



OFFICIAL REPORT
AITHISG OIFIGEIL

Finance and Constitution Committee

Wednesday 4 October 2017

Session 5



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Wednesday 4 October 2017

CONTENTS

	Col.
DECISION ON TAKING BUSINESS IN PRIVATE	1
EUROPEAN UNION (WITHDRAWAL) BILL	2

FINANCE AND CONSTITUTION COMMITTEE

23rd Meeting 2017, Session 5

CONVENER

*Bruce Crawford (Stirling) (SNP)

DEPUTY CONVENER

*Adam Tomkins (Glasgow) (Con)

COMMITTEE MEMBERS

*Neil Bibby (West Scotland) (Lab)

*Alexander Burnett (Aberdeenshire West) (Con)

*Willie Coffey (Kilmarnock and Irvine Valley) (SNP)

*Ash Denham (Edinburgh Eastern) (SNP)

*Murdo Fraser (Mid Scotland and Fife) (Con)

*Patrick Harvie (Glasgow) (Green)

*James Kelly (Glasgow) (Lab)

*Ivan McKee (Glasgow Provan) (SNP)

*Maree Todd (Highlands and Islands) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Professor Mark Drakeford AM (Welsh Government)

Hugh Rawlings (Welsh Government)

CLERK TO THE COMMITTEE

James Johnston

LOCATION

The Robert Burns Room (CR1)

Scottish Parliament

Finance and Constitution Committee

Wednesday 4 October 2017

[The Convener opened the meeting at 09:30]

Decision on Taking Business in Private

The Convener (Bruce Crawford): Good morning and welcome to the 23rd meeting in 2017 of the Finance and Constitution Committee. I make my usual plea about mobile phones and other equipment.

Do members agree to take agenda item 3 in private?

Members *indicated agreement.*

European Union (Withdrawal) Bill

09:30

The Convener: Agenda item 2 is a videoconference; we will take evidence from Professor Mark Drakeford, who is the Cabinet Secretary for Finance and Local Government in the Welsh Government and is leading on the Welsh Government's approach to Brexit. He is supported today by Hugh Rawlings, who is director of constitutional affairs.

I am conscious that Professor Drakeford has another appointment at 10.30, and I would be grateful if members kept their questions short and to the point. I warmly welcome you to the meeting, Professor Drakeford. Do you want to make brief opening remarks?

Professor Mark Drakeford AM (Welsh Government): Thank you very much. I will briefly set the context for what I imagine will be a major focus of the discussion this morning, that is, the European Union (Withdrawal) Bill.

I had a first opportunity to discuss the great repeal bill, as it was then being called, shortly after the United Kingdom Government announced its intention to introduce such a bill, because the matter was discussed at the joint ministerial committee on European Union negotiations.

At that meeting, I said that the Welsh Government hoped that the bill would be one that we could support. I said that we understood the need for a smooth transfer of the accumulated body of legislation that has been accrued during our membership of the European Union to the set of circumstances that we will face when we are no longer members of the Union. I said that we understood the need for corrective action to ensure that that acquired body of legislation can work effectively in the post-EU context, and I said that we understood the need for UK-wide agreements to ensure that trade and other intra-UK sets of arrangements can work smoothly in the post-EU context.

Indeed, at that very first meeting I was keen to offer the UK Government the help of our officials and our lawyers in shaping the bill. We spend our lives looking at the borderlines between what is devolved and what is reserved—I am sure that you do, too. That is our meat and drink, whereas I am sure that there are whole departments in Whitehall where that is a pretty peripheral part of what people normally need to think about.

We thought that we had some expertise and capacity that we could have contributed, to help to make the bill one that we could have supported. Our disappointment has been that, despite our

being very clear that we set off in that constructive way, our offers of help and engagement with the UK Government have really not been taken up at all.

As result, we have a withdrawal bill that, as currently constructed, we cannot support, because at its heart it has a way of going about things that is inimical to devolution. The choice has been to solve the problems that we agree are there to be solved by saying that the UK Government will impose on us a set of solutions, rather than do things in the way that we advocated and get the component parts of the United Kingdom round the table together to create solutions collectively, collaboratively and by agreement.

The Welsh Government and the Scottish Government have worked closely together over the summer to come up with a set of amendments, which we think are a constructive, carefully crafted set of proposals that provide solutions to the UK Government, so that it can get out of a hole of its own making.

We will dedicate our efforts over this autumn to advancing those amendments, to try to win the argument with the UK Government. If we cannot win the argument with the Government itself, we will take our argument to the Parliaments, both in the House of Commons and the House of Lords, because we think that there is a better way of addressing the issues that the withdrawal bill quite rightly seeks to address. If we can be part of an agreed way forward across the United Kingdom, that would work for us and it would work for the UK as well.

The Convener: Thank you very much, Professor Drakeford. I have a couple of very general questions, one on relationships and one on frameworks. My colleagues will get into some of the detail. First, during an evidence session that we had on 20 September with Mike Russell, who is the Minister for UK Negotiations on Scotland's Place in Europe, he described the relationship between the Scottish Government and the Welsh Government on matters around the withdrawal bill; probably an appropriate phrase to use is that common cause was found between the Scottish Government and the Welsh Government on these issues. How would you describe or characterise that relationship?

Professor Drakeford: That is a fair way of describing it. It is important to say that in some ways, the position of the Welsh Government and the position of the Scottish Government are not the same. People in Scotland voted to stay in the European Union and the Scottish Government believes that the future of Scotland is better crafted outside the United Kingdom. People in Wales voted to leave the European Union and the Welsh Government believes that the best interests

of Wales are preserved by continued membership of the United Kingdom, so we come at some of these things from different positions.

However, on the withdrawal bill and the way that the UK Government currently crafts it, we certainly have a common cause in wishing to defend the parameters of devolution, which were established in two referendums here in Wales and in the referendum in Scotland. We have worked hard together to see whether we can come up with constructive and detailed ways in which these problems could be solved better. In that sense, we have a common cause and we worked closely together over the summer to pool our resources and to try to set out a pathway over this autumn so that we can jointly advocate the position that we have arrived at.

Neil Bibby (West Scotland) (Lab): It is good to see co-operation between the Scottish and Welsh Governments and a joined-up approach on a common cause in relation to the European Union (Withdrawal) Bill. You touched on the differences in approach between the Welsh and Scottish Governments with regard to respecting the relevant results in Wales and Scotland. Is there anything in the bill that the Welsh and Scottish Governments have a difference of opinion on?

Professor Drakeford: We have focused on the major areas of agreement, which are very significant. You will have seen that from the joint amendments that we have been able to lay and the way in which our legislative consent memorandums have been changed to make sure that we align our arguments, and in the joint statements that the two First Ministers have issued over the summer.

There are some very fundamental issues at stake here. Although there may be nuances where we would speak slightly differently, we have made a conscious decision that because the issues that are at stake are very important to the National Assembly for Wales, the Welsh Government, the Scottish Parliament and the Scottish Government, we are much better off putting our energy into the things that we agree on in order to try to maximise our ability to exert influence.

The Convener: Thank you. I am aware that the Welsh Government—together with Plaid Cymru—said some interesting things on the frameworks, particularly on issues to do with co-decision making. Can you help us to understand that a bit more by explaining the Welsh Government's approach to that matter? I know that some of my colleagues have more detailed questions on frameworks.

Professor Drakeford: The link between frameworks and how decisions are made is a very basic one for us, because we accept that there is

a strong case for common frameworks to make the UK function effectively once we are no longer in the European Union. As I said earlier, we have always said that we would come to the table to discuss those frameworks in a constructive way and looking for agreement, and we think that agreement is very achievable. However, how do we create a future for the United Kingdom after the European Union when the borderline between devolved and non-devolved will not be as simple as it may have been in the past? How will we make sure that we can get round the table together in a way that allows the component parts of the United Kingdom to share information and come to agreements where necessary?

Because our emphasis is on agreement, we have published a paper, "Brexit and Devolution: Securing Wales' Future", which tries to look ahead to the United Kingdom after the European Union. We make a series of proposals there to develop the JMC into a formal council of ministers, where we would be able to come together as equals and come to important agreements together. That is important to us because, as I said, the Welsh Government believes in the continuation of the United Kingdom and we want it to be able to function effectively.

Our document is intended to be part of a debate rather than a definitive set of proposals. We are frustrated, in a way, that we are apparently not able to have the sort of discussion that we think is needed about the future of the United Kingdom after the European Union. There is very little appetite in Whitehall for engaging in such discussions, but we thought that it was important to publish a set of ideas in order to try to stimulate that debate and to see how people reacted to our ideas and how we might shape them further together.

The Convener: Thank you. Adam Tomkins would like to ask a question.

Adam Tomkins (Glasgow) (Con): Good morning and thank you for joining us. I want to ask you a bit more about the detail of your understanding of the common frameworks that you have talked about with the convener and others. A few weeks ago, the Scottish Government published a list—it was drawn up by the Cabinet Office—of 111 powers that fall within devolved competence that are currently exercised at EU level. I do not think that anybody is suggesting that we need 111 common frameworks. Everybody seems to agree—you said in your opening remarks that you understand the need for UK-wide agreements—that there need to be some common frameworks, but nobody has yet identified where we need them.

Has the Welsh Government begun to think about the areas in which we will need substantive

common frameworks? If so, can you help us to identify what those areas might be?

Professor Drakeford: Thank you for that question. We, too, have a list that was provided by the Cabinet Office. It lists 64 areas of the Welsh context, reflecting the different range of devolved responsibilities. Our starting point will be the one that you articulated. We do not believe that all 64 areas require frameworks. We are trying to have discussions at official level with the Cabinet Office about which areas within the spectrum of that list require frameworks.

Where we require frameworks, there may be a differentiated approach to the sort of frameworks that we need. Some things may require no more than a memorandum of understanding between the component parts on how something might be done. At the other end of the spectrum, there may be other things that need something more significant and substantial to underpin a framework. We are trying to tease out with the Cabinet Office how it sees that spectrum panning out.

To give you the most obvious example—and the one that has been cited—of where we would want to have a common framework, we have four different animal health regimes across the United Kingdom. That is very alive in the minds of the National Assembly because one of the formative experiences of devolution in Wales—within the first couple of years of devolution—was the outbreak of foot-and-mouth disease that we faced here, and the need to co-ordinate animal health regimes has been apparent to us ever since. We completely agree that we would not want four different animal health regimes, so let us find a framework that allows us to make sure that we can conduct that business in an orderly, agreed way.

09:45

Adam Tomkins: That is extremely helpful—thank you.

I want to understand better what you mean when you talk about the varying scale of what might be required for different common frameworks. You say that some of them could require nothing more than a memorandum of understanding, whereas others might require something more significant. What do you mean by that? Do you mean that there might be no limits on the devolved competence of your Assembly or our Parliament to enact legislation in some of the areas that feature on the list of 64 powers or the list of 111 powers? Might there have to be some limits—such limits do not currently exist—on either legislative or executive competence for the two devolved nations of Scotland and Wales in order to give legal effect to those common frameworks?

Are Welsh ministers prepared to contemplate such a position?

Professor Drakeford: We are prepared to contemplate it in the following way. I can imagine situations in which there would need to be some limits on the exercise of devolved competences in the future, where we have come to an agreement on a common framework. Our position would be that those limits would be achieved through a self-denying ordinance by Welsh ministers, having come to an agreement that required us to agree to some limitations. We would commit ourselves to do that by agreement, because we would have come to an agreement.

We would not be willing to contemplate a situation in which, once we had come to an agreement that included some limitation on the use of current powers, the UK Government would then say, "In that case, we'll take that power away from you because you've agreed that you're not going to need it, given that you've come to an agreement with us." We would not do it in that way. We would say, "We've come to an agreement that involves some limitation on the use of powers that we have—we are committed to that agreement, and we would not use those powers in a way that would violate it." Why would we do that, given that we would have just come to an agreement? We believe that that is the mature way to conduct relationships across the United Kingdom.

Adam Tomkins: How would that agreement be enforced in the event—this would surely be wholly unlikely, but nonetheless we have to think about the possibility of unlikely events—that it was somehow inadvertently breached by one party or the other?

Professor Drakeford: We set out in our "Brexit and Devolution" paper ways in which we think matters would be resolvable if we came to an agreement but found that, in implementing it, there were areas in which people had different views about implementation or in which certain elements had inadvertently not been observed. We set out a mechanism for being alert to, and resolving, such situations.

We already have dispute resolution mechanisms in the devolution settlement—they need to be revisited and updated, but we can work from them. Those mechanisms have been agreed, and we have joint responsibility for policing and enforcing them. The answer cannot be that three of the four partners should surrender to one partner at the table the ability to police or enforce those mechanisms.

Adam Tomkins: Indeed, but you accept in principle that there might be a need for additional limits on legislative and executive competence in

Scotland and Wales in order to give legal effect to the common frameworks that need to be negotiated.

Professor Drakeford: Provided that it is done in the way that I described, through a self-denying ordinance. We would agree that limitations may be necessary and on what those would be, and we would voluntarily abide by them, and we would have a back-up set of mechanisms to ensure that the voluntary agreements that we had entered into were effective.

The Convener: Before we get to the point of agreeing any common frameworks, there are significant issues in the bill to be overcome. Maree Todd would like to ask some questions on a particular issue with clause 11.

Maree Todd (Highlands and Islands) (SNP): Thank you for your time. Clause 11 is a new limitation on the power of the Scottish Parliament. Will you tell me a bit more about why it causes concern and what progress has been made on resolving that?

Professor Drakeford: Clause 11 is one of the fundamental reasons why we would not be able to recommend that the National Assembly for Wales give its consent to the UK Government to legislate on the matter, because it is the most significant place where the debate that we have just outlined plays out.

Our position is that there is a set of devolved responsibilities that have been in the National Assembly for Wales since 1999. Those powers did not come to us recently or later on in devolution but were there from the beginning, in agriculture, the environment and fisheries, for example. Since 1999, we have chosen to exercise them through our membership of the European Union. When the European Union is no longer part of our landscape, they will not go anywhere but will rest where they have always been, as they have been in the devolved legislatures since the beginning, unless the UK Government decides to take them away from us.

That is what clause 11 does. It rolls back devolution. It says that, for an indefinite period of time and to an extent that the UK Government cannot explain to us, powers that we have had since the start of devolution will be taken back to Westminster and, at some future date, eked back out to us. In the meantime, UK ministers will have had all sorts of powers to interfere with those responsibilities. Therefore, we do not know when we will get the powers back and we do not know what they will look like by the time they come our way again. That is fundamentally unacceptable from a devolved perspective.

Maree Todd: Thank you for that clarification. Will you tell me a little more about what would fix

clause 11? Does it have to be removed entirely? Are there ways in which it could be amended to make it palatable? It is a fundamental attack on the devolved Parliaments.

Professor Drakeford: The amendments that we have jointly sponsored with the Scottish Government provide a different and far preferable way of resolving the issue that clause 11 attempts to resolve. As I have tried to rehearse, they rest on the approach that the way to ensure that there is an orderly conduct of business across the United Kingdom after we leave the European Union is to do so by agreement. We need to bring the component parts of the United Kingdom together to agree on ways in which we will conduct business in those important areas in future and then, having come to an agreement, move forward maturely to implement it.

That is why we have been so keen not only to complain about clause 11 and other clauses in the bill but to propose a very well worked out and constructively intended set of solutions, through our amendments, which would allow the UK Government to achieve the shared aims that we have of ensuring that, after we leave the European Union, things work sensibly in a way that does not get in the road of people who want to conduct business and that respects the devolution settlement and the fact that, 20 years on from devolution, the United Kingdom is a very different place from how it was in 1999 and a fundamentally different place from how it was in 1972.

Maree Todd: Can you envisage a way forward in which the Welsh Assembly could consent to the European Union (Withdrawal) Bill if it still contained clause 11?

Professor Drakeford: If clause 11 was unamended, it is very difficult indeed for me to imagine a situation in which our First Minister would be able to recommend to the National Assembly that it give its legislative consent, because that would be to invite the Assembly to connive in its own diminution, and I do not see it doing that.

The Convener: Murdo Fraser has a supplementary on this area.

Murdo Fraser (Mid Scotland and Fife) (Con): As a follow-up to Maree Todd's questions, so that I am clear in my own mind about the Welsh Government's position, is it your contention that powers that are currently being exercised by the Welsh Assembly would be taken away if the bill were to pass into law unamended?

Professor Drakeford: I will ask Hugh Rawlings to answer that, to ensure that you get the definitive legal answer.

Hugh Rawlings (Welsh Government): The position is as the cabinet secretary has laid out. As the Welsh Government sees it, the powers lie with it and the National Assembly. They are at present subject to the constraint that they must be exercised compatibly with European Union law. When we leave the EU, the bill envisages a new and substantial body of law, deriving from the UK's membership of the EU, which will be unamendable by either the Welsh ministers or the National Assembly even though that body of law may involve devolved matters. In those circumstances there will be a substantial block of law that is not subject to modification by devolved institutions. That represents a fundamental problem.

Murdo Fraser: Right. I want to understand this clearly. There is, in your view, currently a constraint on the Welsh Assembly legislating, which is EU law. The bill would replace that constraint with a constraint exercised by Westminster. You are not saying that in areas where the Welsh Assembly currently has the power to legislate without constraint that power will somehow be restricted or removed by the bill.

Hugh Rawlings: There are some rather difficult technical arguments around, for example, clause 2 of the bill. This may be a slightly lengthy exposition, which the committee probably does not want to hear. It is true, as far as one can see, that broadly speaking—and it has to be qualified in that way—the existing powers of devolved institutions would not be constrained more than they are. The result of the withdrawal bill would be that a body of retained EU law would be instituted into a body of domestic law, which, even though it is within the area of devolved competence, would not be subject to modification by the devolved institutions. That represents some real difficulties for us.

Professor Drakeford: The other real difficulty is an argument that I have heard put by UK ministers, which is that the bill just leaves the devolved Administrations where they have always been, so what is the problem? The problem is that, while the bill might, subject to the caveats that Hugh Rawlings outlined, leave us where we are, it allows UK ministers an unfettered right to roam. They are given powers to amend all sorts of things, and not simply things that we are not able to amend, in non-devolved fields; it gives them the right to reach over into devolved responsibilities to make changes in areas that, in Scotland, are currently only changeable by the Scottish Parliament, and to do so without the consent of either the Scottish ministers or the Scottish Parliament—and the same for the Welsh ministers and the National Assembly for Wales. To leave one part of a system unchanged while fundamentally changing the powers available to another part of the system, and not to take that

second thing into account, seems to me to be naive—as a kind way of describing it.

10:00

Murdo Fraser: Thank you—that is very helpful. It might help us if you could give us an example of what you are talking about.

Hugh Rawlings: Let us say that the UK Parliament adopts legislation to implement a European directive on environmental protection. As you know, the usual, or very common, way to implement European directives is through the statutory instrument process. The European Union (Withdrawal) Bill, perfectly understandably, will retain in domestic law the statutory instruments that have been made under the European Communities Act 1972, even though that act would be repealed. However, European directives can be implemented in other ways, including through primary legislation. Let us assume this time that there is an act of Parliament that implements a European directive in the field of climate protection. That legislation would in turn be amendable by the Welsh Assembly because the policy falls within devolved competence. However, the way in which the European Union (Withdrawal) Bill is drafted means that that primary legislation, because it was originally a mechanism for implementing a European directive, would cease to be part of the competence of the Welsh Assembly to modify.

Let us imagine that we need only make some minor, technical amendments. In that case, we would introduce a new environmental protection bill in order to make those minor amendments to an earlier UK Parliament act. However, if that UK Parliament act was originally enacted to give effect to a European Union directive, then, as the European Union (Withdrawal) Bill stands, we could not make those changes. We have not been in such a position before.

Patrick Harvie (Glasgow) (Green): Good morning. I want to explore a little more your suggestions about how the intergovernmental relationship will work. Your paper, “Brexit and Devolution: Securing Wales’ Future”, says:

“The UK’s inter-governmental machinery must be reformed with a new UK Council of Ministers”.

Many countries use the term “Council of Ministers, but it is most familiar to us as the European Union’s Council of Ministers. Are you suggesting that there should be a mechanism that, like that EU body, uses qualified majority voting and has a rotating presidency and a degree of co-decision making with the legislature?

Professor Drakeford: We rehearse a number of those elements in our paper. We put forward arguments about qualified majority voting as a way

of coming to decisions across the United Kingdom. I had an opportunity to discuss that with Mike Russell. I think that his view is that there are some instances in which that would be an acceptable way of proceeding, but that it might not be a generally applicable rule.

As I said in my opening remarks, the purpose of the paper is to stimulate exactly that sort of debate and to try and see what others think of the proposals that we have set out.

You mentioned a rotating presidency. The position that we are in with the JMC is, frankly, unsatisfactory, because apparently only one of the four partners is able to call a meeting. That does not seem to be a sustainable way to conduct inter-UK relations. In our paper, we look to try and amend some of those ways of doing things.

We also say that co-decision making is sometimes a difficult concept for our UK colleagues to grasp—particularly those who continue to have a grace-and-favour approach to devolution and a clear sense of a hierarchy in which one of the partners is in charge. We say that that is not the UK of the future—it cannot be. We reflect on days long gone, when we took a different approach that was based on mutual respect and on coming together. We think that our way has a stronger set of outcomes.

Patrick Harvie: I can understand the argument that you make, and many aspects of it are familiar from complaints that Mike Russell has made about the operation of the JMC. It is a situation that has been outlined to us before. I hope that we will also have the opportunity to put such questions to UK ministers at some point.

However, I am still a little unclear about the nature of the replacement mechanism that you suggest would be better and, in particular, how the proposed council of ministers would be held accountable for its decisions. You are accountable to your National Assembly for your individual decisions. Mr Russell is accountable to this Parliament for his. For better or worse, UK ministers are accountable for their decisions to the Westminster Parliament, with all its glories and all its faults. How is the proposed council of ministers to be held accountable for its decisions, or would Parliaments and assemblies throughout these islands simply have to live with an agreement that is signed up to by ministers in such a body?

Professor Drakeford: I assume that it would involve a process. Here at the National Assembly for Wales, if I were to be involved, on behalf of the Welsh Government, in a council of ministers at which matters were discussed, then, well in advance of the point at which they were agreed, I would be questioned in the National Assembly and expected to appear in front of one of its

committees, to be scrutinised on the point of view that the Welsh Government was trying to advocate in those discussions. If an agreement were to be reached, I would be held accountable here for the part that I had played in it and the agreement that we had come to.

In many ways, that is no different from co-decision making arrangements in many parts of our democracy. Many years ago, I used to represent a Cardiff council on the South Wales Police Authority, with four other local authorities. We had to come to agreements there, and when I came back to the council in Cardiff I would be questioned on how I had stood up for the interests of Cardiff citizens in coming to those agreements. That was a very common way in which we managed to pool our sovereignty, as I know that Mike Russell has put it.

Patrick Harvie: Yes, but I imagine that none of the other councils took the view that it represented all the council areas. That is the distinction here. Irrespective of whether there is a case for federalism in the UK, we are not in a federal arrangement. If the UK Government had an arrangement that had been reached through the proposed new intergovernmental machinery, it might look very unkindly on a subsequent decision by either the Scottish or the Welsh Government that it had changed its view on how a common framework ought to operate, or on how a memorandum of understanding ought to be framed.

My concern here is that we do not just leap to the most obvious next bit of stable ground, because the world around us is so unstable. We have to have something that is capable of withstanding political change and changes in Government. If there is a self-denying ordinance—as you put it to Adam Tomkins—as regards the exercise of powers that are constrained by UK-wide frameworks in Scotland and in Wales, what does that say about the ability of the Scottish or the Welsh electorate to cast its votes differently, to change its Government if it wishes and elect a Government that wants to operate such devolved competencies in a way that is different from what is encapsulated in a previously agreed common framework?

Professor Drakeford: Those are all important points, which ought properly to be debated and thought through as we consider the future of the UK.

I do not think that our proposals amount to a federal solution. We do not have a federal system, but neither is the United Kingdom a unitary state in the way that it was in 1972. We have to think creatively about the way in which we allow the United Kingdom to operate effectively after we leave the European Union.

On Patrick Harvie's specific point, I have no difficulty in imagining that a political party in the National Assembly that is not in Government could go to the electorate at an Assembly election and say, "Your Government entered into an agreement that looks like this, but we do not think it was the right thing to do. If you elect us, we will pursue a different course of action." That party would have to pursue the matter by going back to the other component parts of the United Kingdom in order to secure a new agreement. It would have to explain to people in Wales that it was proposing to seek to persuade other parts of the United Kingdom to amend an agreement that it believed did not stand up to scrutiny.

Patrick Harvie: So, even on those devolved matters, its hands would be tied—

The Convener: You have done pretty well, Mr Harvie. We will move on to other issues, as I am conscious of time.

Patrick Harvie has dealt with issues to do with the future. Ash Denham will look at the current structure and whether it is working or not.

Ash Denham (Edinburgh Eastern) (SNP): Good morning. I want to speak about the IGR machinery, which is a topic that my colleague Patrick Harvie has partially covered.

The Welsh Government set out how it has found the JMC (EN) process to be particularly frustrating, and we have just discussed Wales's proposal to move to a council of ministers-type operation. I do not want to put words into the UK Government's mouth. However, if we assume that there is no political will on its part to move to such a mechanism, and that that therefore does not happen, is there potential for the JMC (EN) process to be reset to make it fit for purpose in order to move forward?

Professor Drakeford: There is a series of practical proposals. Immediately after the UK general election, Michael Russell and I set out in a joint letter some proposals that were largely echoed, and in some ways elaborated on, in the House of Lords report on all this. We worked very hard in writing our letter to take any partisan quality out of the proposals and to pitch them very much at the practical end of the spectrum. We tried to say to the UK Government, "While the JMC (EN) is the current vehicle, we all have an interest in making the experience more satisfactory than it has been so far, and here are some ways in which we think that could be done." We hope that when the JMC (EN) reconvenes, some of those ideas will have been taken up. I cannot imagine that the JMC (EN) has been a satisfactory experience for any of the parties at the table, including the UK Government.

Ash Denham: I believe that I am right in remembering that one of the practical suggestions was that agendas should be circulated in advance. Have you received an agenda for the next meeting yet? Do you know what you are expecting to discuss?

Professor Drakeford: I have seen an agenda—it has been discussed at official level, and I think that officials are quite close to agreeing what should be on there. That is an advance—it is a piece of good news.

As I am sure that Michael Russell will have told you, when we left Cardiff for the last meeting of the JMC back in February, not only had we not received any papers or minutes of previous meetings, we did not even know where the meeting was going to take place. When we got on the train, a room for the meeting had not even been agreed. Some of our practical suggestions are simply about getting the mechanics in better order. The JMC was meant to be a very serious forum—the Prime Minister had an ambitious remit for it. If a forum is meant to be doing serious business, it deserves a different level of basic support.

Ash Denham: I have one brief final question. The devolved Governments expected that the process would involve extensive collaborative working and so on, and they obviously feel that the JMC (EN) has failed in what it set out to do. Do you get the feeling that the UK Government feels the same, or feels that it is working as well as it thought that it would?

Professor Drakeford: I cannot imagine that the UK Government thinks that the JMC has worked as well as anybody would have hoped. As far as the article 50 triggering letter was concerned, it certainly did not live up to the ambition that the Prime Minister set for it of arriving at a shared negotiating prospectus.

When I think back, there were a number of things that got in the way of the JMC, some of which were the practical things that we have talked about. However, more fundamentally, my experience has been that the JMC is hamstrung by the fact that the UK Government itself is often not in an agreed position on a number of the very significant things that the JMC is there to discuss. There are so many fissures in the UK Government on those matters that the nature of the discussions that we were able to have was superficial; we could never get into any detail because that would have completely exposed differences of view in the UK Government. Therefore, discussion was kept on a general level that was frustrating for everyone.

Ivan McKee (Glasgow Provan) (SNP): Thank you for coming to talk to us this morning. Clearly,

the Welsh Government at the moment is not able to recommend consent for the European Union (Withdrawal) Bill as it is written and has proposed a number of amendments in conjunction with the Scottish Government.

There are two parts to my question. Which of the amendments are the most critical—I do not want to use the words “red line”—to gaining an agreement through a negotiation between the Welsh and UK Governments? If there is a failure to agree on amendments to the European Union (Withdrawal) Bill, where will that take you? In your letter, I see that you have begun to consider the scope for alternative devolved legislation—in other words, for a continuity bill of some type—so perhaps you could explain a bit more about that.

Professor Drakeford: Our amendments come as a package deal. Different aspects of the bill are interrelated so, as our amendments address those aspects, they are interrelated, too. At the moment, we do not have a sense of hierarchy for them in which one is more important than another; they come as a package and we will pursue them as such.

There is a pathway for negotiations. Our first aim will be to persuade the UK Government of the sensible and constructive nature of our case and of the fact that, in many ways, we are trying to find a better way to achieve outcomes—when we see the sense of those outcomes—that the UK Government itself is signed up to. There is a series of opportunities when we meet UK ministers, both separately and collectively as part of the JMC, and we will make that case. I have not given up on the idea that the UK Government, which is badly in need of friends and has, in a way that I find baffling, turned a situation in which it had friends at the beginning into one in which it has opponents, might come to the realisation that it can work with us on our amendments and come to an agreement. That is our first port of call and we have not exhausted that course of action.

If we do not succeed in persuading the UK Government, we will move to the UK Parliament. We hope that our amendments will be supported in the House of Commons and we will do everything that we can to mobilise friends there who believe in devolution and know that the bill is inimical to devolution—Scottish National Party and Labour Party members, the Green MP, Liberal Democrats and Plaid Cymru members. We will do our best to create as broad a coalition as we can in the House of Commons and, if we do not succeed there, we will mount a major effort in the House of Lords to persuade members there to support our amendments. That is our second port of call. I will say again this morning what I say whenever I get the chance: the UK Government needs to understand that we are deadly serious

about this. This is not sabre rattling; it is not just us trying to have some sort of rhetorical five minutes in the sun. We will go about that work in a very serious way. We will mobilise whatever we can and work with whomever we can in order to defeat the UK Government's proposals.

Only when we have exhausted that course of action and not managed to win those arguments will we think about whether a continuity bill would be necessary. We have to think ahead in that way. We are doing work in the background to put ourselves in a position to introduce a continuity bill, should we need to do that, but that will not be our first port of call. That would come much further down the line. There are other, better ways of achieving what we want to achieve. However, we want to put ourselves in a position in which that course of action would be available to us if we thought that it was the right one to take at the time.

Ivan McKee: Thank you.

Willie Coffey (Kilmarnock and Irvine Valley) (SNP): What are the views of the political parties in the National Assembly for Wales on the Welsh Government's position on clause 11 and the removal of powers from Wales? Do you have a consensus on that, or is there still some disagreement?

Professor Drakeford: I will give you my assessment of where the parties in the Assembly are. The Government is made up of Labour members and one Liberal Democrat member, so those two parties are certainly lined up with our proposals. We have worked closely with Plaid Cymru in the Brexit context. We have a joint committee, and we published our first white paper on Wales's position on Europe jointly with Plaid Cymru. I am quite confident that we would have the support of Plaid Cymru members in the Assembly for the amendments that we have outlined.

We have UKIP members in the Assembly, whose position is a good deal more difficult to predict, but even UKIP members in the Assembly have made speeches in which they have set out their belief in the integrity of the devolution settlement, so it will be interesting to find out how far they take that course of action.

As far as the Welsh Conservatives are concerned, when the First Minister here made a statement on Brexit matters to the Assembly—that was in the past 10 days—the Conservative spokesperson on the subject made an offer to have a meeting with the Government to explore our amendments and to establish whether there was any common ground with which they could align themselves. That meeting has been arranged and it will take place later this week. I

cannot anticipate the outcome of it, but the offer that was made was a significant one.

Willie Coffey: Thank you.

Neil Bibby: We have discussed in detail the need to improve intra-UK relations. You said earlier that there was little appetite in Whitehall for doing that. You have rightly suggested that we should have a convention on the future of the UK in the longer term to look at ways of improving the governance of the UK. Could you explain how that would work? You have mentioned the need to achieve cross-party support and civil society consensus for changes across the UK.

Professor Drakeford: Our First Minister, Carwyn Jones, has long been an advocate of that approach. His support for it goes back to—

Hugh Rawlings: 2012.

Professor Drakeford: There we are—it goes well back into the previous parliamentary session. He comes at the issue from the point of view of a Government that thinks that Wales's future is best preserved by a United Kingdom that can work together but which is frustrated that the mechanics of doing so have failed to keep up with the development of devolution. He believes that if we are to create new and better methods of intergovernmental co-operation within the UK, that means people coming together, sharing ideas and trying to create a way forward for which we can obtain the maximum support. It requires a very rich conversation and a very real willingness to think creatively about ways in which we can make sure that the United Kingdom has a successful future. It is frustrating that it has been difficult to get that conversation going to the extent that we think is needed. The urgent need for it has been there and the urgency of that need has been very much increased because a series of mechanisms that we have been able to rely on through the European Union will not be available to us in the future.

Neil Bibby: I take it, then, that you would encourage all Governments in all parts of the UK as well as all parties to back the idea of coming together in a convention.

Professor Drakeford: There are different ways in which that could be done—there could be a speakers convention or an intergovernmental convention. We believe that the need to have those conversations is very real and that exiting the European Union makes such conversations even more necessary.

Adam Tomkins: In your "Brexit and Devolution" paper, which was published in June, the Welsh Government said that withdrawing from the European Union in a manner that respects and accommodates devolution is "straightforwardly

achievable". That is what you said in June and I agree with you. Do you still hold to that view?

Professor Drakeford: Our amendments to the bill set out that straightforward way of doing so.

Adam Tomkins: All right—thank you very much.

The Convener: Before we move into private session, I thank Professor Drakeford and Hugh Rawlings for taking the time to give us evidence. It was a very useful, informative and constructive session and I am very grateful for the time that you have given us.

Professor Drakeford: Thank you very much for the questions.

10:27

Meeting continued in private until 10:31.

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