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Cenedlaethol
Cymru

National
Assembly for
Wales

Cofnod y Trafodion The Record of Proceedings

Y Pwyllgor Materion Allanol a Deddfwriaeth Ychwanegol

The External Affairs and Additional Legislation Committee

14/11/2016

Agenda'r Cyfarfod
Meeting Agenda

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Public for the Remainder the Meeting

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 tystiolaeth, nodir y rheini yn y trawsgrifiad.

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

Aelodau'r pwyllgor yn bresennol
Committee members in attendance

Dawn Bowden Bywgraffiad Biography	Llafur Labour
Michelle Brown Bywgraffiad Biography	UKIP Cymru UKIP Wales
Paul Davies Bywgraffiad Biography	Ceidwadwyr Cymreig (yn dirprwyo ar ran Mark Isherwood) Welsh Conservatives (substitute for Mark Isherwood)
Suzy Davies 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

Mick Antoniwn Bywgraffiad Biography	Aelod Cynulliad, Llafur (Y Cwnsler Cyffredinol) Assembly Member, Labour (The Counsel General)
Jeff Godfrey	Cyfarwyddwr yr Adran Gwasanaethau Cyfreithiol, Llywodraeth Cymru Director of Legal Services Department, Welsh Government
Imrich Marton	Cwnsler a Dirprwy Bennaeth Cenhadaeth Llysgenhadaeth Slofacia

Counsellor and Slovak Embassy Deputy Head of Mission

Nigel Payne
Conswl Anrhydeddus y Weriniaeth Slofacaid yng Nghymru
Honorary Consul for the Slovak Republic in Wales

Ei Ardderchogrwydd/
His Excellency
Lubomír Rehák
Llysgennad Slofacia i'r Llys Sant Iago
Slovakian Ambassador to the Court of St James

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

Alun Davidson
Clerc
Clerk

Elisabeth Jones
Prif Gynghorydd Cyfreithiol
Chief Legal Adviser

Gregg Jones
Y Gwasanaeth Ymchwil
Research Service

Rhys Morgan
Dirprwy Glerc
Deputy Clerk

Dechreuodd y cyfarfod am 13:31.
The meeting began at 13:31.

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

[1] **David Rees:** Good afternoon and can I welcome Members and the public to this afternoon's meeting of the External Affairs and Additional Legislation Committee, where we will continue our inquiry into the implications for Wales of the decision to leave the EU and the referendum on 23 June?

[2] Before we start the meeting, can I remind everyone that the meeting is bilingual and headphones can be used for simultaneous translation from

Welsh to English on channel 1 and for amplification on channel 2, although it might be on channel 0? We need to check on that one. Can I remind everyone to turn your mobile phones off or place them on silent, please, whilst we are in session? If there is a fire alarm, there's not one scheduled for today, so please follow the directions of the ushers. We've not received any apologies this afternoon. I'm sorry, I tell a lie. We've received apologies from Mark Isherwood and I welcome Paul Davies, who is substituting for Mark this afternoon.

13:32

**Gadael yr Undeb Ewropeaidd: Y Goblygiadau i Gymru—Sesiwn gyda
Llysgennad Slofacia
Leaving the European Union: Implications for Wales—Session with the
Slovakian Ambassador**

[3] **David Rees:** Therefore, we move on to the first evidence session. Can I welcome our visitors? If I introduce the honorary consul for Slovakia, Nigel Payne, perhaps you could introduce your colleagues.

[4] **Mr Payne:** Good afternoon, Mr Chairman, and members of the committee. It is my pleasure this afternoon to be here with the ambassador and the deputy head of mission to the Slovak Republic's London embassy. I was appointed in 2005 as consul to represent the sovereign state in Wales and it's my delight, here this afternoon, to welcome His Excellency the Ambassador of the Slovak Republic to Cardiff. With no further ado, I will ask him to say a few words. Your Excellency.

[5] **Mr Reháč:** Prynawn da. Good afternoon. Thank you, Mr Chairman, Mr honorary consul, the members of the committee. It is my pleasure and honour to join you here today in sharing with you the priorities of the Slovak presidency of the Council of the European Union.

[6] After 12 years of EU membership, Slovakia is honoured to lead the union in this semester. The presidency is definitely a milestone for us. We have a good story to tell: a story that began with the dream of our people to return to a free and democratic world—Europe. A story that continued with our integration into the European family of nations, a family we are bound with in rich history, diverse culture and common values. Indeed, back to Europe was one of the velvet revolution's principles, created in

Czechoslovakia in 1989 on 17 November, and which we will be celebrating in a few days. It was a voice of our European identity. We are proud to call the EU our home, the euro our currency and the Schengen our area. The EU provides us with stability, security and prosperity and we are grateful for that because we were given a lot and we do our best to contribute to the common success of the European project.

[7] The consequences of the United Kingdom's referendum obviously have dominated the EU agenda in previous times and will dominate in the coming months. While EU member states express their regret about the outcome of the referendum, there is a vital interest to have the United Kingdom as a close partner of the EU after its separation. I understand many of you would be interested in hearing from me more than I, as a civil servant representative of my nation, could say in this regard. Let me therefore just recall certain principles that have been agreed at the June informal meeting of the EU 27, which remain valid.

[8] The basic principle is that it is article 50 of the EU treaty that provides the legal basis for the UK's withdrawal from the EU, and then it's up to the British Government to notify the European Council of the UK's intention to withdraw from the EU and there should be no negotiations prior to the UK's notification of this fact.

[9] We also understand the political message that Brexit means Brexit, which is that the UK Government wishes to proceed with the implementation of the referendum result. It is now clear that it will not trigger article 50 during the Slovak presidency, which explains also that I cannot go much further to avoid overstepping the mandate of the Slovak presidency, as it was done on the last day of June because we waited for the result of the UK's referendum for our priorities.

[10] In the meantime, other EU member states cannot stand idle. Self-reflection has become a must, not an option. What was properly expressed by the British people in the referendum has been clearly heard, reflecting the worries of many Europeans, not only the British. The Bratislava informal EU 27 summit, held on 16 September, was a first step in this regard. The aim of the summit was to diagnose the present state of the European Union, facing the withdrawal of one of its member states, and to discuss the approach to our common future, beyond Brexit.

[11] Three key areas have been defined in the Bratislava road map where

significant progress needs to be made urgently. First of all, it was migration and external borders; secondly, internal and external security of the union; and, thirdly, economic questions—economic social development and the problem of youth. It has also been agreed that Bratislava is just the beginning of this reflection process, which will go through Valletta, during the Maltese presidency of the European Union, towards Rome, where we'll celebrate in March the sixtieth anniversary of the Rome treaty, round off the process launched in Bratislava, and set out the orientation for our common future together.

[12] The Slovak presidency, naturally, doesn't have a prescription for all current European problems. But we want to be pragmatic and realistic, while leading the union this semester. To achieve a visible contribution to ongoing processes, we have four ambitions set for the presidency: to make the European Union economy stronger; to modernise and build the single market in areas such as energy and the digital economy; to work towards sustainable migration and asylum policy; and to pay attention also to our external environment, namely trade deals and enlargement policy.

[13] Let me start with the European economy. We'll support an environment favourable to investment for economic growth and job creation. For that to happen, we work on the deepening of the economic and monetary union and banking union. Building the capital markets union is also our focus. During our presidency, we will also deal with the mid-term review of the multi-annual financial framework—the seven-year budget of the EU—and need to adopt the EU budget for 2017. They both must better reflect the EU's priorities and capacities, to help resolve the latest challenges.

[14] The second area is the single market. There's no doubt that the single market is a success story for freedoms, representing an excellent example of very concrete benefits of the EU for its citizens, and for national economies as well. But, in order to keep up with global technological advancement, the single market needs implementation of two new pillars: the digital single market and the energy union. Free movement of data has the unique potential to remove barriers and create new opportunities for businesses and citizens. Our presidency welcomed the adoption of a digital single market package on 25 May, and now we work on its implementation. Next year, we will see the total abolition of roaming taxes in the territory of the European Union, which is a big thing. The energy union can contribute to secure supplies of clean energy at affordable prices, for industry and citizens. To achieve this goal, our presidency is ready to work on further enhancing

diversification of resources, suppliers and transit routes, strengthening also the energy interconnectivity of member states. The energy union is, by the way, a project led by a Slovak member of the European Commission, Vice-President of the Commission, Maroš Šefčovič.

[15] It's no surprise that sustainable migration and asylum policy belong to our top priorities, and they will remain urgent issues, not only during our presidency, but also in years to come. Moreover, it is not just some EU disease, but a global problem indeed. Large-scale involuntary migration will be the most likely global risk over the next decade. We can help resolve it only through joint EU-wide efforts in co-ordination with other global stakeholders. For this purpose, the Slovak presidency promotes comprehensive and sustainable solutions, linking up all relevant internal and external aspects. We must return to the proper functioning of the Schengen area. The European Border and Coast Guard will soon become operational. We also support initiatives such as the 'smart borders' package and the effective co-operation with third countries of origin and transit, and we are planning to come up with a new approach to migration during the December EU summit. Besides that, legal migration should be an instrument to attract highly qualified experts from third countries, wherever they are needed for our growing economies, to complement existing free movement of workers within the EU.

[16] We want the union to be a strong global actor. Our external partners expect us to continue our engagement in global affairs, therefore we must continue to pay attention to our external environment. I speak, particularly, of trade agreements and enlargement of the policy. We believe that free trade is a significant contributor to internal/external stability of the EU. We are, therefore, glad that, after overcoming significant difficulties, the EU managed to sign CETA—the agreement with Canada—during the Slovak presidency. Our presidency is ready to work on the implementation of a new European global strategy for common foreign and security policy. At the same time, we will remain a vocal advocate of a more effective and preventive European neighbourhood policy. To the east, we wish to make a strong emphasis on stabilisation and reform processes. To the south, we would like to focus entirely on countries causing a massive migration flow to Europe. We also try to ensure the credibility of the enlargement policy, even if one of the members is leaving the union. Given our own experience, the enlargement policy is one of the most effective transformation tools in our possession. It is a key instrument for stabilising our neighbourhood. We want to actively communicate that the path towards the EU leads via doing own homework.

[17] Ladies and gentlemen, the Slovak presidency has already entered into its last third. Bearing in mind what I just said about our priorities, I'm proud to say that good progress has already been achieved. The EU ratified the Paris agreement, proving its leading role in fighting climate change. We reached an agreement on the EU budget for 2017, at a council level, in record time. The European Border and Coast Guard was officially launched.

13:45

[18] Good progress has been achieved in the field of the fight against tax fraud and tax evasion. The EU action plan on e-government for 2016–2020 was adopted. In the field of the enlargement process, important negotiating chapters with Serbia were opened and the Council invited the Commission to draw up its opinion on the application of Bosnia and Herzegovina for EU membership. The Council has also approved a visa-free regime with Georgia, which will be discussed now with Parliament. Last, but not least, as I already mentioned, with some extra effort, the free trade agreement with Canada has been signed.

[19] Progress has been achieved in a number of other areas too. Therefore, if I was to summarise the first four months of the Slovak presidency, I would have an optimistic message to share with you that, even under current unprecedented circumstances and in these extremely challenging times, the EU is able to generate positive dynamics. Thank you very much and I'll be glad to listen to your commentaries and answer your questions. Thank you.

[20] **David Rees:** Thank you very much for that introduction and may I also thank you for actually attending this afternoon? It's very much appreciated. As you rightly pointed out, the Slovakian EU presidency is the first full-term presidency since the decision of the UK public to leave the EU, and therefore it's been perhaps faced with some interesting challenges as a consequence of that, and there'll be more to come in other presidencies.

[21] In relation to your four priorities, how do you see those priorities developing and will they actually increase the ability to have a good agreement with the UK upon exiting, because you identify the modern single market as a clear example, and obviously you focus on sustainable migration policies? So, do you see those progressing to a point where you think that the negotiation with the UK could actually become a little bit smoother as a consequence of, perhaps, reform happening within the EU?

[22] **Mr Rehák:** The problem is that we still do not know the scope of Brexit, what does Brexit mean, and what to react to. So, when the EU will be notified by the British Government to what extent the Government wants to leave the EU, what are the parameters or wishes of the British Government, we could—we as a union, I mean—could react. But, really, before that it would be pure speculation to say that it will be helpful or not helpful.

[23] **David Rees:** Okay, thank you for that. Questions?

[24] **Suzy Davies:** I have some points, yes.

[25] **David Rees:** Go on, then, Suzy.

[26] **Suzy Davies:** If you're sure, thank you very much. One of the four main priority areas that you mention, of course, is an economically strong Europe and, in your opening remarks, you mentioned that this was moving along the lines of further union—you saw further union as a route to this. What input has the UK had in developing that priority and how much of a distraction has Brexit been from their ability to be a helpful player in developing that?

[27] **Mr Rehák:** The EU Governments regret very much the result of the British vote about leaving the EU, because the United Kingdom was always in the leading role of economic transformation to a more competitive and developed economy of the union. So, with this loss, definitely we need to readjust a little bit the whole system. But the priorities remain the same, and I think that they will in the future be the same for the EU and for the UK Government, so we can count on good co-operation in the future. But, regarding negotiations, nobody can tell now how the negotiations will be, because they really don't know what will be negotiated.

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

[29] **Mr Rehák:** You're welcome.

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

[31] **Eluned Morgan:** Thank you. Thanks very much for coming to tell us about what's going on in the presidency. It's been a very turbulent time for you, and for the world. I was just wondering—. I think the whole context in which the whole world is working now has just changed significantly with the

election of President Trump, but it's Trump on top of the fact that we've had Brexit. Obviously, there are a lot of potentially very difficult situations that could arise in the next few months with Italy's referendum, the French presidency elections, the possibility of an extreme right-wing President in Austria and the Netherlands, so there are some really challenging times, I think, for the EU. Can you tell us—I'm very fearful that, you know, having been through what I consider to be a very traumatic time in this country; I'm very pro EU—what lessons you're learning from the people and their reactions, in particular, in relation to immigration, which was the big issue in this country? Whether rightly or wrongly, it was an issue that people talked about a great deal. And also, the fact—in Wales's case—that we were, relatively speaking, an area that gained significantly financially from the EU, and yet that wasn't appreciated to the extent we expected it to be in those communities. Is there something that you intend to address there, so that that doesn't happen in other countries? I'd just like you to learn from our difficult situation, really, so that we don't see disintegration of the EU as a concept.

[32] **Mr Rehák:** I agree with you that there are difficult times behind us and ahead of us. Unfortunately, we do not have a crystal ball in order to see how the situation will develop. It's always dependent on current developments in every country of the block, because this is not an autocracy, this is a democratic block, so we cannot influence the situation in member-state countries. But one of the results of the Bratislava summit in September was a firm statement of heads of states and Governments that they are determined to stick with European unity, which is very much important in overcoming the problems that we are facing, and recognition of the role of this big block to reflect better the complications of the world.

[33] **David Rees:** All right, Eluned?

[34] **Eluned Morgan:** Yes. I mean, it's a very broad answer you gave to where I think there are some specific issues. In particular, I'm interested that one of your priorities was about migration from outside of the EU, but obviously one of the four freedoms is the fact that people can live and work within the EU. Is that something that is being discussed at all at the council level? Just to give you an example, one of the difficulties in this country, for example, is the fact that—and I'm very pro the fact people can move, but there were practical difficulties in terms of planning for what the educational needs might be of these people who had the right to come and work here, of an ageing population, and the difficulty in monitoring that. That must be as

difficult for countries in the east, where there's been a lot of migration from those countries into countries like ours, which is difficult then for your countries to plan. Is that something that is being addressed at all?

[35] **Mr Reháč:** Yes, of course, and there are two things, in fact: migration is one thing, and the question you are mentioning is derived from a wrong perception of migration in the United Kingdom, because we do not call migrants the Austrians who are coming from Vienna to work in Bratislava, as we do not migrants the people from a village 200 km from Bratislava coming to the capital. Here, everybody from outside the UK is considered to be a migrant. It's not really fair, because these people are simply using their right to be in the one economic area, their right to work everywhere—wherever they want—and it gives a big stimulus to the economy as well. Also, it creates a problem for many countries like my own, because the brain drain is a serious problem and the lack of workforce is starting to be felt as well, with growing investment. So, that's one question.

[36] Migration from outside: yes, we are preparing the idea for the December's European Council on how to treat external migration in the best way. Slovakia was opposing the system of obligatory quotas for the redistribution of migrants within the EU as not effective. In the common space of Schengen, of open borders, you simply cannot take people and chain them to one country when they wish to go to another country. That is the problem. So, we are considering how every member state can contribute to the resolution of this migration crisis by means that are good and available to everybody. We are receiving hundreds of people in Slovakia as well, and we are supporting migrant camps outside, in third countries. So, there are many instruments for how to stop this bargaining with migrants that these international gangs are doing, transporting people to Europe for enormous amounts of money.

[37] **Eluned Morgan:** Can I ask just one other completely unrelated question that's on trade? Do you think that Britain will get an agreement with the Americans before the EU? Is the transatlantic trade and investment partnership dead?

[38] **Mr Reháč:** I think I am not the right person to answer this question. *[Laughter.]*

[39] **David Rees:** It's a good answer. Steffan.

[40] **Steffan Lewis:** Thank you. You mentioned the informal summit that happened in Bratislava between the EU 27, and, obviously, there was a clear statement from those heads of state and Government. I wonder, though, whether you could elaborate further on whether you think the referendum vote here is accelerating the determination of heads of Government to proceed with the European project or whether it's actually created an opportunity to slow down a bit and reflect on how the future European project can take shape, especially when you think of further enlargement. Is there a question now about, 'Let's reflect on the referendum result in the UK and see whether we need to reassess, as an EU, how we move forward'?

[41] **Mr Rehák:** I think it was a real wake-up call for European leaders. Your question formulated that acceleration means more integration and more federalisation, let's say, of Europe. But, a way forward—it's not obligatory, just federalisation—is also flexibility of the union. The leaders will understand that it's better to reflect, really, so they will do it. Today's world is so complex and so developing that you cannot predict what it will do in half a year or in one year's time, unfortunately.

[42] **Steffan Lewis:** Thank you. On that point, Eluned Morgan raised the question on trade, but, in terms of the future of the UK's trade with the EU, there are obviously a number of—. The EU, of course, is more than just a trading bloc; it is a political union, as well, and there may be instances where the European Union would wish very close future co-operation with the UK, such as defence, common security and those elements. Do you think that, because of the global situation, as described by Eluned Morgan, there might be a way of securing favourable trade terms for the UK because of the wider security implications?

[43] **Mr Rehák:** We don't know what parameters of relations your Government wants, so this is the principal problem now. We had a good intention at the beginning of our presidency to start the process of this reflection about the future relationship, but, now, it's going to the Maltese presidency, because only in, maybe, March will we learn the parameters of the British exit from the EU. For now, we could only speculate what kind of deal can be done and so on. We cannot tell validly how the situation will develop, what your Government will want and what the other 27 will want, and how they will sit around the table and negotiate at one table about these things. But my logic is that the UK needs co-operation with the EU, and the EU needs co-operation with the UK. So, it means that we all will be forced, simply, to have some prosperous deal. But the parameters will really depend

on the level of your separation from the common market or the trade arrangements of the union.

14:00

[44] **Steffan Lewis:** Finally, Chair, if I may, has there been an increase in communication from Slovak citizens in the UK to your embassy in London since the referendum, and what is the feeling among the Slovakian community that is here in the UK?

[45] **Mr Rehák:** Happily, we didn't have too increased a number of hate crime notifications from Slovak citizens. There were a few separate cases, but we really consider them not to be linked and not a part of any organised policy, let's say. So, that's not a problem, happily, for us.

[46] **David Rees:** Before I bring Dawn in, can I ask a question? Under the Slovak presidency, it's the first time we've seen the 27 meet, compared with the 28, and clearly that's going to progress in future presidencies, but, until we give notification of article 50 and until either two years or an agreement is reached, we will be members of the EU. Do you foresee some challenging times ahead in trying to balance the 27/28 agenda, particularly in relation to agreements and treaties?

[47] **Mr Rehák:** The idea of this informal summit in Bratislava in September surged in June, in the European Council, a few days after the referendum, when it was expected that the British Government would notify article 50 with the parameters of departure sooner rather than later. We were just into presidency plans and we were prepared to start all the process. As it didn't happen, the heads of state at that informal meeting focused on reflection: what the EU needs to treat after Britain leaves the European Union, and it was the agenda of migration, of the economic situation, of security or external borders and so on, so there was no intention to isolate Britain from some agendas in the EU. It was just a reflection of the processes that are in the country. The UK is a fully-fledged member of the EU and was fully briefed about the results of these meetings that were sought to give reflection about the union after the leaving of the United Kingdom.

[48] **David Rees:** Thank you. Dawn.

[49] **Dawn Bowden:** Thank you, Chair. You've said a couple of times, in response to questions from other Members, that we're really in unknown

territory here—we don't know where we're going. I think 'speculation' is a word you've used a couple of times, and I think we all feel that as well. It's quite a worrying time, for those of us who are very pro-European, that we're in this situation and don't know where we're going. I just wondered if you thought, from your own experience of the separation of Czechoslovakia, whether there are any potential parallels or lessons that can be learned from how that was managed. It was done very peacefully. You all co-exist very well together. You're all still part of the European Union. Obviously, the UK will be outside of the European Union, but are there things within that process that you went through that you think, actually, you really need to be looking out for these sorts of areas?

[50] **Mr Reháč:** Thank you for the question. I have to say that we do not like to give recipes for separation of countries. We were already asked to do it once, and it was successful, in the case of the split of Serbia and Montenegro. It was fully constitutional, and Montenegro expressed their wish to have an independent state, so, there, it worked. But I'm afraid that we cannot use this precedent in this situation, because it was done in an absolutely different scope. It was an agreement between two states, parts of one common state. Here, it is much more complex, but what was a positive in that separation was that we left the majority of treaties valid and left one economic space, in fact, for one customs zone for the Czech and Slovak Republics, so it helped a lot to overcome the first difficulties of the processes of separation of Czechoslovakia.

[51] The reasons for the separation were different views on the way to get to the common target, which was membership of the European Union. In fact, the result—that we both joined the EU in 2004—shows that both ways, antagonistic at the time, were viable for achieving this common result. So, you can come to a common denominator also via different ways.

[52] **Dawn Bowden:** So, no real lessons to learn from that then.

[53] **Mr Reháč:** To try to have everything in legal terms, and in arrangements—

[54] **Dawn Bowden:** Dot your i's and cross your t's, yes. Just one further question, Chair, if I might, then. You also mentioned the free trade agreement with Canada. Do you see anything in that that may be pointing us in the direction of the type of deal we may end up with? Pure speculation, I know. Just thinking, from what you know of that, does that seem like the

kind of model that might fit?

[55] **Mr Reháč:** It's up to your Government to define what will fit for the country, because the United Kingdom is leaving the block; the block is not leaving the United Kingdom or expelling the United Kingdom.

[56] **Dawn Bowden:** Absolutely. Yes, we know. Okay, thank you.

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

[58] **Suzy Davies:** You mentioned that the UK is leaving the block, and Wales is just part of Britain, in the same way that Slovakia is part of the EU. Regardless of what the final agreement looks like, what space is left for Wales and Slovakia to form a relationship? I don't mean in trade, or even on migration issues, because that's part of the EU, but how can you foresee a cordial friendship arising between this sub-state and Slovakia?

[59] **Mr Reháč:** Thank you for this question. It's very good.

[60] **Suzy Davies:** I don't like calling us a sub-state. [*Laughter.*]

[61] **Mr Reháč:** It's a very good one, envisaging difficult times ahead, because negotiations of such a scale will definitely be long, difficult and painful. We need to find ways not to alienate the peoples of our countries. That's why we really work on economic ties and we have a very good honorary consul here in Cardiff, who does his best to foster this co-operation, and there was a wonderful event in August, when the Cardiff Devils hosted a Slovak ice hockey club here. They were a very, very good two games—one won, one lost, so also convenient from this point of view. And in this perspective of the continuation of these relations, we will tonight see an orchestra where the conductor is also the conductor of a Slovak orchestra; he is Welsh. So, we have plenty of activities to maintain the people-to-people contacts and economic co-operation, even despite of the possible complication with Brexit.

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

[63] **Mr Reháč:** You're welcome.

[64] **David Rees:** Thank you for that. Does any other Member have any other questions? Eluned.

[65] **Eluned Morgan:** I just wondered if you could tell us something about current trade between Wales and Slovakia. What does it look like?

[66] **Mr Payne:** Thank you for that question. Yes, we do. Obviously, Slovakia has a very prominent automotive sector, and here in Wales we also have a very prominent automotive sector. Little is publicised, but a lot of the Welsh plants have sister plants in Slovakia, where cross-production is undertaken, which is perhaps something that needs to be registered a little bit better in communicating that out to the marketplace.

[67] **Eluned Morgan:** Can you name those plants?

[68] **David Rees:** Perhaps you could give us a note.

[69] **Mr Payne:** Pardon?

[70] **David Rees:** If you send us a note on that.

[71] **Mr Payne:** Yes, I think it would be better to send a note on that. But, as you know, Slovakia has just won the inward investment project for Jaguar Land Rover, to produce, so obviously, there are going to be huge benefits for Welsh companies. In fact, we tried to do a business event in August on the back of the sporting event here in Wales, but unfortunately the pick-up from Welsh companies was rather poor—disappointing, really, in some aspects. Talking to Jaguar Land Rover, they have some key areas where they have interests, certainly, in plants in Wales benefiting from the inward investment in Slovakia as well.

[72] **Eluned Morgan:** Am I allowed one more question?

[73] **David Rees:** Yes, one more. Just a little one, and that's it.

[74] **Eluned Morgan:** I just wondered, in terms of a new treaty between the UK and the EU, do you think there's any scope at all for that to be concluded within two years? Is there any chance? Have you got any idea—? Because, the divorce settlement is a two-stage process, as I understand it, so there's the leaving and then there's the new agreement, and all the experts that I've spoken to suggest that that will not be possible within two years. Is that your instinct?

[75] **Mr Rehák:** Both the United Kingdom and the European Union are interested in the orderly leaving of the United Kingdom, so they definitely will do their best to make orderly arrangements for the British departure from the EU. I cannot tell now what they will do in terms of the treaty, because we still don't have real parameters from your Government, but there will be a big effort, I'm confident, in this to arrange things within this frame of two years, maximum—within this two-year period.

[76] **Eluned Morgan:** Can I just ask you finally—?

[77] **David Rees:** That's an extra 'finally' [*Laughter.*]

[78] **Eluned Morgan:** Sorry, yes. Has there been any discussion at the council level on whether article 50 can be withdrawn once it's been triggered?

[79] **Mr Rehák:** It's a legal question, and I think there are more discussions here in the UK than at the European level.

[80] **Eluned Morgan:** It's an EU decision; that would be an EU court decision, rather than UK decision.

[81] **David Rees:** I think, on that point, we'll leave it with you, and perhaps—you can always explore that with your legal advisers, in that sense. Thank you very much. Can I thank you very much for your time this afternoon? It's been interesting to listen to the Slovak position, particularly as they are the current presidency holders of the EU council. We look forward to good relationships with Slovakia in the future, both pre and post Brexit, particularly highlighting the relationships we have in the automotive industry and the important links that will be built upon as a consequence of that. Thank you very much, again, for your attendance. You will receive a copy of the transcript. If you find any inaccuracies in that, please let us know as soon as possible. Thank you very much once again.

[82] **Mr Rehák:** Diolch yn fawr. Thank you.

[83] **David Rees:** I suggest we have a break.

*Gohiriwyd y cyfarfod rhwng 14:15 a 14:19.
The meeting adjourned between 14:15 and 14:19.*

**Gadael yr Undeb Ewropeaidd: Y Goblygiadau i Gymru—Sesiwn gyda'r
Cwnsler Cyffredinol**
**Leaving the European Union: Implications for Wales—Session with the
Counsel General**

[84] **David Rees:** Can I welcome Members back to this afternoon's session? The next evidence session we have is with the Counsel General, Mick Antoniw AM. Can you introduce your colleague, please, for the record?

[85] **Mr Godfrey:** It's Jeff Godfrey, director of legal services.

[86] **David Rees:** Thank you very much. Can I thank you for attending the committee following your statement last week? Obviously, your statement to the Assembly last week provided a lot of detail, but perhaps you'd like to give us just a brief, brief introduction before we go into questions.

[87] **The Counsel General (Mick Antoniw):** Yes, it will be very brief. Perhaps the most helpful thing I can say is what the proposed intervention and what the issues around article 50 are not about. Firstly, our proposed intervention is not about overturning the outcome of the referendum. It's not about preventing or delaying the triggering of article 50. It is about the democratic and constitutional process for triggering article 50. The court upheld the legal principle established back to 1688—or 1689, when we received Royal Approval of the Bill of Rights, which was passed to protect the sovereignty of Parliament. It probably goes back to 1610 to the Case of Proclamations where the justice there made it very clear that

[88] 'the King by his proclamation or other ways cannot change any part of the common law, or statute law, or the customs of the realm'.

[89] Also, it resolved that

[90] 'the King hath no prerogative, but that which the law of the land allows him'.

[91] This is a legal matter about process and about the appropriate constitutional mechanism for triggering article 50.

[92] **David Rees:** Thank you for that brief introduction. We'll go straight to questions. Jeremy.

[93] **Jeremy Miles:** Thank you, Chair. Could I just ask you, please, to clarify the position with regard to the involvement of the Welsh Government or the Welsh Assembly in the triggering of article 50 itself? It's the case, I think, isn't it—but perhaps you could confirm your view—that depending on how the parliamentary mechanism operates for the trigger to be applied, so to speak, there may be circumstances in which that would lead to a legislative consent motion here. Is that the case?

[94] **Mick Antoniw:** Yes. The whole of the High Court case and, in fact, the case that will now be heard in the Supreme Court is exactly about what is the constitutional mechanism. The UK Government's position is that the appropriate mechanism is the use of the royal prerogative, which is normally used for treaties and international conventions, and so on. However, the High Court said, 'No, that isn't the case', because the implications of triggering article 50 are that it will start an irreversible process. Of course, the irreversibility point was made by the UK Government, that it will bring to an end legislation and a whole series of legislative changes—Acts, instruments, and so on—over a long period of time that had given rights to individuals, and that, effectively, the prerogative would be used to overturn statute and also overturn rights that individuals actually hold and that therefore, it was not appropriate. The appropriate mechanism was not specified, but it seems that the court is probably leaning towards the idea of an Act of Parliament, but there might be other options in terms of resolution of Parliament. One or the other might amount to the same thing—probably an Act of Parliament on the basis it would have to involve both House of Parliament.

[95] **Jeremy Miles:** And although the judgment, as you say, doesn't stipulate that expressly, there are a number of points on which it's pretty implicit in the language the court uses that that's what they're indicating. But can you clarify that the reason they haven't dealt with that point is because it's a question of parliamentary privilege, effectively? The courts wouldn't, as it were, be specific about what mechanism parliament should use. Is that—

[96] **Mick Antoniw:** I think that's right, and I think it was also with a mind that it was going to the Supreme Court—that arrangements had already been put in place that the Supreme Court was going to sit to hear this, and for the first time ever that all the 11 Supreme Court justices are going to participate within that process. That indicates the constitutional serious nature in which it is being considered—at the highest level of the highest importance. But it was made very clear in the judgment—and it has always been made clear, I

think, in all the cases where the issue of prerogative has been used—that Parliament is sovereign, that the legislation that is passed is sovereign, the courts cannot overturn legislation, and that the role of courts constitutionally is to interpret legislation and give enforcement to legislation. So, that must be the case, but I think when the Supreme Court sits, certainly there'll be the issue of being specific about the mechanisms that would be constitutionally appropriate to use. So, the issue of legislation, which I think is probably the more likely version—those will certainly emerge during that process, during that case.

[97] **Jeremy Miles:** Okay. And, obviously, to some extent, as you acknowledge in your answer, that is, at this point, speculative, isn't it? But, when the judgment is given, we will be in a situation where, provided that the High Court's decision is upheld, there will either be a motion or an Act of Parliament. In that process, whichever route it goes down, if you like, in that process of triggering article 50, what's your view of whether there would be a legal mechanism of any sort for the Welsh Government's view on both the triggering of it and the consequences of it, in terms of a formal consultation mechanism? What's your view of whether there is that sort of opportunity?

[98] **Mick Antoniw:** The mechanism is ultimately the legislative consent mechanism. But, before you actually get to that, of course there are the commitments and the arrangements, such as the Sewel convention, the memorandum of understanding between the devolved Governments and the UK Government, on how such constitutional matters should be considered, and how they should actually be dealt with. There have been, obviously, a lot of discussions, and, of course, there has recently been a Joint Ministerial Committee, where a number of issues emerged—that there would be more regular meetings, there would be regular contact, there would be a direct line through, and the devolved Governments were asked to put in their own submissions as to the issues as to how Brexit could be dealt with.

[99] All those are important steps forward, because the desirable way of proceeding within this whole constitutional environment that we're in is of the UK Government and the devolved Governments working together to achieve a sustainable and an acceptable outcome that represents the interests of all, but also, an outcome that gives the stability and assurances that the devolved Governments will actually need in respect of their interests. That is also one reason why there's an interest in the parliamentary process as well, because if the court decides that there has to be an Act of Parliament, or even if it has to be by resolution, that will also have

implications in terms of the input that's made and the parameters that are set, not in the issue of triggering or delaying article 50, but in what the various interests are about how engagement should take place. I could well see that there would be an interest whereby negotiations take place that would require a form of statutory engagement, maybe even putting Sewel on more of a statutory basis in terms of the engagement, not necessarily giving the idea of a veto, but ensuring that there is, from the early start of negotiations, proper engagement within that process, because it's clear that there are a variety of interests that exist, whether it be from the Northern Ireland interest, the Scottish interest, and the Welsh interest, and indeed, the English interest, within this whole process. And the outcome of it must be one to achieve a sustainable constitutional resolution.

[100] **Jeremy Miles:** That's very interesting. I have a quick question on the Sewel convention there. You're thinking that could apply more broadly to the question of negotiation, as well as a conventional Act of Parliament.

[101] **Mick Antoniw:** Well, Sewel kicks in because, at some stage within the process, there will be legislation, whether it be the legislation to trigger article 50, whether it be a parliamentary resolution, whether it would be legislation in the form of the great repeal Bill or whatever. It's worth looking at our own Standing Orders as to what applies there, and if you look at sections 29 and 30—. And of course, what we're talking about is any legislation that impacts on the devolved responsibilities of the Assembly, or indeed, ministerial responsibilities. Section 29 of the Standing Orders:

14:30

[102] 'UK Parliament Bills making provision requiring the Assembly's consent:

[103] 'In Standing Order 29, "relevant Bill" means a Bill under consideration in the UK Parliament which makes provision ("relevant provision") in relation to Wales:

- (i) for any purpose within the legislative competence of the Assembly...or
- (ii) which modifies the legislative competence of the Assembly.'

[104] And then if you look at Standing Order 30, 'Notification in relation to UK Parliament Bills'—'UK Parliament Bills Making Provision Requiring

Notification to the Assembly’—there is a similar provision. So, anything that has that impact will obviously require a legislative consent motion. I think the First Minister has made clear on numerous occasions—and I think the same points have been made, certainly, I know, from the First Minister of Scotland—that they want this matter to proceed with the assent of the devolved Governments, and that obviously requires a high degree of co-operation and a high degree of engagement. Of course, those are some of the issues that emerged out of the JMC recently, but ultimately they come before the Assembly, so the Assembly will get to discuss those matters that affect Wales.

[105] There will be legislative consent motions placed for voting on by the Assembly and hopefully those will be achieved by agreement and by consent on a sustainable package, agreed between the devolved Governments and the UK Government.

[106] **David Rees:** I have three people who’ve indicated that they want to come in, so I’ll come back to you. Jeremy, on that point—

[107] **Jeremy Miles:** Just on that last point, yes. The First Minister has spoken about each of the four Parliaments having an opportunity to debate and to prove or otherwise, or ratify or otherwise the deal, if you like. So, what you’re saying is, in effect, there will be a piece of legislation, probably the great repeal Bill, or whatever, which will effectively have the consequence of requiring a consent motion here, and that will be the opportunity then for the Assembly and Holyrood to give their views.

[108] **Mick Antoniw:** I think it’s inevitable that the matter will come before the Assembly and will come in the form of an LCM. The issue will be the extent to which what comes before the Assembly—the content of the great repeal Bill, or whatever the piece of legislation is—has had proper engagement with the devolved Governments so that what emerges is something where there is consensus with the devolved Governments as being the best mechanism for going forward and one that represents the varying interests of the different parts of the United Kingdom.

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

[110] **David Rees:** I have Suzy, Dawn and Paul. Suzy.

[111] **Suzy Davies:** Okay, thank you very much. I just want to mention the

great repeal Bill for a minute because, presumably, the intention of that is to bite on the day that we actually exit the European Union. But, of course, it is the Bill that could be protecting all the rights that are considered to be threatened at the moment, if article 50 is triggered. Do you think that the main concern for the practical outcome of this, rather than the legal process, is: how are rights protected in the period between triggering article 50 and the passing of the great repeal Bill or is that just an artificial concern because, obviously, we remain in the European Union until we leave it?

[112] **Mick Antoniw:** All our European obligations, or the entire legal position remains exactly the same throughout the duration of the two-year period, once article 50 is triggered. Depending on how quickly the legislation comes forward—it's not a case of waiting for two years; two years is the maximum, but it could be sooner. But on the basis that these are going to be complicated negotiations, and the devil is clearly going to be in the detail, I would have thought that two years is probably a minimum period of time, but either way, it has to be completed before that two-year period, so all those obligations and rights remain.

[113] As I understand it, from what the First Minister has reported since the JMC, what the UK Government is talking about is a Bill that would actually seek to freeze the legal position in terms of the European obligations. So, a mechanism for providing, I suppose, a termination point, where existing laws remain, and then there would have to be some mechanism for transition where individual laws were looked at on a piece-by-piece basis. It is an absolutely immense task; it's an immensely complicated task. But it is, I suppose, a way forward of actually dealing with that. That in itself, of course, raises a whole series of questions in terms of the repatriation of the powers that exist within Europe, how those would be dealt with and how the sort of ongoing engagement will take place, because, I mean, I think the First Minister has referred to a sort of pooled sovereignty. That is, once you've achieved the stage of the great repeal Act—so, you've frozen existing law, however that takes place—there's going to need to be incredibly close co-operation between the devolved Governments and the UK Government on how you actually move forward towards not only the repatriation of powers and responsibilities, but the way in which they're going to operate. So, for example, where much of our environmental legislation is under the auspices of environmental directives, all those powers would naturally go back to the area where the devolved responsibilities are. But, of course, it's not quite as simple as that, and there'll be a need for a lot more joint co-operation, it seems to me. I think that once the technical detail of these things is looked

at, there are, I think, many years of work for lawyers, I suspect, to get an understanding as to how the situation has developed through that transitional period. It may well be a very long transitional period.

[114] **Suzy Davies:** Yes, I was just getting a confirmation, really, that that kind of talking about the great repeal is in fact a distraction from the key legal issues before us at the moment.

[115] **Mick Antoniw:** That's right. I mean, the issue as to what is in the Bill would be absolutely nothing whatsoever to do with the Supreme Court hearing. The Supreme Court hearing is solely to do with the constitutional process. The actual mechanisms that flow on after that will be a matter for Parliament, depending on what the nature of the Supreme Court judgment is.

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

[117] **David Rees:** Thank you. I know that Steffan wanted to join in as well. So, Dawn, Paul and Steffan.

[118] **Dawn Bowden:** Yes, I think, to a degree, that's answered the point, actually, because I think we were kind of getting led off to somewhere else, and the great repeal Act, as I understood it, is something that's way down the road. But the High Court judgment—just for clarity, because I'm the simple layperson here; I'm not one of the lawyers in this room. So, just to be absolutely clear, the High Court judgment was just simply about reiterating the right of Parliament, or the role of Parliament, in terms of triggering article 50, and that can't be done until there is an Act of Parliament or a decision of Parliament. So, that Act of Parliament, am I right in saying, could be as simple as a one-line Act of Parliament saying, 'This House wishes to trigger the article 50'? Or is it more complex than that?

[119] **Mick Antoniw:** It could be as—. I mean, firstly, you're right in terms of your analysis; it is solely about the process and the mechanism. It would then be completely up to Parliament how it would do it. It could do it by a single-line resolution. I think the issue that would arise, and you've seen that in some of the debates in Westminster already on this issue, is, of course, leaving the European Union isn't a simple matter and that Parliament would want to be engaged in an understanding of how it's going to happen, what the processes were going to be. There will be, undoubtedly, various interests, regional interests, and interests, perhaps, from devolved Governments. There will be a process, which will be a parliamentary scrutiny

of that process as well, because, ultimately, what would be happening is that Parliament would be passing legislation, but it could choose, if it wished, to say, 'This is wholly a matter now for the Executive and we'll totally leave it up to them until they come back', or it could actually say, 'No, we actually require a higher degree of scrutiny; we have particular interests', and, of course, there are issues there that would obviously be of interest to Wales. For example, either in the negotiations or through whatever the parameters might be, the First Minister's made it very clear that a high priority for Welsh interests is access to the free market, tariff-free trade. Whereas I wouldn't expect Parliament to legislate within that, there might well be parameters with any legislation that set out a mechanism for engagement and parliamentary scrutiny.

[120] It's also interesting to see, once that was triggered, how the parliamentary process might actually operate, because there are Standing Orders, for example the Welsh Affairs Committee's, in terms of the interest in this as it might affect Wales, that have specific provision for engagement with the committees of the Welsh Assembly. So, there is a process that might engage the Assembly as well in terms of all the representations that will be made, and I'm sure that's the way Scotland will be looking at it as well.

[121] But in terms of the case itself, none of that will be an issue, other than insofar as understanding the broader constitutional framework. It's one of the things that's quite difficult to explain. We don't have a written constitution, so that means our constitution is never actually static. So, the constitutional arrangements we have are many of the bits of legislation that pass, and much of it arises out of conflict between Parliament and the monarchy, in terms of the issue of the royal prerogative, and of course you've seen that with the Bill of Rights. As I said, we had a civil war over the issue, there was a monarch deposed subsequently as well, and there have been a whole series of cases where the issue of the prerogative has been constrained by the court, with the court interpreting what is an unwritten constitution. So, when the Government of Wales Act 1998 was passed, and the Scotland Act 1998, and the Northern Ireland Act 1998 and so on, all those things became part of the UK constitution. And the Sewel convention, although non-justiciable per se, and not a binding agreement, it nevertheless becomes part of the constitution because it becomes part of our broader understanding of the interrelationship, which is unwritten, between the UK Parliament and the devolved Governments. And the whole issue of sovereignty then becomes an issue, because you have the sovereignty of Parliament, but of course part of that sovereignty is actually delegated to the

Welsh Assembly, to the Scottish Parliament and to Northern Ireland, which is why the issue of pooled sovereignty post Brexit becomes an important concept.

[122] **David Rees:** Thank you. For clarity, we tend to talk about Parliament, but there is a difference between Parliament and the Executive, which is the Government.

[123] **Mick Antoniw:** Yes.

[124] **David Rees:** And the clarification, really, is: is it what Parliament would like to put into that Bill or is it what Government will put into that Bill?

[125] **Mick Antoniw:** Well, it is de facto what Parliament wants to put in the Bill. Parliament authorises the Government, the Government acts ultimately with the will of Parliament. That is the whole point, and particularly where Parliament acts with the royal prerogative, when it comes to the rights of individuals and the law, Parliament is sovereign. That is exactly what the case is about.

[126] **David Rees:** So, the Government will place a Bill and it'll be for Parliament to decide whether it's the right Bill or not.

[127] **Mick Antoniw:** Yes. It may choose—. It will then have to go through the processes, where there will be opportunities for Members of Parliament to make amendments and so on, and it will go through that whole process where Government engages with the Members of Parliament to achieve a Bill that has the support of a majority of Members of Parliament.

[128] **David Rees:** I just wanted clarification. Thank you.

[129] **Dawn Bowden:** Sorry, I've two very quick supplementaries. One is: my understanding, and correct me if I'm wrong on this, but my understanding, then, is that, once we have an Act of Parliament, or a resolution of Parliament, or whatever it is, and article 50 is triggered, we are then into—and this is what I'm not clear about, so just correct me if I'm wrong—we either then have an agreement, or we don't, on the terms of Brexit. That doesn't require a further Act of Parliament, only a vote in Parliament as to whether we accept it or not. So, we either accept it, or we leave the European Union without an agreement.

[130] **Mick Antoniw:** No, I think the inevitability is—. Once article 50 is triggered, there is a two-year negotiation period with the European Union to deal with all the issues in terms of trade agreements, the mechanism for leaving and what the consequential relationship will be. There may be one-off issues, issues that are in process and still not completed, where there will be a mechanism for resolving those over a period of years, post Brexit. But the ultimate effect will be that there will be significant constitutional change, there will be a legal impact in terms of the powers, the roles and responsibilities of the Welsh Assembly and, indeed, the other devolved Governments. That will have to be in the format of legislation.

14:45

[131] **Dawn Bowden:** Okay. And my final question, very briefly, in what circumstances then, in terms of where we are now vis-à-vis the High Court and the Supreme Court, what would be the circumstances that would end up with us seeing this issue in the European Court of Justice?

[132] **Mick Antoniw:** The only way I think it would be likely to end up in the European court was if the issue of reversibility of article 50 was in doubt and became an issue, because, ultimately, the interpretation of article 50 is European law, and it would be a matter for the European Court of Justice to determine. In the High Court case, it was not an issue, because it was agreed by all parties that, once triggered, it could not be withdrawn.

[133] **Dawn Bowden:** Okay. Thank you.

[134] **David Rees:** Thank you for that, Counsel General. But before we move on to Paul, can I, just for the record, and for the public who may be watching, clarify the difference between a resolution and an Act, so that people understand the differences between the two?

[135] **Mick Antoniw:** An Act is a law that is passed by both Houses of Parliament, and once it has completed the parliamentary passage and the scrutiny processes it is then given the Royal Assent. A resolution is basically an indication of the will of Parliament, but it is not binding, and it can be a resolution of just one House.

[136] **David Rees:** So, a resolution of the House of Commons would be sufficient. I just want to issue clarity for people who may be watching this. Paul.

[137] **Paul Davies:** Thanks, Chair. Can I just clarify your position then on a potential legislative consent motion? You've made it clear that you don't want to frustrate the process, you don't want to prevent the triggering of article 50. I presume therefore that once an LCM is actually laid, you will be advising the Welsh Government to support that particular LCM to enable to UK Parliament and the UK Government to actually trigger article 50.

[138] **Mick Antoniw:** Well, it's probably not a matter in terms of advice, because it becomes a policy matter. It depends what is actually being put into the legislation. So, if we're talking about, for example, the great repeal Bill, it will depend upon what the detail of that Bill is, what it actually does, and to what extent it intrudes into the devolution statutes. Anything that impacts on the powers of the Assembly, or Welsh Government Ministers, has to be the subject of an LCM. One would anticipate that there will have been substantial negotiation and agreement, so by the time something comes forward and the Government has actually laid the LCM, it will be the subject of a high degree of consensus. But, ultimately, it is voted on and the Sewel convention provides that the UK Government won't normally legislate in an area without the consent of the devolved Government. So, there's a strong mandate, I think, both from the UK Government side and from the Welsh Government side to actually reach consensus on that.

[139] **Paul Davies:** So, you could envisage circumstances whereby the Welsh Government would actually vote against that LCM, and to prevent the triggering of article 50.

[140] **Mick Antoniw:** Well, ultimately, it's a matter for the Assembly and whether the Assembly thinks that the legislation that's being passed that is changing the powers and responsibilities of the Assembly has the support of the majority of Assembly Members.

[141] **David Rees:** I need to clarify there's a difference between a piece of legislation that triggers article 50 and the great repeal Bill, which may be a separate piece of legislation.

[142] **Paul Davies:** Sure.

[143] **David Rees:** Okay. Steffan.

[144] **Steffan Lewis:** Thank you, Chair. Was there an LCM required for

passing the European Union Referendum Bill in Parliament?

[145] **Mick Antoniw:** I'm not aware that there was an LCM on that.

[146] **Steffan Lewis:** So, why can we be—

[147] **Mick Antoniw:** Because it's not a devolved area.

[148] **Steffan Lewis:** Why can we be confident, therefore, that the UK Government would interpret the triggering of article 50 as being one that should require a legislative consent motion of the devolved parliaments?

[149] **Mick Antoniw:** Well, it's not a question as to whether the UK Government wants to see an LCM or not. It's because our Standing Orders provide that if there is legislation that impacts upon the powers of the Assembly or the Welsh Ministers, there has to be an LCM. The Standing Orders don't say 'There should be' or 'You consider having an LCM', they say, 'There must be an LCM.' So, depending upon the nature of any legislation, if it does have that impact on the devolution settlement or arrangements, it will have to be subject to an LCM. There will be an LCM here.

[150] **Steffan Lewis:** But if there is legislation that the UK Parliament has brought forward, by the UK Government—and bearing in mind that you said that Sewel is obviously not a legally binding arrangement—that legislation could make provision for the fact that the referendum and the legislation that allowed the referendum was UK Government or UK Parliament only, and therefore, for the triggering of article 50, the judgment says that the UK Parliament is sovereign and the UK Parliament decides on the triggering of article 50, and therefore it isn't necessarily a matter for the consent or otherwise of the devolved administrations.

[151] **Mick Antoniw:** It's up to the Assembly itself to decide—well, for the Government to decide—what requires an LCM and, indeed, I think, for the Presiding Officer in terms of what is actually required when an LCM is required. It's not a matter of choice for the UK Government, even if the UK Government thinks it's a matter. We've had this recently, I think, within certain aspects of legislation here. We had it on the Agricultural Sector (Wales) Act 2014, where we considered a matter to be within our competence and the UK Government considered it was its competence. It was the Welsh Government that chose to lay an LCM and I think there'll be other legislation

as well where that applies, in respect of, for example, the trade union legislation.

[152] **Steffan Lewis:** But, with respect, that wasn't in relation to the UK's membership of, or proposed withdrawal from, an international organisation, which could be argued is not devolved. I don't think the parallel is quite the same between the agricultural wages Bill and—

[153] **Mick Antoniw:** Yes, I don't understand the point you're making because—

[154] **Steffan Lewis:** The point I'm making is that the judgment says that Parliament is sovereign and that it needs to legislate, or at least that Parliament must trigger article 50. So, if Parliament passes an Act that says, 'We give the Government of the UK the right to trigger article 50', and the provisions of that Act suggest that that does not require the legislative consent or otherwise of the devolved administration, then what is the—. Because at least one UK Government Minister is reported to have suggested that the great repeal Bill, so called, would not require a legislative consent motion.

[155] **Mick Antoniw:** Well, I don't—

[156] **Steffan Lewis:** I'm trying to get to where there's a difference of opinion between the UK Government—

[157] **Mick Antoniw:** I don't agree with that. Obviously, it depends upon what the nature of the legislation itself is, but I think that with any legislation that the Welsh Assembly or the Welsh Government considers to have an impact, there will be brought forward an LCM. Ultimately, the UK Government, or Parliament, would have to consider whether it would proceed, irrespective of an LCM that was made. If there was a vote on an LCM and say that the vote was against consenting to the change, Parliament would still have the capacity to proceed if it so wished. The consequence of that, of course, is that it's not conducive to a stable and cohesive constitutional arrangement between the devolved Governments and the UK Government. So, it would be a major step. It's a step that has never been taken since the Sewel convention, which is why it has been stressed by the First Ministers of the devolved Governments, the importance of achieving assent, but ultimately the UK Government—the UK Parliament, sorry; I shouldn't say, 'Government'—the UK Parliament has that capacity.

[158] **Steffan Lewis:** Thank you for that. One final point: it has been suggested that one way of devolved Governments and legislatures ensuring as smooth as possible a transition in the future would be for them themselves to publish and enact European continuity Bills themselves. That is something that the First Minister was asked about last week. Have you considered, rather than waiting and seeing the great repeal Bill, so called, introducing a continuity Bill here in Wales, so that on all matters that are European that relate to devolved subject areas, we legislate here as quickly as possible so that citizens, businesses and others know what they can expect in post-Brexit Wales?

[159] **Mick Antoniw:** I think it's premature to consider those sorts of steps until, firstly, we have the Supreme Court judgment. We need to know that. We need to know what particular process is going to be engaged because that will then determine, I think, many of the subsequent engagements with the devolved Governments or with the UK Parliament and so on. Whether it is viable to have a so-called continuity Bill, that is a possibility. There's a possibility that we might choose, for example, in a post-Brexit situation, to still want to comply with certain standards and certain directives. That would be a matter for the Assembly within its devolved responsibilities. So, I think it's that we're in an area where a lot of thought needs to be given very carefully to how we're actually going to proceed, but I certainly wouldn't want to consider any particular steps until I'd seen the outcome of the Supreme Court judgment and we've got an idea as to where the process is going.

[160] **David Rees:** Can I expand upon that a little bit? Because, obviously, the process of the Supreme Court judgment is based upon triggering article 50. The continuity or continuation Act concept is about actually ensuring that the EU directives within our legislation continue under our jurisdiction, irrespective of the triggering of the article—basically, once we've hit that point at which we know we've come to an end. So, I suppose the question is: is it really linked to the High Court or Supreme Court decision—

[161] **Mick Antoniw:** So, is it—

[162] **David Rees:** Is it really linked to the Supreme Court decision, or are you awaiting, perhaps, an understanding of what the conditions will be in triggering article 50 before you do it?

[163] **Mick Antoniw:** No, it seems to me that it's very important to understand what the framework is going to be, how article 50 is going to be triggered, and what the parliamentary framework may be. Because what Welsh Government will be concerned with is to ensure that the Welsh interests are best represented in whatever process is actually pursued. If there would be benefit from individual legislation, then that would obviously be something that is worth considering, but, until we have a greater understanding as to where we're going and what the legislative mechanisms may be and what they may contain, I think that would be actually premature.

[164] **David Rees:** Thank you. Suzy, did you want to—? I'm sorry.

[165] **Mr Godfrey:** I think it's important to recognise that should the Supreme Court uphold the High Court decision, there will probably be two pieces of legislation. There will be legislation to trigger the article 50 notification, and that will then set the clock running. The great repeals Bill is intended to be enacted by Parliament between the trigger and the exit taking effect, and, I think, in that period, the great repeals Bill is expected to set the framework within which freezing and any continuity provisions will need to be addressed. I think that until you have sight of that, it's very difficult to respond to questions of continuity, not least because, until the point of exit, the Assembly will remain bound by European law as part of its legislative competence. So, it could not, in that period, legislate contrary to European law.

[166] **David Rees:** I appreciate that, but I think the consideration is that perhaps the Welsh Government would want to know exactly what it would want to see continued, and therefore be in a position to be ready to identify what will and what won't be continued when the so-called 'great repeal Bill' comes through. So, I think that's the concept.

[167] **Mick Antoniw:** I understand that. I mean, that's a fair point. I think the implications in a whole variety of areas are incredibly complex. There's an enormous amount of work that is going on, trying to identify, trying to evaluate all the potential legislative areas, and, you know, I think that it's probably a fair question to ask in about three to six months' time, when a lot more water has passed under the bridge and a lot more discussion has taken place and there's a clearer picture. I think it's fair to say that, you know, this is work in progress and much of it in unknown territory, and trying to pull it together into a workable framework with so many unknowns is extremely difficult. So, there are many areas where we can guess and we can speculate

as to what might be the way forward. I think the key thing is that we don't close our minds to any of the options. We have to think imaginatively and legally in terms of how we best look after and represent Wales's interests, but within the context of the UK constitution as a whole.

[168] **David Rees:** Thank you. Jeremy, on this point.

[169] **Jeremy Miles:** Can I just ask you, on that point? The continuation Act could be a piece of housekeeping, in a sense, couldn't it? You know, depending on how you cast it. Alternatively, it could actually address a number of issues that currently exist in the devolution settlement, effectively. So, on the issue of concurrent powers for UK Ministers and Welsh Ministers, for example, the Assembly could take the view that it would use that mechanism of a concurrent continuation Act to remove that power, effectively. It's within a devolved competence, and it could choose to legislate so that Welsh Ministers had exclusive powers in those circumstances. Obviously, that would possibly trigger a response in Parliament—I understand that. But, do you have a legal view? The political views are one thing, but do you have a legal view on the desirability or otherwise of addressing that issue of the concurrent jurisdiction that Ministers have in Westminster and in Wales?

15:00

[170] **Mick Antoniw:** Well, yes, I think there are two aspects. The first one is practical, and that is that two legislatures, or more than one legislature—legislatures as a whole—are approving something, working together to achieve a common objective and a sustainable objective. That may require a certain amount of give and take, and so on. But the ultimate principle that we'd want to preserve is, of course, that the outcome of this isn't that the devolution settlements are diminished, that is, that we end up with fewer powers at the end of this and that there is a greater centralisation of power in Westminster than there was before that. It seems to me that is not what the process should actually be about.

[171] Part of the whole legislative process, and the engagement between the devolved Governments and UK Government, is to achieve an objective whereby those powers remain and that, where powers are repatriated from Brussels, they actually go into the devolved settlement. That is that, for example, powers that remain within environment would naturally come to Wales. So, the actual powers of the Welsh Assembly and the Welsh

Government should actually be de facto increased.

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

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

[174] **Suzy Davies:** Thank you, Chair. You began your evidence today by saying that it wasn't the intention, with your intervention, to delay the article 50 trigger, and I've no reason to disbelieve you there. But if the Supreme Court upholds the High Court decision, Parliament can proceed by way of resolution—in which case, the question of LCM becomes irrelevant anyway because you won't get a chance—or the UK Government will choose to bring forward legislation, possibly in an emergency way. When I say, 'emergency', I mean with a reduced number of stages, or reduced consultation, where, actually, we might be short of time for getting an LCM through our procedures here. In those circumstances, what will you be saying to the Supreme Court, in trying to balance the risk of delay, because of parliamentary procedures, with the stated aim not to delay the trigger?

[175] **Mick Antoniw:** The Supreme Court is acting quicker than I've ever known it to act. The fact that it had listed the Supreme Court hearing before it even started the High Court hearing, I think showed the seriousness with which they regarded the constitutional issues that were being raised. The fact is that, by early January, I think, it's anticipated that the judgment of the Supreme Court will be known. The UK Government has said—I think the Prime Minister has said—that they're working to trigger article 50 by the end of March. That provides a three-month period within which legislation can be brought, and it can be relatively straightforward legislation. It will be fast, but I think, if the UK Government wants to stick to that particular timetable, I don't see any reason why the parliamentary and the LCM mechanics can't actually comply with that. I think what is required is just that there is clear and effective engagement between the devolved Governments and the UK Government to ensure that that process takes place.

[176] **Suzy Davies:** Can I just ask you on the back of that, then: how realistic would it be for the UK Parliament to bring forward speeded-up legislation, bearing in mind that, even if it's just a one-liner, as Dawn suggested, other parties are likely to want to bring amendments forward to it, which, of course, will then start eating up time again?

[177] **Mick Antoniw:** I think there would be an expedited process, wouldn't

there, and there would also be a guillotine within the process as well in order to enable that to happen. I follow very much, and listen very carefully to, what the shadow Brexit Minister, Keir Starmer QC, said, which is that basically there would be no attempt to obstruct article 50, and there's no reason why the triggering of article 50 should be delayed, provided that there is proper engagement with Parliament to enable that all to be put in place and for that timetable to be kept to. It's up to Parliament to achieve that, and it's up to Government to work with Parliament in order to achieve that and, hand in hand, it means working closely with the devolved Governments. Of course, that very much was the message that came out of the JMC just the past week.

[178] **Suzy Davies:** Okay. Thank you.

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

[180] **Eluned Morgan:** I'd like to congratulate the Counsel General on bringing this Welsh case forward at the Supreme Court and making sure that our voice will be heard in that case. I wondered why the Welsh case wasn't heard at the High Court stage. Did we just wake up late?

[181] **Mick Antoniw:** Right. Why do we wait until after the High Court decision in order to intervene?

[182] **Eluned Morgan:** Yes.

[183] **Mick Antoniw:** I think in the early days, of course, there was considerable confidentiality around the High Court case. So, it was, I think, really only in the summer period that we began to become aware of it. Of course, then, the key was to actually find out what the arguments were and what the submissions were that were being put forward. It's during that period that we really began to become aware of the fact that not only was there significant constitutional argument, but also that it might have a significant impact for Wales.

[184] The normal legal process within that sort of situation—a case that you've not initiated, but that you have an interest in—is that that's where the power to intervene triggers. You've identified a specific constitutional interest for Wales—something that has very significant implications for Wales—and, for that reason, the step that I took was to ensure that we had leading counsel there with a watching brief to be present to ensure that the

Welsh presence was noted there, but also to get the full flavour—the full evidence—of what was being argued with the participants and so on.

[185] Of course, in the lead-up to that case, there's a lot more information coming about what the terms of it were, and, of course, there was then a specific Northern Ireland case on much narrower issues to do with the British-Irish Agreement and the Belfast Agreement and so on. That had similar issues, but is going through its Northern Ireland process at the moment. It became very clear to me that the issues raised were of such significant constitutional importance that it was likely that we would want to intervene, but I wanted to see what the terms of the judgment were, or what the issues were, that were raised in the various arguments.

[186] Once we'd seen the judgment, once we'd seen the various pleadings—the documents setting out the case—and once we'd seen the skeleton arguments, it was very clear that there had been raised, within that, a number of important points about the impact of the use of the prerogative in the devolution statutes. It was clear that it was going to go to the Supreme Court. To me, it would've been inconceivable that you could have a case of such constitutional importance, which would have such potential impact on the devolution settlement and our relationship as part of the UK constitutional structure—there had to be a Welsh voice there. We could not have a Supreme Court case taking place, where issues were being raised about the implications for Wales, where Wales didn't actually have a voice. I think the role of the Counsel General in that situation is to actually be present—to be there and to set out and defend and protect the Welsh interest and to put forward a positive case as to what that Welsh interest is within the parameters of that decision.

[187] **Eluned Morgan:** Thanks. Can I ask you about the High Court case itself? Obviously, a lot of points were brought up during that case, but, as far as I can see, it rested on two principal planks: one was the domestic rights that potentially could be lost by individuals and organisations and countries as a result of us leaving the EU, which is why it wasn't a foreign agreement—it was much broader than that, which is why I think we can intervene and why I think it's absolutely right that we can intervene. But, secondly, it was on this issue that article 50 is irrevocable. Obviously, if that was an important plank, it's quite possible that the Government could change their position on this and we could, potentially, be in this deliciously ironic situation where we'd have to go to the European Court of Justice to find out whether, indeed, article 50 is irrevocable or not. Do you have an opinion on that? Are you

allowed to have an opinion? What's your sense on that?

[188] **Mick Antoniw:** Whether I'm allowed to have them or not, I have them. I'll deal with the article 50 reversibility point first of all. Yes, it was an important point. It has to be said, there are arguments on it that go both ways. I think we have a strong argument in any event that, even if it wasn't irreversible, triggering article 50 is still a major constitutional step that still requires Parliament to actually initiate and needs an Act of Parliament. So, even without that, I think there is still a strong argument, but, of course, the Supreme Court will actually consider that. It's just that, the concession having been made, the High Court did not go into a lot more detail about that, but that will be a matter that, undoubtedly, may well emerge in the Supreme Court hearing.

[189] In terms of the individual rights, of course, that is an important point because, in the cases over the centuries relating to the use of the royal prerogative, it has been not only about the sovereignty of Parliament, but also very much about individual rights. Of course, there is a whole series of rights that are enshrined in the Government of Wales Act 2006 in terms of our compliance with international conventions, and also our compliance with European law. But, also, there are clearly rights that have emerged since 1972 that individuals have: the right to live and work in the European Union, the right to free travel in the European Union, the right to vote in European elections, the right to healthcare in Europe, the right to stand in elections for the European Parliament, and there are many employment rights issues—some of which are dependent upon our membership of the European Union, and others that are enshrined, of course, in UK law, but many of which are actually underpinned by European directives, which would actually go.

[190] Of course, in an environment where we have a social partnership, where we work regularly and collectively with employers and trade unions, and the whole issue of procurement, and so on—all those things, which encompass things like decent working conditions and employment rights, form part of the fabric of much of what we do. I don't know if you want me to, but do you want me to give you a list of some of the employment directives that I think are particularly important, which we would lose the underpinning from? I can give you them, if you want.

[191] **David Rees:** I'm sure you could always supply the committee with a list.

[192] **Mick Antoniw:** Perhaps I can tell you that it's a very long list of a quite considerable number of directives that give rights to individuals throughout the United Kingdom and in Wales, and, of course, they underpin. So, the capacity for legislation that repeals employment legislation can only take place if there's not a requirement to comply with a European directive in those areas. So, it does change the whole dynamic. So, that was the individual rights area, and you've taken away from me my opportunity to tell you how much I know about employment directives. [*Laughter.*]

[193] **David Rees:** Thank you. Michelle Brown.

[194] **Michelle Brown:** Coming back to your intervention in the appeal to the Supreme Court, what's your preferred outcome? What are you aiming for in your intervention, apart from clarifying the process? What's your preferred outcome?

[195] **Mick Antoniw:** Well, my preferred outcome is that the Supreme Court considers all the issues very carefully and comes to a conclusion that respects the sovereignty of Parliament, the democratic constitution that we have, and that any issues that relate to Wales are properly considered by the Supreme Court.

[196] **Michelle Brown:** I don't think that really answers my question. That's the job of the court anyway—to apply the law and the constitution. You're just asking them to do their job. What's your objective and goal in this? What do you want that judgment to say?

[197] **Mick Antoniw:** I think the High Court judgment that was given represents, in my view, the proper constitutional position of the United Kingdom. I think it properly represents the various cases on the use of the royal prerogative that have taken place and also reflects the sentiment from the Bill of Rights of 1689.

[198] **Michelle Brown:** Okay. I assume you're going to be sending a legal team. What's the composition of the legal team going to look like?

[199] **Mick Antoniw:** The legal team will consist of myself as Counsel General, leading counsel and, possibly, a junior counsel.

[200] **Michelle Brown:** And are the leading counsel and junior counsel going to be specialists in constitutional law?

[201] **Mick Antoniw:** Yes.

[202] **Michelle Brown:** Good.

[203] **David Rees:** Thank you. Do any other Members have any other questions? I see not. Therefore, can I thank you, Counsel General, for your evidence this afternoon? It's been very helpful. You will receive a transcript of the session, so, if there are any factual inaccuracies, please let us know as soon as possible. So, thank you for your time.

15:14

Papurau i'w Nodi Papers to Note

[204] **David Rees:** Can I move on and ask Members to move on to the next item on the agenda? Item 4 is papers to note. Are Members content to note the minutes of the meeting of 17 October and the minutes of the meeting on 31 October? I see Members are. Thank you very much

15:15

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

[205] **David Rees:** The next item on the agenda—I resolve to exclude the public from the remainder of the meeting under Standing Order 17.42(vi).

Are Members content? I see Members are. Thank you very much. We'll now move into private session.

Derbyniwyd y cynnig.

Motion agreed.

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

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