



Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales

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

23/01/2017

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Cofnodir y trafodion yn yr iaith y llefarwyd hwy ynnddi 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
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

Des Clifford	Llywodraeth Cymru Welsh Government
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)
Paul Harrington	Llywodraeth Cymru Welsh Government

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

Alun Davidson	Clerc Clerk
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Rhys Morgan	Dirprwy Clerc Deputy Clerk
Nia Moss	Y Gwasanaeth Ymchwil Research Service
Elisabeth Jones	Prif Gynghorydd Cyfreithiol Chief Legal Adviser

*Dechreuodd y cyfarfod am 13:35.
The meeting began at 13:35.*

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

[1] **David Rees:** Good afternoon. Can I welcome Members and the public to this afternoon's session of the External Affairs and Additional Legislation Committee? The meeting is bilingual and therefore, if you require simultaneous translation from Welsh to English, can you please use the headphones on channel 1? If you require amplification, then use the headphones on channel 0. Can I remind everyone to turn off their mobile phones or put them on silent, and other electronic equipment that may cause a disturbance to the committee's session? There are no scheduled fire alarms this afternoon, so if one occurs, please follow the directions of the ushers. We've received apologies from Suzy Davies. We've received no other apologies and there'll be no substitute for Suzy.

13:35

Gadael yr Undeb Ewropeaidd: Y Goblygiadau i Gymru—Sesiwn Dystiolaeth gydag Ysgrifennydd y Cabinet dros Gyllid a Llywodraeth Leol Leaving the European Union: Implications for Wales—Evidence Session with the Cabinet Secretary for Finance and Local Government

[2] **David Rees:** We move on to the next item on the agenda, which is our evidence session this afternoon with the Cabinet Secretary for Finance and Local Government, who represents the Welsh Government on the Joint Ministerial Committee (EU Negotiations). Can I welcome the Cabinet Secretary? Would you like to introduce your officials?

[3] **Ysgrifennydd y Cabinet dros Gyllid a Llywodraeth Leol (Mark Drakeford):** Diolch yn fawr, Gadeirydd. Gyda fi'r prynhawn yma mae Des Clifford, pennaeth adran y Prif Weinidog, sy'n arwain ar ochr y gweision sifil ar Brexit, a Paul Harrington, un o'r grŵp o weision sifil sy'n gweithio i'r Llywodraeth ar Brexit.

The Cabinet Secretary for Finance and Local Government (Mark Drakeford): Thank you very much, Chair. With me this afternoon are Des Clifford, head of the First Minister's department, which is leading on the civil service side on Brexit, and Paul Harrington, one of the members of the group of civil servants working for the Government on Brexit.

[4] **David Rees:** Thank you for that. Obviously, we'd like to go straight to some questions. We recognise that the Welsh Government has published a White Paper this morning and has launched it with Plaid Cymru, through the liaison committee. We haven't had time to fully digest some of that, but there may be one or two comments that may come as a consequence of that. We look to opportunities in the future, perhaps, to explore further some of the details within that White Paper. It may come up in what we ask today.

[5] But perhaps I can start off, Cabinet Secretary. It's been quite a busy seven or eight days. The Prime Minister's made her position quite clear and we've received this White Paper, but also, you've attended the JMC(EN) in relation to the discussions as to the negotiating position for going forward. However, it appears, from the reports and the evidence I saw on the television, for example, that yourself and your colleagues from the devolved nations were a little dissatisfied, perhaps, with the way in which the JMC(EN) was going. I will be honest; you were very diplomatic in your answers, but the comments that we were hearing from your other colleagues weren't so diplomatic. Is the reality that the UK Government is listening to devolved nations? Is there a purpose and, perhaps, is the JMC(EN) going to produce what we hope it will produce?

[6] **Mark Drakeford:** Well, Chair, this was the third full meeting of the JMC(EN). I think I would describe it as an evolving process. But, as each meeting goes by, I think you can see some additional maturing in that new forum. There is a tension; there is a tension between knowing whether the core purpose of the JMC(EN) is for devolved administrations to be able to make their views known, to be able to set out the things that are important for each one of us and simply to get a hearing—and that's important in itself. I've learnt a great deal in those three meetings from listening to Scottish and

Northern Irish colleagues, for example. So, the fact that there is a forum where views are able to be expressed and shared, that's important in itself.

[7] But the tension is whether the JMC(EN) is going to be able to fulfil the remit that was set for it, which is that it is a forum in which the ambition is that we are able to agree a negotiating prospectus for the whole of the United Kingdom when article 50 comes to be triggered. We won't know how effective the JMC(EN) has been in that until we have completed our work. But there is some frustration, which I share with colleagues—and some colleagues probably find the frustration more significant, maybe, than I do—that we are not yet confident that we are making progress in that aspect of our work. Does what goes on in the JMC(EN) make a difference to the way the UK's thinking is developing? Well, the chair of the JMC(EN) says definitely it is and that there are examples that can be pointed to in that way. Others are yet to be convinced that it's going to be successful in being able to do that.

[8] **David Rees:** Is that the fault, perhaps, of the lack of solid structures within the intergovernmental relationships to allow a JMC to actually ensure that each of the devolved nations that attend is treated in an equal manner, and that it is, perhaps not dominated by the UK Government?

[9] **Mark Drakeford:** Well, Chair, I do think that one of the things that the whole Brexit experience has exposed is the rather rust machinery that there has been for bringing the four component nations of the UK together to have these sorts of exchanges of views. I'm afraid I remember very well the very earliest days of devolution when the JMC met very regularly, when it was always attended by the Prime Minister and other senior figures. Then we ran into a period where that machinery was not used very much at all, and needing now to revive it for this very important purpose, you can see the rather rusty nature of it. When you have a chance to look at it properly, you will see how, in the White Paper, we rehearse our firm view that, post Brexit, this intergovernmental machinery will need to be attended to across the United Kingdom.

[10] But your question is also about parity. I suppose there's more than one sort of parity. I would say the JMC last week was very carefully chaired to make sure that all participants had a very full opportunity to make their views known. There was a substantive paper from Northern Ireland, there was a substantive paper from Scotland, and the meeting spent the bulk of its time with people from those devolved nations able to set out their views and for everyone else who wanted to comment on them to have a chance to

comment on them. So, in that sense, I would say it was a meeting with quite a high degree of parity. In another way, the meetings are not parity meetings at all. So, six Cabinet members turn up to them, a number of Ministers of State turn up to them, a number of other UK Ministers attend for particular items on the agenda. So, I would say there are regularly a dozen UK Ministers around the table. There are always two Northern Irish Ministers there. Scotland and Wales tend to be represented by one person. So, in that sense, it doesn't feel like a completely equally distributed meeting. The UK Government would say it's a sign of how seriously they take the forum that they bring to it such a large number of very senior figures to participate in these discussions.

[11] **David Rees:** Parity could be explained, as you have just done, either in numbers, or in actually giving time to speak. I suppose the important thing in parity is being able to be heard, and that the issues, particularly if they are devolved responsibilities, are acted upon, in a sense. I suppose, at that point in time, the question of parity can be important, because it is important that the negotiating position reflects those particular areas that are devolved, in which there are clear differences across the nations of the UK.

[12] **Mark Drakeford:** Well, as I said, in the meeting last week I don't think anybody could have gone away feeling that they had been denied an opportunity to contribute. The meeting was carefully chaired in that way, and right around the table, wherever you came from, if you had something that you wanted to say, you were offered that opportunity. So, in terms of parity of contribution, I don't think that you could make a complaint. In terms of parity of impact—whether the views of the devolved administrations will have the impact that we would like to see them have—well, that's a more open question, and in some ways we won't be able to answer that question until the process has been complete.

[13] **David Rees:** You've answered very well, and politely as well, so I'll pass on to my colleagues now at this point. Perhaps, Dawn, do you have a question?

[14] **Dawn Bowden:** Yes. Cabinet Secretary, good morning—good afternoon, actually. It was just a more general question, really. The Prime Minister made a very comprehensive statement on 17 January, and I just wondered if you could tell us a bit more about the Welsh Government's response to that statement and whether, in fact, it did have any influence on what finally appeared in the White Paper, or whether the Government's

position has remained unchanged—I guess, in particular, around her comments on the Government not seeking, necessarily, to remain members of the single market, and perhaps looking at areas around—what’s the word she used—phasing in the implementation of any new agreement. So, really, just some overarching remarks on that.

14:

45

[15] **Mark Drakeford:** Thank you, Chair. I don’t think we could claim that the Prime Minister’s speech has had a direct impact on the content of our document. As you will know, we weren’t alerted to the fact of her speech until very late in the day. Although the First Minister had a telephone call with her in advance of the speech being made, our document has been in discussion over months, and is a product of some very detailed work. It draws on the advice of our advisory committee, was thoroughly discussed in the Cabinet sub-committee, and has been the subject of a series of meetings with Plaid Cymru, through our liaison arrangements there. So, our document was fully formed by the time the Prime Minister spoke. So, I don’t think you can see a direct read-across.

[16] In terms of what the Prime Minister said on the single market, well, the position that I have represented at the JMC from the very first meeting is that, from a Welsh perspective, full and unfettered access to the single market, free of tariffs, free of non-tariff barriers, with regulatory equivalence built into it—that level of single market participation is key to the future of the Welsh economy. I felt my job last week was to try and demonstrate that what we want and what the Prime Minister has said doesn’t have to be regarded as cancelling one another out. You could still deliver a great deal of what we say is essential to Wales within the terms of what the Prime Minister had to say, but you do have to work quite hard to reconcile the two. But in order to be influential, sometimes you have to bridge positions. You have to try and demonstrate that what we want to achieve and what the Prime Minister said don’t have to be irreconcilable. But we are, nevertheless, primarily keen to make our case as clear as it can be that, from the Welsh economy’s perspective, if we ended up with tariff barriers and other non-tariff barriers—actually, when you have a chance to look at it, you will see the chief economist’s analysis in our document that shows that non-tariff barriers are probably more substantial in their impact on trade than tariff barriers—and then to find ourselves in complexities over regulatory equivalence and point of origin, and all of those sorts of things, then all that

can be avoided, we believe, with a sensible arrangement on the single market. We continue to press that point of view, and we have a great deal of support from both other devolved administrations in doing so.

[17] As far as transitional arrangements are concerned, this is an area where I think the Welsh contribution in these debates at the JMC and beyond has been genuinely influential. There was very little talk of this in the first JMC. The UK Government's position at that point was that, within the two years of the article 50 period, it would be possible to both settle the terms of the divorce and to have sorted out all the future arrangements as well. That never seemed plausible from the Welsh perspective; more difficult from the perspectives of other devolved administrations. Scotland's position is that Scotland should remain in the European Union and leave the United Kingdom. So, transitional arrangements weren't much part of their vocabulary. Obviously, the Northern Irish position is even more complex. But we were able to say from the very first meeting that we believed that a sensibly managed transitional period will be essential to give security and continuity to businesses and to citizens in the way that the world as they know it today will be conducted once Brexit has taken place. So, I was pleased to see the Prime Minister aligning herself with that position, as have many others now—the head of the Bank of England and others—and we treat that whole issue to a chapter of its own in our document.

[18] **Dawn Bowden:** Okay, thank you, Cabinet Secretary, that's very clear. Thank you, Chair.

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

[20] **Jeremy Miles:** I have a question as well about the Prime Minister's speech, but can I just take you back for one minute to the JMC and the dynamics of the discussions in the room, so to speak? You've talked about reconciling the Welsh Government's ask and the UK Government's public position on it. In terms of the outcome of those discussions, generally, to what extent would you say that the UK Government is inclined to look for points of agreement? Is that part of its approach?

[21] **Mark Drakeford:** I would say that the meetings are conducted in a way that has some effort to find some common ground in them. It isn't always easy and there still are some significant issues on which the JMC will need to engage. But I wouldn't want to give the impression that on the UK Government's side there isn't an appetite for trying to find common ground.

You will understand, Jeremy, that common ground even inside the UK Government is sometimes in short supply. There are some very different voices within the UK Government's own range of views on Brexit. So, it does come and go a bit and it does depend on who is involved in the dialogue at the time. But I don't want to characterise the forum as being absent of a wish to find common ground because I don't think that would be fair.

[22] **Jeremy Miles:** And is there—? Have you been successful in reaching an agreement or finding common ground with the other devolved administrations in relation to the discussions that are going on in JMC?

[23] **Mark Drakeford:** Well, it's always been the way that I've tried to do these things in other forums for which I am responsible. I think that it always helps when devolved administrations are able to have a conversation amongst ourselves in advance of some of these four-way meetings—not necessarily always because you can agree on everything, but I just think it helps to have understood what other players are going to be saying on issues and why they're going to say what they say and where we are able reinforce one another to be able to do that. But it's as much about making sure that you are well informed, so I will always have spoken in advance of a JMC to the Scottish Minister who will be representing Scotland there, and I will generally have spoken to Northern Ireland colleagues as well. As I say, the essential purpose is just information sharing and making sure we understand one another's point of view. But on full and unfettered participation in the single market, that was something that we were able to agree on very early on, and it's a theme to which we regularly and individually return, and I think that has given that whole issue a greater salience in the way that the JMC discusses it.

[24] **Jeremy Miles:** Thank you for that. On the point of the Prime Minister's speech last week, I think that she has used in many places very careful language about what commitments are being given. In particular, there was a reference to ensuring that the right powers are returned to Westminster and the right powers are passed to the devolved administrations, and a further reference to ensuring that no decisions currently taken in Wales would not be taken in Wales in the future. Those things fall quite a way short of a commitment that any powers currently exercised in Brussels in relation to devolved competencies will end up being exercised in Wales at the end of the process. Do you have concerns about that area? What mechanism would the Welsh Government want to see to ensure that we get back into Wales the powers that are currently exercised in Brussels in relation to devolved

competencies?

[25] **Mark Drakeford:** Thank you, Chair. I think it's important we acknowledge in the beginning that the Prime Minister's speech was a wide-ranging speech, it was often a speech pitched at a reasonably high level of principle, and that there were many audiences that she was needing to try to address in that single speech. So, I think, sometimes, getting too forensic on the specifics of what she had to say maybe won't be the most fruitful way of trying to understand that speech. In general, the fact that the Prime Minister did say that there was no intention to row back on the current devolved settlement, and that powers, post Brexit, would come to the devolved administrations—I think that it was good to hear her say that. We would not necessarily have chosen the language that she chose to express that, and therefore we have to go on expressing our understanding of that area in the way that we would put it. But I don't regard what the Prime Minister said as entirely unhelpful in that area. I think the fact that she took time to address that issue and said something reasonably positive on both counts gives us a platform to work from in further discussions with the UK Government.

[26] Where would we have differed from her? Well, it's been a struggle, I think, all the way through this process, to get some colleagues at Whitehall to understand that, when the EU level is no longer there, the powers that at the moment we choose to exercise through our membership of the European Union will not come from Brussels to London for London to hand on, they will come directly to Cardiff, to Edinburgh and to Belfast. Because these are matters that are already devolved, and there is no member state here for those powers to be repatriated to. The Prime Minister's formulation of it tended to be a bit more that powers will come from Brussels to the UK, and then will be re-parcelled on according to the devolution settlement. That's not our view of it; it's not the view we set out here. Those powers come straight to where, in the UK's constitutional settlement, they currently rest. So in agriculture, for example, the things that we do today at the EU level will in future come to the four nations separately. We may choose—why wouldn't we—on some things like animal health, for example, to re-pool those powers in a form of combined sovereignty on those matters, but that will be or us to decide and to do voluntarily. I think there is a bit of a gap, still, to make sure that we have a common understanding and a common set of language to express the way that that will work in future.

[27] **Jeremy Miles:** Just one final question. Thank you for that, and I take the point about the specificity of the language, and it sounds as though there

isn't yet a meeting of minds about the process, obviously, from what you've said. But have those positions been—? Has the discussion started about those—I suppose you might describe them as constitutional process questions? Have they been aired in discussion yet?

[28] **Mark Drakeford:** Yes, Chair, they have been. As I say, it is in some ways a cast of mind. If you work at a UK Government level, and devolution is a relatively marginal part of the way that you have to think every day about the job that you do, it sometimes just doesn't cross your mind in quite the way that it would to those of us who are familiar with this all the time. And therefore, there is a process of education to be done there. We feel very confident of our position; we think it is the legally watertight position. We're not expressing just a point of view here, we're expressing the way that the law currently would require things to happen. When you're not as familiar with these things, and you don't need to think about them all the time, there's a bit of catching up to be done, and it's part of our contribution to try and accelerate that learning process.

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

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

[31] **Eluned Morgan:** Can I ask you about the options that were closed down last week, effectively, by the Prime Minister? She's effectively said that she doesn't want to be part of the European Free Trade Association, doesn't want to be part of the European Economic Area, which suggests that the only option where your ambitions and her ambitions can be met are through the bespoke arrangements. Is that your understanding?

14:00

[32] **Mark Drakeford:** Well, it's one of the differences that we would have with the Prime Minister. We think that it doesn't make good sense at this point to close down options of that sort. We think, with the menu of different possibilities for sustaining a single market relationship, that it makes sense just to keep all those options on the table. Our paper absolutely does that. We don't rule out the bespoke model that the Prime Minister favours, but we don't quite see the sense of why you would want to turn your back on other possibilities that continue to have a relevance and could do with being explored in more detail.

[33] So, our paper says there are a series of different ways in which that relationship could be modelled to provide the level of participation that we think is important to Wales, and we believe that a wider menu of options should still be in play. That is a difference between our point of view and the way the Prime Minister formulated it.

[34] **Eluned Morgan:** Good, thanks. Can I congratulate you on the paper? I think it's very well written. I think the annexes at the back are particularly useful. I think that's exactly what we need—some really hard evidence to back up the points that you've been making over a number of months.

[35] I wanted to ask you specifically about the demand in this paper for a revision of the block grant in the longer term to ensure that EU funding can be replaced. Could you tell me why you decided on that as an approach rather than any other funding?

[36] **Mark Drakeford:** Well, Chair, I think there are two essential reasons why we advocate a simple adjustment of the block grant as the best way of taking account of funding arrangements post Brexit. One is simplicity. It would be the most straightforward way that the UK Government could recognise the different levels of funding that come to the four nations as a result of EU membership. There are more complex ways in which this could be done, but we think that this is a straightforward way. We are able, in a way that is not controversial, to identify the funding that flows to Wales as a result of EU membership. Those people who advocated leaving the European Union during the referendum were very clear that Wales wouldn't lose a penny, and, in fact, we would be better off as a result of leaving the EU. Therefore, the simple way of making good on that promise is to transfer the funding that comes from the EU to Wales into the block grant.

[37] So, there's simplicity on the one hand, and then there is fair recognition of relative needs on the other, because a Barnett share of agricultural support, for example, would leave Wales very, very badly short-changed. So, other established mechanism simply don't work in this area, and if they were to be applied, they would be much to Wales's detriment.

[38] So, for both of those reasons, we think a block grant uplift, and then allowing the National Assembly for Wales to have oversight of the way that those funds would be deployed for purposes that are currently discharged at the EU level in future would be both democratically suitable, but also economically fair.

[39] **Eluned Morgan:** Would it be possible for you to take that approach and argue for a UK regional policy? Would those be compatible?

[40] **Mark Drakeford:** Well, Chair, our point of view, set out here, is that regional economic policy is a devolved competence, and the Welsh Government and the National Assembly for Wales are in the best position to design a new, regional economic policy that best meets the needs of Wales. We're in the best position to do it from a policy point of view, because nearly 20 years on from devolution, the policy expertise in that field now rests with devolved administrations. There is no central policy capacity in that area. And certainly, practically, we are the level of government, with our relationships with local authorities and others, that is capable of delivering a regional economic policy on the ground. You have to have troops on the ground to be able to do regional economic policy. As I say, 20 years on from Whitehall giving up those responsibilities, I don't believe it is a practical proposition for London to be able to devise or implement policy successfully. It is just right and proper and effective for those things to be done here.

[41] Now, we may well, of course, want to have conversations between all four nations. You don't want regional economic policy to become a race to the bottom in which we're trying now to compete with another in ways that do harm to local economies. So, this is not an argument against proper discussion and sharing and crafting common points of view where you can. But if your question was about where should responsibility rest—should it be a UK regional policy responsibility or should that responsibility be exercised at the devolved level—then I've no ambiguity in saying it's a devolved responsibility now, and it needs to be after Brexit.

[42] **David Rees:** Can I bring in Steffan Lewis who wanted to ask some questions on regional policy?

[43] **Steffan Lewis:** No, I'm satisfied.

[44] **David Rees:** You're satisfied. Okay. Eluned.

[45] **Eluned Morgan:** I just wondered, just to follow up on that—. I completely understand that and I think it's quite easy to justify it today. In five years' time, I just wonder what that might look like politically if you're sitting in the north-east of England 10, 15 years from now and you see that block grant looking very significantly different from the kind of money that

will be going into the north-east. How would you justify that politically? Of course, at the moment, it's very easy to say, 'We're going to be getting 20 per cent of what we have now, what we're receiving from CAP'. I just wonder: are we storing up problems for ourselves in the long term by taking this approach?

[46] **Mark Drakeford:** It's difficult for me to have a firm view of that, I think, Chair. Maybe in 20 years' time if you were living in the north-east you'd be regretting even more the way you voted when you had a chance to secure devolution for the north-east of England. It's not my business, I guess, but, I suppose, if I was trying to take a more detached view of things, then, just as it's my view that Brexit doesn't leave the relationship between the four nations of the UK untouched—that will need to be recalibrated—I think there will be work to be done inside England as well in the way that devolution within that, by far the largest nation of the United Kingdom, the way that powers are distributed within that ambit as well.

[47] **David Rees:** Okay. Mark.

[48] **Mark Isherwood:** Thank you very much. If I could break it down into questions—I've got a huge number of questions—but you referred earlier to representation at the JMC, England having, or the UK having, up to 12 Ministers, Northern Ireland two, Wales and Scotland only one. Are those numbers set centrally or do you have the flexibility to vary numbers as you feel appropriate as a Government, reflecting that, as you say, Northern Ireland, for example, takes more than Wales currently does? Perhaps, if I come on to my final question, I'll throw in a second one at this stage. You said that, post Brexit, inter-governmental machinery will need to be addressed, and, to an extent, that's been touched on—the discussion over whether the powers currently held in Brussels would go back to London or to devolved administrations in devolved areas—but we've had some evidence referring to the need for UK frameworks between the four Governments, specifically in agriculture and marine environment, in terms of agreeing collective policy as it would currently be done at EU level and then adjudicating on that perhaps through the courts system. But, similarly, given reference to north-east England, for example, and broader economic regional funding, it might be, or do you feel it might be, necessary to set the policy again, whether we continue with 75 per cent gross value added as a measure, and, again, to potentially adjudicate over implementation where, currently, the EU would fulfil that role?

[49] **Mark Drakeford:** Thank you for both of those questions. In terms of the numbers of people who turn up at the JMC, I'm sure there is some marginal ability to flex the numbers. An additional Scottish Minister came to the second meeting because there was an item on the agenda that was particularly relevant to his portfolio. So, at the margins, I think you could. Northern Ireland always come with two members because they have to represent both sides of the coalition there. And I think there was an occasion where a third member from Northern Ireland came because of the policy issue that was under discussion. So, at the margins, I think you can, but the current arrangement does have that inbuilt heavy weighting in favour of one of the four participants. We float in our paper a future model closer to the Council of Ministers model, which, obviously, we would need to negotiate and agree with others, and would, I think, have a slightly more equal sense of participation and contribution.

[50] **Mr Clifford:** Can I just add to that?

[51] **Mark Drakeford:** Yes, please, Des.

[52] **Mr Clifford:** If I could just elaborate on that a little bit, Chair, if I may, I think one thing that has not happened previously in the United Kingdom, under our devolved arrangements, is joint decision making between devolved administrations and the UK Government. And I think that the logic of where we'll be left constitutionally after the UK has pulled out of the European Union is a requirement to develop new inter-governmental machinery that will enable joint decision making to take place between the UK Government and the devolved administrations. So, for example, as we've already had discussion about the need to have UK-wide protocols in relation to some aspects of agriculture policy, and no doubt there'll be similar calls for protocols in some aspects of environmental policy, and so on, but also, following the point that was made by Eluned just now, there is an interplay, clearly, between the application of microeconomic policy in Wales post EU withdrawal and wider macroeconomic policies that are set at a UK level. It would be sensible for that kind of policy decision to be taken through a joint UK and devolved administration decision-making body.

[53] So, I think there is a really well-established need now to look again at the machinery by which the UK Government develops its policies jointly with devolved administrations. I think the current machinery is literally not fit for purpose, because the purpose of the current machinery is qualitatively different to the situation that will apply when the UK has pulled out of the

European Union.

[54] **Mark Isherwood:** And adjudication? Because we were told, I think, that the climate change committee in the UK had taken evidence suggesting a need for some kind of environmental and agricultural court, because we know that the environment knows no boundaries, whether it's streams or pollutants through the air, or what have you. What is your view, because there are different views, on the need for some sort of legal structure to reflect that, where the European Court of Justice may not in the future?

[55] **Mark Drakeford:** Well, Chair, on Mr Isherwood's original question, I thought the way he put it was very important, because when he talked about UK frameworks, he talked about those being agreed frameworks. And, from our point of view, that is the key thing—you know, no objection of principle to frameworks where those would help to sustain the internal market of the United Kingdom, but they have to be agreed, not imposed. They're not for the UK Government to set and for us to respond to. They are to be negotiated collectively, and, when they are agreed, having frameworks of that sort would be very useful. We refer in the paper to robust, genuinely independent arbitration mechanisms to help resolve disputes. The detail of that, and how you'd secure that, we would need to talk about further, but the principle is very important.

[56] **Mark Isherwood:** And adjudication?

14:15

[57] **Mark Drakeford:** Yes. Well, arbitration rather than adjudication. I don't think we're handing over the decision making to some other group of people in the way that arbitration suggests, but adjudication, where we have an element of independence in the way that disputes are resolved, I think is very important.

[58] **David Rees:** I think the Member was actually also talking about the replacement of European courts, particularly in the environmental areas, which make decisions where member states have, basically, defaulted on or broken regulations. Currently, that's done on the European level. Would that then be included in a framework at a UK level?

[59] **Mark Drakeford:** Chair, this probably takes us to the so-called great reform Bill, which is essentially designed to reform nothing, but to make sure

you have continuation of arrangements that we have today into the future. A lot of work is clearly going on—not that we are privy to much of the detail of it, I'd have to say—at the London end to begin to frame that Bill.

[60] One of the key questions that we know they will have to address is what's called 'inoperability': if you are transferring into UK law matters that are currently dependent upon an EU framework and that EU law refers to something that's not going to be there in future, like the European Court of Justice, in the British sense, you've got to find some other way of making that work. Sometimes that will be very simple and very technical and resolvable. Other things will be much harder to resolve—to identify those mechanisms that will be available to the UK when this becomes domestic law rather than the arrangements that are there when it is law at an EU level. So, I don't know that we yet have a particularly detailed insight into how the UK Government intends to resolve those things. A very big corpus of law will be for this National Assembly to determine, and we will have to think about these inoperability issues ourselves where the law that we have passed here or will be coming to us as a result of leaving the European Union—how we resolve those things too. So, I don't have an answer as to the specifics of the mechanism, but it's a question that we are very alert to and discussions have started already. Des goes to more of the detailed meetings than I do.

[61] **Mr Clifford:** Just to add a sentence, if I may, Chair, it's one of the reasons why we think it's so important to have new machinery bringing together the four administrations of the UK to resolve this big range of issues, politically, because if they can't be resolved politically, you end up in courts, which doesn't seem a good basis to take policy forward for the long term. We will have the Supreme Court judgment out tomorrow, but I think, as elected politicians, most of you wouldn't feel that constantly having recourse to the courts is a good way to solve differences that are essentially political in nature. That is why we think that the machinery of government has to adapt and evolve to meet the new challenges to avoid that world of overreliance on courts.

[62] **David Rees:** Mark, did you—

[63] **Mark Isherwood:** Just one other—I'll try and keep it quick because I know time's against us. Coming back to pre Brexit—we've been talking about post Brexit—we've heard in evidence of countries, states, that have access to some EU programmes although they're not members of the EU, EFTA or EEA. We know that countries like Switzerland—EFTA, non-EEA—have, effectively,

bespoke agreements. We know that EFTA, or EFTA nations, effectively, have bespoke agreements that give access to some things and not other things on a reciprocal or non-reciprocal basis.

[64] We also know, as we move towards negotiations, that the EU's opening position—and we don't know if it's only an opening position or not—is no single market without freedom of movement and European Court of Justice, and the UK Government's opening position is that we need a flexible, bespoke agreement including free trade. But how important is it, both in your discussions in JMC and more broadly, that negotiating positions at this stage remain confidential and that, whether it's UK Government, devolved Governments, or potentially the EU, they don't tip the other side the wink on what they're prepared to give way on and what they're not?

[65] **Mark Drakeford:** Well, Chair, I understand partly what the Prime Minister says when she says she can't be expected to set out the detail of the UK's negotiating position in advance of negotiations. I think her speech last week was a recognition that she could go further than she had before and, obviously, our document and the Scottish paper go a good deal further than that in setting out our strategic objectives for those negotiations. We calibrate some of these issues differently at present.

[66] In terms of migration, we are very clear in our paper about the positive benefits to Wales from migration and the dangers that there would be to many, many key public services and industries in Wales were an over-restrictive approach to post-Brexit migration to be adopted at a UK level. So, we set out the reliance that there is in Wales: in our social care services, there are over 1,100 workers in Wales today from other EU countries; 25 per cent of workers in tourism and hospitality come from outside the United Kingdom; 11 per cent of workers in agriculture come from other parts of the EU—let alone what we know about our health service and our universities and so on.

[67] So, we set out very positively the case for migration and the dangers to the Welsh economy of an over-restricted approach. We think it is possible to calibrate an approach to migration that would not be inconsistent with full participation in the single market and we set that out here too. It would be an approach that puts a greater emphasis on people coming to Wales for work and having work before they arrive here, or having a limited period in which to obtain work once they are here. So, tying migration to employment more directly and a focus within the United Kingdom—a considerably more robust

focus—on making sure that, if people do come here from other parts of Europe to work in industries, that is not freedom for exploitation, that is not people being brought here to undermine terms of employment, conditions of employment, or the sort of regulatory regimes that we would expect to be in place where people take up those occupations. We think, if you put those two things together, we would go a long way to both meeting those concerns that were undoubtedly there in the run-up to the referendum about the effects of migration, and also being consistent with the sort of participation in the single market that we would like to see sustained. Now, the UK Government will be equally thinking about how you weigh up these different elements in a negotiating position, but I think our White Paper puts our take on that very firmly there for people to see and understand.

[68] **David Rees:** Thank you, Cabinet Secretary. Steffan.

[69] **Steffan Lewis:** Thank you, Chair. Just to go back on one or two points on the JMC, is there an agreement that there should be an agreement at the JMC level? Is it an aspiration that is being worked towards that there could be a shared agreement? I also wondered if there was any added complexity given the situation in Northern Ireland, because, obviously, among the top issues in terms of EU withdrawal is the border issue, and that's going to have a huge direct impact upon Wales, in particular our ports at Holyhead and the two in Pembrokeshire. Do you know if the Prime Minister is planning another intervention before the article 50 process begins in the UK Parliament? Is that something that she or 10 Downing Street will be sharing with the devolved administrations, so that we can prepare here for a response and any possible legislative consent motions that might be required?

[70] And, very quickly, finally, is there any active engagement with the devolved Governments now in terms of the repeal Bill? The White Paper published today by Welsh Government and Plaid Cymru sets out a clear message that the repeal Bill should in no way infringe upon or seek to infringe upon devolved matters. And there's a provision there to say that we will consider legislating here if we believe that the draft repeal Bill attempts to do so, but are they being proactive in engaging with the devolved powers—administrations rather—in order to avoid any future conflict that might arise from that?

[71] **Mark Drakeford:** Thank you, Chair. On Steffan's first question, in some ways, it seems to me that it's not for the JMC to have a view on whether they should be seeking agreement, it is in the terms of reference given to the JMC.

It is the second line in the terms of reference that we are there to seek to craft an agreement. Some of the frustration among some participants is, you know, the extent to which we've focused on that particular aspect of what we need to do. So, it's not about whether players think that's what they're about; that's what they're told they're about. That's why they've been invited to be around that table to do that, and some of us keep coming back to that, fairly regularly, to point out that that is at the core of what we are meant to be seeking to achieve.

[72] On the border issue, that is a very important issue from our point of view. It is one of the points in the Prime Minister's speech where you do wonder how some of the principles she sets out are to be made consistent with one another. Because she has a paragraph in which she says very clearly that it is her ambition to sustain the common travel area, that people should be able to move freely across the border between the republic and the north of Ireland, and, in her very next paragraph, she goes on to talk about migration and control of borders. So, in paragraph 1, she has a completely open border between Europe and the United Kingdom, and then a paragraph about how migration is to be controlled. It is difficult to understand, and I'm not trying to be critical at all, I'm just—. Just in terms of trying to seek, seeking to understand better, it is hard to see how those two things can be squared. The danger, from our point of view, from a Welsh point of view, is, if they were to be squared by making the eastern seaboard of the island of Ireland the border between the UK and the EU, what that would do to our ports, making them now customs points and passport points and being asked to discharge a very, very different set of responsibilities than the ones they currently discharge. I think that point is well understood, that there is an issue there and an issue for Wales as well. How it's to be resolved, I don't think we're much further forward on.

[73] As to whether the Prime Minister will make a further intervention, there is a meeting of the JMC plenary planned, and I imagine that the Prime Minister will want to say things there. It will obviously happen after tomorrow now, so the results of the Supreme Court judgment will also be available. Other than that, I've no insights into the Prime Minister's diary. But I do know that a JMC plenary is intended to take place.

[74] The final question, on active engagement with devolved administrations on the repeal Bill—well, there has been engagement, but it's been at a lawyer-to-lawyer level so far. I know that lawyers in all devolved administrations have been asked to provide information to help the people

who will be responsible for drafting the Bill. My point at the JMC was that that needs to be stepped up—significantly stepped up—in order for us to understand better the approach that the UK Government will be taking in that Bill, for us to understand better whether LCMs will be required—I think our working hypothesis should be, has to be, that they will be—but also for us to understand better whether the great repeal Bill will result in a significant workload for the National Assembly for Wales, not just for the Welsh Government, but whether the floor of the National Assembly is going to find itself having to devote significant periods of time to dealing with the secondary legislative impact in devolved areas of the things that the great repeal Bill will have as its subject matter.

[75] My starting point is that I think we should all be interested in the repeal Bill being a successful Bill. It's in all our interests that that Bill is able to do the business in the way that we require it to do. So, when I said we wanted greater engagement, it's a positive offer, to be positively engaged to make that success happen. But if it turns out that it's not going to be able to deliver on the things that are necessary for Wales, then an early understanding of that and an early sense of what that means in terms of the time that the Welsh Government and its staff would have to devote to it and the time that the National Assembly would have to find to deal with the consequences of Brexit legislatively would also be very important.

14:30

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

[77] **Jeremy Miles:** Just to develop that last point briefly, if I may, engagement over the repeal Bill and any LCMs that go with that are conceptually separate from approval by the Assembly of the deal, possibly. And the Prime Minister has made it clear that both Houses of Parliament will have a vote on the final deal. It's the Welsh Government's position that the Assembly here should have a vote on that deal. What is the state of discussions around that point at the moment?

[78] **Mark Drakeford:** Chair, I think I would say that we have a better sense, following the Prime Minister's speech, of what she anticipates happening at the parliamentary level. Our position is well known, in a sense. The First Minister has said this very consistently from very early on. It is set out again in our White Paper. I couldn't say that there has been a great deal of discussion of those positions, but I think both positions are well-established

and understood by—separately understood by—all the players at the table.

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

[80] **Eluned Morgan:** Can I follow up on the triggering of article 50? You've made it clear in your paper that you wouldn't endorse trying to stop the triggering of article 50, but to what extent do you think any Bill might, or should, be amended, and what would you suggest should be put in it from a Welsh point of view?

[81] **Mark Drakeford:** Well, Chair, thank you for the opportunity just to be clear again. Our White Paper is not about challenging the fact of Brexit, it is about trying to shape the type of Brexit that will take place, and that's where our activities have been focused. I know that some thought is being given to what we might need to do were there to be a parliamentary Bill, but I think, Chair, you will understand that we don't yet know the Supreme Court's decision on that; we don't yet know where the Supreme Court will say that decision-making responsibility lies, and until we are clearer on the landscape that that judgment will create, we haven't been able to devote a major amount of resources to fleshing out what the various options from the Welsh Government's position would be. So, some preliminary thinking is definitely going on in advance of tomorrow, and then we will need to put a lot of flesh on some of that. But until you know what the Supreme Court will say—. There may not be a Bill at all, but when we know what the Supreme Court has decided and where decisions are to lie then we will definitely want to give thought to the points that Eluned has raised about what we think such a Bill should contain and whether there are important Welsh interests that we would need to try and secure through it.

[82] **David Rees:** Thank you. Time is almost at an end, and I'm going to take the final questions. We've focused very much today, and rightly so, on your role to represent the Welsh Government at the JMC(EN), but you are also the Cabinet Secretary for finance, and, clearly, there are implications for the financial aspects as a result of the decision to leave the EU and EU funding, structural funds. In fact, I was at a session this morning with the Shaw Trust, who highlighted their deep concerns over the future of structural funding. What discussions are you having in relation to structural funds and their future? Is there an end date, and has the Welsh Government yet looked at its target of 60 per cent of utilisation of its allocation of that funding?

[83] **Mark Drakeford:** Yes, Chair. Obviously we have very direct discussions

with the Treasury over the current round of funding, and we've made some progress there—as you'll know—in securing some guarantees from the Treasury. We think those guarantees will need to be extended in a number of important ways, both in relation to the way that the current round of structural funding is likely to go on—the ability to spend will go on beyond the end of the financial framework—but also, I make the argument, at least—I mustn't speak for anybody else here—that even if Wales had not qualified for the next round of structural funding, we would undoubtedly have been eligible for transitional funding, which in the current round was 70 per cent of what you had in the previous round. So, it was very significant sums of money that would have been available to Wales as a result of our membership of the European Union, not up to 2020, but to 2030, and we will expect the Treasury to recognise that that would have come to us as of right and via a properly understood rulebook, had our membership continued. So we remain very much in those conversations.

[84] In relation to the amount of EU funding in the current structural funds round that has been committed, we exceeded our 60 per cent target by the end of November, and our current working target—I'm reluctant to use the word 'target', because it's just a working figure that we are using—is that we expect to have 80 per cent of all the funding committed by the end of this calendar year. So we remain ambitious, in the way that we said, to make full use of the funding that's available to us, and to draw forward schemes where we can, where those schemes are worth supporting. I always caveat it with that point. I'm not going to approve a scheme that wasn't worth approving simply to get it under the wire of some funding timetable. But where there are schemes that we are convinced are worth supporting and will do good work here in Wales, we want to bring those forward and maximise our drawdown.

[85] **David Rees:** Eluned. A quick one.

[86] **Eluned Morgan:** Just a quick follow-up on that, which was really heartening to hear; if you can get 80 per cent spent by the end of this year, that would be excellent.

[87] **Mark Drakeford:** Committed, not spent, Chair.

[88] **Eluned Morgan:** Committed. Okay.

[89] **Mark Drakeford:** It's a very important distinction. I hammer away with

our partners on that as well. In previous rounds, there was sometimes a bit of a sense that you'd always be able to allow spend to happen beyond the period of the framework. People have to think of it differently this time. So, committed: we committed 61 per cent by the end of November, our partners have to deliver now on spend as well, to make sure that we don't just commit, but that we actually put that money to use.

[90] **Eluned Morgan:** I just wondered if you could give us—but I wouldn't expect you to have this—a breakdown of the different funds. So, for example, I'd be interested to know to what extent the rural development plan, for example—just the difference in the breakdown. So, if you could provide that—.

[91] **Mark Drakeford:** Happy to try to provide that.

[92] **Eluned Morgan:** Would that be okay? And I just wondered why, also—I can't remember; I did skim read this—I didn't see any reference to that point you made about transitional funding of 70 per cent in the White Paper. Have I missed something, or has it just been left out? And if so, why?

[93] **Mark Drakeford:** Well, I'm not sure that it is reflected directly in the White Paper. If it's not, it's because we don't know the rules for the next MAFF—multi-annual financial framework—and all I was doing was rehearsing what would have happened under the current rules, had Wales not qualified for structural funding this time around. We would anticipate a similar approach next time. This time, we were there around the table, able to argue very forcefully for what was in Wales's best interest, and we're not going to be in that position next time.

[94] **David Rees:** Thank you for that, Cabinet Secretary. I'm conscious that we've actually overrun our time, but thank you very much for that as well. As you know, you will receive a copy of the transcript to check for any factual errors; please let us know as soon as possible if you spot any. Once again, thank you for your time this afternoon.

[95] **Mark Drakeford:** Thank you very much.

14:39

Papurau i'w Nodi
Papers to Note

[96] **David Rees:** Members, I would like to move on to the next item on the agenda, which are papers to note. The first one being the correspondence from the Llywydd, identifying the fact that the National Assembly will be taking its roadshow out to Newport in March and looking to the opportunities for committees to perhaps undertake their sessions that particular week in Newport, if possible. Are Members content for us to look at the possibility of doing a session in Newport during that week, if it's appropriate and if it's achievable?

[97] **Steffan Lewis:** An excellent idea. All meetings should be in Gwent. *[Laughter.]*

[98] **David Rees:** Says the Member for South Wales East. Okay. Thank you very much.

[99] **Dawn Bowden:** Is that the week commencing 20 March?

[100] **David Rees:** It's the week starting on 20 March. Okay? So, for us, it would be 20 March. It would be the Monday.

[101] **Dawn Bowden:** I see. So, the committee—. Is it suggesting that all committees will meet in Newport that week?

[102] **David Rees:** It's suggesting that each committee have a look at the possibility. So, each committee will look individually at its workload, its commitments, and the appropriateness of doing it that week. But we will then, with your views, take the opportunity to see whether it's possible.

[103] The second paper to note is the correspondence from the Constitutional and Legislative Affairs Committee, which highlights their work being undertaken in taking Wales and the devolved institutions into the inter-governmental concepts. That is something that we've already touched on in our work. I would like to perhaps reflect upon whether we should be able to, as a committee, submit some evidence to CLA for that, based upon what we've already discovered, and perhaps point them to our report, which we will be publishing in the near future. Are Members content with that?

[104] **Jeremy Miles:** Yes.

[105] **Steffan Lewis:** Yes.

[106] **David Rees:** Thank you very much.

14:41

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

**Motion under Standing Order 17.42 to Resolve to Exclude the Public
from the Meeting**

Cynnig:

Motion:

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

*accordance with Standing Order
17.42(vi).*

Cynigiwyd y cynnig.

Motion moved.

[107] **David Rees:** In that case, I now would like to, under Standing Order 17.42, resolve to exclude the public for the remainder of this meeting. Are Members content to do so? We are; therefore, we will move into private session. Thank you.

Derbyniwyd y cynnig.

Motion agreed.

Daeth rhan gyhoeddus y cyfarfod i ben am 14:42.

The public part of the meeting ended at 14:42.