common agricultural policy, at the moment there is a policy commitment coming from the EU that farmers are subsidised, that farmers are paid in return for them keeping their land in good environmental and agricultural condition. Now, do we continue that commitment? Is that the basis on which we're going to go forward for a Welsh model, a UK-wide model? Are these things contingent—? You know, is there scope for change? Looking to the future, when do those policy decisions get taken? Is there within what's suggested here, even though they talk about replicating frameworks, and—? Could that be done before the Brexit moment and to come into effect once we've left, or is it only going to kick in, is that only going to become possible after we've left, and who's going to be making those decisions? The critical issue is of funding. Funding can't be separated from regulatory requirements as well. They live together; they feed off each other, and so they are—. Whilst we could park some of those elements, we're still going to have to make regulatory decisions relating to them.

[269] **David Rees:** Okay, Steffan?

[270] **Steffan Lewis:** Thank you.

[271] **David Rees:** Suzy, on this point?

[272] **Suzy Davies:** Yes, it is on this point. Apologies for being late, so if you've covered it, I am sorry. But it seems to me that you're suggesting, Dr Hunt, we need to be talking about that now, rather than taking a pragmatic approach and saying we can make changes after Brexit day, if you like. I think you were advocating a pragmatic approach rather than a constitutionally pure approach in order to deal with transition. Am I understanding that correctly? And if so, if we do that, is there not a risk that once you've established a framework, which is what Steffan was talking about, it's very difficult for one individual component part of that framework to back out just because they've changed their mind at a later date about something? So, sorting stuff out beforehand is what we should be thinking

of, rather than saying, 'Oh well, here's our framework, we'll change it in three or four years' time when we've decided what we want to do with it.' Have I got that right?

[273] **Dr Hunt:** I think there needs to be—. You know, there's a chance that things get locked in with these transitional arrangements and agreements, and if these powers are held in Westminster and Whitehall, they may be quite difficult to unsettle and unseat. There needs to be discussion around that and debate around that now. And we know that—. Well, there's a suggestion that there's going to be a piece of agricultural legislation coming that will connect with environmental legislation, and we just don't know how much of that will be a straight replication. It talks about replicating common frameworks, but it also acknowledges that within our delegated legislative actions that might be necessary, there could be some policy changes in there.

15:45

[274] Leaving the EU will have policy consequences, or create opportunities for policy consequences to flow through, so because we don't yet know, we should be alert to what might happen and what might be coming through in the sectoral legislation as well as the great repeal Bill.

[275] **Suzy Davies:** Thank you.

[276] **David Rees:** Professor Craig.

[277] **Professor Craig:** Just to clarify, my last comment was not intended to be purely, as it were, pragmatic in its orientation. It was just merely trying to say, 'When we are focusing on what is going to happen, let's keep clear two crucially distinct stages.' One is the stage that the great repeal Bill is primarily concerned with, which is ensuring there is not a black hole, and ensuring there is smoothness of transition at the date when we leave, and making the changes that are necessary in anticipation of that leaving date. That's all one part. Another part then is who has power to do what in particular substantive policy areas thereafter. And my point about the latter was merely to emphasise that, in Wales, you retain the power that you have under the Government of Wales Act 2006, pursuant to Schedule 7 et cetera, to pass Assembly Acts, subject to the exceptions. And if an area of devolved policy then comes back to Wales because it falls within Schedule 7, and isn't knocked out by any of the exceptions, then my point was actually a

substantive constitutional one, which is that you continue to retain that plenary legislative authority, subject to Whitehall's residual power to enact legislation notwithstanding the fact that it's within your competence, and you can make those determinations.

[278] Anything about these common frameworks moving forward—. Anything about those common frameworks that would run contrary to the fact that an issue is *prima facie* within your competence would, or could only be pursued legally, on my understanding, if the requisite legal changes were made allowing for Westminster to have, as it were, purchase within your area of a kind that it doesn't presently legally have.

[279] **Suzy Davies:** I fully understand. Thank you. I'll just leave it there, Chair. I could ask you something else, but I won't.

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

[281] **Mark Isherwood:** I think you've largely answered the question I was going to ask. Just in layperson's terms, let me get this right: notwithstanding what I think Professor Craig referred to as Westminster's trump card, all powers and competencies in respect of Welsh devolved matters currently held at European level will, on the stroke of midnight on the day of Brexit, pass to Wales, unless some action is taken to overrule that. In which case, would not UK single market frameworks have to be agreed?

[282] **Professor Craig:** I think that UK single market frameworks would have to be agreed. I am not denying that. What I am suggesting is that the law always provides, to some extent, a framework within which political argument takes place. How tight or loose the framework is depends upon the nature of the laws. All I'm saying is that, clearly, you'll need a single market framework, but the laws provide the foundation for what the starting point of those political negotiations are. If the laws provide, as they do, a starting point whereby you have competence over these issues, then that's at least something to take to the bargaining table, which might well affect the shape of the subsequent negotiations.

[283] **Mark Isherwood:** Thanks, Chair.

[284] **David Rees:** Jeremy.

[285] **Jeremy Miles:** I hope the UK Government Ministers are listening to the

evidence you've just given, Professor Craig, because when I put it to the Minister of State that the obiter comments in Miller represented the reality of the situation, he refused to concede that on more than one occasion. So, I'll leave that on the record for now.

[286] I'd like to ask about the powers of Ministers to amend legislation, to conform then, if you like, to new arrangements after Brexit. And the intention is that UK Ministers will have those powers for UK-wide legislation, but there are comments to the effect that Welsh Ministers will have powers in line with those to affect devolved legislation. And it's really the point that you were making, Dr Hunt, about what comprises devolved legislation. If that means no more than legislation that has already been passed by the Assembly, then, surely, there would not need to be a provision in the great repeal Act to provide Ministers with that power. So, it must envisage something larger than that, mustn't it?

[287] **Professor Craig:** Do you want to go first?

[288] **Professor Bell:** I would have thought that there must be a whole range of things that fall from the European straight down to the Welsh or Northern Irish level. Because, at present, there are large ranges of provision that are operating—you know, environment and other areas—at European level that will have to be looked at at the devolved level. If a common framework means that we simply transfer competence from the EU to create a regulatory framework to the Westminster Parliament, then you're undermining the framework of devolution as a whole. So, I think there's got to be some serious thought about this.

[289] But, to go back, as it were, to what's in the whole area of the common market, of course we are taking out of the common market at European level the free movement of persons, and that's a very big chunk. We obviously have free movement of persons within the UK, but there are lots of implications for the status of people who are in the UK who have been let in under the Immigration Act, which will be separate from the great repeal Bill, which will have serious implications for the budget and other activities at devolved levels. So, in those sorts of situations, there needs to be much greater clarity about what is common, and what is allowed to be different and experimented on within the UK. I think the assumption that it's going to be copied down is going to be a serious problem.

[290] **Jeremy Miles:** A slightly different point, which is what that reference to

devolved legislation can comprise, kind of conceptually, if you like. It's not so much about the common frameworks, but it's a sort of gateway term, if you like, into the powers that the Bill envisages Welsh Ministers having to amend legislation, and—

[291] **Dr Hunt:** There may be a distinction there between legislation within devolved competence, within areas of devolved competence, which could include primary and secondary legislation that has been adopted by the Assembly and by Welsh Ministers, and then a narrower—sorry, legislation would include that, but also primary and secondary legislation from the UK Parliament and from UK Ministers that is within Welsh competence, or could be within Welsh competence as well. So, 'legislation within devolved competence' could be a broader notion than 'devolved legislation', which could be simply those pieces of legislation that have been adopted at a Welsh level.

[292] **Jeremy Miles:** Okay, thank you.

[293] **Professor Craig:** Could I just add a thought on this? Because I think your question is—I mean, all the questions have been important, but the one that you've asked, I think, is significant here. Because, just to reiterate, my understanding of your question is that, subject to an ambiguity about what devolved legislation means—which has been taken up by my colleagues—but your point then was, 'Well, why does there need to be any power contained in the GRB to deal with such matters; don't you have the power to deal with that already?' Okay?

[294] I've got a kind of two-part answer to the question; the points are related, but distinct. Part 1 is that my understanding of how the White Paper treats the meaning of the term 'devolved legislation' in paragraphs 3.6 and 4.6 is that it is thinking of it as legislation in the narrower of the senses—already enacted legislation that might then be impacted by Brexit. It's the narrower of the two senses that Dr Hunt was putting on the table.

[295] Now, on the second point—why the Welsh Government does not have power already—that's a really interesting question. I think that the answer may be, or the issue may be one that was addressed in paragraph 116 of the House of Lords Constitution Committee paper. There, the way that they put it is this—they said, just reading the operative few sentences:

[296] 'The power, in anticipation of Brexit, to amend the body of EU law that

will, following Brexit, be brought across by the “Great Repeal Bill”...will only exist as granted by the Bill.’

[297] It carries on—two more sentences. It can be expected that, when Brexit takes effect,

[298] ‘the devolved institutions will be able to amend domesticated EU law to the extent that it pertains to matters that are within devolved competence. However, it is not clear that, under the devolution settlements, the devolved institutions will have the competence to pass legislation making anticipatory amendments to the body of EU law that will be domesticated by the “Great Repeal Bill” but that has yet to come into effect as UK law.’

[299] So, what they say is—the paragraph concludes that it is possible

[300] ‘that all anticipatory provisions, in respect of both reserved and devolved matters, are made by Parliament through the “Great Repeal Bill”.’

[301] Just a footnote on this—accepting the logic of the reasoning in paragraph 116, and as the House of Lords committee understands and reflects in paragraphs 120 and 121—it would still be open to Parliament, in the GRP, to do one of two things: either, basically, to say, ‘We at the Westminster level will do everything about bringing all these directly applicable regs et cetera into UK law—we’ll do all that across the whole UK level’, but it would also be possible for the Westminster great repeal Bill to contain a power that would allow the devolved administrations, insofar as they don’t have that competence at present, to make those amendments and changes, insofar as the matters fall within the sphere of devolved legislation. I’m sorry, that was all a bit complicated. I apologise.

[302] **Jeremy Miles:** No, no—absolutely, I’m with you. So, on that last point, what would your view be, constitutionally, I guess, about the Assembly having powers to decide on what powers it delegates to Welsh Ministers to amend legislation transferred under the repeal Bill?

[303] **Professor Craig:** It seems to me the underlying constitutional logical principle within the devolution legislation suggests that there’s an affirmative answer to that question. That would seem to me the logic of what devolution’s all about. And particularly when you link devolution with notions of subsidiarity, the two things actually fit and go rather neatly together: you’re closer to the problems at hand; you’re better placed to decide exactly

what changes might be needed to the relevant legislation, which is in your backyard, as it were. So, the whole logic seems to me to indicate that that should be the way forward.

[304] **Jeremy Miles:** Thank you. There's been suggestion of sunset clause provisions and so forth, and other well-understood control mechanisms to limit that power. I guess that would apply in the UK Parliament as it might apply here to any powers the Assembly granted to Welsh Ministers. Do any of you have any other advice to the Assembly on what other controls we might consider putting in place if we do get the power, as an institution, to delegate those powers to Welsh Ministers to make those technical changes?

16:00

[305] **Professor Craig:** Just briefly, it seems to me there's a lot of good sense in the House of Lords Constitution Committee about how you can use sun-setting provisions in this context. It seems to me the recommendations—. I think sun-setting provisions are very important and, basically, you really want a belt-and-braces job, almost, in this kind of context. You want sun-setting provisions to provide your straightforward temporal constraints on the limits of the powers that you've granted—time limits on the powers that you've granted to the Welsh Ministers. You also want substantive limits and they make clear that if you're going to delegate powers to the Welsh Ministers, you want substantive limits to make sure that those powers do not allow the Ministers to, as it were, slide from technical change, using their powers to expedite and facilitate technical change, to substantive policy amendment. They make very sensible suggestions as to how you might craft clauses to prevent that happening.

[306] **David Rees:** Professor Bell.

[307] **Professor Bell:** To some extent, the issues are similar to those that would be dealt with at Westminster, namely you need to have something about the procedure by which you make these regulations. For example, the most obvious thing is that the regulations are made in draft so that people can discuss them, because the point that Professor Craig's just made about what is technical and what is policy is not necessarily obvious, and there may be disagreements. As he said, there's then the issue of scope: what the scope of the power is and what the substantive limits are, but, positively, what is clearly within the competence of the Minister to do and when the Minister needs to go back and get further powers. Then, finally, you need

scrutiny, because once the final version of the Bill or a delegated legislation has been made, you need scrutiny to check it through, that actually it will do what is expected. There's a lot of technical difficulty particularly transposing the drafting of EU legislation into the typical drafting of Welsh or English legislation and that needs careful attention and can't simply be left to a Minister to do on their own.

[308] **Jeremy Miles:** Isn't there going to be inevitably a tension between the volume of legislation or secondary legislation, which we will be required to scrutinise, and the extent to which we are physically going to be able to scrutinise each individual piece?

[309] **Professor Bell:** You're absolutely right and that's what I talked earlier about: the relationships between executives matter. There need to be, as it were, small groups of civil servants of the different jurisdictions who work through the legislation and divide up the issues so that you can transmit the more policy issues. So, to some extent, it requires co-working between the Whitehall officials and those from Cardiff, Edinburgh and Belfast together, just as it happens at European Union level. None of the EU system would work without there being a core body of officials who meet regularly and work through the difficulties in advance. There's plenty of time at the moment to look through the legislation and to decide which is difficult and which is not. But that really requires civil servants to work together, I think.

[310] **Dr Hunt:** Just to follow up. Currently, when we're implementing EU law and the statutory instruments that are used to implement delegated legislation there, the powers that are in the European Communities Act 1972 section 2(2)—. The great repeal Bill is going to have to do more than simply replicate that—those sort of sweeping powers that are there for Ministers under 2(2). Correcting the statute book, affecting any sort of policy change that might come through there—it's a very different process than implementing EU law that has been made, as we've heard, in these very consensual processes and so there has to be some clear attention to that.

[311] **Jeremy Miles:** Interesting, thank you.

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

[313] **Eluned Morgan:** Can I come back to you, Professor Bell, on what you've just said in terms of civil servants needing to divide up the issues? Is there a danger that, actually, the parliamentary scrutiny aspect could be forgone

here because of time constraints and, therefore, we're handing over that power to Ministers, not just in UK Government but also in a devolved administration? So, we as parliamentarians, as Assembly Members, won't have the opportunity to determine whether indeed they are technical or whether they're political.

[314] **Professor Bell:** I think you're right, there is a significant danger and that's why I said the first thing that needs to be sorted out is the procedure by which the legislation is made. If it's kept quiet in a ministry for a long time and then just appears as a made piece of legislation, we've got no chance. If you have a procedure where the thing is laid in draft and there is time to amend—of course there will be negotiations going on under the article 50 process, but that doesn't mean that you can't present on very many areas a draft piece of legislation that will need minor tinkering to look at the final version of an agreement between the UK and the EU 27. So, if you can produce it in draft, then you've got time. But again, the issue in terms of workload may be how, within the Assembly, you divide up the jobs so that not everybody's looking at everything but a certain number of delegated Members look at agriculture and another lot look at environment and so on. But I think these are the sorts of things that can be thought through now. There's not much point in thinking it through when the great repeal Bill has actually been enacted, because you've lost already six to nine months.

[315] **Professor Craig:** Could I just add to what Professor Bell said? Clearly, it's an endemic problem and a serious one about ensuring that Assembly Members can exercise some proper scrutiny over these measures. Could I just recommend here that it seems to me, once again, that the devil's always in the detail in these respects and the detailed recommendations that are contained in paragraph 102 of the House of Lords Constitution Committee report are actually pretty helpful as vehicles through which Assembly Members can maintain input? So, recommendations such as the Minister has to

[316] 'sign a declaration in the explanatory memorandum to each statutory instrument amending the body of EU law stating whether the instrument does no more than necessary to ensure that the relevant aspect of EU law'

[317] will operate sensibly in the UK following the UK's exit from the EU. That's just one suggestion. Again, that

[318] 'The explanatory memorandum to each statutory instrument sets out

clearly what the EU law in question currently does'

[319] pre Brexit, and

[320] 'what effect the amendments made by the statutory instrument will have on the law'

[321] as it applies after Brexit. It's got a whole list of these things and it seems to me, while there's no single magic bullet that is going to make life for Assembly Members easier, these kinds of practical suggestions of the way in which statutory instruments are drafted and the important role that can be played by the explanatory memorandum can, other things being equal, help to ensure that Assembly Members continue to have some real voice and platform to exercise scrutiny over these matters.

[322] **Eluned Morgan:** We're back to the practical question: 'Can we do it in time?' And we don't want to fall off a cliff at the end, we need it, day one: people need to know where they stand. So, it would make sense, perhaps, to think further about this sunset clause that could buy us, effectively, a bit more time so at least we'd be able to come back to it. Can you elaborate a bit on how you would see a sunset clause working?

[323] **Professor Craig:** I think that what's really important in this respect is to ensure that a division is maintained. I'm not saying it's going to be easy on the ground at every moment. But, in principle, there is a clear division, and that was accepted in the White Paper—and accepted and is central to the House of Lords Constitution Committee—between ministerial power to make necessary, black-letter, technical amendment to law. That technical amendment to law is serving two discrete functions. On the one hand, it's ensuring that there isn't a black hole in the regulatory framework, so that if you're going to have—there can't be no rules about safety for washing machines on the day after Brexit. And, in so far as they came from directly applicable laws, regulations, those have to be transferred. So, one strand of the great repeal Bill and the transition is dealing with that—ensuring there are no black holes. The other strand is to ensure that necessary amendments are made to these provisions to make sure that they make sense—that they don't refer to EU institutions or something that will be nonsensical in a post-Brexit world. Okay, that's what your initial grant of powers to Ministers is all about.

[324] And what is recognised very forcefully—it's one of the fundamental

constitutional precepts that underlies the whole House of Lords' Constitution Committee report, and I think rightly so, and is indeed acknowledged in the White Paper—is you keep those two things distinct from, 'Do you want to make substantive amendments in policy terms to that body of the law, whatever it is?' Now, that is separate, and what runs through the House Lords' Constitution Committee report, and I think it's consistent with the White Paper, is that that's got to be subject to much more detail. Scrutiny, sometimes primary legislation, should be required, but if it's going to be done by statutory instrument, then you get into the realm of, 'Let's have more use of super affirmative procedures, or procedures that facilitate proper, more detailed scrutiny'.

[325] **David Rees:** Can I come back to you on your point, which I'm interested in, as well? You mentioned there technical aspects such as changing the name of the institutions—the European institutions that are identified—but, surely, that's going to mean a major role prior to any discussions, because that has to be negotiated in certain areas. That has to be a negotiation as to what institutions will replace European institutions, who will have the adjudication powers in those situations. So, there are a lot of constitutional issues that need to be addressed before we get to that point on the technical points, I would have thought.

[326] **Professor Craig:** I would agree with that. I mean, I wouldn't dissent from that at all. My earlier comment was mainly directed to the fact that there are lots of examples given, both in the White Paper and in the House of Lords Constitution Committee, where there are what I called the second strand of changes that need to be made, which don't necessarily implicate or entail broader substantive constitutional issues. They are simply technical matters that need to be sorted in order that, on the day we leave, the legislation makes sense and not nonsense.

[327] **David Rees:** Professor Bell, I notice you're nodding your head.

[328] **Professor Bell:** You could take areas like bathing water and so on—duties of reporting there have to be changed. So, that might be considered technical, but, on the other hand, more substantive changes to standards, or how standards are then drafted, might well be seen as policy. So, I think it's going to be a bit difficult to always get right, and that's why I think opening up most of the legislation to at least consultation in advance gives the possibility for people to turn around and say, 'No, that's not technical, that not just lawyers' law'.

[329] **David Rees:** Okay, thank you.

[330] **Dr Hunt:** Again, just to reiterate what we've already heard, with that example of bathing water, there may a requirement to report to an EU institution. Now, going forward, do we report to somewhere else, or do we just lose that requirement to report and, in so doing, lose something of the force of that regulation, and something that looks technical could sort of move into more policy oriented considerations there?

[331] **David Rees:** Thank you. Michelle, you have a question on legislative consent motions.

[332] **Michelle Brown:** Just a very, very quick question. Do you think it would be appropriate to bring the great repeal Bill before the Assembly, for a legislative consent motion? Do you think that would be appropriate or—?

[333] **Professor Craig:** I think it would be desirable and appropriate.

[334] **Michelle Brown:** Okay, thank you.

[335] **David Rees:** Would anyone contradict that?

16:15

[336] **Professor Bell:** I think it's entirely appropriate if we're going to operate in the European way of consensus.

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

[338] **Dawn Bowden:** My question is maybe an academic one, because maybe I don't think that we realistically believe we're going to come out of this without an agreement with the EU, but I suppose we can't ignore the possibility that there may not be one. What would your view be on what Welsh Ministers should be doing in anticipation of that as a potential, or would you be suggesting that they do nothing, or, if they did do something, what should they do in preparation for that scenario?

[339] **Professor Craig:** I think you're absolutely right to put that on the table, and, in fact, if anything, I think the situation is more complicated than that, or it has more nuances than that. The bottom line is that there are two kinds

of agreement in the article 50 process—a withdrawal agreement and some agreement on future trade. The UK Government pressed very hard for what is known in the jargon of the trade, or has become known in the jargon of the trade, as parallelism in the negotiations of both of those over the next two years. That was slapped down rather forcefully by the EU—President Tusk rejected it, the European Council guidelines have rejected it and the European Commission negotiation guidelines have rejected it. So, the idea now is that you don't even begin discussions about future relations including future trade until there has been significant progress, as attested to by the European Council, on the issues concerning withdrawal.

[340] Now, what that means is that that has particular relevance to the kinds of things that we've been talking about. In a sense, almost everything that we've been talking about has been predicated upon an assumption that, at a particular date, we know what's going to happen. We know we're leaving on a particular date and we know that all rules terminate on that particular day, but the possibility of a transitional agreement of some kind—so, in other words, if, as is extremely likely, a future trade agreement is not secured within two years—then the possibility of some transitional deal, and how it's worked out legally and how it's made is a whole other can of worms, as it were, but the possibility of that happening is a real one, in which case that implicates, or has direct implications for, the kinds of things that we've been talking about and are contained in a great repeal Bill, because you won't know whether you can dispense with regulation (a), (b) or (c). If your transition agreement says that, actually, regulation (a), (b) or (c), or the following 5,000 regulations, carry on for another three years during the transitional period to stop industry and business falling off the edge of the cliff, then that's going to have some pretty significant implications for the drafting and mode of operation of a great repeal Bill, because a great repeal Bill by definition could not, in those circumstances, withdraw the legal foundation for something, where the opposite is predicated in your transitional agreement—that those regulations continue.

[341] **Dawn Bowden:** Yes, sure.

[342] **David Rees:** Professor Bell.

[343] **Professor Bell:** I would say that the potential for needing to change in the light of whatever is agreed doesn't withdraw the need to get on with looking at most of the legislation that comes from the EU, because, although there may be some things in the transition, a lot of it is going to need to be

transposed and would not be affected very much, and at least we would get the detail of the sorts of areas where we wanted policy change clear and upfront. So, I think it behoves the Westminster Government and those in the devolved assemblies to get on with drawing up at least the first draft of delegated legislation that would transition, and then it can be amended at a fairly late stage when the final version is put forward for agreement. But I think the first planning needs to go on on the basis that we need to repatriate most stuff and to do it from day one. That's the easier default position. If it turns out there is a transition that slows things down, all well and good; that can be adjusted.

[344] **Professor Craig:** I wouldn't disagree with that at all, and I certainly wasn't intending to suggest that the possibility of a transition agreement would obviate the need for a great repeal Bill. John's absolutely right about that and, of course, I agree. But, when you start to think about it, it does actually get considerably more difficult. Just to take one example, the whole point about EU law is that, under EU law, while you're in the EU, regulations are directly applicable. They are part of our law without further legislative action. That is part of the requirements of EU law.

[345] If, just to take an example—it's not a wild example and this possibility is, in a sense, almost prefigured in the European Council negotiation guidelines—you had a transitional agreement, which, in effect, was postulated on the following scenario—you haven't got anywhere really close to making a deal on future trade and you're worried about the effects on the economy of an exit with a *tabula rasa*, a blank slate, in terms of trade, so the way in which you deal with it is you say, 'We're going to continue with the status quo for three or four years'. Now, if that happens—I haven't got the precise quote in front of me—the quote from the European Council guidelines is that, if a transitional agreement of that kind were to be made, then it would be predicated on the assumption that the regulatory, adjudicatory, budgetary, et cetera rules from the EU continue to operate. That includes the legal superstructure, and not only adjudication from the ECJ, but the status of EU law within the legal orders during that three or four-year transitional period.

[346] So, all I'm saying is that, of course, I agree we need to get ahead and plan for this, but there'll be some hard legal thinking about precise—. If you do have a transition agreement of anything like the kind that I just put on the table, which isn't beyond the bounds of possibility, then there would have to be some hard legal thinking about the legal compatibility of a Bill or an Act

that, in a sense, transposed all of this stuff and started rewriting it, amending it and all that sort of stuff, while we were still subject to these rules for another three or four years.

[347] **David Rees:** Okay. Eluned.

[348] **Eluned Morgan:** I'm very keen to ask your opinion on a discussion that we're having here on whether there is a need for us to consider a continuity Bill in the Assembly. Until we see the colour of their money—until we see exactly what is in the great repeal Bill—we can't be sure about where we stand. It may be too late unless we start moving things along now. I just wondered, in terms of us securing our powers, whether that belt-and-braces approach is something that you would advocate that we consider or not.

[349] **David Rees:** Dr Hunt.

[350] **Dr Hunt:** We've heard on a number of occasions about a consensual approach, and it seems disappointing that we'd have to think in terms of taking measures to protect the devolution settlement, and that those protections couldn't be reached through inter-governmental and inter-parliamentary discussions and the establishment of some sort of constitutional principles around that. I'm not convinced about the legal value of a continuation Bill—a continuity Act—simply because everything is subject to that Westminster sovereignty. It's potentially an important political statement, and it could be part of an ongoing discussion and discourse that might ultimately lead to the courts, but it's part of the evolving story of the UK's constitution. It could fit into a place in that. But it's disappointing that our inter-governmental and inter-parliamentary relations are such that it's something that has to be considered.

[351] **David Rees:** Professor Craig.

[352] **Professor Craig:** I think it's a curse to live in interesting times. What I mean is: Brexit throws up all sorts of intriguing constitutional and difficult legal issues—but it's still a curse to live in interesting times. I think, on the possible need for a continuity Bill, I'm more positive about it than Dr Hunt, and I'm partly more positive about it for the kinds of reasons touched on in paragraph 18 of the House of Lords Constitution Committee report. Because we're thinking of this great repeal Bill and we're thinking of it bringing into UK law and, as it were, giving legal status to these norms, to these rules, within the UK legal framework—particularly directly applicable laws. But of

course, there's a whole body of EU law out there, including direct effect, and one possibility might be that you want—. I mean, it's a political choice, but in paragraph 18, they talk about:

[353] 'the Bill will need to provide a mechanism for incorporating directly effective EU law...into UK law.'

[354] That's assuming you don't want all directly effective EU law to disappear, and that's likely to be achieved by a general provision—a continuity provision. Then they canvassed the alternative possibility of transposing directly effective EU law by giving Ministers the power to transpose individual elements of EU law by making statutory instruments. It seems to me that, for that reason, I'm rather more positive about it, I think—at least to consider the possibility of a continuity measure—than I think, maybe, Dr Hunt is, on this particular issue.

[355] **Professor Bell:** I think there's a slight difference between a default position, which—. From time to time, the British Parliament has enacted default positions of continuity. A long time ago, in the British North America Act, for example, you have that provision. So, what you're trying to do, then, is secure, if there is a doubt, where the default lies, and that's where continuity goes. On the other hand, I'm more sceptical about the idea of incorporating a direct effect type of approach into domestic law, because what that effectively does is to give to Westminster—and particularly to Whitehall—the powers that previously were operated by the Commission and the European Union. I think they are different institutions, and that continuity would not come through. I think what one would do is simply say there's a default position, but the other continuity that has to be looked at is the continuity of the devolution settlement, and how one expresses that. In European Union procedures, it would be easy: it would be in the recitals to the legislation, and it may be that there are ways in which some safeguarding of the devolution system ought to be actually written into the great repeal Bill itself.

16:30

[356] **David Rees:** Okay, thank you. I'm conscious about time and I'm sure there's more we could actually start exploring, but we have the Minister coming in now to also give us evidence. So, can I thank you all for your evidence this afternoon? It's been very much appreciative and thought-provoking for Members. I'm sure we may well come back to you at some

point for some other advice in the future, because this is not something which will go away quickly. You will receive a copy of the transcript for any factual inaccuracies. If there are, please let us know as soon as possible so that we can correct them. But in the meantime, thank you very much for your time this afternoon.

[357] We'll have two seconds now while we change over witnesses. We are still in public.

16:36

**Ymchwiliad i Fil y Diddymu Mawr a'i Oblygiadau i Gymru—Sesiwn
Dystiolaeth 2
Inquiry into the Great Repeal Bill and its Implications for Wales—
Evidence Session 2**

[358] **David Rees:** Can I welcome the Cabinet Secretary to the final session this afternoon and the evidence—our second session this afternoon on the implications of the great repeal Bill for Wales and the White Paper that was produced? Cabinet Secretary, if you could introduce yourself and your officials today for the record.

[359] **The Cabinet Secretary for Finance and Local Government (Mark Drakeford):** Prynawn da. With me this afternoon are Piers Bisson, who has been heading the new arrangements we have to support the Welsh Government in relation to Brexit, and Hugh Rawlings, who, as many of you will know, heads up the Welsh Government's approach to things constitutional.

[360] **David Rees:** Thank you for that. We have some questions now, after a very interesting session with some academics relating to, perhaps, interpretation of the great repeal Bill. One question I want to start off with is: I mentioned to the previous witnesses that some of the technical aspects that are considered refer to European institutions and, perhaps, European rules and regulations—I think in your own paper you highlight the procurement as an example—but, for a technical change, we need to have a body in place of those European institutions. Therefore, I would assume discussions are taking place between the devolved nations and the UK Government as to those replacement bodies and institutions. Are they taking place? Are there such discussions going on? Because surely you can't actually go into a repeal

Bill until you've got those in place.

[361] **Mark Drakeford:** Well, Chair, I suppose the first thing to say is that very few conversations are going on. The nature of a general election means that there are very significant constraints on what Governments are able to discuss with one another in areas of this sort. So, in recent weeks, the flow of information and discussion has been constrained by the rules that are there in a general election context. Discussions still go on between officials, but even those are bound by the rules that UK Government civil servants will have to observe in relation to the different possibilities that will be there after 8 June. So, I couldn't honestly say to you that there is a great deal of detailed conversation of the sort that you just described that is possible just at present, and nor will there be for at least another three or four weeks.

[362] **David Rees:** Prior to the announcement of a snap election, were any scheduled discussions put into place for such things?

[363] **Mark Drakeford:** I think there would undoubtedly have been a JMC meeting during the month of May had there not been an election called—

[364] **David Rees:** But would that have been a discussion in that meeting? Would you have been able to start those discussions on replacement institutions, replacement bodies and how it will work within the UK outside the EU?

[365] **Mark Drakeford:** Well, Chair, I don't want to give you the impression that those issues have not been raised already and that they've not been discussed already, but the discussions have been at the level of agreeing between Governments that it will be necessary to replace references to various European institutions and bodies with domestic arrangements. So, the basic idea that that's all you've got to do has been discussed. Whether the UK Government's thinking itself has got to the point where it is able to say, 'In this piece of legislation we refer to this European body, and we think that the equivalent at a UK level would best be this'—to be honest, given everything that they are having to think through, I don't think that they have yet got to a level of detail of that sort.

[366] **David Rees:** Can you clarify? From my view, that seems to be something that will hold up changes, because, until you make those discussions or have those completions, you can't make the changes.

[367] **Mark Drakeford:** My own guess would be, and it's no more than that, that this will be an area that will be divided like many of these areas will be. There may well be some areas where there is a readily available equivalent body that would be easily enough agreed. There may be other areas where either those bodies are in scarce supply, or where there are choices to be made, where more than one view will be possible. So, I think it'll be a matter of trying to agree the things that are reasonably readily agreeable, and then concentrate as much as we can, in the time that will be available, on those areas where either there are choices to be made or deficits to be made up.

[368] **David Rees:** Suzy.

[369] **Suzy Davies:** Yes, I take your point, Chair, about delay. I'm just wondering whether Welsh Government's already started unilaterally looking at more obvious areas of law, if you like, and done a bit of name-spotting itself already—you know, to take to the table.

[370] **Mark Drakeford:** Well, insofar as we are able to, work has already started within the Welsh Government identifying those pieces of secondary legislation that will need to be converted or corrected in the Brexit context. It is not that easy to do when the basic parameters that we are working within are themselves so opaque, but, yes, you can be sure that work has more than begun. Work is going on all the time.

[371] **Suzy Davies:** Could you give us just a rough idea, then, of how many bits of secondary legislation you might have looked at on that score, for example? I take on board what you've just said, obviously, but just to give some rough idea.

[372] **Mark Drakeford:** I'll ask Hugh. Maybe he'll give you some better examples of what we've looked at already. We have some estimates from the UK level as to the number of pieces of secondary legislation that they think will need to be viewed in this way. Some work has gone on in some other devolved administrations. It's an evolving picture rather than an exact science.

[373] **Suzy Davies:** Okay. It might be somebody else's question, I've just realised, but—. Apologies.

[374] **David Rees:** We'll come back to capacity afterwards, don't worry.

[375] **Mr Rawlings:** I think there are three stages here. One is the identification of the set of legal provisions that need to be examined that implement European obligations and which therefore, in principle, might need to be amended. Now, in evidence to another committee last week, one of my colleagues from Legal Services said that they were talking in terms of something over 12,000 that had to be read and looked at. If you then break that down to talk about the number that would need amendment, we don't know yet, because the process of reading those instruments has only just begun. But, to give an indication, our colleagues in Northern Ireland, who, for reasons that you will understand, have not had a working Government for some time, and therefore officials have had rather more free time to do this, have identified in excess of 1,000 that would need to be amended.

[376] **Suzy Davies:** On the point of bodies' names, really—I was trying to make it a bit easier—

[377] **Mr Rawlings:** Oh, I'm sorry. 'I don't know' is the short—

[378] **Suzy Davies:** No, no, that's a perfectly acceptable answer.

[379] **David Rees:** That's fine at the moment. We'll come back to the question on capacity.

[380] **Suzy Davies:** Yes, that's why I didn't want to go into the wider story.

[381] **David Rees:** I think some of the other questions may lead to a better understanding on capacity.

[382] **Suzy Davies:** Thank you.

16:45

[383] **David Rees:** So if I move on to Jeremy—

[384] **Jeremy Miles:** The intention is, it seems, that Welsh Ministers will get powers in line with those of UK Ministers to amend legislation to conform them to the new arrangements, whatever they end up being, effectively—I'll leave that point for now—and that that will relate to 'devolved legislation', I think is the term that's used. Recognising that we don't want to attach too much weight to the particular form of words used in this kind of document, what's your operating assumption about the extent of the powers that Welsh

Ministers will get as a result of that?

[385] **Mark Drakeford:** Well, Chair, as you know, there's an ambiguity in the White Paper. Does that mean simply the capacity to do that work in relation to legislation that has been directly passed by the National Assembly for Wales, or does it refer to all legislation made within devolved competencies, wherever that legislation has been carried out? My belief is that it should be the second, not the first—that it should be the wider definition rather than the narrower definition, but you can read both of them in the White Paper. Partly, I take the view that it should be the second, firstly because I think that is the constitutionally proper arrangement, but I just think, just in terms of practicalities, if UK Ministers tried to retain to themselves some powers to deal with legislation that falls within devolved competencies, where will they go to get the advice of the sort that Suzy Davies just asked about? Where will be the body of people be that they can go to to find out about the names of potential bodies in Wales with which they could replace? Well, they'd end up coming here to get the advice. So, in a sheerly practical way, I think, when they begin to realise that, they may decide that the simple solution is just to allow the Welsh Ministers, through the National Assembly, to do that wider job.

[386] **Jeremy Miles:** And, in relation to that, what's your expectation? We've talked about the numbers of sections of legislation that might be required. What's your view of the extent of powers that Ministers should get if—? Well, let's take a step back. Do you think, effectively, the great repeal Bill should just give the Assembly powers to delegate powers to Welsh Ministers, or should the great repeal Bill say something more specific about that itself on the face of the Bill?

[387] **Mark Drakeford:** Well, my reading of the White Paper, Chair, is that this is one of the areas where it is not ambiguous. It proposes that the repeal Bill will provide Ministers in all devolved administrations with these powers, rather than handing over the decision to devolved legislatures. It will legislate for a uniform pattern of decision-making across the United Kingdom in which Ministers are given these responsibilities but have to exercise them within the procedures of the legislature to which they belong.

[388] **Jeremy Miles:** But what's the preference of the Welsh Government in relation to that? Is that something you're happy about, or would you prefer to see the powers of delegation coming from the Assembly itself?

[389] **Mark Drakeford:** I don't think that, as a Minister, that is a topic on which I should have a view. I feel slightly queasy about Ministers telling legislatures what powers they should or shouldn't have. The legislature here will have an opportunity to make its views on that known, should a legislative consent motion come before the Assembly to allow the arrangements in the repeal Bill to apply to Wales. It may be that the Commission, the Llywydd, would have a view on the question that Jeremy Miles just asked me. But I think it is a question that is more properly answered by the Parliament than it is by the Executive.

[390] **Jeremy Miles:** Okay, thank you.

[391] **David Rees:** So, in that sense, would it be better if a motion was put to the National Assembly to discuss this issue, which might therefore advise the Welsh Government of the views of the Assembly? Because, as you say, you don't wish to give a view on that. Constitutionally, it is an important role.

[392] **Mark Drakeford:** Well, I think a debate, if there were one to be held, would flush out some of the argument here, Chair. I wouldn't myself at least start from the point of view that there are not some downsides as well as upsides to any course of action. If you assume for a moment that, at the UK level, Ministers were given these responsibilities and were able to get on with them and to make decisions and get things in place, whereas, in a different place, a different set of arrangements were in operation that would mean that decisions were being made at a different timetable and in a different way, given that all of this is going to be taking place under a huge pressure of time and of volume, then you could argue that there are some significant arguments in favour of a more unified UK approach to resolving these matters. So, a debate would flesh those arguments out. I'm not advocating either side of them; I'm just saying that there is more than one argument to be made.

[393] **Eluned Morgan:** So, on that, I can understand it's difficult for you to make a point in relation to this place, but what about in relation to the UK Parliament? Do you have a view on that? Do you have a view that, actually, accountability is important, as a principle, when there is such a wholesale power shift going on from the EU and coming to the United Kingdom?

[394] **Mark Drakeford:** Well, Chair, I, myself, thought that the way that the House of Lords select committee resolved this had some significant merits to the argument. So, they, I think, argue that giving Ministers powers in this

area is not unreasonable, provided that those powers are tested against the 'no more than necessary' principle. That's what they say. So, Ministers in these circumstances should have the powers, but they should be no greater powers than are necessary for the purposes of those powers, no greater powers than can be scrutinised by proper processes, and that those powers should not last for any longer than the powers are needed. They then go on to say that, as far as the process of scrutiny is concerned, Governments ought to advise, but Parliaments ought to decide. So, while Ministers would be exercising the powers given to them, it wouldn't be for Ministers to decide the way in which the scrutiny of those powers was carried out.

[395] We're not unfamiliar with that, here, I think. There are Members here, I know, who sit on the Constitutional and Legislative Affairs Committee, where that committee will look at pieces of legislation where the Welsh Government will provide advice and we may say, 'We think this is a significant change, but that's a minor change' and the committee sometimes endorses that view and sometimes takes a different view and says, 'No, actually, we think this is a bit more significant than the Government believes', and reports in that way to the Assembly. So, I'm not uncomfortable with the arrangement that the House of Lords endorses, given, as I say, the fact that all of this has to be done under very considerable pressure of timetable, and where there are very, very large volumes of work to be undertaken.

[396] **Mark Isherwood:** Given what you say, whether or not delegated powers to Welsh Ministers come from the Assembly or the great repeal Bill, should the technical changes then proposed by Welsh Ministers, in your opinion, and given what you just said, be subject to negative, affirmative or superaffirmative procedures?

[397] **Mark Drakeford:** Well, Chair, the way I would see it happening is that Ministers would let the legislature know which procedure we thought would be proportionate to the piece of legislation in front of the Assembly, but the Assembly will be free to accept or reject Welsh Ministers' advice. So, a Welsh Minister may say, 'I think that these are entirely technical changes and these are ones that you can allow to go through under the negative procedure', but the Assembly would be under no obligation to take the Minister's advice. The Assembly itself, the legislature, would look at that advice and say for itself either, 'Yes, we think that's reasonable', or would say, 'No, actually, we think the affirmative procedure should be deployed here'.

[398] **Suzy Davies:** Wouldn't it rather depend on what the great repeal Bill

says in its Schedules about how powers will be granted to Welsh Ministers, though? Because there may be instruction in that part of the legislative process that tells us what we're supposed to expect.

[399] **Mr Rawlings:** Yes. I think what the White Paper says is that the Bill will make provision for UK Ministers to have these wide-ranging powers and then Parliament will decide on the appropriate form of scrutiny. What it then goes on to say is that Welsh Ministers will have equivalent powers, but it doesn't say anything about the procedure for scrutiny of the exercise of those powers. Now, in some ways, you might think it not a good idea for Parliament to prescribe how this place should decide to exercise its functions of scrutiny, and so there is an argument that says that the Bill, in conferring powers on the Welsh Ministers, ought in some way or other to leave it to the Assembly to decide what is the appropriate scrutiny procedure, and that the Bill itself should not lay down, or purport to lay down, or tell this place how to exercise its powers. That would be inappropriate.

[400] **Suzy Davies:** I don't disagree, but I just wanted to flag that up. Thank you.

[401] **David Rees:** Can I ask the question? Because you earlier said that the clarification as to what powers would come to yourself, and what powers would be undertaken by a UK Minister, isn't there. There's still a vagueness as to that one. We're talking about scrutiny. Is there a possibility that we could lose aspects of scrutiny if a UK Government Minister takes on powers on devolved competences, as we've identified? As such, we won't have an opportunity to scrutinise, because there won't be secondary legislation. There won't be a legislative consent motion. So, how do we ensure that scrutiny takes place?

[402] **Mark Drakeford:** Well, I imagine, Chair, that if the UK Government takes that narrow view of the two options, and that the only powers that come to Welsh Ministers are to deal with the consequences of those pieces of legislation that have been directly passed by the National Assembly, that any scrutiny of things in devolved competencies that fall outside that definition will be taken through Parliament by UK Ministers, and it will be up to people at the Westminster end to scrutinise their actions. There wouldn't be a role, would there, for Assembly Members in there? It would be for parliamentarians to be scrutinising those things. It's another reason, I think, why probably my own view is in favour of the broader definition.

[403] **David Rees:** So, it could be parliamentarians scrutinising devolved competencies.

[404] **Mark Drakeford:** Yes.

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

[406] **Dawn Bowden:** Just a simple question, really, Minister, about your understanding of what the White Paper actually is referring to in terms of the responsibility for devolved legislation. Do you interpret that as historical legislation that's already been passed or future legislation or both?

[407] **Mark Drakeford:** Thank you. I heard your exchanges with your previous witnesses on this point.

[408] **Dawn Bowden:** Yes.

[409] **Mr Rawlings:** My take on this is that what the Bill envisages is that UK Ministers and Welsh Ministers will be given powers to correct existing legislation so far as that is necessary to make Brexit work on day 1 of Brexit. So, what we're talking about here is existing legislation that has stuff that needs amendment.

[410] **Dawn Bowden:** Okay. So we still have this grey area about the areas of future legislation, then.

[411] **Mr Rawlings:** Well, future legislation will be made by Parliament, or by the Assembly within the scope of the Assembly's competence, but I don't think it is envisaged that new provision would be made by Ministers under powers conferred by the great repeal Bill. What the repeal Bill is about is making sure that the body of law at the point of Brexit is workable.

[412] **Dawn Bowden:** Okay, thank you.

[413] **David Rees:** We'll come back to that point. Michelle Brown, you wanted to ask a question on capacity. It seems like a good time now.

[414] **Michelle Brown:** Thank you. It seems fairly clear that there's going to be quite a big body of laws to review. Do you have the resources in the Assembly and in the Government to actually accomplish that, and do you think that you're going to need more?

[415] **Mark Drakeford:** Well, Chair, I think what we envisage is that we will have to reprioritise the resources that we have, rather than assuming that we will just need more. We're going to have to redirect some resources from elsewhere to be able to deal with this job of work, because this job of work has to be done, and it has to be done relatively urgently, and it may well have some knock-on effects for the Government's legislative programme.

17:00

[416] Things that we've got planned, we may have to adjust in order to be able to release resources to cope with this. Just as, it may well be—as I'm sure you'll have heard—that the Assembly itself will have to think about how its time may have to be renegotiated in order to be able to carry out the scrutiny functions that the Assembly will have. So, I'm not saying that we may not have some areas where we will need to be able to draw in some extra expertise, but, on the whole, our approach will be to try and do as much as we can within the resources we have already, redirect resources where we need them above, and then—if we have to—look for more beyond that. But that will be the third in that hierarchy, rather than the first choice.

[417] **Michelle Brown:** Has this process already started, or when is it due to start?

[418] **Mark Drakeford:** The process has already started, in the sense that the team that Piers leads is a team that has been put together following the referendum of June last year. And that's been done by bringing people together from previous parts of the Welsh Government. So, we are already in the process of reordering our priorities and our resources in order to respond to the Brexit agenda. And that's an ongoing process, and it will certainly be how we will aim to deal with the consequences of the great repeal Bill.

[419] **Michelle Brown:** Just one more question, Chair. Have you any idea when this work might start coming before the Assembly for scrutiny?

[420] **Mark Drakeford:** Well, Chair, all this depends on the outcome of the general election, because different parties have different manifesto commitments on this matter. Our best working estimate would be—whatever the particular form would be—that any incoming Government would aim to try and get a Bill onto the statute book by the spring of next year; and,

therefore, that the bulk of the work that will come directly to the Assembly will be likely to be after April 2018, and then running through the summer and into the autumn of next year. That is a sort of best guess, rather than a sort of schedule that we've seen.

[421] **Michelle Brown:** Fine, thank you.

[422] **Mr Rawlings:** Could I just sort of add one point about this? As the Minister said, we're talking about draft Orders coming forward in summer and autumn of 2018. An infinitely complicating factor will be transitional arrangements, because this is an area where most people think that a so-called clean Brexit is economically disadvantageous, and one needs a gradual exercise, and the argument for a transition is made in the Welsh Government's White Paper. It has to be accepted, however, that transition will make the formulation of draft Orders in the summer and autumn of 2018 a very much more complicated process, because one won't know what the form of the transition might be until very late on, and you've got to get the legislation right to accommodate that. So this is a very, very complicated exercise of multidimensional chess really.

[423] **David Rees:** Based on that fact—I'll bring Dawn in in a second—I can't remember whether it was you or the First Minister who indicated that the Welsh Government had one official seconded to Whitehall. But based on clearly the need for that close relationship and understanding of where those societies, bodies or whatever, organisations will be placed, and discussions that will only take place between Whitehall and Cardiff, are you going to be looking at actually placing more people in Whitehall, so that you could actually get a better feeling of what's happening up there? They could also get a better understanding of what is happening here, because that was one of our concerns early on in this investigation.

[424] **Mark Drakeford:** Well, Chair, one of the frustrations that I think we have felt as a Welsh Government is that there have been times along the way, over recent months, in which we could have offered more help to the UK Government than they have drawn down. So, in terms of the great repeal Bill, for example, we have offered lawyer time from the Welsh Government to assist drafters at the London end with some of the expertise about the devolution aspects of it, which you can't expect them to have, but we have people who deal with this all the time, and have made offers to the UK Government about being willing to give assistance in that area. And sometimes those offers have not been drawn upon to the extent that we

would have been willing to make them.

[425] I try every time not to sound as though I'm being just straightforwardly critical, because the people we are making the offers to are dealing with an enormous number of things all the time in this area. So, this is one fraction of the things that they are thinking about all the time. But it is one of the frustrations that we have felt, that we would have been willing—we were very willing—to make more offers of assistance to the UK Government to think through some of these things than they've been able to draw on so far.

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

[427] **Dawn Bowden:** Thank you, Chair. It was just to go back to Hugh's point about the multifaceted aspects of what you're dealing with. You may have picked up earlier that I asked a question of the previous panel about whether Welsh Government, in that context, is already preparing alongside—a kind of dual approach, if you like, to what might happen in the event that there is no agreement between the UK Government and the EU, and how the Welsh Government might respond to that. So, is that like a kind of parallel piece of work? This is kind of linked to the transition stuff that you were talking about, but is it really a piece of work that you want to leave until we see how things start to develop, rather than do work unnecessarily, or is it a piece that you are actually considering?

[428] **Mr Rawlings:** I think it's probably a little too early to be focusing on that scenario. There are so many steps to take before it becomes apparent that that is where we are. I think the time is not yet.

[429] **Dawn Bowden:** Okay.

[430] **Mark Drakeford:** And just to be clear, Chair, the Welsh Government's position is to look for the best possible deal, and we do not subscribe to the theory that no deal could be better than a deal. We think that no deal is the worst deal. So, we want to support the UK Government in their efforts, which I'm very prepared to regard as genuine, to secure a deal that works for the United Kingdom, and recognises the needs of our ongoing very important partners in Europe, and so on. So, we are focused on trying to make sure that there is a good deal, rather than worrying at the moment about what we would do if there wasn't one.

[431] **Dawn Bowden:** Thank you.

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

[433] **Steffan Lewis:** Thank you, Chair. I think it's quite insightful that you revealed that the UK Government did not take up the offer of Welsh Government support in terms of devo-proofing, if you like, the plans for their so-called great repeal Bill. Did you have an explanation as to why they did not want to bother themselves with devo-proofing their White Paper?

[434] **Mark Drakeford:** Chair, I think they would say—although it's difficult for me to put myself in their position—that we had had a discussion in the JMC on the broad approach that the UK Government was taking to the preparation of the Bill, that they had asked us a number of high-level questions about that approach, that all three devolved administrations had had an opportunity to contribute to that, and that they would look to draw down the more detailed help that we could offer them further on in the process. So, I think if they were answering you, Steffan, they would say it's not that they have turned their back on the help, it's just that the time at which that help would be most useful hasn't yet arrived.

[435] **Steffan Lewis:** But in terms of the discussions you had at JMC, are they reflected in chapter 4 of the White Paper that was eventually published?

[436] **Mark Drakeford:** To a certain extent, there are some parts of it, but it's a very skeletal chapter in a pretty brief White Paper. And certainly some of the things that we would have wanted to see and some of the detail we would have liked to have seen, you won't find that in the White Paper.

[437] **Steffan Lewis:** And, in particular, you will know, Cabinet Secretary, that I'm particularly exercised about paragraph 4.2 and how the UK Government describes current arrangements in terms of European frameworks. Can you clarify that that is not the Welsh Government's understanding of how the UK comes to negotiate current European frameworks, and can you confirm that Welsh Ministers have actually spoken at the European Council on behalf of the whole of the United Kingdom on European frameworks?

[438] **Mark Drakeford:** Well, that is absolutely the case, Chair. No, we do not recognise that description. That description advocates to the UK Government itself an ability to speak entirely on behalf of the whole of the UK without any involvement of the devolved administrations. It doesn't work in—. That isn't

how it works, even in practice. In the best part of the system, UK Ministers, whoever that person would be, is speaking on behalf of a shared position that has been worked out between the four administrations. And it's been like that, actually, right from the very beginning of devolution. It isn't that this has been something that has evolved into a more sophisticated way of doing business over time. I remember, very early in devolution, Jane Davidson, as the education Minister here, speaking on behalf of the UK at a number of Councils of Ministers in relation to youth provision and extending entitlement and all of those sorts of things. And that was an agreed four-way position, in which Welsh Ministers took the lead. So, the much, much more narrow understanding in 4.2 is not ours.

[439] **Steffan Lewis:** And have you had an opportunity to discuss with counterparts in Westminster 4.2 in particular, since its publication obviously? Presumably, they didn't show you a draft of the White Paper before they published it, which, again, is another disappointment.

[440] **Mark Drakeford:** No, we didn't see a draft of the White Paper. We had some forewarning in the immediate run-up to its publication of what it would contain. But no chance to influence it.

[441] **Steffan Lewis:** And in subsequent discussions?

[442] **Mark Drakeford:** And, subsequently, we've had some—. The Joint Ministerial Committee, which has not met now for many weeks, was dealing with a large agenda of other items on that day. There were some limited opportunities for devolved administrations to express a view on the White Paper, but my memory is that most of that discussion was taken up by discussion of the process and regrets at the lack of involvement in the preparation of the White Paper rather than on substantive parts of it.

[443] **Steffan Lewis:** And just one final point, if I may. Just going back to the issue of the volume of legislative change that will beset all administrations in the UK, have the UK Government offered devolved administrations, including the Welsh Government, resources for you to carry out your own assessment on the number of instruments and legal frameworks that will require amendment that relate to devolved areas? Presumably, in the year since the referendum, they have carried out, and have had considerable resources to carry out the kind of analysis needed. Have they been prepared to open up their corridors and their offices to your officials to share that information as part of a UK family-of-nations approach to this?

[444] **Mark Drakeford:** Chair, I slightly misunderstood the question to begin with. I thought Mr Lewis was asking me whether the UK Government had offered to provide us with money to pay for—

[445] **Steffan Lewis:** Oh, good Lord, no.

[446] **Mark Drakeford:** [*Inaudible.*]—

[447] **Steffan Lewis:** I know the answer to that one.

[448] **Mark Drakeford:** —I was going to disappoint him there. As to whether or not UK officials have been available to us for discussion, then I think it would be fairer to say that, actually, there has been quite a lot of involvement there, and that continues, even during this pre-election period. I think, Piers, you've had discussions already this week, and will have later this week, with officials in different departments at Whitehall.

[449] **Mr Bisson:** Yes, that's right. So, we're trying to keep an active dialogue going to understand—. Obviously, there is a pre-election period, but in terms of technical work that we can engage on, we're trying to keep up that dialogue and understand as much as we can, noting that, of course, much will depend on the outcome of the election and the administration after that point, and what they choose to do in respect of different aspects of legislation, or more broadly.

17:15

[450] **Steffan Lewis:** Just to follow up, it seems that everyone, and every devolved administration, will have a different interpretation of the data, but, surely, it makes sense to have a UK data pool, that all Governments can dump information—for want of a better word—including all the scoping, and areas of expertise, and that you can all access it, so that we will have a clear answer in terms of the number of legislative instruments that will require amendment following withdrawal from the EU that relate to devolved matters. I fail to understand why there's a reluctance on the part of the UK Government to just do that.

[451] **Mr Rawlings:** If I can respond briefly to that, there have been some productive discussions with individual Whitehall departments, although, as the Minister has explained, the coming of the general election has sort of

brought a halt to that, really. The other source that we have been able to exploit is the National Archives, which are responsible for the publication of legislation, and do have ways of sifting out legislation. And the material that they have provided is enabling us to identify the set of legislative instruments that need to be examined in order to identify the ones that need to be amended.

[452] **David Rees:** Is that consistent across all departments? Have all departments in Westminster been as co-operative as you would like?

[453] **Mark Drakeford:** I think the First Minister was asked this question recently and said that historical patterns tend to have been repeated in this exercise, as in the past. Some Whitehall departments work very closely with devolved administrations—it's in the nature of the business they do; they therefore tend to be more familiar with the way that we do things, and they tend to be better at making sure that information flows. There are other departments—

[454] **David Rees:** So, it's a polite way of saying 'no', in other words.

[455] **Mark Drakeford:** Well, what I want to say is its variable—its variability, I think, is less rooted in differences of willingness than in differences of experience. If you're a department that is used to dealing with devolved administrations, you tend to do this better than if you're a department where you need to think about the devolved aspects, where it's much less part of your daily work.

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

[457] **Eluned Morgan:** I just wondered—some people might interpret 4.2 in the White Paper as the UK Government parking their tanks on the devolution lawn. I just wondered, is that your interpretation, and how much thought have you given to a kind of defensive positioning, in terms of coming up with a continuity Bill, and have you started working on that?

[458] **Mark Drakeford:** Well, Chair, we are absolutely on record as saying that this whole exercise cannot be a vehicle for rolling back on the devolved settlement. And we have a very different view to the UK Government on some aspects of that. You know that it is our clear position that competencies that have been part of this Assembly's responsibility often, since 1999, but which we have chosen to exercise, through our membership of the European

Union—when the European Union is no longer there, those competencies remain where they have always been. They have been here all along, they have never gone away, and they will be here after we leave. It is not a matter of repatriation and redistribution, which is the way the UK Government sometimes itself portrays these things.

[459] And I have said absolutely directly to UK Ministers that our position is that, if they choose to act in that way, they will have to legislate proactively to take powers away from us, even if they say that they're just doing that in some holding pattern, and for some short-term reasons. We say that the way to deal with these matters is not by some sort of central fiat, but by a process of negotiation, recognition of shared interests, and then agreement on the way forward. And the UK Government would have an ally in the Welsh Government in that, because we genuinely agree that there is a need for some UK frameworks to operate if there are no European frameworks there, but that the way to secure that is by recognising the different powers that lie in different parts of the United Kingdom and then entering into a genuine dialogue with a commitment to reach an agreement.

[460] **Eluned Morgan:** I think we all understand that would be the ideal, but we haven't seen much evidence of that working well so far. So, are you preparing a continuity Bill and when will that be? When will the last moment—because we're up against a tight timetable here as well—what's the latest we can leave that as an option to leave on the table?

[461] **Mark Drakeford:** Well, preparation is going on in the terms that there is active thinking happening around a continuity Bill—active work to scope what a Bill would need to contain. My view is that you only need a continuity Bill if you don't get a great reform Bill of the sort that you would wish to see. Our ambition would still be to have a great reform Bill that does the business properly and does it properly for Wales—that it recognises devolved competencies properly and protects and safeguards them.

[462] Now, it is for UK Government Ministers, whoever they will be—and there may not be a reform Bill; there might be a different approach taken—but it will be for whoever is in Government in the UK to demonstrate to us that they are intending to go ahead in a way that does properly observe and protect the devolved settlement as it currently exists. If we reached a point where we felt that we could not rely on that being the case, then a continuity Bill is a possible fall-back position, and the Welsh Government is preparing the ground so that if we were in that position, we would be able to move to

do so. But it's not the first resort for us—it is a last resort, when we feel that we have run out of the ground that we would like to see there, of the assurances we would be looking for UK Government Ministers to provide.

[463] **David Rees:** Can I ask—? Clearly, we cannot predict or prejudge the people's decisions on 8 June, but, to date, has your experience been that you are confident that the lack of details in the White Paper, which you've identified, will provide a greater reflection of the interests for Wales in a Bill—because it seems a Bill rather than a draft Bill will be coming forward—particularly as you weren't involved in discussions on the White Paper and it seems that you're not involved in discussions on the Bill—or are you? Therefore, is it likely that to actually produce a Bill, at this stage, in your experience, to deliver what we need for Wales—?

[464] **Mark Drakeford:** Well, Chair, there are no discussions on the Bill. There are no discussions in Whitehall or between Whitehall and elsewhere because there is no Government to have those things. So, it is not that we are being kept out of discussions that are going on. It's inevitable, in the pre-election period, that those discussions are not able to take place.

[465] **David Rees:** But prior to 3 May, did you have any discussions?

[466] **Mark Drakeford:** Prior to the calling of the election, there was a schedule of meetings that was planned and there were discussions going on between officials on the basis of the White Paper set out by the outgoing administration. Now, there's inevitably been a hiatus in that and the hiatus comes at a cost to the ability to be able to work collaboratively on these matters. Whenever I have had a direct discussion with the Secretary of State, he has always been at pains to say that the UK Government's intention is to observe the devolved proprieties and to recognise the competencies that lie in Scotland and Wales and not to row back on those. But that is often also then accompanied by an account of the need to secure UK-wide frameworks to replace European frameworks, to safeguard the internal market of the United Kingdom, and sometimes, then, that shades into a belief that that can only be done by UK Ministers taking action unilaterally to secure that. Up until that point, we've got a largely shared point of view. But, at the point when UK Ministers say, 'And, in order to do that, we're going to take powers off you, even if it's temporarily, and then hand them back to you once we've got these frameworks in place', that's the point at which we say, 'We have a fundamentally different view, both of the law as it exists, but also of the way in which future constitutional relationships within a United Kingdom outside

the European Union should be conducted.'

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

[468] **Mark Isherwood:** What is your view on the evidence we heard earlier—and I summarise, because this was very complex—that the passage of a continuity Bill here would not be constitutionally binding on the UK Government, but might be used by Welsh Government in a subsequent legal challenge, were that to come forward?

[469] **Mark Drakeford:** Well, Chair, the point of view of the UK Government would undoubtedly be that Parliament remains sovereign, and we can pass legislation here, but, in the end, if it was legislation that they wished to override, that they would have the power to override that. Parliament remains sovereign in their view in that way. I didn't hear that part of your evidence, I'm afraid, because I was probably walking down to you here. So, if that was the point that was being made, that they don't have to take notice of what we do, then I suppose that is what that was reflecting. I don't think, without having heard it, that I've got a good enough sense of the way in which a Bill that was then set aside by the UK Parliament could be used in litigation. I'm not sure I understand it well enough to give you a sensible answer.

[470] **Mark Isherwood:** I'm only working off memory—it was a response to a question from Eluned Morgan, if you check the record, as I'll seek to do as well.

[471] **Mark Drakeford:** We will do, yes.

[472] **Mark Isherwood:** Have I got that right, from your recollection? In essence, the response—

[473] **David Rees:** I'm sure the Cabinet Secretary will check that.

[474] **Mark Isherwood:** Right—oh, thank you. I will.

[475] **David Rees:** Cabinet Secretary, prior to the dissolution of Parliament—I have to be cautious now because [*Inaudible.*] otherwise, had you had discussions with the UK Government regarding the possibility of a legislative consent motion in relation to the great repeal Bill?

[476] **Mark Drakeford:** Yes, Chair. In a number of Joint Ministerial

Committees, I have said that I find it very difficult to imagine a Bill of the sort that they have described that would not require an LCM.

[477] **David Rees:** And did they agree with you?

[478] **Mark Drakeford:** I think I would say that they took note of our position. [*Laughter.*]

[479] **David Rees:** So, again, the answer was 'no'. Okay. Based upon the timescales you've identified, which are that you need to have the Bill by April of next year effectively, and what we understand is that, if an incoming Government is to put this Bill forward, it's likely to be in the Queen's Speech, so that it can be laid and operated on, what type of timescales are you working towards, because, clearly, we need to look at the LCM implications and the analysis of that information well before the Bill is actually approved and enacted?

[480] **Mark Drakeford:** Well, based on the same analysis that I used when I responded to Michelle Brown's question, that's to say, 'These are our best estimates rather than anything more concrete than that', I would anticipate that, on the timetable you've just outlined, an LCM would come before the National Assembly either at the end of the autumn term or the very beginning of the spring term of next year. So, December, January.

[481] **David Rees:** Okay. Are there any questions for the Cabinet Secretary? We're just literally coming to the end of our time. So, can I thank you, Cabinet Secretary, for your evidence this afternoon? As you know, you will receive a transcript to check for any factual inaccuracies. If there are any, please pass them on to us as soon as possible. Can I also thank you for the written paper we had? I didn't thank you at the start. It was very helpful. We will be looking forward to more meetings, obviously, but we appreciate, at this point in time, that we are in limbo in one sense. But there's a lot of work to be done in the meantime. Thank you very much for your time.

[482] **Mark Drakeford:** Thank you very much. Diolch yn fawr.

17:29

Papurau i'w Nodi
Papers to Note

[483] **David Rees:** On to the next item on the agenda for the committee. Can I ask Members to note the following papers? If you wish to comment upon any, please say so as I go through the papers. Paper 1: the post-Brexit manifesto from the Wales Tourism Alliance.

[484] **Suzy Davies:** I've had a request from the chair of the WTA, who gave you the paper, that if the committee, further down the line, decides it wants to do inquiries on certain sectors and have, you know, a deeper dive into sectors, whether tourism could be considered for one of those.

17:30

[485] **David Rees:** Thank you very much. We'll make sure that's noted. Paper 2—.

[486] **Eluned Morgan:** On that—

[487] **David Rees:** Back to paper 1.

[488] **Eluned Morgan:** Back to paper 1, sorry. There were some figures, I think, in that, from the Wales Tourism Alliance, that I think were different from ones that I've heard somewhere else. So, I wouldn't mind some more detail on that.

[489] **David Rees:** Okay, I'm sure the chair of the cross-party group on tourism will look into that.

[490] **Eluned Morgan:** Well, it's in the cross-party group that I heard different figures, which is why I'm interested.

[491] **David Rees:** Paper 2 to note: a letter to the Chair from the chief executive of the Arts Council of Wales and a paper on negotiating a new creative relationship between Wales and Europe. Are you happy to note that?

[492] Paper 3: a letter from the Secretary of State for Wales, Alun Cairns, in response to our correspondence on Welsh Government access to Whitehall. Are Members happy to note that? Okay, thank you. I want to add on record my disappointment at the letter being a single response, because we wrote

to several departments within Whitehall and Government, and I felt the response was inadequate to this committee and disrespectful in that sense, and I want that on record.

[493] Paper 4: a letter from the Chair of the Equalities, Local Government and Communities Committee. Are you happy to note that? Paper 5: correspondence from the Chair of the Constitutional and Legislative Affairs Committee and its response to the House of Commons Procedure Committee, actually an inquiry into the repeal Bill. Paper 6: a paper from the NHS Confederation on Brexit and the NHS. Paper 7: a paper from the Organisation for Economic Co-operation and Development. Thank you for that.

17:31

Cynnig o dan Reol Sefydlog 17.42 Benderfynu Gwahardd y Cyhoedd o'r Cyfarfod

Motion under Standing Order 17.42 to Resolve to Exclude the Public

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.

[494] **David Rees:** Then I move on to the next item. Under Standing Order 17.42(vi), I resolve to exclude the public from the remainder of this meeting. Are Members content? We'll now go into private session.

Derbyniwyd y cynnig.

Motion agreed.

Daeth rhan gyhoeddus y cyfarfod i ben am 17:32.

The public part of the meeting ended at 17:32.

