



OFFICIAL REPORT
AITHISG OIFIGEIL

Finance and Constitution Committee

Friday 19 June 2020

Session 5



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FINANCE AND CONSTITUTION COMMITTEE

13th Meeting 2020, Session 5

CONVENER

*Bruce Crawford (Stirling) (SNP)

DEPUTY CONVENER

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

COMMITTEE MEMBERS

*George Adam (Paisley) (SNP)

*Tom Arthur (Renfrewshire South) (SNP)

*Jackie Baillie (Dumbarton) (Lab)

*Alexander Burnett (Aberdeenshire West) (Con)

*Donald Cameron (Highlands and Islands) (Con)

*Angela Constance (Almond Valley) (SNP)

*Patrick Harvie (Glasgow) (Green)

*John Mason (Glasgow Shettleston) (SNP)

*Alex Rowley (Mid Scotland and Fife) (Lab)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Michael Russell (Cabinet Secretary for the Constitution, Europe and External Affairs)

CLERK TO THE COMMITTEE

James Johnston

LOCATION

Virtual Meeting

Scottish Parliament

Finance and Constitution Committee

Friday 19 June 2020

[The Convener opened the meeting at 10:30]

Brexit

The Convener (Bruce Crawford): Good morning, and welcome to the 13th meeting in 2020 of the Finance and Constitution Committee. Today, we will take evidence on Brexit.

The committee has considered a number of pieces of Brexit-related legislation over the past few years and, no doubt, we will continue to do so. However, this is a timely opportunity to have an update on where we are. We are joined by Michael Russell, the Cabinet Secretary for the Constitution, Europe and External Affairs, and, from the Scottish Government, Euan Page, the head of the United Kingdom frameworks unit, and David Barnes, the deputy director and head of European Union exit strategy and negotiations.

Cabinet secretary, I warmly welcome you to the meeting and invite you to make a short opening statement.

Michael Russell (Cabinet Secretary for the Constitution, Europe and External Affairs): I am grateful for the opportunity to say a word or two before answering questions.

I want to inform the committee at the very start that, today, we have published the UK Withdrawal from the European Union (Continuity) (Scotland) Bill, which will give the Scottish Parliament and the Scottish Government powers to keep pace with EU legislation, as well as introducing principles of environmental governance and establishing a new body. I am happy to answer questions on that bill. I suspect that I will be back to talk to the committee about it at some stage in the near future.

The issues around this are difficult and complex, but I think that the present situation can be summarised by saying that the current negotiations are deadlocked not because of a difficulty of detail but because of a difficulty of politics. The fourth and most recent round finished on 5 June. As members will know, the Prime Minister met the President of the European Commission, the President of the European Council and the President of the European Parliament on Monday this week. Although there was an announcement about further intensification of negotiations, there was no political

breakthrough. In reality, the two sides have fundamental differences.

The Scottish Government's position is clear. It is taken as read that we do not support Brexit—and, of course, the people of Scotland did not vote for Brexit. I hope that we will not get hung up on that today, because those are the facts of the situation. We have tried—as has the Welsh Government, for example—to find compromises with the UK Government. It has become not increasingly difficult but actually impossible. The rejection early on of the single market and customs union option was a bad start, but presently, the discussions between the Governments are very difficult to progress because the UK Government does not provide information, does not listen to the devolved Administrations and, indeed, does not respect devolution and how it operates.

Things got to a very difficult state last Friday. We and the Welsh Government decided not to attend a ministerial briefing from the Paymaster General on the von der Leyen meeting prior to that meeting, because we felt that no respect had been shown for our opinions and points of view, particularly with regard to the extension. The extension will be a crucial part of the discussion today. The UK can request an extension to the present transition period up to the end of this month. After the end of this month, it will be very difficult indeed to get that, largely because the decision from the EU would have to be a mixed decision, which would require the involvement of all 27 members and perhaps their Parliaments as well.

The impact of Covid-19 on the capability—and, indeed, on the finances—of every Government has been enormous, and it is inconceivable that a Government could go ahead with something as complex as the Brexit negotiations and expect to have them completed and implemented within the next six months. That is simply not feasible and to go ahead with that is—*[Inaudible.]*—because it also places businesses in this country at a huge disadvantage. It will be very difficult to recover from Covid, and every business knows that. To have the additional burden of Brexit and not knowing what the outcomes or new arrangements will be just adds—*[Inaudible.]*

A huge number of people have said that to the UK Government, but it has been completely impervious to reason. There is also a real possibility that there cannot be the type of democratic scrutiny that is required for such a huge constitutional—*[Inaudible.]* Last Friday, the issue came to a head when the Chancellor of the Duchy of Lancaster announced ex cathedra that there was to be no extension, without paying any attention to the letter from the First Ministers of Scotland and Wales to the Prime Minister

requesting that an extension be sought. Recovering from that situation will be hard. My Welsh counterpart and I wrote to Michael Gove on Tuesday of this week with a series of proposals to reset discussions between the countries, but we have not had a response yet. We took part in a meeting with Penny Mourdant, the Paymaster General, on Tuesday, but it was simply a read-out of the von der Leyen meeting and there was nothing in it that we could not have gleaned from the newspapers, which, unfortunately, tends to be the reality of those meetings. We suggested that the primacy of the joint ministerial committee (European Union negotiations) needs to be re-established. The JMC(EN), which was established in October 2016, has written terms of reference, which include oversight of negotiations in so far as they affect the devolved Administrations. Those terms of reference must be brought back into play and treated seriously, because they were agreed between the four countries.

I do not want to say much more except that we would like to continue with discussions with the UK, because vital issues are at stake in the negotiations. Our input must be meaningful and not simply pro forma. That position is shared by us and the Welsh Government; but, so far, we find that the UK Government is not listening. I am happy to answer questions.

The Convener: Thank you, cabinet secretary. Can you please tell us the main impact of Covid-19 on the Scottish Government's work in preparing for the end of the transition period? You told us that there has been an enormous impact. Given that it looks increasingly unlikely that the transition period will be extended, what will the on-going impact be on managing the Scottish Government's Brexit process while we are dealing with the Covid emergency?

Michael Russell: We announced in mid-March, before lockdown, that we would suspend the work that we were undertaking on independence and the preparations for an independence referendum to focus entirely on Covid. That was the right and necessary thing to do, because the people doing the work on the main Brexit discussions and on the independence discussions had to focus on the issue of Covid. That means that the vast majority of officials have been spending their time on Covid-related issues. For example, I have officials who have been working on testing and officials who have been working on regulations. As members know, I took responsibility for the Covid legislation and the Covid regulations, which required detailed work. I have taken two emergency bills through Parliament. Mr Fraser, who is the deputy convener of this committee but is the convener of the COVID-19 Committee, is expecting to hear from me on Wednesday both on the reporting on the bills and on the regulations.

That was the right thing to do, but it has been very detailed work. To be fair, the UK Government has been doing the same: the vast majority of officials have moved into that type of work. Now that we are expected to say that we will draw those people back—reluctantly, I will have to draw some of those people back—to prepare for other work, of which the continuity bill is an example. We would not have introduced a continuity bill at this stage—it would have remained to one side—had we not got to the stage where we need the powers to keep pace by the end of this year. The last date on which we could introduce the bill, to allow the committee to invite evidence over the summer, was 18 June. We have gone to the very last day in order to move forward.

The work of the Government is the first thing. The second thing is the financial burdens. We have undertaken huge expenditure, not all of which has come back through consequentials. The reality is that we do not have money to spare to spend on any set of activities, and that will be an on-going pressure. The third issue is scrutiny. There is a commitment to bring the frameworks to Parliament for scrutiny when they are concluded. As of today, I expect more than 100 pieces of secondary legislation to come to the Parliament as a result of the UK Government's desire to conclude the transition period by the end of December. That is certainly a very similar level to that for the preparations for a no-deal Brexit last year, so that will be an administrative burden.

The final issue is no-deal preparation and planning. Over and above what I have described, we will now have to reactivate no-deal preparation and planning. It is quite clear that, if there is an outcome, it will be no deal or a low deal, because the UK Government's ambition in the negotiations is for nothing more than that. If there is a low deal or no deal, substantial planning will be needed for the very difficult times ahead.

All those things will come to bear. It defies belief that a sensible Government would not say, "We've got an opportunity to slow things down." It does not need to abandon its principles. I would love Brexit to be out of the way, but that is not what I have been asking for. The UK Government could slow things down in order to ensure that pressures are not put into the system. To refuse to do so is reckless and damaging, particularly given that, according to the *Financial Times*, we are facing the worst recession since 1709. I was not there and you were not there, so we cannot say whether that is true, but if that is even partially true it would be the height of folly to continue.

The Convener: I want to pick up on the impact of Covid-19 on business, which is one area that you covered. You will be aware that, for a number of years, the committee has been discussing

common frameworks. Until today, I am aware of only one draft common framework having been published. I appreciate that the reason for that might be, in part, the impact of Covid-19, but you have just told us that more than 100 common frameworks will be required to—

Michael Russell: No—100 pieces of secondary legislation might be required, not 100 common frameworks.

The Convener: Forgive me. In that case, how many frameworks will the Parliament be expected to consider before the end of the transition period? Will temporary arrangements need to be put in place? Are there any policy areas in which common frameworks have not been agreed? If so, is there an understanding that those will be needed by the end of the transition?

Michael Russell: The common frameworks issue is immensely complicated as a result of the UK Government's refusal to agree on the issue of a level playing field. It will also be complicated by whatever happens with the Northern Ireland protocol. There is considerable concern that there is an attempt to renegotiate the withdrawal agreement and the protocol. Yesterday, I noticed that Michael Gove stressed his dissatisfaction with aspects of the Northern Ireland protocol and said that it would not be acceptable, even though it is part of a binding international treaty. On frameworks, there are big difficulties conceptually and in relation to how we move the issue forward. The four-country board on the frameworks has already concluded that it will not be possible to finish the work this year. That is quite clear. The impact of Covid has had a huge effect on that work.

We hope that three full frameworks might be completed by the end of the year. We should remember that we are talking about in the region of 23 or 24 frameworks; there is still quite a variety. It looks as though frameworks on nutritional labelling and compositional standards, emissions trading systems and food safety and hygiene law might be completed this year. The first of those to come to the Parliament would be on emissions trading, for which the consultation with stakeholders has been completed.

However, that is not guaranteed; it is, in essence, the best-case scenario. That would leave another five full frameworks outstanding. We would have to make interim arrangements on issues ranging from fisheries management and support and agricultural support—which, of course, are closely related to the negotiations—right down to late payment of commercial transactions. Those frameworks would all need to be in the pipeline. That number of frameworks being completed is considerably less than any of us would have wanted, but none of them might be

possible if there is no agreement on having a level playing field. If there is no agreement on a level playing field, it is very difficult to see a basis for those common frameworks—in particular, with regard to the involvement of Northern Ireland. There is no certainty that that could happen. I imagine that, as a best case, we might get three frameworks through.

10:45

The Convener: This is my final question, cabinet secretary. We may be looking at 100 pieces of secondary legislation, three common frameworks and a number of temporary arrangements between now and the end of the year. What discussions have you had with the Parliament about how best we can, given the current Covid emergency, enable it to properly scrutinise the secondary legislation and the common frameworks?

The resources of Government are stretched, and it is finding it difficult to deal with the current circumstances, but that is also true of Parliament. Nevertheless, Parliament must have a role in that process—it must be able to scrutinise what is going on, regardless of the current difficult circumstances. That is an imperative.

Michael Russell: We have said that the Parliament must be engaged in, and central to, the process for the frameworks and that it must be able to approve them—we made that commitment.

On secondary legislation, there is, as you know, an existing protocol. We were made aware of the number of pieces of secondary legislation only in the past week or so, and that is only an estimate. The Minister for Parliamentary Business and Veterans is now raising those matters with the parliamentary authorities and with the business managers.

We are talking about that process happening from August onwards. Some of those matters will not be clear until there is a deal, if there is a deal at all. Looking at the timescale that the UK Government has set itself up to the end of August, with five rounds of negotiation, the most optimistic view is that some sort of arrangement might be entered into by September. It will therefore be able to put all that stuff in place for consideration only in September, October, November and December, at a time when the Parliament is still struggling to get back to full stretch. That illustrates how ridiculous the whole approach is. We do not need to do it that way—we could quite reasonably say, "Let there be a pause for the next period."

The Convener: We will move to questions from Alex Rowley, cabinet secretary. All the work that you are talking about will, of course, coincide with the need for the Parliament and the Government

to make a substantial effort around budgetary matters, which will cause significant workload challenges.

Alex Rowley (Mid Scotland and Fife) (Lab): I intended to ask the cabinet secretary about the current relationships and the negotiation and discussion between the UK Government and the devolved Administrations, but he touched on that in his introduction. I will put my question in another way.

In the period after the EU referendum, the Scottish Tories argued that the Scottish Parliament would be far more powerful because all the powers that would come back from Europe in devolved areas would come to the Scottish Parliament. My party, Labour, argued that there should be no power grab and that those substantial powers should come back to Scotland. Is a power grab by the UK Government taking place?

Michael Russell: In my view, there has been a continuing power grab by the UK Government—it has never moved away from that. Some of the issues that may be on the horizon with regard to a so-called UK single market will intensify that process. My view is that there is a low tolerance of devolution from the current UK Government and it is always unhappy if the areas of devolved competence are drawn to its attention by the devolved Administrations.

We did our very best on the frameworks—we worked very hard to put them in place—but they are jeopardised again by the UK Government's refusal to accept a level playing field and other such issues. All of that is aside from a failure to get any progress on the intergovernmental review, which is a very serious matter—there has been no progress on that whatsoever.

Convener, I understand that my video is not being sent, because of difficulties on the line. I apologise. I live in a rural part of Argyll and there is sometimes a problem with the quality of the broadband—I look forward to it being improved.

Alex Rowley: You said that these are technical and complex issues. For a layperson looking at the situation, is this simply an argument between politicians about where decision making sits? What are the implications for the everyday lives of the people of Scotland? When we talk about regulation, for example, people are genuinely concerned about dodgy chicken and other food. Could standards go down as a result of the Brexit deal and the trade deals that follow? What about workers' rights and health and safety? Why is this such a big issue for people in Scotland? Is it just about where decisions are made or is it about the ramifications of those decisions for people?

Michael Russell: That is an important question. The ramifications for people are clear. You are right to talk about dodgy chicken and beef imports. It is interesting that, yesterday, the United States trade representative made it absolutely clear in public that there will be no trade deal between the UK and the US unless meat is allowed to be part of the deal. I suspect that that applies to a number of things right up to and including private healthcare.

For the people of Scotland, the way to avoid that—short of independence; it will be no surprise to you that I believe in independence, Alex—is to take a rigid view of the devolved competences and ensure that the Scottish Parliament can operate in that regard. That means that there should not be—*[Inaudible]*—on food safety, healthcare or any other area that is within the competence of the Scottish Parliament, without the full involvement of the Scottish Parliament and the Scottish Government.

That is not happening, on two levels: it is not happening at the level of discussions between the Governments who are meant to oversee the talks—let me use the word “oversight” again, because it is in the remit of the JMC—and it is not happening in the context of, for example, the Trade Bill, on which the Scottish Parliament will eventually be asked to give its opinion. We have published material and said that we should have a modern trade bill that recognises the issues and ensures that the devolved Administrations are closely involved, but Westminster has no intention of doing that—none whatsoever. The impact on daily lives will be great.

We can pursue the issue of independence—I am happy to do so in this context—but that is why there should be an intergovernmental system so that we all know what the rules are, how they operate and what the dispute resolution procedure is, and so that we have a system that is fair and equitable. The Labour Government in Wales supports us on that; it has published a paper that says that sovereignty should lie within each of the countries and that we should willingly pool our sovereignty—that is how it should work.

However, there is no intention of going anywhere near such an approach. The intention, if anything, is to intensify this medieval concept of the sovereignty of the Westminster Parliament and to try to diminish anything else. That will have an effect on the daily lives of everybody in Scotland. I have been involved in these talks for four years—regrettably—and that is my conclusion about where we are and what the intentions are.

Alex Rowley: As cabinet secretary in Scotland, do you have any idea where the UK Government is heading? I think that the Scottish Parliament was united in saying that we need a deal that

takes us much closer to the EU market and alignment with the customs union. I think that that was the unanimous view, and I assume that it is the view that the Scottish Government has been pushing on our behalf. Will we get anywhere near that? Do you have any idea where we will end up?

The Convener: Was that your final question, Alex?

Alex Rowley: Yes.

Michael Russell: There are two possible landing zones. One is that the current UK Government has a change of heart, accepts that the devolved Administrations should be actively involved in issues to do with devolved competences, changes the way in which it is operating towards the EU and seeks a better deal. I do not want to leave the EU, but that means a deal with terms that are possible to live with.

Alternatively, the UK Government continues down its path and gets a no deal or a low deal, which means that there is a double, triple or quadruple whammy for the people of Scotland. Certainly, that will reduce food standards, imperil public services, impinge on devolution and create circumstances in which the UK is undertaking approaches that are damaging to us all. That is where it is going. A no deal will be particularly disastrous, but a low deal will be pretty bad, too. I am always hopeful that some sense will enter into the process, but I cannot see any at present.

Alexander Burnett (Aberdeenshire West) (Con): My question is on the process for the UK common frameworks. I understand that, back in March 2019, you stopped your officials engaging. Is that true, and will you be looking to engage going forward?

Michael Russell: If you are talking about frameworks, that is not true. We have been actively engaged in frameworks all the time and continue to be so. That is why I can say that the work on, for example, an emissions trading system is complete. That is not true about frameworks.

Alexander Burnett: I am very glad to hear it.

Given that the bulk of Scotland's trade is with the rest of the UK and that nearly 0.5 million more people voted to remain part of the UK than voted to remain part of the EU, can we have your assurance that you will continue to prioritise engaging with the UK Government constructively on the issue?

Michael Russell: No. What I will prioritise, which is what you should prioritise, too, is working for the people who elected me. The people who elected you in your constituency, as in mine, voted in the majority to stay in the EU. That is an indisputable fact. We have tried as hard as we can to negotiate with the UK Government to get an

outcome that would be agreeable, as far as we could, to all of us. The UK Government has failed to offer that on any occasion.

On trading, it would be very foolish if the UK Government has suddenly decided not to trade with the EU because it is not to be a member of the EU—although, given the UK Government's ideological obsessions, I would not be surprised. There is absolutely no reason why countries that are not part of the same political unit or organisation cannot trade with one another. We see that all the time.

I hear all this flim-flam about new trade deals with Australia and New Zealand. It is flim-flam because, according to the UK Government's figures, the New Zealand deal would have zero impact on gross domestic product. I respectfully point out that, as I am sure the member knows, New Zealand and Australia are neither neighbours of ours nor part of the same political unit, yet they continue to trade. If you are telling me that there would be no trade between Scotland and England if we were not part of the same political unit, and if that became the principle by which the UK operated, the implications for the UK would be very severe—much more severe than they would be for Scotland.

Angela Constance (Almond Valley) (SNP): Mr Russell will remember the findings from Westminster's Public Administration and Constitutional Affairs Committee, which concluded that, despite 20 years of devolution, Westminster did not understand the devolved settlement, never mind paying due respect to it.

Is the cabinet secretary aware of another report from a Westminster committee that has a Tory majority—the Committee on the Future Relationship with the European Union—which is urging the UK Government

“to take steps to improve the involvement of the devolved nations”?

That committee heard evidence from Kirsty Hughes, who said that the joint ministerial committee

“is not being used as a serious forum”.

In fact, I think that it has met only once this year. Will the cabinet secretary say what he thinks could and should happen to improve that? How urgent is it? How would it help?

11:00

Michael Russell: I am familiar with the Westminster committees that have been looking at the matter and I will be giving evidence to PACAC on Tuesday.

Almost since the beginning of devolution, every examination of the joint ministerial structure has regarded it as not being fit for purpose. Westminster committees, Scottish Parliament committees, committees in other devolved areas and academic study have all come to that conclusion. I have often said that the weight of Brexit was too great for devolution to bear, and what was not working terribly well became much worse.

The JMC (Plenary) has not met since December 2018, when Theresa May was Prime Minister. Boris Johnson has never attended it, because there has not been a JMC (Plenary) meeting since he took office. The JMC on Europe was abolished without reference to the devolved Administrations—which tells me quite a lot—so the JMC(EN) is the only other functioning part at the moment. It has met twice this year—it met physically on 28 January in Cardiff and it met virtually on 21 May. However, those meetings are now pro forma.

The JMC(EN) has a written remit, which I have quoted several times. One part of it was to agree on the article 50 process, but the committee was never shown the article 50 letter. Nobody saw it. In such circumstances, it was not allowed to fulfil its function early on, and it is still not fulfilling its function. I would need to look at the exact dates, but in March or May 2018, in order to do something about that, there was an agreement to re-examine the intergovernmental relationships. The intergovernmental review started then and it has wound its way on, but nothing has happened.

Changes of Administration did not help with that, but in Manchester in June 2019, at the last meeting that David Lidington was at, there was an agreement that there would be progress of two sorts by the end of 2019. However, that did not happen. We were assured that, in Cardiff in January 2020, we would see material from Michael Gove that would make proposals, but we saw nothing.

During that time, Mark Drakeford, who was my opposite number and is now the Welsh First Minister, and I have made substantive contributions through lectures at the Institute for Government in London and a paper that the Welsh Government published on those matters. We have all brought to the table views on how the intergovernmental relationship and the JMC process might be improved, but the UK has brought nothing. My view is that it is not interested. The improvement of those relationships is not a priority for the UK; it regards any improvement as threatening and it will not bring forward anything serious. I regret that.

Although it will not be enough, we need improvement, and I have always said that I will

back improvement. The most recent improvements came from David Lidington and Damian Green, his predecessor, who slimlined the JMC(EN), which was becoming bloated with people turning up, to make it more effective and make sure that a preponderance of UK ministers and officials did not swamp the devolved Administrations. That was always a problem in the JMC structure. Many years ago, in 2010 or maybe 2009, I attended a meeting of the JMC on Europe that was attended by, if I remember correctly, 23 UK ministers, me and Rhodri Morgan. There was no equity in the process.

Unless there is a serious commitment from the UK to the structure, it is not going anywhere. Even if there was a movement, the only acceptable one would be one that treated the four partners equally. That is a long way from the UK Government's mind.

Angela Constance: My final question relates to the fact that, although 83 per cent of Scots who were polled are in favour of an extension to the Brexit transition period—in fact, 77 per cent of people across the UK are in favour of that—it would appear highly unlikely, as the cabinet secretary said earlier, that the UK Government will seek an extension to it.

There appears to be disagreement and no progress in the Brexit negotiations, and there is also the UK Government's intransigence in dealing with not only the Scottish Government but the other devolved Administrations, in relation to which the cabinet secretary has described no progress, intractable disagreements and no clarity on how processes can be resolved. Given all of that, are we not heading for an absolute calamity?

Michael Russell: I agree with the member. We are in an absolute calamity at the moment in terms of those relationships, and failing to agree to an extension will make that calamity even worse. I cannot see that this will end in anything but tears and, as Alex Rowley suggested, very substantial damage being done to ordinary people in Scotland. However, the UK Government seems hellbent upon it and, regrettably, nobody in the Scottish Conservative Party appears to be standing against it.

The Convener: Before we move on to George Adam, I note that the difficulty in doing virtual meetings such as this is that you cannot see what I am thinking or any signals that I am making, cabinet secretary. I wonder whether you could keep your answers a wee bit tighter, which would help us to keep to the time that we have. I am sorry to ask you to do that, but I think that it will help everybody.

George Adam (Paisley) (SNP): I will ask the cabinet secretary about the challenges that we

have ahead with Covid-19 and Brexit. Only two or three hours ago, we heard that the UK debt mountain soared in May to £55.2 billion, which adds to the £1.59 trillion of current debt. That is nine times higher than it was in May 2019. A lot of that has been used to deal with the current crisis, and the challenge that we have at the moment of coming out of that crisis is difficult enough. Surely it is complete folly for the UK Government to continue down this Brexit path?

Michael Russell: I am tempted to follow the convener's injunction and simply say yes, I agree with you. It is complete folly and it will cost us a great deal of money. We have not yet received as much as we have paid out and, just as Brexit was too heavy for devolution to bear, Covid is far too heavy, and its financial implications are horrendous.

George Adam: The problem that we all have is that we have constituents who are struggling with day-to-day issues such as employment and economic instability as we come out of the coronavirus crisis. Is it not the case that we need to continue working closely with other nations in the world so that we can get to a place where we can say let us get out of the crisis, bin Brexit for the current time, and look at another way of working this out?

Michael Russell: Yes. Obviously, international co-operation and learning from each other are very important, and a lot of discussion is going on about that. There is also international collaboration on things such as the purchase of PPE. The UK's attitude towards that was pretty disastrous. As far as I understand it, it is not taking part in the joint activity to make sure that there is understanding of the lockdown across Europe, of how it is being reduced and changed in each place and of what the border issues are. Refusal to participate in Europe is problematic at a time when, for example, a new European health fund is being established that will mean substantial resources for research into Covid. That is the type of thing that we should be involved in. It is the wrong thing at the wrong time.

George Adam: The cabinet secretary said earlier that there is little prospect of any positive outcome from the current negotiations between the UK Government and Europe. Can you expand further on that? What we have discussed with regard to negotiations—again, I come at the issue from a basic level—will affect our constituents' day-to-day lives in a massive way. If the UK Government is going to be gung-ho in its position, we surely have to think about the constituents whom we represent, and try to find a better way through all this.

Michael Russell: Of course that is the case. I responded to a member's question in committee

yesterday by saying that the issue is not just whether there is a deal, but what type of deal it is and whether it can be implemented in time.

The UK Government is going for a very unambitious deal that will change the protections that people currently have. For example, it does not wish to sign up to the European convention on human rights, and there are all sorts of other things that it does not want to do. That will diminish opportunity and protections, and it will be damaging. That is simply the fact of the matter.

Whatever the deal, it will be very poor, and it will be very hard to implement in the required period—in fact, it will be impossible to implement before the end of the year. A lot of chaos will arise from that, and people will suffer.

Murdo Fraser (Mid Scotland and Fife) (Con): I have a follow-up question on EU negotiations, but first I want to ask about the new UK Withdrawal from the European Union (Continuity) (Scotland) Bill, which was published this morning. You will appreciate that we have not yet had a chance to scrutinise any of the detail but, just going on the Scottish Government's press release, I have a couple of questions about the policy intent of the bill.

After the end of December, we will no longer be part of the EU, so any new EU laws that are made from that point onwards will have no input from us and there will be no consultation with any stakeholders in Scotland at all. The Scottish Government seems, in the bill, to be proposing that Scottish ministers will have the power, at their discretion, to determine whether those new EU laws will become part of Scots law. There would be no need for any primary legislation or detailed consultation, or any parliamentary scrutiny of those new EU laws. They would simply be imposed by regulation. Is that not just a power grab by Scottish ministers?

Michael Russell: No. Your assumption is wrong, and your view of the position is perhaps coloured by a somewhat hostile view of European law. First, law cannot be made by the Scottish Parliament in any form or type without scrutiny. There are various levels of scrutiny, but there is scrutiny, and it is clear that there will be scrutiny through the normal legislative process. There is no mechanism to make law without scrutiny, so your assumption is false.

Secondly, the principle behind the bill is very clear, and it is not as you have stated. It is for the Scottish Parliament, not the UK Government, to take a view on the extent to which devolved law aligns itself with the law of the EU. That is an unexceptional point of view and you would have to reject the whole premise of devolution if you did not accept it.

In all those circumstances, in areas in which we have competence, it is right that we have the choice to decide whether we align ourselves with EU law, as we do now for a number of practical reasons, one of which concerns standards. We want to maintain a connection to the highest standards and to stretch ourselves so that we can continue to have those high standards in, for example, food safety and water quality.

We are respecting the choice that the Parliament made when it passed the UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill by bringing back an unexceptional part of that bill which is, in our view, necessary to maintain the highest standards. We will ensure that there will be, as there always has to be, scrutiny of any law that is made.

Murdo Fraser: I thank you for that response, but there is nothing to prevent the Scottish Government, now or at any point, from bringing in new laws. The issue is the level of scrutiny that applies.

Given that we are talking about laws that are made by the EU—a body with which, from the end of December, we will not be involved—and on which we will not be consulted in any way, I would have thought that the obvious approach would be to allow the maximum level of scrutiny. That would involve primary legislation rather than allowing ministers to decide, at their whim, whether to introduce those EU laws by regulation, and not allow for any amendment by the Scottish Parliament or for the application of the same scrutiny that primary legislation requires.

I will follow that up with a second question. We know that the UK domestic market is worth three times as much to Scottish business as the EU single market. What would happen in the event of a conflict between UK standards, which will be very important to Scottish businesses that are looking to export to the rest of the UK, and EU standards? For example, in an area such as animal welfare, it is generally the case that the UK standards are higher than the EU standards. What would happen if there was a divergence? Which side of the fence would the Scottish Government follow?

11:15

Michael Russell: The Scottish Government would come down on the side of the fence that aligned the highest standards with the maximum opportunity for Scottish business. That is the present situation, and that is the situation that we would wish to continue. That would not be the case if, for example, the UK were to decide that it wished to have chlorinated chicken—forgive me for reintroducing chlorinated chicken into this

dispute—because that was required in a trade deal with the UK, and we did not wish to have it. We would then be entitled, under devolution, to make that decision.

Mr Fraser's argument is reminiscent of Damian Green's argument about jam makers in Durham and Dundee: it will be difficult for a jam maker in Dundee to sell jam in Durham and vice versa if there are different standards. There are different standards, because there are such things as devolution and devolved competence. If the Scottish Parliament, in its wisdom, decided that it wished to make a difference to the content of jam in Dundee as opposed to the content of jam in Durham, for example, it would be entitled to do so.

If Mr Fraser is arguing for the abolition of the Scottish Parliament and all its competences, he should say so openly. If he is not arguing for that and as he is a member of the Scottish Parliament, he should rejoice that there is democratic flexibility to have the standards that we wish to have and to operate in the way in which we wish to operate.

Murdo Fraser: That is precisely why we are going to have UK-wide common frameworks and that is why they are important. As you are well aware, the UK Government has made it clear that chlorinated chicken will not be on sale in the UK.

My final question goes back to the issue of the EU negotiations, which we discussed earlier. I have asked you this question before, and you have never given me a straight answer to it. I hope that you will do so this time. As you know, one of the major sticking points in the EU negotiations is the fact that the UK Government is saying that it will not, as a precondition, concede access to UK and Scottish fishing waters, and the EU side is demanding that as a precondition for further discussions. Does the Scottish Government support the UK Government in saying that it will not concede that at this point?

Michael Russell: I have said regularly to you, to Alister Jack and to a range of other great flag wavers for fishing—I sometimes think that that is the only issue that you think the EU is engaged in, because you rarely talk about any other issue—that the Scottish Government believes there should be, first of all, a negotiated outcome that is favourable to the Scottish fishing industry and that meets the promises that have been made to it. I fear that those promises will not be met yet again by the Conservatives, as has always been the case. In those circumstances, we believe that there should be a negotiated outcome that ensures that Scottish fishermen have good prospects for the future. I do not believe that, at the end of the day, the UK Government will deliver that or that the way in which it is put forward by you and others of your—[Inaudible.]

If I may quote a Gaelic proverb in English, it is at the end of the day that the fisherman tells of his fishing. I think that, at the end of the day, we are going to discover what false friends the Conservatives have been to the fishing industry.

Murdo Fraser: Gaelic proverbs or not, you still have not answered my question. However, I will leave it there.

Michael Russell: I think that I have answered it comprehensively—[*Inaudible.*]

The Convener: Okay. I hear the two of you. We will go back to fishing issues, because Tom Arthur wants to raise it again, but we have two supplementary questions on the continuity bill to deal with first.

Patrick Harvie (Glasgow) (Green): Good morning. Obviously the committee and probably others will have a lot more time to spend looking at the continuity bill that has just been introduced, but, cabinet secretary, you have just told us that its policy intention is to maintain the highest standards. The policy memorandum says that the intention is

“to continue the role and functions of the European institutions in ensuring the complete and effective implementation of environmental law.”

It also says that it will

“ensure that Scotland’s environmental standards can continue to keep pace with those in the EU level.”

Am I right in thinking that the Scottish Government’s intention in introducing the environmental governance aspect of the bill is to completely close the gap in environmental governance that Brexit threatens to open, and to ensure that the strength and breadth of environmental governance that EU institutions have provided are entirely continued, such that we will have no weakening of that governance after Brexit?

Michael Russell: Yes, that is the intention. As you know, the bill is in three parts. One is on keeping pace with EU law, one is on environmental principles and environmental governance principles, and the third one is on the detail of the new body. We do not wish a gap to open up, and the bill is a means of making sure that it does not open up.

Patrick Harvie: That is a reassuring commitment, but if that is the case, it seems to be implied that the bill needs to be significantly strengthened. Under the bill, ministers would need only to “have regard to” environmental principles, and that requirement would rest only with ministers. Wider application would continue to be around the Environmental Assessment (Scotland) Act 2005. That would be significantly weaker than

the wide application of principles that we currently have under EU law.

As the bill stands, how is it not a significant step backwards in terms of environmental governance compared with the situation that we have been in as EU members?

Michael Russell: Well, it would be far better to be an EU member—I am not going to dispute that. We are dealing with a piece of legislation that, of necessity, will be constrained from that position. Given the limit of where we can go, we think that it does the job.

It is perhaps helpful that I hear that argument opening up now, because it will clearly be a significant argument during the bill process. I hope that there will be consultation, particularly between the Cabinet Secretary for Environment, Climate Change and Land Reform and you, Mr Harvie, to see whether we can find ourselves in a position where we support and agree to measures that we can pass. That is what I want to do.

I am happy to see that discussion will be a co-operative effort between me and Roseanna Cunningham, given the issues that are in it. I look forward to those discussions.

Patrick Harvie: Does that mean that the cabinet secretary recognises that the bill will need to be strengthened?

Michael Russell: I recognise that that will be your position. You and I have had such discussions in other areas, and we need to have that discussion on the bill.

Patrick Harvie: Thank you.

The Convener: Is that your final question, Patrick?

Patrick Harvie: Yes—thank you, convener.

Donald Cameron (Highlands and Islands) (Con): I have two questions on the continuity bill, cabinet secretary. The first is about the workload involved. I believe that the EU produces approximately 2,000 laws, directives and regulations per year. I am going to ask about the practicality of tracking and assessing those and deciding which ones the Scottish Government will keep pace with or adopt. That strikes me as a mammoth administrative undertaking. Do you agree with that?

Michael Russell: I would agree only if our intention was to follow every single one, and it is not. Quite clearly it will be selective and will apply in areas in which ministers or stakeholders or Opposition parties identify things that they wish us to align with. I entirely agree that it cannot apply to everything. My view is that it should be done in everything, but the answer in that case would be

that we would have to be an independent member of the EU.

Donald Cameron: I have a slightly different question, about environmental principles and the environmental body that I believe the bill sets up, although I have not had time to digest the bill in detail.

What is the Scottish Government's view on court structures and adjudication in relation to enforcement of environmental standards and principles? Does the bill envisage that existing court structures will be used to adjudicate on such matters?

Michael Russell: I am not being difficult in not answering that question directly, but there is a strong case for Roseanna Cunningham to answer questions on the environmental provisions in the bill and the detail of their implementation.

I am quite happy to do two things for Donald Cameron. One is to write to him with some detail on those provisions in the bill, and the other is to encourage him to engage with Roseanna Cunningham about the details of how the body will operate and how it will be set up. It is better if it happens that way.

The Convener: I said that we would get back to fishing-related matters. Tom Arthur has the next question.

Tom Arthur (Renfrewshire South) (SNP): My understanding is that implementation of international obligations that relate to the Fisheries Bill, which is going through the House of Commons at the moment, would be within the competence of the Scottish Parliament.

However, I have a question that specifically concerns powers that the Fisheries Bill would confer on the secretary of state. For clarity, I will read out the relevant parts of clauses 23 and 24. Clause 23(1) is about the determinations that the secretary of state may make, and clause 23(2) states:

"A determination under subsection (1) may be made only for the purpose of complying with an international obligation of the United Kingdom".

Clause 24 is on duties relating to a determination on fishing opportunities. It states that when the secretary of state is "making ... a determination" they

"must consult ... the Scottish Ministers"

and other devolved ministers. My concern is that, although it would nominally be for the Scottish ministers and the Scottish Parliament to implement international obligations, there is a provision in that bill for the secretary of state to override the Scottish Parliament. Do you concur

with that understanding, or do you have a different view?

Michael Russell: That is a danger in that bill, as it is in a number of current Westminster bills. The danger lies in the word "consultation". One consults stakeholders but, in dealing with other Governments, a more robust set of arrangements needs to be in place. There has to be equity of action, which means that, if a UK secretary of state is involved, the relevant Scottish Government minister must also be involved and there must, as a minimum, be an agreement between them.

The simplest way to deal with that is to say that the Scottish Government has a right and responsibility and we take the decisions. However, the UK Government is not comfortable with that in almost every area. Therefore, as we consider the legislative consent motions that come before us, we will find that that is a considerable difficulty with a variety of legislation.

I, for one, do not think that we should be content with eroding devolved competences by giving new powers to UK ministers; we should be accepting that the powers that are currently exercised by the Scottish ministers are being exercised in the right place. The real issue is the principle of subsidiarity.

Tom Arthur: There is something in the UK Government's approach that is analogous to the—now infamous—consent decision mechanism that was introduced into the European Union (Withdrawal) Act 2018, which inserted the new section 30A into the Scotland Act 1998. There seems increasingly to be a pattern in the UK Government's behaviour towards the Scottish Parliament and other devolved bodies. You said earlier that the UK Government does not respect devolution and how it operates.

How do we get out of this without a complete and utter breakdown in communication and dialogue? How can we find a path that will give the UK Government the confidence—so to speak—to start engaging constructively, rather than seeking to hoard powers and prerogatives for itself?

11:30

Michael Russell: We would have to wind back the situation considerably. I do not want to give a history lesson, and I am sure that the convener would stop me if I were to do so. He is nodding, which worries me. At a very early stage, the then Prime Minister Theresa May should have sat everybody down and asked how we could all get something out of this. That is not a new thought; it has been covered quite extensively in recent years.

Before the decision was made in the Mansion house speech in early 2017 about whether there should be a single market and customs union outcome, a decision should have been made on the compromises that would have allowed everybody to get something out of the situation. As time went on, Theresa May got herself bulldozed into a right-wing corner, and then the driver of the bulldozer took over as Prime Minister. Other people have been pushing him further to the right, which is somewhere he is never reluctant to go, and we have ended up with this boorach.

Tom Arthur: As you have said, it seems to be inevitable that there will either be no deal or a low-deal Brexit that will be rushed together at the end of the year. I imagine that the UK Government would be quite willing to ride roughshod over the current devolution settlement in its pursuit of other trade deals. Earlier this month, the *Financial Times* reported that, far from chlorinated chicken being off the table, Downing Street has left the door open to the UK Government allowing its importation. Is there anything within the current constitutional arrangements that would allow the Scottish Parliament and the people of Scotland to resist the imposition of trade deals that we do not want. If there is not, what is the remedy?

Michael Russell: The remedy is for both sides to respect one another's mandate. At the January JMC meeting, I acknowledged the UK Government's mandate to leave the EU, and I asked it to acknowledge the Scottish Government's mandate to hold a referendum and request a section 30 order. That has not happened. The only solution and way out of this is to give the people of Scotland a choice. That is axiomatic.

The Convener: You talked about history lessons. I suspect that it is inevitable that we are about to get one if Jackie Baillie is going to ask about dispute resolution machinery.

Jackie Baillie (Dumbarton) (Lab): I do not want to provide a history lesson; I would much rather look forward. It has been a fascinating morning. We have heard about the complexity of the legislation and how competences could be affected. We have witnessed political to-ing and fro-ing during the meeting, never mind that which is likely to go on between the UK and Scottish Governments. Clearly, disagreements are likely as we move forward. What dispute resolution mechanisms exist? Do they need to be strengthened?

The Convener: I meant that the answer to Jackie Baillie's questions might be the history lesson. We will see what the cabinet secretary says.

Michael Russell: I want to put this as carefully as possible. Jackie Baillie and I have a history and go back a long way, in the sense that we have seen what has happened since 1999 and the establishment of the joint ministerial committee structure. The only dispute resolution mechanism, in reality, is for the UK Government to be frank and say, "We accept that we've been caught with our hand in the till. We apologise and we won't do it again," because there is no dispute resolution mechanism that works. If a dispute is called by anybody through the JMC structure, it is first of all up to the UK to say whether it is actually a dispute or not. Its usual reaction is, "Nothing to see here. Move along."

An early example was the £1 billion for Northern Ireland. The Welsh and Scottish Governments both said, "Hang on a minute—that money should be Barnettised," but there was complete refusal to accept that there was an issue. So, there is no real dispute resolution mechanism.

I do not know this for certain, but I believe that that is a key issue that has prevented Michael Gove from producing a paper for the JMC. I do not think that any UK Government department is willing to cede any of its authority or power on the matter.

If we think about it for a moment, we can see that in order for it to be effective, a dispute resolution procedure would have to accept the equality of all those round the table, and there should be some means of reaching between them a judgment about the situation. The Welsh devised something—the first paper from Wales, which was published when Carwyn Jones was First Minister, looked at issues such as qualified majority voting, ways of resolving disputes, and whether there should be a requirement for one, two or more devolved Governments to weigh in on some things.

It is complex, but we could find a way to resolve disputes. That would not be as good as being equal and independent—you would expect me to say that—but there should be a way to do it. However, there is no commitment from the UK to do that.

Jackie Baillie: In my experience, joint ministerial committees were always about co-ordinating policy. For example, Gordon Brown effectively co-ordinated policy on child poverty across all the nations. The current arrangements do not strike me as providing that mechanism. I am keen to hear whether you are likely to support the paper from the Government in Wales, because there is no doubt in my mind that we urgently need a dispute resolution mechanism to which everyone can sign up.

Michael Russell: I am likely to support any move that Wales makes to improve the situation, with the caveat and understanding—this has been clear between Mark Drakeford and Jeremy Miles in the Welsh Government, and me—that although we support each other to improve the current situation, we accept that we have different end points in mind. That is the relationship, and I am grateful for it.

If proposals come from Wales that bring progress, I am likely to support them, because there is no great pleasure in attending endless meetings that are going nowhere, and at which attempts at civility sometimes get a bit worn because things are so frustrating for every side. We need something better. It would be better to act on the basis of absolute equality, as independent countries, but I will not refuse to support attempts to improve the situation.

I supported attempts by Damian Green and David Lidington to support the structure, but there have been no such proposals from the current UK Government, and I fear that any such proposals from the current UK Government would have a sting in their tail. We might have to look for it very carefully, but it would be there.

Patrick Harvie: I agree that we should not give up on trying to improve the current arrangements. However, it seems to me that if a dispute resolution mechanism is to be meaningful, it needs to be about resolving disputes between parties or bodies that have power. The reason why the existing intergovernmental machinery does not work is that the power is all held by one of the parties at the table, so everyone else who turns up feels pretty futile. Surely, without fundamental constitutional reform of the UK itself, which the UK is currently unwilling even to examine, no dispute resolution mechanism will ever succeed in rebalancing the power that is currently so imbalanced.

Michael Russell: I entirely agree. The two issues are power and trust. A dispute resolution mechanism could work only if the four people who sat at the table were treated equally. That will not happen in the current UK structure, because it would impinge on the sovereignty of the UK Parliament, and there is unwillingness to take that approach.

Equity is one element; trust is the other. The EU system works not just because the 27 have to trust one another, but because there is an underpinning ability to enforce decisions. The European Court of Justice sits—I heard the current Taoiseach talk about this very effectively—and what happens is that people trust and are able to work with other people because they know that things can be enforced.

Patrick Harvie is right to say that there is inequity of power. There is also no trust, because nothing can be enforced. We can be told one thing one day, but if the next day it does not happen, we cannot do anything about it. We cannot trust people in those circumstances.

John Mason (Glasgow Shettleston) (SNP): Over the years, Scotland has benefited greatly from European structural funds—by something like €900 million in the past five years. There has been talk of a UK shared prosperity fund to replace EU structural funds. Can you update us on that?

Michael Russell: I cannot, because there has been no update from the UK Government. We have feared that a shared prosperity fund would be held to itself by the UK Government and that the role of the devolved Administrations in, for example, regional funding, would be removed. There are indications that that might be the intention of the UK Government, but we do not know for certain.

It goes back a long way; a proposal for a shared prosperity fund first emerged in the 2017 Tory manifesto. I had a discussion with James Brokenshire when he was Secretary of State for Housing, Communities and Local Government, in which he promised me that there would be a consultation. He said that at the earliest in autumn 2017, but nothing has happened since. It is problematic for all the people who are and have been drawing down social funding, regional funding and a variety of other funding that no replacement exists. However, I suspect that a rabbit, wearing the UK Government's colours, will be pulled out of a hat, and the devolved Administrations will be told that they have no role. That would be utterly unacceptable.

John Mason: Thank you. It strikes me that coronavirus has made the matter more urgent, because regional disparity within the UK and Scotland has increased and changed through coronavirus. I accept that you cannot do a lot about it, but do you accept that there is increased urgency because of Covid?

Michael Russell: Yes, there is increased urgency because, although we are now only months from the time by which we will require to know what is happening, nobody knows what is happening. It is hard to move from one funding source to another. I experienced that when I was Minister for Environment; moving from one set of programmes to another causes a lot of disruption and it takes time to settle in.

There is no indication of where the funding is. At some stage, it will appear—badly planned, badly put together and held to itself by the UK Government. The people who suffer from that will be the people for whom the funds were intended.

That is the tragedy: the funding is necessary and has been very important for parts of Scotland; I know, for example, how important regional funding has been in my constituency. There are projects now that would benefit from regional funding but will get no money because nothing is flying. The severe effects on rural development and on improvement of rural infrastructure in Scotland will be laid at the door of the Conservatives.

John Mason: Is there any point in the Scottish Government or Parliament working on that to develop a regional policy, or are we totally dependent on and must wait to see what the UK Government does and whether we have any freedom to move?

Michael Russell: We have responsibilities and we will endeavour to do that work, but discharging responsibilities without cash is difficult. A number of ministers have already talked about how they intend to streamline change and develop regional policy, but in order for the devolved Administrations to get on with that, they need cash and a guarantee of moneys coming—the same amounts that would have come from European structural funds.

The Convener: I have a final question on the matter that John Mason has rightly raised. The committee has done a fair bit of work and produced a report on structural funds. One of the key findings of that report was that responsibility for continuing to implement the replacement for the structural funds should remain with the Scottish Government and Parliament, and that the quantum should remain in the same area. Reports are being heard about the Scotland Office setting up a special unit to deal with those matters and, in effect, to make a power grab of structural funds, against the wishes of not just the Scottish Government but this committee. What can you urgently do about that?

Michael Russell: We wish to work with the committee to ensure that the voice of Scotland is heard—*[Inaudible.]*—exactly the same position—*[Inaudible.]* The most effective thing would be for Conservative MSPs to be part of that and to make it clear to their party in Government that that is unacceptable and is against the will of the Scottish Parliament and Government.

The Convener: I thank the cabinet secretary for his evidence this morning. You had challenges with your broadband, but we were able to hear you loud and clear, even when we could not see you.

Meeting closed at 11:45.

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