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Tuesday 9 January 2018

Session 5



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Scottish Parliament

Tuesday 9 January 2018

[The Presiding Officer opened the meeting at 14:00]

Time for Reflection

The Presiding Officer (Ken Macintosh): Good afternoon, and welcome back. Our first item of business this afternoon is time for reflection. Our time for reflection leader today is the Rev Dan Harper, minister of Bridge of Allan church.

The Rev Dan Harper (Bridge of Allan Parish Church): Thank you, Presiding Officer and members of the Scottish Parliament. A happy new year to you all.

As we stand at the new beginning of a new year, it is easy to cast our minds back and think of all that has gone before us. It is natural to lament past challenges and celebrate old victories, and to find ourselves buoyed or sunk by the same but, as new beginnings arrive, we must intentionally look forward.

In the last couple of years, I have stood at a few new beginnings. The two that shine brightly are the new beginning of my ordination as parish minister of Bridge of Allan parish church, and the exciting and wonderfully engulfing new beginning of parenthood. Both of those significant life events have thrust me into worlds that I could never have imagined, even though I read, studied, asked questions and did everything I possibly could to find out what those new beginnings meant.

The feeling that surrounded me as I looked forward from the cusp of these two life-changing events was one of hope. Not a passive hope, but an active one for the future—a future working in the church in which I am in a position to encourage others to live out their faith in love and service; and a future in which my child will be able to grow, inquire and explore all that interests her, taking me along for the ride.

At this time of year, the church calendar is starting to move on from Christmas things. Whether it is the magi visiting the two-year-old Jesus at Epiphany, or the narratives concerning the adult life of Jesus, beginning with his baptism, our hearts and minds start to look forward. The baptism of Jesus changed the understanding of baptism from being simply about cleansing and purification to symbolising a new beginning: a fresh start at which we are filled with expectation of what might come rather than embarrassment and regret at what has been.

As we stand at the beginning of this new year, and the new parliamentary term, we should therefore take the opportunity of a fresh start and look forward with hope—hope that our past and future mistakes will not define us; that our own lives, and the lives of our loved ones, will be full of opportunities to grow, inquire and explore; and that we can work together for the benefit of all people, no matter what their life circumstances or religious or political beliefs.

Business Motion

14:03

The Presiding Officer (Ken Macintosh): The next item of business is consideration of business motion S5M-09804, in the name of Joe FitzPatrick, on behalf of the Parliamentary Bureau, setting out a revised business programme for today.

Motion moved,

That the Parliament agrees to the following revisions to the programme of business for—

(a) Tuesday 9 January 2018—

after

followed by Topical Questions

insert

followed by Ministerial Statement: Response to exceptional winter pressures

after

followed by Culture, Tourism, Europe and External Relations Committee Debate: Culture, Tourism, Europe and External Relations Committee's Inquiry into the Article 50 Withdrawal Process

insert

followed by Election to the Scottish Parliamentary Corporate Body

delete

5.00 pm Decision Time

and insert

5.15 pm Decision Time

(b) Wednesday 10 January 2018—

after

followed by Portfolio Questions
Justice and the Law Officers;
Culture, Tourism and External Affairs

insert

followed by Ministerial Statement: The Chief Constable's leave of absence—[Joe FitzPatrick.]

Motion agreed to.

The Presiding Officer: The nomination period for the election of a member for appointment to the Scottish Parliamentary Corporate Body is now open. Nominations should be submitted to the parliamentary business team by 4.45 pm today, and the election will take place just before decision time.

Topical Question Time

14:04

City Region Deals

1. **Kenneth Gibson (Cunninghame North) (SNP):** I wish one and all the very best for 2018.

To ask the Scottish Government what its response is to the recent reported concerns regarding city region deals. (S5T-00849)

The Cabinet Secretary for Economy, Jobs and Fair Work (Keith Brown): I thank Kenneth Gibson and his fellow members of the Local Government and Communities Committee for their report, which is to be welcomed.

The Scottish Government and I want to see all parts of Scotland thrive, and city region deals are contributing to that aim. It is important that they encourage the United Kingdom Government to commit investment to the Scottish economy that might not otherwise be forthcoming.

In each of the city region deals that we have agreed, we have been clear that the deal must demonstrate benefit to the whole region, not just to the city involved, and that continues to be our approach for the remaining city region deals. However, city region deals are only one part of a much broader toolkit that the Scottish Government deploys to foster growth in Scotland.

The Local Government and Communities Committee has made a series of important points, which I will carefully consider and respond to in due course. I hope that I can rely on the UK Government to do likewise. I think that the committee meeting on 22 November was the first time in the Parliament's history that both a UK Government minister and a Scottish Government minister appeared before Parliament together. I hope that we will also see a response from the UK Government to the committee's points. I agree, for example, that rigid demarcation of reserved and devolved deal components limits the scope of a deal. City region deals are the product of negotiations between the Scottish Government and the UK Government, and they reflect the fact that the two Governments have different economic strategies. In Scotland, we want to promote growth that simultaneously tackles inequality, because we believe that that will create more sustainable benefits in the longer term.

Kenneth Gibson: Does the cabinet secretary agree that the focus should be on what a project in a given deal can deliver? He has just said that whether a project is reserved or devolved should be irrelevant if we are to attract optimum levels of

investment and deliver the best possible outcomes. Is that happening at this time?

Keith Brown: As I said in my evidence to the Local Government and Communities Committee, the UK Government introduced the stipulation that it will fund only reserved matters. It has not stuck rigidly to that in all cases, and that was not the basis of the Glasgow city region deal, which was the first deal in Scotland. However, the UK Government says that it is important for it to do that. We continue to discuss with the UK Government ways in which we can be more flexible. For example, we continue to discuss whether, in different parts of a given area—not all the deals are restricted to cities; they can apply to a wider area—we can have different balances of regional and devolved issues, if that makes sense. We have tried to be as flexible as possible.

I agree, of course, that we want to invest in projects with maximum impact. I have had discussions with the Secretary of State for Scotland, who has acknowledged that it would be helpful for local authorities and others who are involved in shaping deal propositions if the two Governments were very clear in their resolve to work together in effective partnership. I am committed to doing that and ensuring that any obstacles to delivering for Scotland are removed.

Kenneth Gibson: In the committee meeting on 22 November, Lord Duncan of Springbank gave heavy hints that the chancellor would announce funding for the Ayrshire growth deal on that budget day. That did not happen. Does the cabinet secretary share my concern that foot dragging by the UK Government will lead to areas that are left behind being doubly disadvantaged by the displacement of investment? Glasgow's deal, for example, has been up and running since 2014, but no date has yet been set for the commencement of Ayrshire's deal. Does the cabinet secretary agree that it is important to provide a clear timetable by which growth deals for areas such as Ayrshire will begin?

Keith Brown: As Kenneth Gibson is aware, I have asked the UK Government in writing and verbally on a number of occasions to commit to an Ayrshire growth deal. I have also publicly stated my and the Scottish Government's intention to agree a growth deal for the Ayrshires. We will continue to encourage the UK Government to support that. Despite—Kenneth Gibson hinted at this—positive discussions at an earlier stage, no commitment has yet been made to an Ayrshire growth deal from the UK Government. However, we will continue to encourage it to contribute to the regional economy of Ayrshire, whether through the UK's industrial strategy or other specific UK Government initiatives. My officials will continue to engage with the Ayrshire partners, and we will see

through a growth deal for Ayrshire. It would be best if we could do that in tandem with the UK Government, but that, of course, is a decision for the UK Government to take.

Oliver Mundell (Dumfriesshire) (Con): My constituents were disappointed that, unlike the UK chancellor, Derek Mackay failed to even mention the borderlands growth deal in his budget speech. Will the cabinet secretary reassure my constituents that the Scottish Government is fully on board with that game-changing cross-border proposal, and will he set out what specific resource has been committed to it?

Keith Brown: We have, of course, made substantial commitments in relation to the establishment of a new agency for the south of Scotland, and the Borders has been part of a city deal already, so I do not accept the idea that we have not been proactive in ensuring that there is a deal for the Borders. However, it is important to take into account what Kenneth Gibson said. A deal for Ayrshire was meant to be on the cards. What has happened to the Ayrshire growth deal, and why are the borderlands now being spoken of ahead of the Ayrshire growth deal?

I have said to the Secretary of State for Scotland that I am willing to work with him on a borderlands deal. Despite the fact that, before Christmas, we agreed once again that we would work jointly and collaboratively on this, this week my office was told that we should undertake joint visits later this month; there was no discussion—my office was simply told when the secretary of state is going. He certainly knows now that I cannot go on the day in question, as I have a prior commitment with the Council of Economic Advisers, but no alternative date was offered. That is not joint working; that is not collaboration. I do not know whether what is going on is game changing or game playing, but we remain committed to working on a borderlands deal.

What has happened to the Ayrshire growth deal? What has happened to Falkirk? What has happened to Moray? What has happened to the islands? Those other parts of Scotland also deserve recognition but, unlike the part of the country that Oliver Mundell represents, they have not yet had a city deal. We need to be honest and sincere when we talk to people about this issue.

Colin Smyth (South Scotland) (Lab): One of the warnings that are given in the Local Government and Communities Committee report is that rural areas that are not covered by current city deals must not miss out or lose out to bigger cities. Dumfries and Galloway is not covered by any city deal, so why have no meaningful negotiations involving the Scottish and UK Governments and the five local authorities that cover the borderlands taken place? When will we

see those negotiations begin? When will funding be made available for specific projects? Given the committee's concern that local communities and businesses should be involved in shaping those projects, will the cabinet secretary ensure that there is an end to the secrecy surrounding the projects that have been submitted to the Government by the borderlands local authorities?.

Keith Brown: I do not know about that—the member would have to ask the council whether the projects that they have submitted are being kept secret.

On the point about rural areas, first of all, it is worth saying that the agreed city deals and those in prospect also include areas, such as my own, that are semi-rural and not part of a city area. Indeed, many of the city deals cover large parts of Scotland that are rural.

The point that I making, which I tried to make in response to Oliver Mundell's point, is that we must have an agreed process for how we go forward. Therefore, whether we are talking about the borderlands, the Ayrshire growth deal, Moray, which has also asked for a growth deal, Falkirk, which is not part of any growth deal, or some of Scotland's islands, there must be an agreed basis on which to proceed.

We will make sure that all parts of Scotland, including Dumfries and Galloway, are covered by a growth deal, but we need to know whether the UK Government is on board. We need clarity about that and the basis on which it would be involved. To return to the previous point, is it the case that the UK Government will fund only through its industrial strategy? Does it want to continue to have joint deals with the Scottish Government? Will it be constrained and fund only reserved issues? Of course, the UK Government did not do that with the Democratic Unionist Party when it put £1.5 billion towards matters that are all devolved, not reserved.

I assure the member that there will be a deal for Dumfries and Galloway, but we need clarity and we would like to know whether the UK Government is on board for that and the other deals that we think should take place across Scotland.

Jenny Gilruth (Mid Fife and Glenrothes) (SNP): The cabinet secretary will be aware of my frustration that Fife Council did not include the Levenmouth rail link proposal in its submission to the Edinburgh city region deal. Will Fife Council have a future opportunity to re-evaluate its priorities and to submit the Levenmouth rail link proposal for consideration?

Keith Brown: The member will know the position better than I do, but my understanding is that the transport minister has given a commitment

to investigate further the question of the Levenmouth rail link.

More generally on the question of city deals that have been struck subsequently changing, Lord Duncan and I have said that we are willing to look at potential changes. The Glasgow deal is now three or four years old, and there is the prospect of a lot of change, not least because of Brexit. However, we will not be looking for changes to the relative distribution among the different parts of that area—that is, among the different councils—or a change to the quantum of money that is being made available by the UK and Scottish Governments.

The deals last for a long time—they may be 15 or sometimes even 20 or 30-year deals—but we cannot constrain councils and other partners by saying that they will stay the same throughout that period. On the basis of what we have agreed, including the amount of funding, we are willing to consider further changes.

Clare Haughey (Rutherglen) (SNP): The Cathkin relief road in my constituency was built using city deal funding of more than £20 million. Despite many of my constituents protesting that the road was not needed and that its construction through a wild park would destroy the habitat of many animals and plants, the previous South Lanarkshire Council Labour administration granted planning permission. What assurance can the Scottish Government give my constituents that their views will be taken into account—and listened to—in any future city deal projects?

Keith Brown: In relation to the city deal that Clare Haughey raised, it is true that the Scottish Government was not involved in the early parts of the process. We were simply met with a demand from the UK Government and the constituent authorities for funding of £500 million, which we agreed to provide. The initiatives are led by local authorities and local partners, so it is for them to undertake consultation to ensure that they have local populations on board.

I clarify for Clare Haughey that the city region deals do not override existing processes. Local authorities will remain responsible for ensuring that proper consultation with communities and other interested stakeholders is undertaken, especially when there is a statutory process as plans are developed. There were statutory processes involved in the circumstances of that particular project, and it is incumbent on the local authority to make sure that consultation processes take place.

Jamie Greene (West Scotland) (Con): I am sure that everybody in the chamber will join me in welcoming the £1 billion investment in Scotland that the UK Government has made through the

city region deals. Members will be pleased to know that I will meet the Secretary of State for Scotland on Friday to discuss how we can move forward with the Ayrshire growth deal. Does the cabinet secretary agree that, to alleviate any perceived tensions between London and Edinburgh, a potential compromise on objectives is not just possible but in the best interests of Scotland?

Keith Brown: I agree with Jamie Greene's final point. I have asked in writing and verbally any number of times for a commitment to an Ayrshire growth deal—not to discuss the projects, what the compromise on the projects might be, or the amount of money to be put towards the deal, but just to discuss the principles—and that surely has to be the starting point. If I, or Jamie Greene when he meets the secretary of state later this week, can get a commitment to an Ayrshire growth deal, that will be the starting point. Then, as we have for each of the other city region deals, we can reach a compromise that will be to the benefit of all the constituent authorities. I wish the member luck in succeeding—where, so far, I have not—in convincing the secretary of state to make a commitment on behalf of the UK Government to an Ayrshire growth deal.

Richard Lochhead (Moray) (SNP): As the cabinet secretary mentioned, Moray is developing a growth deal in order to compete with Inverness and Aberdeen, which have city deals. Is he willing to discuss with his UK counterparts how we can get more clarity from them as to what the UK contribution might be to a growth deal, and how we can expedite the plans?

Keith Brown: That is Richard Lochhead's key point. If we have an agreed understanding now or shortly on how to go forward from the current position of having agreed the existing city deals, we can make rapid progress with the two prospective city deals for Stirling and Clackmannanshire and the Tay cities, and with the other areas of Moray, Falkirk, Argyll and Bute and the borderlands. However, if we do not have an agreement, the Scottish Government will have to take forward those matters itself. We can get more out of it if we work together, so I am more than willing to continue talking to the UK Government about that and, as Richard Lochhead has urged me to do in the past, to continue talking to Moray Council on its specific proposals.

Fiona McBride (Employment Tribunal Ruling)

2. Margaret Mitchell (Central Scotland) (Con): To ask the Scottish Government what its response is to the ruling of the recent employment tribunal in favour of the fingerprint officer, Fiona McBride. (S5T-00861)

The Minister for Community Safety and Legal Affairs (Annabelle Ewing): The case has been running for many years and indeed since before the creation of Police Scotland or the Scottish Police Authority. It is a complex issue, and I note that the latest employment tribunal ruling was made towards the end of December 2017 and awarded Ms McBride compensation for her loss of earnings and pension contributions since 2007. It is for the SPA to consider its response to the ruling.

Margaret Mitchell: Can the minister confirm how much taxpayers' money the Scottish Police Services Authority and now the SPA have spent to date in opposing Fiona McBride's reinstatement, given that the legal fees for the Supreme Court case alone amount to a staggering £257,120? Can the minister also confirm who the SPA is accountable to for that expenditure?

Annabelle Ewing: I am afraid that I do not have before me the total figure as requested by Margaret Mitchell; that is a matter for the SPA.

As I said, the SPA is to consider the employment tribunal ruling, and it is for the SPA to do so. I understand that it is in the process of making that consideration, and therefore I recognise that there could be a risk that any comment on the decision could trigger, to some extent, some sub judice considerations.

Margaret Mitchell: Does the minister consider it reasonable that, as a consequence of the SPSA's and then the SPA's refusal to accept the original tribunal decision in 2009, Fiona McBride has now had to wait 10 years for a definitive decision about her reinstatement? It appears, from what the minister has just said, that even now Ms McBride's position is still not certain.

Annabelle Ewing: As I said in my answer a moment ago, it is for the SPA to consider the ruling of the employment tribunal, which I think was communicated to it at the end of December 2017. As I also indicated, there is perhaps a risk that any substantive comment on the ruling at this stage, could, to an extent, trigger sub judice issues. That militates against me as a minister making such a comment.

National Health Service (Winter Pressures)

The Presiding Officer (Ken Macintosh): The next item of business is a statement by the Cabinet Secretary for Health and Sport, Shona Robison, on the response to exceptional winter pressures. The cabinet secretary will take questions at the end of her statement. If members wish to ask a question, I encourage them to press their request to speak buttons as soon as possible.

14:21

The Cabinet Secretary for Health and Sport (Shona Robison): The staff of the NHS are the beating heart of the service. They have been nothing short of exemplary in the care that they have provided in the face of exceptional winter pressures. They have gone more than the extra mile, they have worked across and beyond boundaries, and above all they have continued to deliver safe and effective patient care in the most challenging of circumstances.

I am sure that I speak for all of us when I give a heartfelt thank you to our NHS, community health and social care staff for their continuing dedication. That thanks is shared by patients and their families, many of whom have contacted me to praise the efforts of staff.

Equally, I want to apologise to patients whose treatment has been delayed. I want to take this opportunity to thank them and their families for their patience and understanding during this extremely busy time.

Each year we try to prepare for the additional pressure that winter can bring. This year that has included working with the service and other partners since the summer to prioritise and invest an extra £22.4 million to meet accident and emergency and winter pressures.

However, our NHS is facing a number of sustained challenges this winter. Emergency departments are seeing the highest level of attendances over the festive period in a number of years. During the two-week festive period, attendances were up 10 per cent compared with the same time the previous year, and in the week leading up to Christmas alone that level rose to 20 per cent. We saw a huge surge in falls and fractures before Christmas, which has undoubtedly impacted on the number of admissions and length of stay in hospitals. Some hospitals reported that the level of demand in one day was the equivalent to average demand for a week. Flu rates in Scotland doubled in December, with the most recent figures from Health Protection

Scotland showing that in one week around 46 Scots in every 100,000 were suffering from the virus, compared with 22 in every 100,000 for the same week in 2016.

Over the festive period between 15 December and 2 January, there were more than 73,000 calls to the Scottish Ambulance Service. Indeed, overnight on hogmanay the Ambulance Service saw its control centres take almost 40 per cent more calls than they did during the same time last year. NHS 24 received more than 45,000 calls in the four days over Christmas—almost double the number of calls that it received during the same period last year—and thousands more calls were taken over the new year period. Christmas day was the busiest for NHS 24 since it began in 2002. In short, the demand for emergency care services has been unprecedented over the festive period.

Our NHS has sought to manage the impact of that demand in a number of ways. For example, where necessary for infection control, hospitals have on some occasions closed wards. Such closures mean that those beds can be closed for a number of days.

NHS boards are taking decisions to manage the exceptional demand based on their local plans, and that might include the deferral of some non-urgent elective surgery. Boards are reporting that, over the festive period, the level of cancellations was consistent with that of previous years. It is important to say that, unlike in England, no blanket cancellation of non-urgent elective procedures is planned. In England, it was reported that an estimated 55,000 non-urgent operations could be deferred as a result of the deferral of all non-urgent inpatient elective care to 31 January.

I want to take some time to set out the impact of flu on our health service and our population, and what action has been taken. I have already outlined the increase in the flu rate this year, which is at its highest level in the past six years and is double that of last year. It is right that we take flu seriously, and we should note that Scotland was hit by flu earlier than anywhere else in the United Kingdom.

As we do every year, we put in place preparations ahead of the flu season commencing. We have worked to ensure that flu vaccines are available to those who need them, and that people are aware of that and are encouraged to be vaccinated.

Each year, the World Health Organization reviews evidence from previous years and determines the flu viruses that are most likely to occur and which should therefore be covered by the vaccine programmes in the northern and southern hemispheres for the next influenza season. Those are the only vaccines that are

available on the global market. The data tells us that the most commonly found flu types in Scotland so far are well matched to this year's vaccine, and it is ill informed and alarmist to suggest otherwise.

Sustained exceptional levels of demand or regular peaks in demand, such as during increased flu levels, require different clinical processes from the usual systems that are in place in hospitals. Of course, the vaccine is useful only if we can make sure that as many people as possible receive it. I note that the Conservatives claimed over the weekend that uptake rates in Scotland have dropped. The fact is that our uptake rates are broadly in line with those in previous years. Overall, to the end of the second-last week of 2017, more than 1.4 million people had been vaccinated by the NHS in Scotland, which is 26 per cent of the whole population. At the same point in the previous year, 26 per cent of the population had been vaccinated. Therefore, we are in line with where we were last year. In fact, the uptake has increased among some eligible groups—for example, among pregnant women with risks the uptake has increased to 57.5 per cent, which is higher than the rate in England.

In Scotland, all primary school children have been offered the vaccine since 2014-15, which has provided improved immunity to the wider population. This year, 71 per cent of the primary school population has been vaccinated, whereas in England only children in the first four years of primary school are offered the vaccine, and uptake in that group is 50 per cent or less for each of those four year groups.

I want to say a word about healthcare staff vaccination. The rate is lower than we would want it to be. I am absolutely grateful to the NHS staff for all the hard work that they do, but in this particular area I think that we can go further. We estimate that, so far, more than 40 per cent of healthcare staff have been vaccinated. That figure covers patient-facing and non-patient-facing staff, whereas the English figure covers only front-line healthcare workers. I caveat that by saying that the figure might be an underestimate, as it will not reflect the proportion of staff who might have been vaccinated through the national programme because of clinical eligibility.

We have made it clear to the NHS that free seasonal influenza immunisation should be offered by NHS organisations, including primary care employers, to all employees who are directly involved in delivering care. I know that NHS boards across Scotland have worked hard to promote uptake through innovative approaches and to provide leadership through senior clinicians and managers. We have supported them with national resources, including the development of a

toolkit that helps those who are charged with promoting and delivering planning of their local flu campaign and the provision of campaign posters and leaflets to every health board in Scotland.

Our public campaign this year, which was launched in October, included adverts for the childhood flu programme and the seasonal flu programme for adults that ran on television, radio and digital and social media platforms. In addition, we worked with a wide range of partners, including the British Heart Foundation, the British Red Cross and Scottish businesses that are healthy working lives registered, to distribute promotional materials. In total, that work resulted in 106 organisations supporting the seasonal flu campaign, and 93 organisations supporting the childhood flu campaign.

Campaign materials for the general public for general practice surgeries, nurseries, libraries, community centres and antenatal clinics have also been distributed. Ultimately, the decision about whether to be vaccinated is down to individuals, but I am sure that we would all want to take this opportunity to urge all those eligible to get the flu vaccine as soon as possible, if they have not already done so.

Finally, some rather alarmist commentary on flu mortality rates has been reported that needs to be corrected. Four people have passed away in hospital after being admitted with flu-related symptoms and each one of those deaths is a personal and family tragedy. However, all-cause mortality is not the same thing as flu-related deaths. That data reflects deaths due to any cause, such as accidents, other diseases and old age, and is not just about flu. On that point, timing is important. The three-week period at the end of 2017 was before we really started to see flu infections presenting in our hospitals, so it is too simplistic to say that that excess is explained by flu. Work is under way by public health experts to investigate that aspect urgently so that we can use facts rather than speculation.

As I have said, a number of factors are contributing to the current pressures and they have not been just about flu. Clearly, though, flu will be a key factor over the coming weeks. The winter flu season usually has a duration of eight to 10 weeks, so it is too early to say what the end-season picture will be. However, we must view the current and emerging data in the right context and must allow space for our health service to continue to treat our sick patients with flu-like illnesses or other conditions and allow them to recover from what has been and still is a very challenging time.

NHS and care staff have worked incredibly hard over the past few weeks and have pulled together to cope with winter pressures—I pay tribute to them again for that. They deserve the collective

support of this Parliament in their endeavours and I hope that that is what they will get today.

The Presiding Officer: Thank you. A number of members wish to ask questions, starting with Miles Briggs.

Miles Briggs (Lothian) (Con): I thank the cabinet secretary for the advance copy of her ministerial statement and I associate members on the Conservative benches with what she has said today. All of us in this chamber have been able to see over the past few weeks the tremendous work that those who work in our health service have done for our constituents and our families, and we all pay tribute to those staff and their dedication. Can the cabinet secretary answer this question, though? Is she able to confirm alarming reports that the Scottish Ambulance Service's national command and co-ordination centre, which is normally reserved for major incidents such as terrorist incidents and emergencies, has been set up and operating for several weeks now because there have simply not been enough call handlers in local call centres and not enough crews out on the road to cope with the current high level of demand? Can she tell Parliament what extra support she will be providing to hard-pressed ambulance staff, paramedics and call centre operators?

Shona Robison: I thank Miles Briggs for his comments about the staff. It is important that the messages that we send out are in support of our hard-working staff, because they have pulled together in a way that has been astonishing. In the comments that we make, it is incumbent on each and every one of us to get behind our staff in those efforts.

Miles Briggs talked about the Scottish Ambulance Service, which has escalation procedures that kick in when it is under pressure. With regard to the 40 per cent rise in calls on hogmanay, in such cases the senior management team will escalate procedures to ensure that the command and control processes reflects that level of demand. We would, of course, expect them to do nothing less than that when faced with those demands on the service. Of course we support the Scottish Ambulance Service and all the other parts of the system in responding to those demands. I get updates on a daily basis on what the services, including the Scottish Ambulance Service, are looking like, and we closely monitor that. The Scottish Ambulance Service has done a tremendous job in responding to the unprecedented level of demand and I put on record my particular thanks to it.

Anas Sarwar (Glasgow) (Lab): We all give our heartfelt thanks to all our amazing NHS staff, who go above and beyond all year round but particularly at Christmas. To be clear, any failures

in our NHS are despite the fantastic efforts of the staff, not because of them. However, this is not just a winter issue. The staff have been left overworked, undervalued and underresourced all year round, and that is amplified now in winter.

Yesterday, the First Minister and the health secretary issued an apology for winter failures, but every month cancer patients do not get their treatment on time, every month children are denied mental health support and every month patients are waiting too long. A new analysis has shown that, in 2017, the service failed to meet the four-hour A and E standard for more than 100,000 patients. It is not just one apology in winter that is needed from the First Minister and the health secretary, but more than 100,000 apologies all year round.

"Thank you" alone is not enough, so when will the warm words stop and when will we actually see meaningful action in support of our NHS staff and Scotland's patients?

Shona Robison: The actions that we are taking through the draft budget, which I hope Anas Sarwar will support, are making sure that we will provide record levels of new investment to the NHS. I look forward to his support for that budget. We provide support and resources all year round, but this winter we have provided the biggest injection of resources that we have seen in any winter, with £22.4 million specifically to help the service cope with winter pressures.

On an apology, all health systems across the UK have issued an apology to patients who have had to wait longer, but patients have been hugely praising of the staff. The public have been very understanding. In the face of winter pressures, with an unprecedented level of flu—double the rate of last year—they understand the pressures that are on our system, even if Anas Sarwar does not.

I will say a final word on A and E. Scotland's A and E departments have been the best performing over two and a half years but, this winter, even our best performing A and E departments have faced pressures. My local A and E department at Ninewells had never fallen below 95 per cent but, over the past two weeks, it has done so because of the pressures of fractures and of flu and unprecedented winter pressures. I think that most reasonable people would understand that.

John Finnie (Highlands and Islands) (Green): I thank the cabinet secretary for the early sight of her statement. I also thank the NHS staff.

The cabinet secretary talked about working "across and beyond boundaries". I heard of a situation where there were frequent falls in an area. The local hospital made inquiries with the local authority and discovered that it no longer

gritted the area around pensioners' houses, so the NHS now pays to grit it. If that is correct, I commend that approach and the other preventative steps that have been taken, which the cabinet secretary alluded to in her statement, including the flu inoculations.

Does the cabinet secretary recognise the benefits to the NHS of additional funding for local authority social care and indeed the gritting operations? Will she ask the Cabinet Secretary for Finance and the Constitution to direct more money to local authorities specifically for those purposes?

Shona Robison: One of the main issues before the flu epidemic hit Scotland was the level of fractures. John Finnie makes an important point about the impact of those falls on the NHS, in that we had a wave of mainly frail elderly people, many of whom had to have operations—I know that, at Ninewells hospital, theatres were dedicated only to fixing fractures—and many of those elderly people are still in hospital. At Christmas and new year, bed availability usually increases as people leave hospital, but we have not seen that this year because of that wave of fractures.

About £550 million of resources have now gone through the health budget into social care, and that will be added to by £66 million in the budget for 2018-19. However, more important than that is the joined-up service. When I visited Perth royal infirmary yesterday, I visited the discharge hub, where we have local authority colleagues working side by side with NHS staff, making sure that people get home as quickly as possible and, in many cases, preventing people from coming into hospital in the first place. That is integration working and working well, and we should pay tribute to all the staff involved.

Alex Cole-Hamilton (Edinburgh Western) (LD): I thank the cabinet secretary for the advance sight of her statement. I absolutely echo the praise that has rightly been delivered by members in all parts of the chamber for our hard-working NHS staff, but does the cabinet secretary expect Parliament to believe that a bout of icy weather and an uplift in flu cases are genuinely all that are to blame for the worst waiting times on record? Is this not just symptomatic of a health service that is on its knees, where those additional pressures are heaped on hard-working staff who are fighting fires in every overstretched shift that they do?

Shona Robison: No. They are facing unprecedented winter pressures, the likes of which we have not seen for years. We cannot have a doubling of the flu rate and not expect it to have a severe impact on front-line services.

We have put in additional resources of £22.4 million in anticipation of a colder winter. The doubling of the flu rates has exacerbated the

issues. It is not just an issue for Scotland. All health services across the UK are facing the same, if not worse, winter pressures. Because our accident and emergency departments were performing at such a high level going into winter, they had a resilience that many such departments across the rest of the UK did not have. When the figures eventually come out, it will be interesting to see the comparison with the festive season here in Scotland.

Jenny Gilruth (Mid Fife and Glenrothes) (SNP): How do the attendance rates at accident and emergency departments during the festive period compare with those of the past few years?

Shona Robison: As I said in my statement, they have been much higher than they were in previous years. In the week leading up to Christmas, they were 20 per cent higher. We have had approximately 3,000 more attendances than usual, and that was on top of the trauma cases that the service was still trying to deal with in numbers that it had not seen previously. NHS 24 and the Scottish Ambulance Service were also working at unprecedented levels.

Despite all that, the service has rallied round and people have pulled together. The accident and emergency figures of 78 per cent that were published today are challenging because they are too low. However, for the service still to be seeing, treating and discharging eight out of 10 patients in accident and emergency in the face of all those pressures is commendable, and each and every one of the staff involved deserves our praise.

Brian Whittle (South Scotland) (Con): The number of hospital beds in Scotland has fallen by more than 7 per cent in the past four years, which has a particular impact in winter when beds are full, accident and emergency departments are overflowing and delayed discharge is preventing people from going home. Does the cabinet secretary accept that more must be done to improve patient flow throughout the health and social care system, particularly in the busy winter months?

Shona Robison: I will deal with acute beds first. Acute bed usage has changed dramatically during the past 10 years, as far more people come in to have day case surgery. I am sure that Brian Whittle is aware of that. The way in which our health service is used has changed dramatically.

Brian Whittle is sitting beside his health spokesperson, who has demanded that we shift the balance of resource away from acute spend into primary care. They cannot sit side by side and ask me to do two different things. I hope that they will support the 2018-19 budget so that we can make the investment in community health services, avoid people going into hospital in the

first place, and help those in hospital to get home more quickly.

There has been a 10 per cent reduction in delayed discharge since last year. There is more work to be done, but when he considers that most of the delays are in five or six areas, I hope that Brian Whittle will acknowledge the progress that has been made in tackling delays.

Ivan McKee (Glasgow Provan) (SNP): Can the cabinet secretary confirm that there have been no blanket cancellations of elective surgery in Scotland this month?

Shona Robison: That is correct. Cancellations of electives are, so far, in line with last year's rates for the festive period. That is quite astonishing, given that, in England, we have seen a blanket cancellation of elective procedures for the whole of January—to the tune of up to 55,000. We have not done that in Scotland. Although we have seen some limited cancellations of elective procedures, we expect boards to minimise such cancellations on a daily and weekly basis because it causes problems for the service further down the line. We expect boards to keep the position under review.

I should also point out that the latest published figures, from back in November, showed a reduction in cancellations, so we were starting from an improved position. There have been no blanket cancellations and boards will look at the position on a daily and weekly basis to help manage pressures.

David Stewart (Highlands and Islands) (Lab): Will the cabinet secretary join me in thanking all our hard-pressed and dedicated NHS staff for the work that they do, not just at Christmas but all year round?

Will the cabinet secretary agree to review the eligibility criteria for the flu vaccine, in terms of age and vulnerability? Does she share my view that general practitioners have autonomy to apply clinical judgment to extend the flu vaccine to non-eligible patients if the risk of flu would exacerbate illness?

Shona Robison: I will of course join David Stewart in thanking NHS staff, and I thank him for the constructive tone of his questions.

The eligibility criteria are guided by the public health experts. We have seen changes over the years in the groups that have been covered by the eligibility criteria and the criteria are kept under constant review.

On the point about GPs using their clinical judgment, clinicians always have that option, but they would be guided by the priority groups because they need to make sure that the campaign and the vaccine supply are focused on them. However, once we are out of the winter

pressure period and we reflect on the winter period, we will certainly look at whether there is further work to be done around the eligibility criteria, guided by what the public health experts tell us.

Emma Harper (South Scotland) (SNP): I think that the cabinet secretary might have covered this in her statement when she spoke about the World Health Organization's determination of the most likely flu viruses, but can she reiterate how the current vaccine matches with the prevalent strains this year?

Shona Robison: Yes. The vaccine is a good match for the current dominant strains that are in circulation. That is a very important message. To say otherwise risks undermining the confidence that people have in being vaccinated. It is very important that we all use the opportunities in the Parliament and outside it to encourage everybody in those priority groups to get vaccinated. It is never too late and it is a good defence against flu. In particular, we know that the impact of flu on someone under 65 who has an underlying health condition can be very severe indeed, so vaccination is very important.

One of the issues that we may need to address is that, because of the relatively mild winters and low rates of flu that we have seen in recent years, people have perhaps forgotten how difficult and severe flu can be. This winter is a reminder, and I suspect that over the next few weeks, we will see a rise in the vaccination rate as people realise how important to their health it is to get the vaccination.

Annie Wells (Glasgow) (Con): Figures today have revealed that over the Christmas period, the A and E waiting time target figures reached an all-time low. Between Christmas and the new year, 21.6 per cent of patients across Scotland were forced to wait beyond the target of four hours and, in one health board—NHS Forth Valley—the figure was a shocking 42.7 per cent. In that single week, 272 people had to wait longer than 12 hours, compared with just two people in the same period last year. What action will the Scottish Government take to restore confidence in our emergency departments?

Shona Robison: The 78 per cent figure that was published today for the week ending 31 December is disappointing but understandable, in the light of all the pressures that we have seen. It was unlikely that we would be able to maintain the levels of performance in A and E that we have seen over the past two and a half years—levels that are the best in the whole of the UK—in the face of those unprecedented winter pressures. Most reasonable people would understand that.

It is important that we are now focused on helping those A and E departments to recover.

The fact that, despite all those winter pressures, nearly eight out of 10 patients were still seen, treated and discharged within the four hours is actually quite remarkable.

I gently point out to Annie Wells that surely the Prime Minister and the Tory health secretary would not have had to apologise if they were not facing some of the same winter pressures in their A and E departments. Therefore, to come here and say that the position in Scotland is somehow different from the position elsewhere in these islands is disingenuous in the extreme. We are all facing winter pressures, and we should be getting behind our hard-working staff rather than talking down their efforts.

Ash Denham (Edinburgh Eastern) (SNP):

What alternative services are available to people who are concerned that they may have flu-like symptoms, short of going to A and E? For instance, are there more appropriate services to try first?

Shona Robison: Yes, there are. One of the best first ports of call is NHS inform. I can tell Parliament that the NHS inform website had 60,000 hits on Christmas day, which is unprecedented. NHS inform is a hugely important source of information and has now become a key part of the health advice system. In addition, there is NHS 24, which many patients have used. There are also local GP practices, the out-of-hours service and, importantly, community pharmacies. If someone has flu-like symptoms, we do not want them to wander about, potentially infecting others, so the advice is to stay at home; family and friends will be able to get over-the-counter remedies from a community pharmacy. If people are in any doubt, they should please contact NHS inform, where they can get good advice and information.

Monica Lennon (Central Scotland) (Lab): The cabinet secretary will be aware that NHS staff in Lanarkshire, as well as doing their day job, have been brought in as volunteers to cover clerical and cleaning roles. They are the heroes that have kept our hospitals in Hairmyres, Wishaw and Monklands running. However, staff and patients in my region are wondering why NHS bosses in Lanarkshire have had to go looking for volunteers when other health boards in Scotland have not. Does the cabinet secretary agree that a properly resourced health board with a strong workforce plan should not have to resort to that kind of approach?

Shona Robison: First of all, I pay tribute to the staff in NHS Lanarkshire. No one forced them to do that, but they rallied round and came out in huge numbers to support the front-line staff. I pay tribute to each and every one of them.

NHS Lanarkshire had particular challenges, partly because it has three A and E departments that were hugely under pressure, and because flu has hit NHS Lanarkshire very hard indeed. We have been working with NHS Lanarkshire to support it to ensure that it can keep patients safe and keep services operating. I also pay tribute to the GPs who came out and worked last Saturday morning. It is a real credit to them that they did so, and it helped to relieve some of the pressure on hospital services. We do not see that sort of thing very often, and we would not expect staff to have to do it very often, but it says a lot about our staff that, when push comes to shove and the service is under pressure, people roll up their sleeves and get on with the job. They are to be commended for that.

Sandra White (Glasgow Kelvin) (SNP): I think that we all welcome the extra £22.4 million to support boards to meet A and E and winter pressures. In addition to that extra investment, can the cabinet secretary confirm that the Scottish Government will continue to work with health boards and will be available to assist them with the pressures that they are under not just at this time but in the future?

Shona Robison: We monitor what is happening across our system every day, and I get a report on that every day. I should pay tribute to our civil servants and senior officials who have been out and about in the service providing really important support to the front line and to senior management teams.

It is important that we are all focused on getting through the winter period, because flu will be around for another few weeks, with all the impact that that will bring, so we are not out of the woods yet. However, once we are through this winter period, we will do a proper analysis, as we do after every winter.

If there are lessons to be learned about changes that we need to make or other things that we need to do, we will do that for next winter. That is part of the normal course of winter planning and preparation in advance of the following winter.

The Presiding Officer: That concludes the statement.

Article 50 Withdrawal Process

The Deputy Presiding Officer (Linda Fabiani): The next item of business is a debate on motion S5M-09732, in the name of Joan McAlpine, on the Culture, Tourism, Europe and External Relations Committee's inquiry into the article 50 withdrawal process.

14:56

Joan McAlpine (South Scotland) (SNP): In opening the debate on my committee's inquiry into the article 50 withdrawal negotiations, I thank everyone who submitted written evidence and provided oral evidence and those who met the committee during its visit to Brussels last September. I thank committee members for their diligence and our clerks for their hard work.

If one thing has emerged from our inquiry, it is the influence that the European Union has on the process of negotiations. The EU 27 decided the sequence and substance of negotiations. They decided that the first phase would cover citizens' rights, the border on Ireland and the money. They decided that the second phase would cover transitional agreements and the identification of an overall understanding of the framework for the future relationship. They stipulated that there would be no final agreement on the future relationship until the United Kingdom was outside the EU. The EU calls the shots and has done from the start.

Another key observation is that the EU is an organisation based on law and agreed process—the only practical way to get agreement from so many different states. That can appear cumbersome, inflexible and slow to those people who are on the other side of the table, but that is the way that the EU operates and, as we have already observed, it is calling the shots. That has an impact on time, which is running out. Michel Barnier, the EU negotiator, told the committee in September that the negotiations must be finished by November this year to allow time for the legal text of the withdrawal agreement to be finalised and translated into all EU languages. It must then be ratified in the European Council and the European Parliament.

The first phase of the negotiations took seven months from June to December and, even today, those commitments still need to be translated into an agreed legal text. The second phase—on transition and the future framework—must be completed to a similar deadline. The European Council says that negotiations on transitional agreements can start only after the Council agrees the negotiation directives on the matter in January. We must then wait until late March for it to adopt

guidelines on the negotiations on the future framework. That leaves barely six months for completion.

What has been achieved to date? The December joint report from the EU and UK Government negotiators indicated that both parties had reached a common understanding on the protection of EU and UK citizens, which is good. One of the most powerful evidence-taking sessions that we had was with representatives of the Fife Migrants Forum, who spoke of the uncertainty that they and their families had suffered. That personal testimony demonstrated the human cost of the withdrawal process.

The second area of agreement relates to Ireland and Northern Ireland. The joint report says that the commitments and principles that it outlines

“must be upheld in all circumstances, irrespective of the nature of any future agreement between the European Union and United Kingdom.”

It also states that any future relationship must be compatible with the overarching requirements of protecting north-south co-operation and the UK's guarantee of avoiding a hard border. The joint report continues:

“In the absence of agreed solutions, the United Kingdom will maintain full alignment with those rules of the internal market and the Customs Union which, now or in the future, support North-South cooperation, the all-island economy and the protection of the 1998 Agreement.”

The committee heard from the consul general of Ireland, who said that Ireland's priorities were to

“protect the gains of the Northern Ireland peace process, including by protecting the Good Friday agreement in all its parts and avoiding a hard border on the island of Ireland ... minimise the impact of Brexit on trade and the economy, and maintain a close trading relationship between the UK and the EU, including Ireland”.—[*Official Report, Culture, Tourism, Europe and External Relations Committee*, 21 September 2017; c 1-2.]

The third area of agreement relates to the financial settlement. We do not know the ultimate cost of the settlement for leaving the EU and we might not know it for many years to come.

The December joint report is a must read, and it must be read with the European Council's guidelines that were agreed on 15 December, which state that the second phase can progress only if all commitments that are undertaken in the first phase are respected in full and translated faithfully into legal terms as quickly as possible. We still need the first phase to be translated into that legal text that both sides can agree. In stipulating that, the EU—as it has throughout this process—is setting the terms of the negotiations.

Mr Barnier has been very successful in achieving the terms of his negotiating mandate so far. Therefore, we should look carefully at the

December guidelines to see the EU roadmap for the second phase. The EU is very organised. That became clear to us in our meetings in Brussels in September. At every step, the EU has been prepared and has published directives setting out the next move. Many have contrasted that with the UK approach, which was illustrated today in the leaked letter from David Davis to the Prime Minister in which he warns that British businesses are suffering because the EU is preparing for the possibility of a no-deal scenario. The response of the EU Commission spokesman to the leak can best be described as wry. At a press conference, he said:

“We are ... surprised that the United Kingdom is surprised that we are preparing for a scenario announced by the UK Government itself.”

We have also recently learned that 130,000 UK businesses face up-front VAT bills for goods imported from the EU. The UK Government has hurriedly promised to mitigate any impacts, but the Treasury says that it is too early to say whether the UK would remain in the EU VAT area, which is perhaps another example of UK unpreparedness.

I will try to be optimistic for a second. The European Council has reconfirmed its desire to establish a close partnership with the UK, and that is good. However, it stresses that the future relationship can be finalised only once the UK becomes a third country. The EU is ready to engage in preliminary discussions to identify what it calls

“an overall understanding of the framework for the future relationship.”

That understanding would then be elaborated in a political declaration accompanying, and referred to in, the withdrawal agreement.

To be clear, there will be no final trade agreement before the UK leaves the EU. There will, hopefully and maybe, be a political declaration on the framework of that future relationship.

When Michel Barnier spoke to us in September, he identified two options for the UK. One option would be a Norway-style arrangement, but the UK has rejected that, along with membership of the single market and the customs union. The other option outlined to us by Mr Barnier would be a Canada-style agreement, which does not include services to any significant degree. However, even that will take time. The first phase of negotiations between the UK and EU took nine months and resulted in 15 pages of a written, though not final, agreement. The comprehensive economic and trade agreement, CETA—the Canada free trade deal with the EU, which the UK says falls short of its desired outcome—amounts to 1,598 pages and took seven years to conclude, so you can draw your own conclusions from that.

My committee commissioned Dr Tobias Lock of Edinburgh law school to look at the processes for agreeing the transition, the article 50 agreement and the new relationship treaty. Among the legal and political constraints that he describes the EU as being under, he highlights the principle of most favoured nation status.

Dr Lock explains that the CETA agreement contains a clause according to which the EU and Canada must grant most favoured nation status to each other in the highly regulated field of services. That means that each party must treat service suppliers of the other party no less favourably than it treats service suppliers of any other country. Hence, if a future agreement between the EU and the UK was to treat the UK more favourably than Canada, the EU would have to accord the same favourable treatment to Canada. The same applies to South Korea and its agreement with the EU. The UK may seek a bespoke agreement, but there are many legal and political constraints on the EU—some deriving from its own treaties and procedures and others deriving from its international agreements—that will restrict the kind of agreement that can be reached.

To conclude, 2018 could be a year in which harsh realities blow away the magical thinking that has dominated so much of the discourse on this side of the channel in relation to Brexit. The constraints are many and leave little room for flexibility and imagination.

I move,

That the Parliament recognises the evidence gathered to date by the Culture, Tourism, Europe and External Relations Committee on the first phase of the Article 50 withdrawal negotiations, and notes the European Council Guidelines agreed on 15 December 2017 that set out the position of the other 27 Member States of the European Union in relation to the second phase of the negotiations, which will be related to transition and the framework for the future relationship.

15:05

The Minister for UK Negotiations on Scotland's Place in Europe (Michael Russell): I wish Parliament a happy new year and welcome Neil Findlay to his new position. We have form in facing each other across the chamber, but I am hopeful of a fresh start in 2018. I look forward to working with Mr Findlay in the same constructive way as I work with his Welsh Labour colleague, Mark Drakeford.

I thank the committees of the Parliament for their hard work in scrutinising the work of the Scottish Government and the UK Government on Brexit. Since the day of the referendum, the Culture, Tourism, Europe and External Relations Committee has worked exceptionally hard to study, understand and bring forward thoughts on

Brexit. The convener would probably agree that, when she took the convener'ship just after the 2016 elections, she was looking forward to immersing herself in cultural matters. She has been immersed in not much other than Brexit since then and has done it exceptionally well.

I thank the Finance and Constitution Committee. I will come briefly to its report, which I expect will be debated later this month in the chamber. Its work has been intense, too, since it took on the constitutional remit after I had had, I think, two meetings as convener and given it up. The political experience of Bruce Crawford and the intellectual rigour of Adam Tomkins have brought an important dimension to the subject.

I mention two other committees that have engaged in the issue. In the Rural Economy and Connectivity Committee, Edward Mountain has twice had the problem of having myself and Fergus Ewing giving evidence to him in the same meeting—I am not sure that there will be a third occasion. It has certainly been interesting. I also commend the careful approach of Graham Simpson and his team in the Delegated Powers and Law Reform Committee on the issue of the European Union (Withdrawal) Bill.

At the weekend, the First Minister pointed out that Brexit represents an enormous challenge for Scotland in 2018. In political and economic terms, Brexit is like a black hole, sucking in energy and resource that would be far better used elsewhere. I disagree profoundly with the Prime Minister when she said in her new year message that

“most people just want the government to get on and deliver a good Brexit”.

That is wrong on many counts. Most people are now apprehensive and concerned, particularly about the ability of the UK Government to deliver anything. Secondly, most people are astonished at the waste and profligacy of the process, which is absorbing all the energy of the UK Government and more. I think that most people are fully aware that there is and can be no such thing as a good Brexit.

The Prime Minister is also wrong when she talks about securing a Brexit that would work for the whole of the UK. The Brexit red lines that she has set out indicate the type of Brexit that she and the UK Government seem to wish, which would be deeply damaging to Scotland in terms of people, regulation and money.

It would be damaging in terms of people because freedom of movement is essential in Scotland, particularly in rural Scotland. Ending freedom of movement would cause enormous damage in almost every part of Scotland. Just before Christmas, I visited Stoddart's the meat processors in West Lothian. Thirty per cent of its

staff are EU nationals and they occupy a range of skilled and unskilled positions in the company. The company is unable to recruit others, although it has tried everywhere. That is simply one company out of many. Freedom of movement has been tremendously successful for Scotland. As anybody who knows about freedom of movement is aware, it is not unlimited migration.

There are huge issues in terms of people, and there are huge issues for citizens of this country who want to travel to Europe and who value their European passport. I do not care whether it is blue, pink or purple, but I do care that it allows freedom of access right across the EU, and that, of course, will end.

Secondly, on regulation, the uncertainty that is being caused is extremely worrying, not just for business but for almost every organisation in Scotland, and it is leading to an exodus of jobs and investment. Thirdly, there is the issue of money, which will touch home in almost every part of Scotland, too, through infrastructure spending, social fund spending and of course agricultural and fisheries spending. Those matters are completely unresolved, and even Michael Gove's announcement at the Oxford farming conference last week did not indicate any detail.

There are concerns aplenty, and we have to express them in this chamber and find our way through and round them. The debate gives us an opportunity to express Scotland's priorities at this time, faced with those challenges.

I believe that there are three priorities for the Parliament at the moment. The first is to secure changes to the European Union (Withdrawal) Bill. I am pleased that the Finance and Constitution Committee was absolutely unanimous about that today. There have to be changes, not just to clause 11 but to other parts of the bill, if any progress is to be made, before the Scottish Government can lodge a legislative consent motion and before the Scottish Parliament can approve such a motion. It is therefore regrettable that I have to tell the chamber that I had a conversation on the phone with David Mundell just before lunch today, and that he confirmed that the UK Government will not bring forward an amendment at the report stage of the bill. The UK Government says that it is not ready to bring forward such an amendment, and it is now suggesting that it may bring such an amendment at the House of Lords stages.

That is unacceptable. Negotiation will continue and I am not giving up on that negotiation, but clearly the Scottish Government and the Scottish Parliament have to prepare themselves for circumstances that would otherwise be a cliff edge. I will therefore, later this week, bring forward more plans to address the issue of the continuity

bill, as suggested by the Finance and Constitution Committee, which wishes to know more about the timescale for that bill and the intentions behind it.

Adam Tomkins (Glasgow) (Con): The Secretary of State for Scotland has confirmed to the minister this afternoon that the UK Government will not be able to bring forward an amendment at report stage in the House of Commons. Did he also confirm to the minister that it is still the UK Government's intention to bring forward amendments to enable the Scottish Parliament to give its consent to the legislation before it is passed by Westminster?

Michael Russell: Indeed, and I think that I indicated that but, as the book of Proverbs puts it,

"Hope deferred maketh the heart sick".

We have spent six months discussing bringing forward that amendment, and no amendment has been brought forward. Indeed, the UK Government instructed and whipped its members to vote down such an amendment at the committee stage. There is some depression about that, but I have indicated that I will continue to work with the UK Government. In congratulating David Lidington on his appointment, I also indicated that he should address that as a matter of urgency, because it is now a matter of urgency.

The second issue that we should address is our own red lines, which I believe are increasingly the issues of the single market and the customs union. Without those, we cannot deliver the minimum that Scotland needs. That was the unanimous view of this Parliament immediately after the European referendum. They are needed more greatly than ever, and we will publish more detail on that shortly. We look to engage the whole of the Parliament in discussing how those issues can be taken forward. There are different interpretations of them, and of the outcomes of them, but we need to secure what the single market and the customs union have secured for Scotland in recent generations.

Thirdly, if the UK continues to negotiate with the EU, it is essential that Scotland is involved in and consulted on the negotiations. I pay tribute to Damian Green, who worked hard to get the joint ministerial committee off the ground again and who understood the process. That is one of the issues that we addressed at the most recent JMC and it now needs to be brought forward by his successor, so that there is a clear means of constant contact and consultation as those negotiations go forward.

I will be very much in listening mode today. There are many issues that need to be addressed, and if they are brought to this chamber the Scottish Government will engage with them. We will also continue to discuss those matters with

other parties, as we have done until now, and I want to do that. However, it is essential that the Scottish Parliament and the Scottish Government are involved in all aspects of Brexit, and that our views are respected.

The First Minister was right when she said this week that no Brexit would be better than a bad Brexit. It is increasingly clear that, for Scotland, no Brexit is better than any Brexit presently being negotiated or brought forward by the UK Government. This is going to be a difficult year for Scotland. The Brexit process brings us many challenges. I hope that the Parliament can show unity and resolve in protecting Scotland during that time—that is, after all, its duty.

The Deputy Presiding Officer: I call Jackson Carlaw. You have around seven minutes, please, Mr Carlaw.

15:15

Jackson Carlaw (Eastwood) (Con): Thank you, Presiding Officer. I, too, wish you the best for 2018.

I apologise to the chamber. I am afraid that I am in my third day of enduring a chronic migraine, which means that most members are just a blur to me. I hope that they are there, and that I will be vaguely aware if any of them tries to intervene. I have persuaded myself that it is the thought of today's debate on Brexit that has stimulated this attack.

I thank Joan McAlpine, who convenes the Culture, Tourism, Europe and External Relations Committee, on which I sit. She detailed the evolving canvas of evidence in the 18 months since the referendum in which the United Kingdom voted to leave the European Union. Because the situation has been a changing feast and it continues to evolve almost daily, today's debate is an opportunity for us to take stock of where we are.

In looking at all the facts and figures, as one does, I discovered that my Eastwood constituency voted to remain by the largest margin of any UK seat held by the Conservatives. Of course, I pay tribute to my own powers of persuasion with my electorate for the fact that they fell in behind my campaign for us to remain in the EU.

My view has not changed at all. In the conversation and on-going negotiation on our exit from the EU, it is important for those of us who are engaged and who seek to support the negotiation to obtain the best possible terms for that exit but not to pretend that, in some substantive way, we have changed our view on whether it represents a better future for the UK than the one that was otherwise available. I suppose that the only things

that might have changed that or that might change public opinion further are some of the speeches that were made by the President of France and by Mr Juncker and others in the second half of 2017, in which they sought to change even further the political integration arrangements in Europe. I do not know but, had those points been made during the referendum in 2016, they might not have influenced some of those who wished to leave and might have emboldened some who were undecided not to vote to remain. I do not support what some in Europe now see as on-going and further political integration.

The work of the committee has been to hear from a series of people among whom, it would be fair to say, it would be rare to find any who has seen a positive or uplifting outcome for Scotland or the UK as a consequence of Brexit. In essence, we could summarise the evidence that we have heard as saying that Brexit is not a good thing—which was the position that most of those who gave evidence held before the referendum—and that it will be bad for Scotland.

I will say one thing to counteract some of the pessimism that we have heard. The evidence sessions have taken place as negotiations have gone on and, when the committee was in Brussels in the late summer, it was instructive that, when we met privately with officials on both sides—I cannot go into detail, because the discussions were private—as professionals, both sides demonstrated a more pragmatic on-going discussion and delivery of progress than was the case in the more theatrical political environment in which most of us operate.

We were told then that it was very unlikely that the test of there having been sufficient progress would be met in October, and that both sides fully expected that that test would be met in December. We were told that the issue of citizens' rights would most likely be resolved eventually with an agreement that protected both the interests of European citizens here and those of Scottish and UK citizens in Europe. We were told that the issue of Ireland would probably be resolved—although I feel that it will be impossible to do so finally until we get to the conclusion of phase 2, because much of it depends on the future trading arrangements that we would have—and that the stumbling block would probably be the issue of finance, which, for a long time, seemed to be the case.

However, the committee also heard that the budget resolution would involve the United Kingdom paying as much as £100 million or €100 million. The reality is that we have arrived at an interim agreement on the issue of European citizens. We were told that European citizens were queuing up to leave the United Kingdom as a

result of the uncertainty of Brexit, but we now know that the number of EU nationals in Scotland rose by 10 per cent in the 12 months after the Brexit vote. There are now 219,000 European nationals here. There has not been an exodus. Undoubtedly, people will have left because of uncertainty, but the net position is that there are now more EU nationals in Scotland than there were before the referendum took place.

Our responsibility in the chamber is to be as pragmatic and realistic as we can be. That is not to say that we think that we are in the process of negotiating a position that is superior to the one before; rather, we must do all that we can to work to negotiate the best possible deal and judge that finally in the analysis of what has been achieved.

I would like to say something directly to Mr Russell. Perhaps we have been ambiguous about this, but let us be clear: clause 11 of the European Union (Withdrawal) Bill is not acceptable to Scottish Conservatives. I understand the reasons that the Secretary of State for Scotland has given today, but I am not entirely persuaded that the UK Government could not have done more. I do not blame the secretary of state. The urgency of the resolution of that point has been made very clear to officials. They have protested that there has not been sufficient time, but they could have done more to ensure that there was sufficient time to get to a final agreement. However, the secretary of state has given the assurance that the UK Government will table amendments to clause 11, because we wish to work to ensure that the Scottish Parliament is finally in a position to support an LCM that the Scottish Government supports.

We undoubtedly face long and turgid negotiations that will sometimes involve taking three steps forward and two steps back or two steps forward and three steps back. Ms McAlpine detailed perfectly accurately and reasonably the difficulties that we expect to face. However, we start from the position of being a member of the European Union and therefore with equal regulatory frameworks from which we need to negotiate future separate arrangements. I believe that we will succeed in doing that. Obviously, I do not know at this stage what the final shape of the agreement will be, but our responsibility is not to be theatrically lurid all the time. I will miss Mr Macdonald, who has been an oasis of calm in representing the Labour Party on the issues. He will be replaced by a radical edge of rhetoric from Mr Leonard and Mr Findlay, which I look forward to hearing. I hope that, beyond all of that, we can ensure that the Parliament's contribution is to work to get the best possible deal and then to judge the deal when we see what it is.

15:23

Neil Findlay (Lothian) (Lab): I thank my old chum Mr Russell for his very warm welcome and his wishing us a happy new year. I reciprocate that. I am sure that we will work together on many issues over the coming weeks and months, and I am sure that we will work together on exposing the Tories' shambolic handling of Brexit.

I am very sorry that Mr Carlaw is feeling poorly today. It is rather unusual for someone to get a migraine prior to a speech by him; people usually get migraines during or after his speeches. However, we wish him a speedy recovery.

The reality is that extricating the country from a political and economic union that we have been a member of for around 40 years is self-evidently very complex and difficult. The negotiations will be long, arduous and torturous at times, but they have to succeed for our economy, our jobs, the environment, our consumers and all our citizens who live here, wherever they originally came from.

As with any negotiations, if people enter into them on good terms with mutual respect and a positive attitude, things are much more likely to go better than if they go into them with a belligerent, ill-judged and what often looks like a clueless approach. The latter typifies the UK Government strategy to date—18 months have passed since the referendum and progress has been painfully slow. The UK Government has failed to make the progress required. Brexit minister David Davis's bluff and bluster have not taken him very far. We are barely off the starting blocks, and it is likely to be March before we even see any beginning to the detailed discussion on the terms of the transition phase, never mind what happens thereafter. If the Prime Minister and David Davis think that the past 18 months have been tough, they should just wait until they see what will come when they get down to the detailed negotiations on the million and one things that will require to be agreed.

As the excellent committee paper prepared by Dr Lock of the University of Edinburgh sets out, the legal issues around Brexit are multifaceted and very complex. For lawyers specialising in EU and constitutional law, the next few years will be like having Christmas and winning the lottery every day. There are many ways to win the EuroMillions jackpot, and this might be one of them for EU and constitutional law firms.

Although the process of withdrawal plays out in the media every day, the legality of Brexit will cause the most headaches across the board. Dr Lock says in his paper that negotiating with the EU is not like negotiating with a sovereign nation. Some of the outcomes will have to be ratified by qualified majority voting, others by the European Council or by individual countries. There is the role

of the European Parliament to consider—it might veto an agreement. There might be legal challenges, which could come from a number of fronts, in the European Court of Justice. There must also be a meaningful vote in the House of Commons. All those are very real and practical hurdles, and that does not even include the legislative consent motion issue here. The multitude of hurdles will prove difficult to overcome.

Just as we said that it was fanciful for the Scottish Government to claim to be able to negotiate an exit from a 300-year-old union with England in two years, it is nonsense to believe that Brexit can be negotiated in a similar timeframe. Therefore, a stable and sensible transition period is essential to give business certainty and to protect jobs and people's rights. The transition period, in which single market and customs union rules would apply, should be time limited, which would provide continuity and retain access to the single market for businesses.

We accept that freedom of movement will end, but we want to see a fair and well-managed immigration system that ends the exploitation of labour and safeguards human rights; we also want to ensure that all the rights of EU citizens who live here are protected. Those issues have been raised repeatedly by a wide range of organisations that gave evidence to the committee, including the Food and Drink Federation Scotland, trade unions such as Unison, and councils such as North Ayrshire.

We want a deal that protects workers, consumers and our environment and that builds a new co-operative relationship with our friends and colleagues across the continent and beyond, reflecting the concerns raised by, for example, the Church of Scotland in its very good written evidence to the committee. That stands in contrast to—I would not put Mr Carlaw in this boat—some on the Tory far right who see Brexit as an opportunity for the UK to become an insular, isolationist, deregulated economy rid of every bit of progressive legislation that has ever come our way.

Those of us who are on the progressive end of politics must be very vigilant and forceful, because we cannot allow the Tories to negotiate away our hard-won rights, or to take us over a cliff edge. However, we live in a democracy, and we accept the will of the people—just as we accepted the will of the people in 2014.

We want devolution to work and we want to protect the interests of the country and working people, so I will work closely with the cabinet secretary on the LCM and, of course, on the role of the devolved Governments.

Labour's objective in the negotiations is to retain the benefits of the customs union and the single market while negotiating that new relationship with our European neighbours. We believe that that can be achieved if there is a change of attitude, good will and determination to secure a deal that is in our national interest and the interest of all other states.

The Deputy Presiding Officer: We move to the open speeches, which are to be six minutes long. There is a little flexibility if members want to take interventions.

15:29

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): I wish a happy new year to all my colleagues in the chamber except for Tavish Scott, who will shortly celebrate new year with his constituents at Up Helly Aa, rather than celebrate it conventionally, on 1 January.

My constituents are exceptional, too, as, perhaps more than others elsewhere, they are taking a keen interest in the negotiations on the UK leaving the EU. That is because they, rather differently from most people in Scotland, can see a local benefit from our doing so. That benefit is from our exploitation of our escape from the common fisheries policy and the regaining of control over fishing opportunities in our waters out to 200 miles.

I referred to my opposition to the common fisheries policy in my first speech in Parliament in 2001, which was made on the day following my first swearing in, and members have heard me speak on that subject on many occasions since.

We only gain meaningful benefit from being outside the CFP if the exit negotiations deliver certain other matters of importance to our fish-catching sector. Catching more fish means little if we lose the opportunity to add value to an increased weight of fish through increasing our processing activity. Yes, skippers would be able to land the increased amount of fish directly to European Economic Area ports, which would probably mean Norway, and thereby make a gain. However, the bigger prize—and the bigger industry right now—is onshore, on our shores. It can flourish, and the entrepreneurial spirit is strong, but it needs fair and, essentially, timely access to export markets. Some products, such as the Cullen skink Scotch pie that I sent to David Davis for Christmas, are products that are designed for delivery by time-variable means such as the post. I hope that he enjoyed the pie as much I enjoyed one for my lunch on the same day. Other products, such as our world-famous langoustines, halve in value if they arrive even four hours late.

Tariff barriers are currently less critical with the fall in the value of the pound, but if the pound recovers its previous exchange rate, they might again be an important matter. Access to market is what matters, yet we see no sign that that has a high-enough priority in the negotiations.

We have greater, if substantially less than full, clarity on migration. Our fish processing industry's future depends on people from many nations coming and, crucially, being able to settle here. About half of the migrants who have come to the north-east in recent years have made a permanent relocation. It is not simply seasonal recruitment, but permanent employment. Alasdair Allan's evidence to the committee suggested that 46 per cent of people in fish processing in the UK are EEA nationals, and we know that 70 per cent of workers in north-east fish processors have been migrants. They add huge value to the local and national economies, particularly in the north-east, which is an area of high employment where recruitment has long been difficult. They also enrich and strengthen our culture, substantial as it already is.

The Cabinet Secretary for Rural Economy and Connectivity, Fergus Ewing, told members that the UK minister Michael Gove has a sympathetic ear to the issues around fishing and fish processing, and Mr Gove's connections to the north-east of Scotland underpin his understanding. However, for the UK, the industry is a very minor part of the economy, and I share the concern of others that it will end up as a bargaining chip and that benefits that we expect will be traded away.

I listened with great interest to Jackson Carlaw, who is in soft focus for me today because I do not have my glasses—I have no migraine but no glasses. However, the secrecy, the exclusion of the devolved nations' Governments and Parliaments from the development of post-Brexit policy and rules, and their exclusion from the negotiation itself feed a paranoia, justified or not, about possible outcomes. It also has the practical effect of reducing the resource that can be applied to the shared interests of all the nations of the UK—for clarity, I include England when I say that—in what is the greatest challenge to our future in my lifetime. I am pleased to note the consensus that has been referred to already that we cannot yet—I repeat, yet—give our consent as a Parliament to the UK Brexit bill.

However, the prospect of cutting off migration is the one that is worrying me most. Historically, the Scots are probably the greatest migrants in the world. The cities of Warsaw, Krakow and Gdansk each have areas in them called Nowa Szkocja, or New Scotland, which is a testament to our outward migration in the late 1600s. Indeed, a Scot was the mayor of Warsaw on four occasions. The 2011

census says that there are 55,000 Poles in Scotland. They are our largest immigrant group.

Countries around the world would not exist in their present form without our citizens; Canada is the most obvious example. In my own family, as in others, it continues. A niece, born in Edinburgh, is now a Swedish citizen because of Brexit. Her brother will shortly be a Dane.

Leaving the EU and thus leaving the common fisheries policy, while remaining in the single market and retaining free movement of people, ticks most of the boxes for most of my constituents, as it does for Scotland as a whole and as it will do for all the nations of the UK.

15:36

Rachael Hamilton (Etrick, Roxburgh and Berwickshire) (Con): I wish everybody a happy new year.

Although it is a new year and we are here to focus on the Culture, Tourism, Europe and External Relations Committee's inquiry into article 50 withdrawal negotiations, once again we are hearing the same old message from the Scottish National Party: independence, independence, independence. In 2017, the SNP lost 21 seats and close to 500,000 votes. If there was a clear indication that the public did not want a second referendum, that was it.

Ivan McKee (Glasgow Provan) (SNP): Will the member tell us which SNP members have mentioned independence in the debate so far?

Rachael Hamilton: I thank Ivan McKee for that intervention. I have no need to tell him who has mentioned the independence referendum—it was across the newspapers yesterday and this morning in the words of his own First Minister.

We know that SNP members do not listen, and they obviously do not read the papers. Education, health and affordable housing still lack much-needed attention, and yesterday—not two weeks after we had seen in the new year—the First Minister brought a second independence referendum back to the forefront of the SNP's agenda. The SNP's answer to Brexit is independence. That is a crying shame and shows a real lack of ambition by the First Minister and the SNP—rant over.

Since the committee's inquiry started in September last year, negotiations have been fast, furious, challenging and even frustrating. I have no need to remind members that article 50 simply sets out a process by which the UK, as the leaving member state of the EU, follows agreed negotiating guidelines that cover phase 1 of the withdrawal process. Phase 1 focused on issues related to citizens' rights, the financial settlement

and Ireland, on which the committee heard evidence. I thank the clerks for their hard work, and I thank those who gave evidence. I also thank our convener and our deputy convener, Lewis Macdonald, who will be missed. I welcome Neil Findlay to the committee.

In December 2017, the European Council was satisfied that sufficient progress had been made on the aforementioned priority areas. That gave the green light for discussions regarding the UK's future relationship with the EU, and guidelines were adopted that focus on the possibility of transitional arrangements. In the Prime Minister's Lancaster house speech, she suggested that the UK would need an implementation phase before its new relationship with the EU was fully realised.

That ask was accepted, and, on 20 December 2017, the European Commission published a draft negotiating mandate for the transition. The mandate says that the EU would accept a transitional arrangement in which its laws should apply to the UK

“as if it were a Member State”

but that the UK would not be able to

“participate in the decision-making or the governance of the Union”.

That means that the UK will not get a say on new EU laws but will have to abide by them. It will also have to accept the four freedoms of the single market and the jurisdiction of the ECJ.

In Scotland, we must concentrate on what is best for our people, businesses and organisations following our departure from the EU on 29 March 2019. Unfortunately, in this chamber politics is polarised. The First Minister has raised the possibility of an independent Scotland, but what business and organisations need is certainty. Transitional arrangements are what businesses are looking for to prepare them for our future relationship with the EU.

It is also important to note, as a number of members have done, that the Parliament's Finance and Constitution Committee has recommended that changes be made to the withdrawal bill before the Parliament can recommend that it be given legislative consent. It has been acknowledged that clause 11 of the bill

“represents a fundamental shift in the structure of devolution in Scotland”.

I accept what Mike Russell said about his phone call to the Secretary of State for Scotland, but David Mundell has recently given assurances that the bill will be amended at a later stage, and its consideration at Westminster is due to resume in the next few weeks. Therefore, I hope that we can look forward to a shift. I welcome the cross-party progress that has been made so far and hope that

work will continue on reaching agreement on a common UK framework for returning powers to the Scottish Parliament.

As Dr Kirsty Hughes said in her submission to the committee, later this month or next, the Prime Minister is expected to set out in more detail—probably in a speech—the sort of future relationship that her Government would like to see between the UK and the EU27. The EU27 are then expected to agree their position and guidelines for talks on a future trade and wider relationship with the UK at their summit on 22 and 23 March. Once they have done that, talks on a future trade deal and a wider security relationship can get under way.

The aim is to complete talks on the withdrawal agreement and on an outline framework for the future relationship by the autumn of 2018, so—allowing time for ratification on both sides—time is very tight indeed. The UK Government and the Scottish Conservatives are clear in their view that working together to get the best deal for Scotland and for the UK is the way forward. However, it is the Scottish Government—in particular, Nicola Sturgeon, the First Minister of Scotland—that repeatedly wants to disrupt the Brexit process by threatening to hold an independence referendum. Yesterday, we were all reminded that all that the Scottish Government wants is independence—at any cost. The SNP will dismiss the hard work that has been done so far, saying that it is not enough, and it will attempt to hold another independence referendum. In the meantime, uncertainty among Scottish business will increase, confidence in Scottish business will all but disappear and the Scottish economy will suffer.

The Minister for International Development and Europe (Dr Alasdair Allan): Will the member take an intervention?

Rachael Hamilton: I am sorry, but I am in my final minute.

The Scottish Government needs to get behind Brexit and to abandon its threat to hold a second independence referendum. It is a new year, and the SNP needs a fresh start.

15:42

Mairi Gougeon (Angus North and Mearns) (SNP): If I have learned one thing from the Culture, Tourism, Europe and External Relations Committee's inquiry, it is that we have only scratched the surface of some of the major issues that Brexit will raise. I will focus on some of the issues that were flagged up during our evidence sessions—in particular, the session that we held on the role of the European Court of Justice and other legal matters, which we, as a Parliament, have not looked at in any great detail so far.

The role of the European Court of Justice is one of the most contentious matters in the Brexit discussions, and it is one that we need to take a serious and considered look at, because I believe that it has been fundamentally misunderstood and misrepresented in the lead-up to the EU referendum—if it was discussed at all during that period—and in the discussions that we have had since then. To do that, we need to look at the kinds of cases that the ECJ deals with and how that affects us, how directives and laws are formed and the problems that we could potentially face.

In September, we took evidence from a panel that included representatives of the Faculty of Advocates and the Law Society of Scotland as well as Professor Sir David Edward, who is a former judge on the ECJ. He outlined why the body is vital and the kind of work that it deals with. He said:

“British companies will still want to send their employees to other European countries ... Those employees will want to live in the country to which they are sent with their families ... Some will find themselves on the wrong side of local bureaucracy and some will separate; they will need to know which courts will grant a divorce and which will decide on the financial settlement, the custody of children and problems of cross-frontier access. Such issues are what the jurisdiction of the ECJ is designed to solve, for ordinary people in ordinary, day-to-day situations. It is not just about trade disputes. That is the most important point to understand in the whole of this discussion.”—[*Official Report, Culture, Tourism, Europe and External Relations Committee*, 14 September 2017; c 2.]

Cases that the ECJ deals with are not always necessarily about the UK versus another state, which is often how it is made out. The day-to-day reality is that an issue can be raised in one jurisdiction that is enforceable in another.

In November last year, I visited Westminster with the Justice Committee to meet our counterparts there and a number of other committees. Although this issue deviates slightly from the direction of the work that we undertook in the Culture, Tourism, Europe and External Relations Committee, it is important to mention it. One of the Westminster committees that we met was the House of Lords EU Justice Sub-Committee, which has undertaken detailed work on the implications of the UK leaving the EU for EU citizens here and UK citizens abroad as well as on how that will impact family law, individuals and businesses. That committee has held evidence sessions and has produced a number of important detailed reports that I urge all members in the chamber to look at because they highlight the sheer scale of the issues that we face and go into greater detail than we have been able to cover in the Scottish Parliament.

The reports also cover matters that the public was not generally made aware of when the decision was made to leave the EU. An important

point to remember in that regard is that it is not as though we have all been sitting here, helplessly subject to the directives and laws that have come from the EU, because the UK has played an important role in helping to develop those very laws. That issue has been raised by Lord Thomas of Cwmgiedd, a former Lord Chief Justice, in terms of current work to develop law for the digital sphere, where, as members of the European law commission working together with the American law commission, we have a key role. Lord Thomas has said that

“one of the very big issues that the Committee may wish to think about in due course is how we, in a relatively small jurisdiction set between two very large jurisdictions, the United States and the European Community, will have an influence on the fashioning of the law for this new marketplace once we leave the Community ... This is a very, very large topic; it is the future development of our law that is sometimes lost sight of in the debate.”

There are also issues with current legislation that is based on EU directives, such as the Data Protection Bill. That aspect was raised by Lord Hope of Craighead, a former Deputy President of the Supreme Court, who illustrated the problem by saying that

“the law enforcement directive—it goes right through the Bill, which is designed to give effect to it ... The problem for individuals will be that, after we leave the European Union, we will have no direct access to the court if an issue comes up as to the meaning of the directive ... this deprives the individual, including a corporation as much as anything else, of the right to have a ruling that will apply not only to itself but to trading partners in the EU. That is a real deficit that is apparently being built into legislation that will be part of our law after we leave.”

Those are big issues on their own, without our looking at other fundamental problems. How will mechanisms for our security and safety, such as the European arrest warrant, continue to operate? Again, Lord Thomas addressed that issue when he said that

“the European arrest warrant operates in a fundamentally different way. Unlike treaties, it is premised upon judicial co-operation. It is very difficult to see how, if an instrument operates on that basis, it can do so without some body at its apex to determine the rules by which it works ... there is a total lack of debate about the two very different approaches to the problems of the relationship between two judicial systems: the treaty-based mechanism and the one based on co-operation.”

So, where do we go from here? Will we have that overarching body to determine those issues? Will its decisions be binding? Will they be enforceable? We know that the ECJ will continue to have a role in citizens' rights for eight years, but what about beyond that? How will we deal with trade disputes? Right now, there are more questions than answers and, with complex questions like those, that is extremely worrying, given that there is less than a year for those key issues to be agreed.

Michael Clancy of the Law Society of Scotland said in evidence to the Culture, Tourism, Europe and External Relations Committee:

“We, and the UK Government, have to be careful about simply identifying the initials CJEU and saying that that is something that we do not want in any circumstances. We have to be much more circumspect.”—[*Official Report, Culture, Tourism, Europe and External Relations Committee*, 14 September 2017; c 18.]

We should be and need to be open minded about the ECJ. However, given that Theresa May has continually pandered to the hard right of her party, my fear is that it is already too late.

15:49

Pauline McNeill (Glasgow) (Lab): Fourteen months or so from now, Britain will leave full membership of the European Union and its various institutions. We are now honouring the result of the 2016 referendum and are preparing for that outcome by discussing and negotiating future relationships through agreement in the coming months and years, so we have a relatively short time in which to conclude how the agreements should be shaped.

We cannot allow that to be driven by the hard Brexiteers in Theresa May's Cabinet—those who think that the colour of their passport is a significant issue and that changing it is a benefit of leaving the EU. Rather, I hope that the more sensible Tories in their party will muscle in, take the Brexiteers on and ensure that there is a coalition of the parties that see a bigger picture and see that we must all work together in the interests of the country. In the withdrawal process, it is up to all of us to make sure that, despite our various disagreements, the subsequent arrangements aim to safeguard the economic interests of the UK and of all the parts of the UK—be it Scotland, Wales, Northern Ireland or indeed any region of the UK. All their interests must be served.

The Culture, Tourism, Europe and External Relations Committee has done this Parliament a great service with the work that it has done. I am sure that I am not alone in finding that following the unfolding of the Brexit story in the daily news is hard work, and I have certainly found the reports that the committee has put together quite exceptional.

The paper that was written by Tobias Lock is also worth a read, if members have not already read it. He says, among other things, that it is highly unlikely that a deal will be fully completed by 2019. In practical terms, he has suggested that the transition phase is likely to have “two broad objectives”. The first is

“to allow for detailed negotiations”,

although that is

“Provided that the ... withdrawal agreement outlines the future framework”

in broad terms, as other members have said. The second is

“to allow time for government, businesses, and individuals to make practical preparations for the new relationship”,

which will be easier said than done.

The European Council has made it clear that it envisages a status quo transition, during which the UK will have to comply with EU trade policy and customs tariffs—it will have to collect EU customs duties and do everything associated with that. According to Dr Lock, European Council guidelines seem not to cater for a phased approach to transition. Many questions remain about the full implications for the UK in the transition period, and we will need to return to that regularly.

In my view, the transition period will therefore prove to be a key part of moving to the final stages. Whatever final agreements we reach, as I said, the UK must consider all parts of the country, including Scotland, Wales and Northern Ireland, and ensure that their different needs are taken account of in our arrangements on trade, our relationship with the single market and all the other important aspects. Like others, I am sure, I await with interest the detail in phase 2 of how such an agreement will honour the Good Friday agreement.

Dr Allan: Will the member take an intervention?

Pauline McNeill: If it is on that point, I will.

Dr Allan: The member mentioned the single market and the transition arrangements. I agree that it is important that we wait for information, but is it not also important that we have from the outset a certain sense of where we are headed? Is it the member's view that that should be membership of the single market?

Pauline McNeill: As I have said in setting out my views, we must ensure that, whatever the final arrangements are, we have the best arrangements for Scotland, Wales, Northern Ireland and all parts of the UK. That is what we are discussing going forward.

I have already raised in this Parliament many times an excellent report by the House of Lords that highlights the asymmetrical structure of devolution in the UK. The reason for that structure is that there are clearly different problems to solve, and I mentioned one of them a moment ago—the border with Northern Ireland. In going forward, I hope that the Government will recognise that Scotland relies heavily in its NHS and its public services on immigration and freedom of

movement, and therefore—[*Interruption.*] Apologies, Presiding Officer. I hope you did not hear that. [*Laughter.*]

The Deputy Presiding Officer: Would all members please make sure that their mobile phones and other pieces of equipment are turned off?

Pauline McNeill: I apologise to members; I hope that they did not hear any of that. I will try to compose myself.

Scotland relies heavily on immigration but—and I have argued this previously—I do not believe that we require the devolution of immigration to construct a policy that recognises that different parts of the United Kingdom need different things.

Jackson Carlaw has made a significant contribution. I recognise the work that he and Adam Tomkins are doing to represent Scottish interests to the UK Government. That shows that there is hope that we can work together. I have fought for the integrity of the Scotland Act 1998 all my political life. I believe that what is not reserved is devolved. We should all uphold the integrity of the act.

Brexit is the most significant political issue of our time. There are hard times ahead for ordinary people, who are trying to follow what we politicians are doing. They faced a decade of austerity after the banking crash and we know that, as we move forward with Brexit, there will be many problems to solve. Let us remember the people we are working for and come to an arrangement that works for them.

15:55

Richard Lochhead (Moray) (SNP): As a member of the committee, I congratulate the convener on her opening speech, which summarised very well the issues that the committee has been dealing with, which form the theme of today's motion. I thank my colleagues on the committee and the clerks for all their work over the past 18 months, during which they have dealt with an enormous subject that is full of complexity. Its impact on Scottish society and the Scottish economy is difficult to grasp.

I wish all the best to Neil Findlay, who is about to join the committee, and say a fond farewell to my fellow Aberdeen Football Club supporter on the committee, Lewis Macdonald.

It is quite incredible to think that this is the first parliamentary debate of 2018. We have, quite rightly, chosen the subject of Brexit because it is the biggest subject facing Parliament and Scotland. The fact that this is 2018 means that we are now in our final full year as a member of the EU, if the UK Government gets its way. That is

quite significant: we are only weeks away from entering the final 12 months of membership for Scotland and the UK. Of course, as the convener pointed out, Barnier said to the committee that he needs a deal to be wrapped up by November 2018, which is even closer—it is only a few months away. That shows the scale of the challenge that the country faces and of the responsibility on the UK Government to show more leadership and make sure that Scotland and the UK get a good deal.

As parliamentarians going around our constituencies, and as committee members hearing from witnesses, we have met with continuing common themes. The first is uncertainty: people simply do not know what is going to happen in future. The second is their real concern about the hard Brexit that the UK Government seems to be pursuing—people have been flagging up the prospect of a no-deal scenario.

We in Parliament must keep at the forefront of our minds the fact that 62 per cent of Scots voted to remain in the EU. Many people across the UK—even some people in Scotland—voted to leave the EU because of misplaced patriotism or some false hopes that they were persuaded to adopt by the leave campaign and which have been exposed as false over the past 18 months. However, even those who voted to leave the EU did not vote for a hard Brexit, and they certainly did not vote for a no-deal scenario.

Many businesses and ordinary people in the country are concerned about living standards and the future state of the Scottish economy. I have spoken to many businesses in my constituency in the past few months and they are extremely concerned about what is happening. Many of those businesses are export orientated, and many rely on the overseas workers who work in factories in Moray, as happens in other parts of Scotland. Those businesses tell me that many EU citizens are deciding to leave the country and go back home and that fewer inquiries are coming from overseas people who want to work in Scotland. That is a real concern for the business community as it plans ahead.

Many of those businesses will not speak out for obvious reasons, but they are concerned about what is happening. The implications for trade are severe indeed, especially from the horrendous prospect of a no-deal scenario. A hard Brexit or no-deal scenario are seen as ticking time bombs by the business community in Scotland, and we should all view them that way. It is unfortunate that the UK Government is doing so little to defuse those ticking time bombs.

The convener mentioned the David Davis letter, which was quite astounding. On the one hand, we

have Philip Hammond, the UK Chancellor of the Exchequer, putting aside £3 billion in last November's budget to prepare for a no-deal scenario; on the other hand, we have a letter of alarm going from David Davis to the Prime Minister in the past couple of weeks—a letter in which he expresses alarm that the EU is planning for a no-deal scenario, with all the dangers that that presents to the UK economy and to the country. What else does the UK Government expect when it is planning for a no-deal scenario itself?

The Scotch whisky industry is another industry that is quite close to my heart. Shortly after the referendum in June 2016, the Scotch whisky industry was quite relaxed—surprisingly relaxed—about the impact of Brexit on it. However, we have moved from that situation to the situation today in which it is very concerned, given the lack of progress on reaching any kind of deal with the EU and the prospect of leaving the single market and the customs union. The industry has now issued seven asks as part of its campaign. It wants a

“comprehensive customs agreement, minimising cost and complexity”,

which it says is essential. It talks about potentially devastating arrangements for imports and exports and the impact that those could have on the industry.

The press release that has been issued by the port of Rotterdam has also caused alarm. It got some headlines in the UK press, but it should have got a lot more. The port of Rotterdam is setting alarm bells ringing about the impact of Brexit on EU trade not just for other EU countries but in relation to the fact that many goods come from the EU to the UK through the port of Rotterdam. The press release talks about congestion in Europe because of the lack of preparation and the need to hire 100 more customs officers to work in Rotterdam. It talks about delays in getting clearance for goods that are exported and imported through Rotterdam. The port is basically flagging up the potential for absolute chaos in relation to trading agreements and arrangements.

As we sit here debating the issue in early 2018, we are only a few months away from when the EU wants to have a deal in place. That just shows the lack of preparation that there has been. I urge the Scottish Government to continue to keep all the options on the table. There are real concerns out there. One relates to the potential for a transition period. The fishermen and the farmers are being told that there will be a transition period, and some industries will be able to stay within the customs union and the single market. However, others, such as fishermen, will be able to get out of the EU in March 2019. Quite clearly, the UK

Government is cherry picking, and there is no basis whatsoever to think that its approach will be supported by the rest of the EU.

In terms of keeping options on the table, the SNP is not facing the same constraints as the Labour Party, which is worried about UKIP making inroads into the housing estates in England, and it is not facing the same constraints as the Conservative Party, which is interested only in maintaining the unity of the Conservative Party. The SNP and the SNP Government continue to put Scotland first, and that is what they should do. They should keep all the options on the table to get the best deal for Scotland.

16:03

Ross Greer (West Scotland) (Green): Like my colleagues, I would also like to thank our committee convener, our committee clerks, all those who have submitted evidence, and those who have hosted us for committee visits, both here in Scotland and in Brussels. It has been invaluable in recent months to hear first-hand from those who are already experiencing this process.

Scrutinising the Brexit process has been a deeply dispiriting experience. Hearing directly from individuals, families and organisations affected by the UK Government's handling of the process cannot have filled any of us with confidence that a positive outcome is remotely possible.

In phase one of the negotiations alone, we have seen so much uncertainty and stress caused by the Conservative Government's shambolic approach. It knew full well that the EU would accept nothing less than proper guarantees on EU citizens' rights, yet we saw month after month of the UK Government dragging its feet, refusing to offer that guarantee, and even trying to rescind some of the rights of EU citizens living here.

In that time, we heard from those citizens who felt that they had to leave Scotland as they did not feel welcome here any more. I accept Jackson Carlaw's point about those who have come here since, but for a Government's actions to have resulted in anyone feeling that they need to leave the country—as some have—should be something that fills us all with shame.

I have spoken to EU citizens who have already faced discrimination based on their nationality—in the job market, from landlords, and even from the national health service. The most striking piece of evidence that our committee has gathered so far was not from a Government minister or a representative of business interests, but from a mother, originally from Romania, who had made a life here for her family. She felt that EU27 citizens, such as her family, were being treated like dogs that the UK had bought for Christmas and did not

want any more. That has been a shameful way to treat anyone, not least UK residents who have actively chosen to make their lives here.

I welcome the phase 1 agreement, although not how long it has taken us to reach it. There is now less than a year left for the UK Government to negotiate its future relationship with the EU before it needs to begin ratification. Delaying the inevitable concessions has used negotiating time that the UK side simply could not afford to squander.

Phase 1 was far simpler than what is to come. It is hard to see how a minority Government can reconcile its own hard Brexit fringe with the commitments that have been made to avoid a hard border in Ireland, along with what is necessary to reduce the inevitable economic damage that we will sustain by leaving. This is an opportunity for the progressive opposition to step up and ensure that the UK moves towards a softer Brexit position, at the least retaining our membership of the single market and of the customs union. I hope that the Labour Party can join those of us who have been working consistently for that shift. Following the line of a Tory hard Brexit does not live up to the Corbyn mantra of working for the many and not the few. The only people who will benefit from such an approach are a very few disaster capitalists and outside corporate interests.

We should be in no doubt that the next six months will be far more challenging than the last. Phase 2 is where rhetoric will have no alternative but to collapse in the face of reality. The UK has committed itself to ensuring no hard border between Northern Ireland and the Republic, which means continued alignment with the rules and regulations of the single market. However, the Tory Government is also intent on leaving the customs union, a policy aimed at ensuring that the UK can strike its own international trade deals. Even accepting at face value the fanciful suggestion that a technological solution can ensure no hard border—despite the UK being outside of the customs union, which is not realistic in the unique circumstances of Northern Ireland and its border—the UK will quickly find itself under pressure to diverge from and undermine the rules of the single market.

As soon as the UK attempts to negotiate a trade deal with the US or any other major economy, regulatory standards will be targeted for removal. We know this already from the EU-US negotiations for the transatlantic trade and investment partnership, which proved so unacceptable that they failed after eight years. The US has been very clear: it considers EU regulations such as REACH—the framework on chemicals that involves extensive registration,

testing, data gathering and, crucially, the precautionary principle—to be a barrier to trade. In the US, on the other hand, it is still legal to buy and sell asbestos. Regulations on animal welfare, on minimum ageing for whisky, on hormones and growth enhancers in beef production, on sanitary processing of meat—that is banning chlorinated chicken, for those of us not familiar with the industry—on the use of certain pesticides in agriculture and on subsidies to farming under the common agricultural programme are all considered by the US to be barriers to trade. The list goes on and on.

In all those instances, the EU offers stronger protections for the public and the environment than the United States. The US tried to undermine many of those standards in the TTIP negotiations, and that was with the EU representing a trading bloc of greater economic power than the US economy. The UK negotiating alone with the US will be at a severe disadvantage. That was made very clear to us on one of our first committee visits to Brussels, where US trade negotiation tactics were explained: they appear with a draft and tell the other side, “It will be signed” because, in most instances, they are the far more powerful bloc and they get their way. Just last week, a US under-secretary for trade stood beside Michael Gove and lobbied for the UK to drop EU protections for the sake of trade with the US.

At every opportunity, the US will attempt to undermine the regulatory standards that we inherit from our EU membership. However, if we want to continue to trade freely with the EU and maintain a genuinely open border in Ireland, we will have to maintain those standards—we cannot have it both ways. When we leave the EU, the Government’s policy on leaving the customs union will mean that we will also lose every trade deal negotiated by the EU. We will be left isolated. As has already been noted, some of the most recent deals, such as CETA, took eight years to negotiate. We will leave the EU far sooner than eight years from now. It will be a huge effort just to maintain a worse trading relationship with the EU than we have at present, let alone negotiate new trade deals with other countries.

It is hardly a secret that the Brexit process has, so far, been far from a triumph for this new global Britain. Without a hard dose of reality quickly, it will get much worse and make the prospect of a no-deal Brexit ever more likely. That is not in Scotland’s interests, and it is not in the UK’s interests. It is what we should all be working to avoid.

16:09

Tavish Scott (Shetland Islands) (LD): I welcome the new year across the chamber and I

say to Stewart Stevenson, who is sadly not here, that I can exclusively reveal that he got something wrong today—probably for the first time in his whole parliamentary career. Up Helly Aa is not about Christmas for Shetland; it is about our connections to Scandinavia. I will be happy to give him a lengthy treatise on that on a later occasion.

I also welcome Neil Findlay to the front bench. It is great to see him joining the establishment of politics. We will watch that with great entertainment. His jousts with Mr Russell will no doubt be good fun for the rest of us, although they will be nothing for me compared to watching him have to be nice to the Tories on Brexit. I must confess that, at times, it is a little hard to tell the difference between the Tory front bench and the Labour front bench on Europe, particularly after one or two of today’s speeches.

Jackson Carlaw is doing well with his migraine, but his interpretation of the Macron speech was a bit wide of the mark. The President of France spotted the opportunity that has been created by the fact that there is now no British foreign policy and advanced the case that, for example, the French language could soon be the most spoken across the globe. If that is not spotting an opportunity, I do not know what is, but it comes about because of the UK Government’s failure to spot what is happening.

Neil Findlay: It will also be interesting to watch Mr Scott ride two horses at one time with the Shetland fishermen who are hostile to his pro-Europeanism.

Tavish Scott: That is entirely true. The Shetland fishing industry—or, rather, the fishermen themselves—do not support staying in the European Union but, as Mr Stevenson rightly set out, the fish processing industry needs access to the single market. It needs membership of the customs union as well and does not need the tariffs that we will get with a hard Brexit. I take Mr Findlay’s point but, in politics, some of us have to stand up now and again for things that we believe in. I believe in the European Union and wish that we were staying in it, not leaving it.

As the UK Government reshuffle continues, politics—but certainly not the country—observes Tory Brexiteer promotions and how that affects the balance of that most disunited of Governments. We are in the final nine months of the EU-UK negotiations. The Prime Minister has spent two days not on defining her Government’s position on our future but on a reshuffle that appears to be anything but a reshuffle. She could have had a two-day Cabinet meeting to thrash out an agreed position, but we can only conclude that that will never happen on Europe. The reshuffle could have heralded the back of Messrs Johnson, Davis and Fox. Why should they be replaced? Because,

with them, a Tory Cabinet can never unite on the most important aspect of the UK's future: the type of trading relationship that the Government envisages will govern our relationship with the EU.

In Florence last year, the Prime Minister sought to say that she wanted to build bridges with the EU—or, rather, to replace all the bridges that she had previously burned—and to forge a close working relationship like the one that we used to have before she set fire to all the bridges. Today, we learned that the Brexit secretary is appalled that EU planning is under way for the eventuality that negotiations fail. Who can blame Mr Barnier? The UK Government response is a David Davis letter helpfully leaked to the *Financial Times* saying that the impact of there being no deal could jeopardise existing contracts that British businesses have won and force such businesses to relocate to the continent.

What does Mr Davis expect? Or is this the start of an aggressive anti-EU public stance that has been simmering under the surface for the past 18 months? The hypocrisy of David Davis criticising the EU for planning for no deal takes a bit of believing on the day that the Prime Minister has considered appointing a specific minister in his department whose only job would be to plan for no deal. In the speeches that the Prime Minister has made on Brexit, she always cites the possibility of no deal.

Late last year, we found out that the UK Government had produced no assessment worth the paper it was redacted on of the sector by sector, industry by industry impact on the economy and businesses of the UK Government's approach. No wonder the UK Government does not know what its approach is. It does not want that objective assessment because it will fall so short of what Brexit campaigners promised voters that, in the House of Commons vote later this year, MPs might just muster the courage to say no.

The chancellor wants regulatory equidistance or, rather, the same EU rules to continue. Take pharmaceuticals. It now appears that Philip Hammond is not alone. Other UK ministers are worried not only by the loss of thousands of jobs as the European Medicines Agency moves from London to Amsterdam, but by the industry's open call for the UK to remain within that regulatory regime. Here is the rub for the Prime Minister: that will keep the UK under the indirect jurisdiction of the European Court of Justice, despite ending the court's role in the UK being a Theresa May red line. The agreement on citizens' rights also means a continuing role for the ECJ, despite all the protestations to the contrary.

Some other red lines are blurring too. Boris Johnson, speaking as the Foreign Secretary, said

Brussels could "go whistle" for any British money. However, we will now pay at least £40 billion for leaving the EU. So much for the £350 million per week that would go to the NHS—based on the accident and emergency figures for Scotland that were announced today, we could do with some of that.

The one certainty about article 50 is uncertainty. Last year, in this Parliament, article 50 author Lord Kerr of Kinlochard, said:

"I find it odd that we chose to trigger the procedure without having a clear idea of where we were going to go."—[*Official Report, Culture, Tourism, Europe and External Relations Committee*, 5 October 2017; c 2.]

Indeed. Lord Kerr went on to observe that the Prime Minister's Florence speech ruled out the Norwegian trade relationship model and a Canada-style deal. She refuses to say what will be the long-term permanent, relationship between the EU and the UK following Brexit. We are now offered another speech and another speech. Well, let us hear what that relationship will be.

Lord Kerr added:

"When David Davis says ... that we will enjoy the exact same benefits as we did when we were members of the single market and customs union,"

—that sounds a bit like Jeremy Corbyn, by the way—

"Michel Barnier is right to say that that is impossible".—[*Official Report, Culture, Tourism, Europe and External Relations Committee*, 5 October 2017; c 8.]

So, there we have it. The only objective conclusion is that the UK is heading later this year for no deal. I oppose that—but then, I oppose leaving the EU altogether. There will therefore be a test of the 650 members of Parliament in London. If MPs were to vote against such a deal before Christmas, we would remain a full EU member—that is a legal fact. There would be space to reassess. If the Government loses that vote, the Conservatives will fall. If the DUP support the Tories at that point, despite the impending crisis that would befall the Irish border, who knows what will happen?

In those circumstances it is inconceivable that the rest of the EU would insist that the UK should leave on 29 March 2019. Instead, in that classic and merciful way that predominates in grown-up politics in Europe, a way would be found to suspend article 50, which would be in the EU27's interests. At that point, the UK would have to ensure that the people of this country were given a choice.

16:16

Stuart McMillan (Greenock and Inverclyde (SNP): I concur with what the convener of the

committee, Joan McAlpine, said about everyone who has assisted the committee in its work thus far.

I thought that Jackson Carlaw's speech was useful and helpful in terms of the wider debate that has taken place in Parliament. Unfortunately, it contrasted with the tone of his colleague Rachael Hamilton's speech.

Conservative speakers have been quite consistent in their defence of their UK Government; I understand that their position is that they will defend that Government to the hilt, and they are certainly entitled to do so. However, leaving the EU is a serious business that will have serious effects on our economy and on everyone who lives here or who wants to live here and to make a contribution to Scotland and the rest of the UK.

As things stand, there is no take 2; we are leaving the EU. Whether we like it or not, we have to get the best possible outcome from talks. Our constituents deserve that.

Among all the ever-confusing information that is in the public domain, there are a few very important points. First, the guidelines that were agreed at last month's European Council meeting showed that the EU27 are looking for clarity from the UK on the end-state relationship that it wants with the European Union. I am sure that I am not alone in agreeing with the EU27 about that: I, too, would like clarity on the end state, because it will have a long-term effect on Scotland and my constituents. The end state will be what we have to live with, do business in and foster social relationships under for some time to come.

Nobody is asking that all the cards be placed on the table, which would clearly give the upper hand to the EU27 in further negotiations. However, we know what we are leaving but have absolutely no idea what the destination will be. That creates huge uncertainty and fosters a situation of fear and trepidation. As James Carville—Bill Clinton's election strategist—continually highlighted during the 1992 United States presidential election, "It's the economy, stupid". Joan McAlpine spoke in her speech about some of the financial elements that will be absolutely crucial going forward in that respect.

Another point is the situation in which Northern Ireland will find itself. It is clear that some type of special arrangement between Northern Ireland and the EU is being created, which I welcome, so there is no logical reason why Scotland should be prevented from having such an arrangement. Some people will say that we voted as the UK to leave the EU, so we have to get on with it. However, Scotland and Northern Ireland both voted to remain, with England and Wales voting to

leave. Why can one "remain" part of the UK have a special arrangement but the other—Scotland—cannot?

My second substantive point is about respecting the decisions that were made in phase 1. The paper that was commissioned by the Culture, Tourism, Europe and External Relations Committee and published by Dr Tobias Lock laid out in clear terms that the European Council has agreed that sufficient progress has been made to move on to the second phase of article 50 negotiations, and said that

"negotiations ... can only progress ... as long as all commitments undertaken during the first phase are respected in full and translated ... into legal terms".

That is important, because of the confusion from UK Ministers after phase 1 was agreed.

There is also the situation in respect of the end state. Dr Lock said that the UK's new relationship with the EU

"would have to be founded on one or more international agreements between the EU and the UK",

which can be signed only when the UK is no longer a member of the EU—in other words after 29 March 2019. The fact remains, however, that the UK Government needs to provide clarity about its long-term aims and ambitions for the UK. No deals can be signed until the UK is out of the EU. If the UK Government wants a positive relationship with the EU when it leaves—which would be in the best interests of both sides—it is crucial that clarity be brought in respect of that end state. We need to remember that the UK is leaving the EU: it has not been thrown out, so it is incumbent on the UK to show leadership and to give clarity on its ambitions for everyone who lives in the four UK nations.

My final point is about the European Union (Withdrawal) Bill. On 2 November 2017, the Secretary of State for Scotland attended the Culture, Tourism, Europe and External Relations Committee. In answering a question from Jackson Carlaw, he stated:

"We should all rally round and try to get the best possible deal. It is clear to me that all the other countries involved will be significantly pursuing their own interests. We need to pursue our own interests and we need to do it in as united and as cohesive a way as possible."—[*Official Report, Culture, Tourism, Europe and External Relations Committee*, 2 November 2017; c 11.]

The Minister for UK Negotiations on Scotland's Place in Europe, Michael Russell, had some discussion with Jackson Carlaw earlier. If we accept the secretary of state's comments and consider his reply to be valid, can any of the Conservative members in the chamber say why all 113 amendments to the bill that were laid by Scottish National Party MPs were rejected by the

UK Government? They included 38 amendments that had been jointly worked on by the Scottish and Welsh Governments.

I have looked at the amendments and accept that some of them were consequential, but some were amendments that would safeguard this Parliament's authority over devolved matters. Some would have prevented the UK Government from amending the Scotland Act 1998 and the Government of Wales Act 2006 without prior consent from the Scottish and Welsh ministers. Such amendments and others were rejected by the UK Government, which looks like a rolling back of the powers of the devolved institutions. That is despite the secretary of state's having said, later in the meeting that I mentioned, in response to a question from me:

"I hope that we can have a united and cohesive approach. That is in our best interests—for everyone in Scotland and the UK. The amendments to the withdrawal bill are part of that process."

He added:

"I believe that the Scottish Government is seeking a constructive role."—[*Official Report, Culture, Tourism, Europe and External Relations Committee*, 2 November 2017; c 22.]

If the UK Government genuinely accepts that the Scottish Government is being constructive, why did it reject every amendment that was laid by the SNP, including amendments that had been worked on jointly with the Welsh Assembly Government? Many of the amendments, which were to protect this Parliament's powers and responsibilities, were supported by SNP, Labour, Liberal Democrat and Green MPs.

Phase 1 of the article 50 process has been agreed, but has not yet achieved or delivered. Phase 2 will be much tougher. If it genuinely believes that the UK should have a unified position, the UK Government needs to step up to the plate, open its ears to others in these islands, accept that there are different aspects of economic and social life in all the parts of the UK and try and build consensus. A consensus of the Conservatives, the DUP and UKIP is not a consensus that I would be proud of or wish to support.

16:24

Jamie Greene (West Scotland) (Con): It has been a year and a half since the United Kingdom decided to leave the European Union. In that time, we have been faced with a number of obstacles. That was always going to be the case. Any major constitutional change of this scale has a unique set of challenges that will undoubtedly test a nation's resolve.

When the UK first joined the European Economic Community, as it was known then, the new-found trading benefits that saw our southern ports grow and which massively boosted their regions saw a reorientation in which cross-channel focused trade headed southwards, which equally took its toll on the northern regions of these islands.

Indeed, the European project itself did not come easy to member states: the experience of the 1970s tells us so. A centralised approach to the Europe-wide industrial sectors was not an apolitical exercise, because even then national Governments were reluctant to let go. In practice, at the time, many nations sought to preserve their industries, one against another, and although customs barriers were removed, the psychological barriers were not. In the midst of a recession, Governments then fought to hang on to their national privileges, subsidies and protectionist barriers.

Those differences of opinion over the economic ideology of the European Union remain today. There are on one side people who see it as a neoliberal panacea for building a bold and free multistate economy, and on the other side are people who prefer the road of wider socioeconomic redistribution and see the EU as a means with which to do that. It is not as simple as being in or out, so perhaps it is the "In or out of what?" question that caused more than a million Scots to mark a cross in the leave box. One EU member state is seeking to do what no other has done before—to leave and make it work.

I am pleased that the UK and the EU have made what is widely acknowledged and accepted as being sufficient progress on the first phase of talks. That progress will ensure that there is a distinct set of circumstances in Northern Ireland that will be respected by both sides. There has never been any desire to resort to a hard border between the north and the south, but anyone who has any real experience of the troubles will know that the matter is about much more than simple trade and customs borders. The deep and complicated historical difficulties merit a distinct solution, in my view, and to suggest otherwise is churlish and simplistic. As we start the second phase of negotiations, it is in everyone's interests to tackle those difficult issues one by one and to find a mutually acceptable solution.

When I look back at 2017, my view is that much of the debate was often wasted on partisan politics, which got in the way of finding any common ground in tackling the issues around our exit from the European Union. However, we are about to enter the second phase of talks, so my hope is that the tone of discourse becomes more practical and constructive. I disagree with Mike

Russell that it is a waste of Government, political or even civil service time. A profoundly important and difficult decision was made by the British people, and its delivery merits the attention of both Governments.

On a positive note, however, I believe that Conservatives have some common ground with the Scottish Government: I believe that there is a clear desire for a pragmatic deal on trade, which will be of benefit to all the UK. We both recognise the immense contribution that European migrants have made to Scotland, and to the rest of the UK, and we both want to build a constructive and positive relationship with Europe that goes beyond simply being trading partners or even historical political unions.

As someone who lived and worked in a number of European countries before I got into politics, my experiences of Europe are very personal, but my career shift has taught me that, as politicians, we are used to telling voters before elections that if they vote a certain way the outcome might be disastrous. As democrats, it is our duty to move on from campaign rhetoric, to accept the outcome of that vote and to do our best to make it work.

Could things have been pre-empted differently? In my view, yes—perhaps they could. Before the EU referendum took place, clearer plans could have been set out as to what should or could happen if a vote to leave was the result. Perhaps the result to leave came as a surprise to many people, and it will no doubt be among the contents of many future political autobiographies. I respect the fact that there are diametrically opposed views on Brexit even today. That said, whatever the outcome of the negotiations, we must work together to ensure that trade with Scotland's largest market—the UK domestic market—is not disrupted.

Now is not the time for petty point scoring. Today's debate, for the most part, reaffirms my faith—I hope not my naivety—that this Parliament will work constructively with the UK Parliament to deliver the best outcome that we can achieve as we enter this new era of politics in Europe.

Stuart McMillan: Will the member take an intervention?

Jamie Greene: I am just finishing.

The Deputy Presiding Officer (Christine Grahame): I call Stuart McMillan.

Stuart McMillan: I thank Jamie Greene for taking an intervention. Will he also accept that to have that—

Jamie Greene: Presiding Officer?

The Deputy Presiding Officer: I beg your pardon, Mr Greene. I have not got my glasses on

so I do not hear so well. Mr McMillan—I believe that Mr Greene had concluded his speech. However, if you want to take an intervention, Mr Greene, I can allow it.

Jamie Greene: If the member wants to make a salient point on my speech, I would be very happy to listen to it.

The Deputy Presiding Officer: Well, that is the test. Is the point salient? Let us find out.

Stuart McMillan: I thank Jamie Greene for taking my intervention. A moment ago, he spoke about the Scottish Parliament wanting to work with the UK Government, but surely the UK Government needs to work positively with this Parliament and with the Scottish Government at the same time.

The Deputy Presiding Officer: Mr Greene, was that salient enough for you?

Jamie Greene: It was very salient. I thank Stuart McMillan. In closing, I say that I agree with that. Mike Russell reflected that in his opening comments, in which he acknowledged the work that Damian Green had done in setting up the JMC, and expressed the hope and desire that the new minister will continue that. I have every faith that the JMC will continue to work with Governments in all parts of the United Kingdom as we move forward. I hope that all members and parties will approach those discussions constructively.

The Deputy Presiding Officer: I take it that you have now concluded.

Jamie Greene: I have.

The Deputy Presiding Officer: That is excellent. I call Ivan McKee, to be followed by Donald Cameron.

16:30

Ivan McKee (Glasgow Provan) (SNP): I thank Joan McAlpine and the Culture, Tourism, Europe and External Relations Committee for bringing Brexit back to the Parliament today.

It is important that we debate the issue in this Parliament as the Brexit shambles rumbles on to its next chapter. It is also important to remember the catalogue of chaotic events that led us to where we are today. A Prime Minister won an election that he did not expect to win, and as a consequence had to call a referendum that he did not expect to lose. When he lost the referendum he lost his job, and a new Prime Minister who had supported the remain vote got the job of delivering the decision to leave. She, in turn, called an election that she could not lose, but in which she managed to lose her majority. She now finds herself in hock to a party that is committed to

leaving, but that represents a part of the UK that voted to remain, and is four-square opposed to any borders in or around the island of Ireland, which is a circle that cannot be squared while meeting its requirement of a hard Brexit.

The latest episode is that of the leaked letter from David Davis. For the record, I must say that I am not surprised that the EU is surprised that the UK Government is surprised that the EU is preparing for an outcome that the UK Government has itself advanced, and continues to do so. Let us be clear that having no deal is the worst possible option, and the pretence—for political reasons—that it is anything else does nothing except to trash the last vestiges of credibility that the UK Government still has.

We have an official Opposition that has adopted Schrödinger's Brexit as its official policy position: that is, being both in and out at the same time—being in favour of having all the benefits of the single market without being in it, and being as close as possible to the single market without actually recognising that we need to be in it to get the benefit of it. However, going by his stumbling performance on the radio this morning, at least the Scottish branch office manager understands that being in the EU is not a requirement of single market membership, which is something that the UK Labour leader seems unable to grasp. To be fair, Labour's policy of creative ambiguity is one that may well get it through. By the time that anyone gets around to opening the box to see whether its Brexit position is alive or dead, it will be too late. So, on both sides there is lack of clarity and direction.

We heard from Joan McAlpine that the committee's work in investigating the article 50 withdrawal negotiations found that the control and influence that the EU has over the negotiation process are profound. The EU designed the framework in which the negotiations will take place, in regard to both the first phase—covering the Irish question, finance and EU citizens' rights—and the upcoming second phase. At every stage, the EU has been prepared and clear in its objectives, in contrast to the UK Government. The second phase can take place only if all measures agreed in the first phase are written in legal terms and translated into all member languages—a process that, as we heard, has hardly begun. That includes the UK guarantee of avoiding a hard border on the island of Ireland.

Negotiations must be finished by November 2018 to allow time for ratification in the European Parliament and the Parliaments of 27 member states, which is something in which this Parliament has no say and in which the UK Government tried to stop the Westminster Parliament having a say.

As has been made clear, there will be no final trade agreement before the UK leaves the EU.

Let us take stock of where the UK Government is at this stage: there is no clarity on objectives, no route through the mess of contradictory red lines and political needs and wants, and no skills to negotiate a deal, or even to understand what is possible in that regard. Even if all those were in place, there is no time to deliver on any of it. Where it will end up, time will tell, but, month by month, we move closer to an exit date that is now barely 15 months away. The transition that will follow, which is perhaps designed to kick the can down the road, will not delay the UK's exit from the EU. However, when we have no idea where we are going, buying time is perhaps the only logical option.

Meanwhile, the Brexit process consumes all the time, focus and resources of the UK Government to the extent that the Prime Minister cannot even manage a reshuffle without it descending into a chaotic parody. The Prime Minister is so weak that she invites ministers in for them to tell her what job they want to do, and not the other way round.

Let us face reality. There is no such thing as a good Brexit. Brexit will hurt Scotland's economy, cost Scotland jobs and growth, hurt our standard of living, place in great uncertainty the future of people from other EU countries who have made Scotland their home, and limit our freedom of movement to live and work in other EU countries—but at least we will have blue passports.

The committee's work has made clear the truth of what we suspected all along. The UK Government is stumbling through the process without direction or clarity. The episode will not end well. Our job in the Scottish Parliament is to stand up for the people of Scotland and to clearly state that, whatever the question is, a hard Brexit is not the answer, that the people of Scotland did not vote for Brexit, that they do not deserve to have the shambles that there is visited upon them, and that membership of the single market and the customs union is essential to the future of Scotland. That is what we should continue to argue for.

The Deputy Presiding Officer: I call Donald Cameron, who will be the last speaker in the open debate. Obviously, that means that we will move to closing speeches after he has spoken. You have been warned.

16:36

Donald Cameron (Highlands and Islands) (Con): I am very pleased to be able to take part in this Culture, Tourism, Europe and External Relations Committee debate. Members of other

committees—Mike Russell has noted them—have also spoken in the debate, not least members of the Finance and Constitution Committee, whose views are particularly pertinent, given their recent report on the European Union (Withdrawal) Bill, as reported in today's news. The Environment, Climate Change and Land Reform Committee, which is my committee, likewise has a significant interest in Brexit, given the raft of environmental legislation and policies that currently sits in Brussels.

In late November, the Environment, Climate Change and Land Reform Committee went to Brussels to meet EU officials and the missions of other countries, including those of Norway, Switzerland and Canada, to discuss various matters. Two immediate observations struck me on that visit. First, no one should underestimate the enormity and complexity of what we are trying to achieve by disentangling ourselves from the EU, not least in the face of the ideological purity with which the EU views its fundamental principles and the diversity of views that 27 member states inevitably possess. My second observation was that, notwithstanding all of that, the EU is a pragmatic beast that will endeavour to reach a practical outcome for both itself and the UK.

The second point was amply demonstrated by the accord that was reached between the Prime Minister and the EU President last month. As we all know, the UK and the EU concluded that sufficient progress had been made to advance to the second stage of negotiations. Agreements have already been reached on some of the most controversial questions—namely, on citizens' rights, the Irish border and the financial settlement. In short, the UK Government has likewise confronted, listened to and acted on many of the legitimate issues that MSPs have grappled with, and it has reached agreement with the EU about them.

The Prime Minister has always been acutely aware of the concerns that have been raised here and in Westminster regarding EU citizens' rights. Accordingly, a negotiated settlement with the EU has now been achieved to ensure the protection of the status of EU citizens post-Brexit.

Many people today and at other times have raised concerns about the Irish border. The Prime Minister has restated the principle that there should be no hard border between Northern Ireland and the Republic.

Those are a few examples, but I am confident that, when the Scottish Parliament and the Westminster Parliament raise proper and legitimate concerns in the future, the UK Government will listen and act when it comes to further negotiations.

What transpired in Brussels in December represents significant and substantial progress. From that, we can take heart that, likewise in the future, trade agreements that require to be negotiated will be resolved in due course. That may not be easy—in fact, it will certainly not be easy—and it will take time, but I am sure that a deal will be struck in the end.

I echo Jackson Carlaw's views on the European Union (Withdrawal) Bill. Clause 11 requires urgent and substantive change. It does not respect the devolution settlement, and it is no surprise that it has deeply troubled MSPs of all political stripes. I welcome that that has been recognised by the UK Government, and I know that it is committed to respecting the devolution settlement. We on these benches will continue to take a constructive and pragmatic approach to help the SNP and the UK Government to reach a solution.

Mairi Gougeon mentioned the role of the ECJ. Four years ago, I had a unique experience as an advocate when I appeared before the ECJ to act—somewhat surprisingly—for the Scottish Government. I lost, unfortunately.

Members: Oh!

Donald Cameron: The Lord Advocate was my senior, but I will not blame him. The serious point is that the vast number of cases that come to the court are between member states and the Commission and, often, large companies. There are relatively few cases involving individuals, but I take the member's points about the implications for those individuals who are affected, and she is absolutely right to say that the court has a role in family disputes.

A fundamental principle of EU law is that an individual can rely on their EU legal rights and seek redress in domestic courts. If the withdrawal bill achieves its aim of importing EU law into UK law, that will continue. Our courts routinely decide matters with reference to international law, where that is relevant. I believe that that will apply to ECJ jurisprudence, too.

Since I have been a member of this Parliament, we have taken part in a number of Brexit debates. We should not downplay its importance—it is a critical moment in our history that requires proper discourse—but every time the issue is discussed, it seems as though it is only the members on my benches who talk about the positive future for Scotland outside the EU and the opportunities that exist.

Stewart Stevenson: Will the member take an intervention?

Donald Cameron: I am sorry, but I do not have the time.

Before Mr Russell reaches for his playbook of character taunts about our being unalloyed optimists—will it be Pollyanna, Pangloss or Mr Micawber today, I wonder?—let me deal with that issue head on. I am an optimist but, more important, I am a realist. Without doubt, the most realistic outcome in this situation is a negotiated deal that will allow us to get on with delivering a Brexit that will benefit the people of Scotland.

The Deputy Presiding Officer: We have a little time in hand. I call Claire Baker to close for Labour. You have seven minutes, please.

16:42

Claire Baker (Mid Scotland and Fife) (Lab): I very much welcome today's debate and the work of the Culture, Tourism, Europe and External Relations Committee in taking forward its inquiry into the article 50 withdrawal process. I look forward to working closely with committee members in the coming year. I am sorry to disappoint some members in the chamber, but I will be joining the committee, not Neil Findlay, and taking part in its debates.

This afternoon's debate has been a serious, wide-ranging discussion. It takes place in an ever-evolving landscape, as the committee convener, Joan McAlpine, set out. The process of exiting the EU is, first, highly regrettable and, secondly, the most challenging set of circumstances that we have faced in many years, but we must do the best that we can in the interests of our constituents. The complexity is not to be underestimated, and I appreciate the work of members of this Parliament—whether committee members, Government ministers or party leaders—to try to achieve the best set of circumstances possible for Scotland and the UK.

There are many opportunities for disagreements, accusations, political posturing and misrepresentation, but I hope that that does not hinder our ability to work together in the best interests of jobs, our economy, our legal system—as highlighted by Mairi Gougeon—human rights, the environment and all the areas that the decision will affect.

It is imperative that, while the debates continue, we focus on ensuring that we play an active part in securing the best possible deal for our constituents, with the security of jobs and the economy at its heart.

I acknowledge the concerns about how Scotland's interests will be sufficiently protected. As Michael Russell said, Scotland must be involved and consulted. Although the UK Government is leading the negotiations, we depend on the work of this Parliament, the Scottish Government, the Secretary of State for

Scotland and the JMC to ensure that as many of the clear benefits of EU membership as possible continue within the reality of leaving the EU.

It is not surprising that the Finance and Constitution Committee has concluded today that the European Union (Withdrawal) Bill is incompatible with devolution, and it is imperative that the Secretary of State for Scotland brings forward changes to the disputed part of the bill, regardless of future promises.

I turn to the work of the committee. I do not underestimate the challenges that there are, and have been, in monitoring and scrutinising the article 50 withdrawal negotiations and their implications for Scotland. I hope that the new year will bring greater clarity to our understanding of the impact on specific sectors and the significant implications for our economy and jobs.

At the end of last year, GMB Scotland published a report that it commissioned from the Fraser of Allander institute, which made an important point. It said:

"Most independent analysis has concluded that Brexit will weaken the UK's (and Scotland's) growth prospects in the long-run. But the implications could look quite different for particular sectors and companies and much will depend upon how policymakers respond."

The process will require flexibility and, when necessary, a robust response from Government on supporting sectors that might need additional focus and others that might be able to exploit new opportunities, as Stewart Stevenson described. It is difficult to see beyond the challenges in the anticipated new tariffs and changes to the labour market but, as the Fraser of Allander report recognises, much will depend on the future policy responses of Government, and we must be prepared to respond positively. As part of the solution, the Scottish Trades Union Congress is calling for investment plans that are determined by employers and unions to be established for sectors that are most likely to be affected.

Persistent criticisms of the withdrawal process include the lack of clarity over negotiations, the limited ability of Parliament to scrutinise the decisions that are being made and whether those decisions are in the interests of the country, along with the lack of preparation by the UK Government for the impact of withdrawal. Those criticisms are all valid.

At the end of 2017, the talks between the UK Government and the European Union finally moved forward with the conclusion of phase 1. As outlined by Ross Greer, some issues of concern were addressed, especially with the guarantees to secure the rights of EU citizens in Scotland along with the rights of Scots living abroad. We know the value of EU migrants to our country, whose

contribution is not just the £4.4 billion that they make towards our gross domestic product but their contribution to our way of life and our society.

Although those guarantees are welcome for those whom they cover, there are still concerns about the skills shortages that Scotland could face in the future. There are an estimated 115,000 EU nationals in employment in Scotland, which represents 4 per cent of the Scottish workforce. Farmers have warned of produce rotting in fields because of a lack of people to harvest it. We have many skilled EU nationals working in our health and social care sectors and, with an ageing population, the demand will only grow. Therefore, we must ensure that we have an immigration system that works for our economy, as Pauline McNeill argued earlier in the debate. Previously, I was on the cross-party working group that looked at post-study work visas, building on Jack McConnell's fresh talent initiative. We need to ensure that we can find workable solutions and a new immigration policy that accommodates the needs of our economy.

As soon as one hurdle is cleared in the negotiations, we quickly approach another. Dr Tobias Lock's recent briefing paper for the committee outlines the complexity of the negotiations and the decision-making process and highlights the tension between the political and the legal processes. While politicians are occupied with the political debate, we can often forget that a tightly bound legal process governs what might be politically achievable.

We must work to retain the benefits of the single market in a way that supports our economy. We must look for a transitional period to be put in place that ensures that the jobs of those working in the Scottish economy are protected in any outcome. To crash out of the EU without such a deal would be disastrous and would risk causing the most harm to the most vulnerable in society.

The committee has heard about the impact of Brexit uncertainty. Trade unions report that Brexit is being used to justify low pay offers in the private sector. The STUC has raised concerns about Brexit leading to increased austerity and has emphasised that pressure must be put on the UK Government to maintain and improve workers' rights, health and safety provisions and wider social protections post-Brexit. Evidence shows the importance of retaining the Human Rights Act 1998 and of remaining a signatory to the European convention on human rights.

Today's debate is a staging post in the work of the committee. I have welcomed the opportunity to reflect on its progress so far and on the challenges ahead.

The Deputy Presiding Officer: I call Adam Tomkins to close for the Conservatives. You have seven minutes, please, Mr Tomkins.

16:49

Adam Tomkins (Glasgow) (Con): Thank you, Deputy Presiding Officer. I would like to start by thanking Joan McAlpine and the Culture, Tourism, Europe and External Relations Committee for bringing this debate to the Parliament this afternoon. I think that it has been a useful start to the year's proceedings.

In the same spirit in which I think Joan McAlpine gave her speech and that we heard from Michael Russell, Neil Findlay and Jackson Carlaw, I would like to be positive—or at least to start positively—and say that we start 2018 in a much better position than we started 2017 when it comes to Brexit, debating Brexit and thinking about Brexit.

At this time last year, there had been no progress at all, even on phase 1. Now, as we have heard, phase 1 has been completed satisfactorily. At this time last year, the SNP was talking only about a differentiated deal for different parts of the United Kingdom, which, in my judgment and the judgment of a lot of members, would have been disastrous for Scotland and indeed for the whole of the UK. At this time last year, the UK Government had not even begun to set out what its negotiating position would be, and we now have a very clear set of negotiating positions from the UK Government that were set out amply by the Prime Minister both in her Lancaster House speech in January last year and again in Florence in September. There is much to be positive about.

On phase 1, we have not merely a conclusion but a conclusion that I think we should welcome, particularly with regard to the statements around Northern Ireland. It is incredibly important that there is full regulatory alignment between Northern Ireland and the Republic of Ireland, so that the north-south elements of the peace process can continue.

It follows from that that that is incredibly important that there is close regulatory alignment between Ireland—and therefore the whole of the EU—and the whole of the UK. Just as at this time last year we were opposing the SNP's proposals for a differentiated deal for Scotland, so too would we oppose any proposals for a differentiated deal for Northern Ireland. What goes for Northern Ireland must go for Great Britain too—it must go for the whole of the United Kingdom. If that means that there needs to be close regulatory alignment post-Brexit between the United Kingdom—all of it—and the European Union, then that, in my judgment, is all to the good.

Joan McAlpine: Surely the implication of what the member is saying is that we in the UK should therefore continue to recognise the rulings of the European Court of Justice.

Adam Tomkins: I am going to come to the European Court of Justice in a few moments, because I want to respond to a number of remarks that were made by Mairi Gougeon in what I thought was a really important contribution to this afternoon's debate, although Donald Cameron stole some of my thunder, which is why I rudely intervened on him.

We have also, I think, seen a much more constructive approach between the Scottish Government and the United Kingdom Government in the last three or four months than we did in the first half of 2017. For my part, I warmly welcome that.

In a few days' time, we will debate formally in this Parliament the Finance and Constitution Committee report that was published today on the European Union (Withdrawal) Bill. I am the deputy convener of that committee, so in that debate I will have to play a role as deputy convener. Let me take that hat off for a moment and just speak as a Scottish Conservative member of this Parliament about the withdrawal bill.

I am deeply frustrated and disappointed that the United Kingdom Government has not yet brought forward the amendments that it knows it needs to make, particularly—but not only—to clause 11 of the withdrawal bill, in order to obtain this Parliament's consent. It is imperative that the legislation is passed by Westminster in order to secure a smooth Brexit and it is imperative that the legislation is passed by Westminster with this Parliament's consent.

Both the Scottish Government and the United Kingdom Government want that and it does not have to be difficult. We have been talking, publicly and privately, about a series of solutions to the clause 11 problems for months. A solution around common frameworks and respect for the devolution settlement is on the table and it is not beyond the wit of either Government to ensure that that solution is accelerated and brought forward sooner rather than later. We had hoped and, indeed, been led to expect that the problem would have been fixed by report stage in the House of Commons. It is frustrating that it is being kicked into the House of Lords.

However, I remain optimistic—I said that I was going to start out positive and I am still going to be positive. I remain optimistic that a solution to the problem will be found and, indeed, I think that—to all intents and purposes—the solution has already been found. I certainly pledge myself and, on behalf of everybody on the Scottish Conservative

benches, I pledge my party to continue to work with the Scottish Government, Scottish Government ministers and the United Kingdom Government to ensure that we get that solution sooner rather than later.

I want to turn to some of the points that have been made during the debate, particularly those that Mairi Gougeon made in her really interesting and, in some respects, excellent speech about the European Court of Justice. The ECJ will continue to play a role in UK law in all the jurisdictions of the UK after Brexit in the manner that Donald Cameron described, but the ECJ is also part of the problem—it is partly why so many people in the UK voted to leave the EU.

For 50 years, the European Court of Justice has not enforced the rule of European law; it has enforced what it wants European law to become. I was a remainer—I still am; I voted to remain in the EU and, if I could vote again, I would still vote to remain in the EU, but I would vote to do so despite and not because of the ECJ.

Mairi Gougeon: Will Mr Tomkins take an intervention?

Adam Tomkins: I am afraid that I do not have time.

Time after time, in all sorts of fields—from citizenship to the free movement of goods to competition law—the European Court of Justice has deliberately gone out of its way to bend the rules of European law so that they do not say what the nation states of the EU said that they should say in the treaties. If the ECJ had not done that, we might not be in quite the predicament that we are in at the moment. That is the only negative point that I want to make.

I want to end on a positive and to endorse the view that a number of members from across the chamber—including, in particular, Donald Cameron and Jackson Carlaw—have expressed: we must be pragmatic as we move forward. We must mitigate the risks of Brexit and we must not be naive or complacent about what those risks are, but there are also opportunities to seize. An issue that we have not yet heard enough about in this Parliament is what kind of fisheries policy we want to pursue for Scotland post-Brexit. One way or another—regardless of whether it is subject to a common framework—that will be our choice. Another issue that we have not heard enough about is what kind of agricultural regime we want to pursue for Scotland—what kind of agricultural subsidies do we want for our farms and crofts? Those are questions that we have not had to think about for the past 50 years because they have been thought about for us by the EU.

As well as mitigating the risks, we must seize the opportunities that exist. If we can do that

constructively together, across the political divide, we will get the Brexit that we all deserve.

16:57

Michael Russell: I agree with Adam Tomkins, who was keen to make a positive contribution. So am I; therefore I will get my negativity out of the way immediately. I recommend that Rachael Hamilton give up on her absolute obsession with the union. She is a woman who is utterly obsessed by the union and cannot make a speech without the union being absolutely at the centre of it. I commend to her that she give up that approach in 2018 and try to widen her horizons, which are terribly narrow.

I now come to the positive part of my speech. It has been a better debate. Adam Tomkins was right to say that the debate has been much better than the one that we were having 12 months ago. However, I will make absolutely clear the Scottish Government's position on differentiation, because it is not precisely as Adam Tomkins described it. Our position is that membership of the single market and membership of the customs union are essential for the future of Scotland. It would be preferable for every part of the UK to be in the single market and the customs union, and I take the point that Mr Tomkins made about regulatory alignment across the UK. That issue is being presented in an interesting but difficult way. I will come back to that point in a moment, because it relates to an issue that arises from what Mairi Gougeon and Donald Cameron said about the law, which revealed an interesting divergence of view between the political culture in the UK and the political culture in Europe.

However, if regulatory alignment is not possible—if it is not delivered by the Prime Minister—differentiation will be essential, as a minimum. I do not want there to be any misunderstanding about that. We cannot envisage circumstances in which Scotland would be separated from the single market and the customs union in the way that is being talked about. That would be disastrous.

Jackson Carlaw, Donald Cameron and Adam Tomkins made generous speeches on the issue of clause 11. I hope that the debate has been a better tonic to Jackson Carlaw than any migraine tablet. Its high standard will undoubtedly have resulted in his forgetting the pain that he is suffering. His statement that clause 11 is "not acceptable" to the Scottish Conservatives, Donald Cameron's point that change to clause 11 is "urgent" and Adam Tomkins's honest view that clause 11 must be changed and his disappointment that it has not yet been changed are very helpful. I just hope that they are being listened to.

The necessity here is action, and we must see action. A clause must be negotiated—it cannot be imposed—and we stand ready to negotiate. If that does not happen—I repeat what I said in my opening speech—we will move to a continuity bill. I am happy to discuss that at a future date; indeed, it is referred to in the Finance and Constitution Committee's report.

We will have to see what transpires over the next few weeks, but the clock is ticking. I see this afternoon that the Scotland Office does not believe that an amendment to clause 11 can be rushed. My definition of "rushed" does not mean six months after the publication of the bill. I think that the timescale has been more than adequate. Indeed, there was a perfectly good amendment on the table that was drafted by us and the Welsh Government. There are only a few more weeks when the bill will be in either the House of Commons or the House of Lords, so some urgency needs to be applied. I look to David Lidington, in particular, to bring that urgency.

Let me comment on Neil Findlay's speech. I agree substantially with what he said—which is something that I never thought I would hear myself say in the chamber. Clearly, life is going to change from now on, either for Mr Findlay or me or for both of us. I disagree with one or two things that he said, but I am not going to labour those at the moment. The issue of the single market and the customs union might come between us, and I cannot understand why there should be freedom of movement for capital but not for workers—we will have to address that issue. However, Mr Findlay highlighted the central dilemma of the difference between the political systems that exist in the UK and in the EU. David Allen Green, the legal commentator, drew attention to that some time ago, and I have thought about it a great deal since I read his first comments.

The issue is that, in Europe, there is a political discussion, then a legal solution and the law is then applied. That is particularly true in the negotiations, where a very legalistic approach is taken. However, the UK political system is based on politics continuing, with political fudges and ways in which we try to get the best out of a circumstance and never tie anything down completely. The problem is that those two approaches are incompatible. At the end of the day, when we write down the agreement, it must be legal; we cannot fudge the agreement. That is undoubtedly what we are going to see in the Northern Irish situation, because we cannot fudge the agreement about what is inside a lorry when it crosses the border—that must be absolutely clear.

As time goes on, we will find innumerable issues that will have to be resolved with legal clarity, which is why Mairi Gougeon's speech was

important. Like Adam Tomkins, I commend her speech. However, I do not agree fully with the interpretation of the problems in the ECJ that was presented by Adam Tomkins. An honest assessment of the ECJ would bring him to an interesting conclusion. The argument is always that the ECJ is against the UK and that it judges all the time against the UK. I am not saying that that is Adam Tomkins's argument, but it was a leave argument that the ECJ was prejudiced against the UK and that the UK always lost cases. In fact, although the UK lost about 75 per cent of the cases brought against it by the EU, France lost 90 per cent of its cases. The reason for that is that the EU brings cases when it thinks that it is going to win, not when it thinks that it is going to lose. In fact, the UK brings cases and wins them. For example, it has won cases against France on agriculture issues and has won cases that the City of London has gained advantage from because the rest of Europe has been found to be out of step.

The tabloid view of the ECJ and its horrors was rightly worked against in the evidence that David Edward and others gave to the Culture, Tourism, Europe and External Relations Committee. Mairi Gougeon was absolutely right to draw attention to that in the debate, because, despite Donald Cameron's optimism about the way in which things will operate, the people who will suffer from the UK's withdrawal from the ECJ are individuals who require the Brussels convention on family law in order to live their lives. They will find it harder to rely on those European systems.

There have been one or two other exciting and memorable events in the debate but none, as Tavish Scott pointed out, as monumental as Stewart Stevenson getting something wrong. It was an epoch-making moment that Tavish Scott drew attention to in his speech, but Stewart Stevenson missed it because he was not in the chamber. I therefore have pleasure in repeating it. I commend Neil Munro and the Para Handy stories to Stewart Stevenson, although I am sure that he has them by memory. Indeed, Neil Munro was probably his great-uncle. [*Laughter.*] There is one story about the fact that the two new years are kept at Cairndhu, and two new years are also kept at Burghead. That is where I think the confusion has arisen, because that is also a fire festival. However, the old new year is not part of Up Helly Aa; it was perhaps a ceremony that arose from the Christmas celebrations, but it is not a new year celebration. I think that we will all remember this afternoon for the error by Stewart Stevenson, though Mr Findlay has another reason to intervene.

Neil Findlay: I wonder whether members agree with me that, now that Mr Stevenson has got something wrong, the cabinet secretary is left as

the only member of this Parliament who has never got anything wrong. [*Laughter.*]

The Deputy Presiding Officer: Mr Russell, you must conclude.

Michael Russell: I am sorry to be negative, but Mr Findlay contradicts himself. There was a time when, according to Mr Findlay, I could get nothing right. In all these circumstances, I think that Mr Findlay has, unfortunately, shot himself in the foot.

It has been a more positive and more memorable debate. Ivan McKee's description of the process as having previously been in an episode of a soap opera was a wonderful contribution. However, at the heart of it, the dilemma that we are going to face during the year is this: we face a very hard process. I do not believe that there are good things to be had from it—I must be honest about that—and the Scottish Parliament is going to have to work together on it. The debate has perhaps been a slightly encouraging start, but there is a long way to go.

The Deputy Presiding Officer: I call Lewis Macdonald to close for the Culture, Tourism, Europe and External Relations Committee.

17:05

Lewis Macdonald (North East Scotland) (Lab): Today's debate has reflected the many different ways in which the economy, the institutions and the cultural life of Scotland and the United Kingdom are intertwined with those of our nearest neighbours and with the European Union itself. The work of the Culture, Tourism, Europe and External Relations Committee over the past 18 months has shown that the Brexit process and the creation of a whole new set of relationships outwith the EU will be complex and difficult and will throw up unintended and unexpected consequences.

That is confirmed, too, by the report that Dr Tobias Lock prepared for the committee on the processes for agreeing a transition, negotiating a future relationship and reaching a final agreement. As well as being huge undertakings in themselves, those processes risk drawing attention and resources away from the many other challenges that Governments and Parliaments face every day.

Michael Russell: It was remiss of me not to pay tribute to the member for his contribution while he was a spokesperson on Brexit for the Labour Party, when I worked with him, as well as for the contribution that he is now making in the committee. I wanted to put that on the record.

Lewis Macdonald: It is very kind of Mr Russell to do so, and I thank my fellow committee members who have made such comments in the

course of today's debate. In case I do not have time at the end of my speech—given your attention to such matters, Presiding Officer—I also thank Joan McAlpine, the convener, and all the members of the committee for the hard work that they have done, especially given the work that I know lies ahead.

Joan McAlpine: I, too, congratulate the member on his contribution to the committee and, indeed, the forensic approach that he has taken to all our inquiries, which has made such a difference to some of the reports that we have produced.

The Deputy Presiding Officer: Can that be the last bit of the love-in, please? Thank you.

Lewis Macdonald: This is in clear danger of turning into an even more consensual contribution than deputy conveners of committees are wont to make, but I very much thank the convener for those comments.

In the work that the committee has done over the period, we have discovered layer upon layer of complexity in the Brexit process. For example, in September, we went to Brussels to discuss with Michel Barnier the question of transitional arrangements, and we discovered at that time that, although he was ready to talk about transition, the United Kingdom Government had not yet asked him to do so and no formal request for such transition had been made. However, we have now reached that point. There will be a negotiation on transition and the transition will run from March 2019 to the end of the current multiannual financial framework period, which the UK is now fully committed to funding, and therefore to the end of December 2020.

As Mr Barnier told us in September, that means that, in a transitional period—an implementation period, if you will—the United Kingdom will continue to be subject to EU law and all regulatory, budgetary, supervisory, judiciary and enforcement instruments and structures will continue to apply, as will the jurisdiction of the European Court of Justice, the rules of the single market and the customs union and the freedom of movement of people, goods, capital and services. Britain, in other words, will continue to have the obligations of a member state without the powers of one.

As Lord Kerr of Kinlochard told the committee, a transition offers a stay of execution in that the rules of engagement for British businesses in Europe will continue over the next three years instead of only the next 15 months, but it is too soon to know whether that deferral will help to mitigate the impact of Brexit on the British economy. It is too soon to know that because transition will be useful only once we know what it

is that we are going to transition to. The committee has pursued that issue.

Just before Christmas, the UK Government discussed what kind of relationship it wants to see between Britain and Europe. However, it has not yet spelled out its potential desired outcome. The reports that emerged spoke of “aiming high” for “a bespoke agreement”, but they did not say what that agreement would look like. Working to achieve a bespoke agreement surely has to start with a clear view of the intended outcome, which we do not yet have—at least not in the kind of detail that would allow an international treaty to be negotiated and agreed.

Like others elsewhere, the committee also pursued the question of what detailed sectoral analysis had been done of the impact of Brexit. As others have been, we were forced to conclude that no such analysis exists. It is difficult to understand how anyone can aspire to design a bespoke agreement without knowing the desired outcome. As Tobias Lock highlights in his report, a new treaty will need all member states to ratify it in line with their own constitutional arrangements—and the agreement with Canada last year showed just what a tortuous process that can be.

We have a duty to seek to understand the positions that are taken by both parties and what they might mean, and that goes to the heart of the debate. As things stand, the UK Government's red lines rule out freedom of movement, the jurisdiction of the ECJ and substantial financial contributions to the EU while ruling in regulatory divergence and an independent trade policy. As Michel Barnier told the European Council last month, those red lines mean that the UK cannot have a trade relationship on the model of the EEA, the Swiss bilateral agreements, the association agreement between the EU and Ukraine or the customs union between the EU and Turkey. If that is the case, a bespoke deal must surely mean something more like the third-party trade agreements that have been reached with countries such as Canada and South Korea, which have much less access than we enjoy today, particularly where services are concerned.

As Michel Barnier emphasised to us in September, the balance between rights and obligations means that Britain cannot have the same access to the single market as Norway but only the obligations of Canada. It will be for the committee this year and next year to establish just what UK ministers are seeking to achieve and what they think a bespoke agreement actually means.

It is also important to make the point that, if the single market is indivisible, there cannot be one set of rules governing access to the single market and the customs union for Great Britain and

another set of rules for Northern Ireland. The convener has quoted the UK Government's commitment at the end of phase 1 to protect the Good Friday agreement and to see no return to a hard border, with

"full alignment with those rules of the Internal Market and the Customs Union which, now or in the future, support North-South cooperation, the all-island economy and the protection of the 1998 Agreement."

If Northern Ireland is to be fully aligned with all or most of the rules of the single market and the customs union, the rest of the United Kingdom must also be. Adam Tomkins's closing remarks on those matters were in line with much of the evidence that the committee has heard recently. The choices that need to be made are the reason why clarity about the objective that is being pursued by the UK Government matters so much, and it will continue to be of critical importance to the work of the committee and the Parliament as a whole.

On the one hand, there are the red lines, which imply that Britain will diverge from European standards, leave the customs union and seek separate trade agreements with third countries. On the other hand, commitments given on Ireland can be delivered only by continued alignment with single market regulation across a wide range of areas, continued access for Irish citizens in the UK to European justice and free movement across the Irish border and the Irish Sea. That is the choice that the United Kingdom will have to make this year. Either we seek a future aligned with Europe, protecting access to the single market and maintaining existing rights and obligations, or we set out in a quite different direction.

The Scottish Parliament must continue to scrutinise the actions of UK and Scottish ministers in dealing with those matters and must seek to ensure that the right choices are made in the months ahead.

At the conclusion of the debate, I will step down as the deputy convener of the committee. With your indulgence, Presiding Officer, I therefore thank Dr Katy Orr and the clerking team as well as all those who have supported the committee's work. I also thank my fellow committee members. A good job has been done so far in difficult circumstances, but there is clearly still a big job to be done.

Scottish Parliamentary Corporate Body

17:15

The Presiding Officer (Ken Macintosh): The next item of business is the election of a member for appointment to the Scottish Parliamentary Corporate Body. A vacancy has arisen following the resignation of David Stewart. I thank him for his invaluable contribution to the work of the SPCB over many years. [*Applause.*]

I have received one valid nomination for appointment. The nomination is Kezia Dugdale.

The question is, that Kezia Dugdale be elected for appointment to the Scottish Parliamentary Corporate Body. Members should press yes, no or abstain.

For

Adam, George (Paisley) (SNP)
 Adamson, Clare (Motherwell and Wishaw) (SNP)
 Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
 Arthur, Tom (Renfrewshire South) (SNP)
 Baillie, Jackie (Dumbarton) (Lab)
 Baker, Claire (Mid Scotland and Fife) (Lab)
 Balfour, Jeremy (Lothian) (Con)
 Ballantyne, Michelle (South Scotland) (Con)
 Beamish, Claudia (South Scotland) (Lab)
 Beattie, Colin (Midlothian North and Musselburgh) (SNP)
 Bibby, Neil (West Scotland) (Lab)
 Bowman, Bill (North East Scotland) (Con)
 Briggs, Miles (Lothian) (Con)
 Cameron, Donald (Highlands and Islands) (Con)
 Campbell, Aileen (Clydesdale) (SNP)
 Carlaw, Jackson (Eastwood) (Con)
 Carson, Finlay (Galloway and West Dumfries) (Con)
 Chapman, Peter (North East Scotland) (Con)
 Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
 Cole-Hamilton, Alex (Edinburgh Western) (LD)
 Constance, Angela (Almond Valley) (SNP)
 Corry, Maurice (West Scotland) (Con)
 Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
 Denham, Ash (Edinburgh Eastern) (SNP)
 Dey, Graeme (Angus South) (SNP)
 Doris, Bob (Glasgow Maryhill and Springburn) (SNP)
 Dornan, James (Glasgow Cathcart) (SNP)
 Dugdale, Kezia (Lothian) (Lab)
 Ewing, Annabelle (Cowdenbeath) (SNP)
 Ewing, Fergus (Inverness and Nairn) (SNP)
 Fee, Mary (West Scotland) (Lab)
 Findlay, Neil (Lothian) (Lab)
 Finnie, John (Highlands and Islands) (Green)
 FitzPatrick, Joe (Dundee City West) (SNP)
 Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Freeman, Jeane (Carrick, Cumnock and Doon Valley) (SNP)
 Gibson, Kenneth (Cunninghame North) (SNP)
 Gilruth, Jenny (Mid Fife and Glenrothes) (SNP)
 Golden, Maurice (West Scotland) (Con)
 Gougeon, Mairi (Angus North and Mearns) (SNP)
 Gray, Iain (East Lothian) (Lab)
 Greene, Jamie (West Scotland) (Con)
 Greer, Ross (West Scotland) (Green)

Griffin, Mark (Central Scotland) (Lab)
 Halcro Johnston, Jamie (Highlands and Islands) (Con)
 Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)
 Harper, Emma (South Scotland) (SNP)
 Harvie, Patrick (Glasgow) (Green)
 Haughey, Clare (Rutherglen) (SNP)
 Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
 Hyslop, Fiona (Linlithgow) (SNP)
 Johnson, Daniel (Edinburgh Southern) (Lab)
 Kelly, James (Glasgow) (Lab)
 Kerr, Liam (North East Scotland) (Con)
 Kidd, Bill (Glasgow Anniesland) (SNP)
 Lennon, Monica (Central Scotland) (Lab)
 Leonard, Richard (Central Scotland) (Lab)
 Lindhurst, Gordon (Lothian) (Con)
 Lockhart, Dean (Mid Scotland and Fife) (Con)
 Lyle, Richard (Uddingston and Bellshill) (SNP)
 MacDonald, Angus (Falkirk East) (SNP)
 MacDonald, Gordon (Edinburgh Pentlands) (SNP)
 Macdonald, Lewis (North East Scotland) (Lab)
 MacGregor, Fulton (Coatbridge and Chryston) (SNP)
 Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
 Maguire, Ruth (Cunninghame South) (SNP)
 Martin, Gillian (Aberdeenshire East) (SNP)
 Mason, John (Glasgow Shettleston) (SNP)
 Mason, Tom (North East Scotland) (Con)
 Matheson, Michael (Falkirk West) (SNP)
 McAlpine, Joan (South Scotland) (SNP)
 McKee, Ivan (Glasgow Provan) (SNP)
 McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
 McMillan, Stuart (Greenock and Inverclyde) (SNP)
 McNeill, Pauline (Glasgow) (Lab)
 Mitchell, Margaret (Central Scotland) (Con)
 Mountain, Edward (Highlands and Islands) (Con)
 Mundell, Oliver (Dumfriesshire) (Con)
 Neil, Alex (Airdrie and Shotts) (SNP)
 Ross, Gail (Caithness, Sutherland and Ross) (SNP)
 Rumbles, Mike (North East Scotland) (LD)
 Ruskell, Mark (Mid Scotland and Fife) (Green)
 Russell, Michael (Argyll and Bute) (SNP)
 Sarwar, Anas (Glasgow) (Lab)
 Scott, John (Ayr) (Con)
 Scott, Tavish (Shetland Islands) (LD)
 Simpson, Graham (Central Scotland) (Con)
 Smith, Elaine (Central Scotland) (Lab)
 Smith, Liz (Mid Scotland and Fife) (Con)
 Smyth, Colin (South Scotland) (Lab)
 Somerville, Shirley-Anne (Dunfermline) (SNP)
 Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
 Stewart, Alexander (Mid Scotland and Fife) (Con)
 Stewart, David (Highlands and Islands) (Lab)
 Stewart, Kevin (Aberdeen Central) (SNP)
 Todd, Maree (Highlands and Islands) (SNP)
 Tomkins, Adam (Glasgow) (Con)
 Torrance, David (Kirkcaldy) (SNP)
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
 Wells, Annie (Glasgow) (Con)
 Wheelhouse, Paul (South Scotland) (SNP)
 White, Sandra (Glasgow Kelvin) (SNP)
 Whittle, Brian (South Scotland) (Con)
 Wightman, Andy (Lothian) (Green)
 Yousaf, Humza (Glasgow Pollok) (SNP)

Abstentions

Fabiani, Linda (East Kilbride) (SNP)
 Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
 Mackay, Rona (Strathkelvin and Bearsden) (SNP)

The Presiding Officer: The result of the vote on the appointment of Kezia Dugdale to the Scottish Parliamentary Corporate Body is: For 106, Against 0, Abstentions 3.

As a majority of members have voted in favour, Kezia Dugdale is duly selected for appointment to the SPCB. I congratulate her on her appointment. [Applause.]

Parliamentary Bureau Motions

17:16

The Presiding Officer (Ken Macintosh): The next item of business is consideration of motion S5M-09805, in the name of Joe FitzPatrick, on behalf of the Parliamentary Bureau, on committee membership, and motion S5M-09806, in the name of Joe FitzPatrick, on behalf of the Parliamentary Bureau, on substitution on committees.

Motions moved,

That the Parliament agrees that—

Claire Baker be appointed to replace Lewis Macdonald as a member of the Culture, Tourism, Europe and External Relations Committee;

Neil Findlay be appointed to replace Monica Lennon as a member of the Delegated Powers and Law Reform Committee;

Kezia Dugdale be appointed to replace Daniel Johnson as a member of the Economy, Jobs and Fair Work Committee;

Mary Fee be appointed to replace Daniel Johnson as a member of the Education and Skills Committee;

Lewis Macdonald be appointed to replace Neil Findlay as a member of the Health and Sport Committee;

David Stewart be appointed to replace Colin Smyth as a member of the Health and Sport Committee;

Daniel Johnson be appointed to replace Mary Fee as a member of the Justice Committee;

Monica Lennon be appointed to replace Elaine Smith as a member of the Local Government and Communities Committee;

Colin Smyth be appointed to replace Rhoda Grant as a member of the Rural Economy and Connectivity Committee; and

Elaine Smith be appointed to replace Claire Baker as a member of the Standards, Procedures and Public Appointments Committee.

That the Parliament agrees that—

Neil Findlay be appointed to replace Daniel Johnson as the Scottish Labour Party substitute on the Culture, Tourism, Europe and External Relations Committee;

Alex Rowley be appointed to replace Pauline McNeill as the Scottish Labour Party substitute on the Delegated Powers and Law Reform Committee;

Pauline McNeill be appointed to replace Mark Griffin as the Scottish Labour Party substitute on the Economy, Jobs and Fair Work Committee;

Kezia Dugdale be appointed to replace Iain Gray as the Scottish Labour Party substitute on the Education and Skills Committee;

Rhoda Grant be appointed to replace Jenny Marra as the Scottish Labour Party substitute on the Equalities and Human Rights Committee;

Elaine Smith be appointed to replace Kezia Dugdale as the Scottish Labour Party substitute on the Finance and Constitution Committee;

Mary Fee be appointed to replace Claire Baker as the Scottish Labour Party substitute on the Justice Committee;

David Stewart be appointed to replace James Kelly as the Scottish Labour Party substitute on the Public Audit and Post-legislative Scrutiny Committee;

Alex Rowley be appointed to replace Mary Fee as the Scottish Labour Party substitute on the Public Petitions Committee;

Monica Lennon be appointed to replace Richard Leonard as the Scottish Labour Party substitute on the Social Security Committee; and

Rhoda Grant be appointed to replace David Stewart as the Scottish Labour Party substitute on the Standards, Procedures and Public Appointments Committee.—[*Joe FitzPatrick*].

Decision Time

17:17

The Presiding Officer (Ken Macintosh): There are three questions to be put as a result of today's business. The first question is, that motion S5M-09732, in the name of Joan McAlpine, on the Culture, Tourism, Europe and External Relations Committee's inquiry into the article 50 withdrawal process, be agreed to.

Motion agreed to,

That the Parliament recognises the evidence gathered to date by the Culture, Tourism, Europe and External Relations Committee on the first phase of the Article 50 withdrawal negotiations, and notes the European Council Guidelines agreed on 15 December 2017 that set out the position of the other 27 Member States of the European Union in relation to the second phase of the negotiations, which will be related to transition and the framework for the future relationship.

The Presiding Officer: The next question is, that motion S5M-09805, in the name of Joe FitzPatrick, on committee membership, be agreed to.

Motion agreed to,

That the Parliament agrees that—

Claire Baker be appointed to replace Lewis Macdonald as a member of the Culture, Tourism, Europe and External Relations Committee;

Neil Findlay be appointed to replace Monica Lennon as a member of the Delegated Powers and Law Reform Committee;

Kezia Dugdale be appointed to replace Daniel Johnson as a member of the Economy, Jobs and Fair Work Committee;

Mary Fee be appointed to replace Daniel Johnson as a member of the Education and Skills Committee;

Lewis Macdonald be appointed to replace Neil Findlay as a member of the Health and Sport Committee;

David Stewart be appointed to replace Colin Smyth as a member of the Health and Sport Committee;

Daniel Johnson be appointed to replace Mary Fee as a member of the Justice Committee;

Monica Lennon be appointed to replace Elaine Smith as a member of the Local Government and Communities Committee;

Colin Smyth be appointed to replace Rhoda Grant as a member of the Rural Economy and Connectivity Committee; and

Elaine Smith be appointed to replace Claire Baker as a member of the Standards, Procedures and Public Appointments Committee.

The Presiding Officer: The next question is, that motion S5M-09806, in the name of Joe FitzPatrick, on substitution on committees, be agreed to.

Motion agreed to,

That the Parliament agrees that—

Neil Findlay be appointed to replace Daniel Johnson as the Scottish Labour Party substitute on the Culture, Tourism, Europe and External Relations Committee;

Alex Rowley be appointed to replace Pauline McNeill as the Scottish Labour Party substitute on the Delegated Powers and Law Reform Committee;

Pauline McNeill be appointed to replace Mark Griffin as the Scottish Labour Party substitute on the Economy, Jobs and Fair Work Committee;

Kezia Dugdale be appointed to replace Iain Gray as the Scottish Labour Party substitute on the Education and Skills Committee;

Rhoda Grant be appointed to replace Jenny Marra as the Scottish Labour Party substitute on the Equalities and Human Rights Committee;

Elaine Smith be appointed to replace Kezia Dugdale as the Scottish Labour Party substitute on the Finance and Constitution Committee;

Mary Fee be appointed to replace Claire Baker as the Scottish Labour Party substitute on the Justice Committee;

David Stewart be appointed to replace James Kelly as the Scottish Labour Party substitute on the Public Audit and Post-legislative Scrutiny Committee;

Alex Rowley be appointed to replace Mary Fee as the Scottish Labour Party substitute on the Public Petitions Committee;

Monica Lennon be appointed to replace Richard Leonard as the Scottish Labour Party substitute on the Social Security Committee; and

Rhoda Grant be appointed to replace David Stewart as the Scottish Labour Party substitute on the Standards, Procedures and Public Appointments Committee.

Tenement Communal Property (Maintenance)

The Deputy Presiding Officer (Linda Fabiani): The final item of business is a members' business debate on motion S5M-08354, in the name of Ben Macpherson, on maintenance of tenement communal property. The debate will be concluded without any question being put.

Motion debated,

That the Parliament recognises that a significant proportion of people in Edinburgh and across Scotland live in tenement buildings; believes that the maintenance of communal property, otherwise known as the common parts or "Scheme Property" as defined in the Tenements (Scotland) Act 2004, in tenements is essential to the upkeep of the buildings and the standard of living for owner occupiers and tenants; understands with concern that, in many cases, such Scheme Property is in a state of disrepair, degradation or deterioration; believes that current legislation is not consistently fulfilling its intention to encourage owners to establish effective arrangements for managing communal repairs and undertaking maintenance; acknowledges the various potential solutions put forward by groups and individuals in the housing sector to help address this issue, and notes the view that, for the wellbeing of owner occupiers and tenants and to sustain and enhance the country's urban infrastructure and environments, the government should review the situation and consider any legislative changes, new initiatives, enhanced use of existing rules and/or further action by local authorities that could facilitate improved upkeep of Scheme Property.

17:19

Ben Macpherson (Edinburgh Northern and Leith) (SNP): I thank colleagues for their cross-party support for the motion on maintenance of tenement communal property, and for attending the debate on this pertinent issue. Before I proceed, I declare an interest as an owner-occupier of a tenement flat.

For the benefit of all our constituents, MSPs must all work to help to enhance and improve Scotland's existing housing stock and the integrity of our built heritage. A major aspect of the shared responsibility is maintenance of Scotland's tenements. There are well over half a million tenement properties in Scotland. They make up 24 per cent of its domestic housing property, including hundreds in our capital city, in our other big cities—Glasgow, Aberdeen and Dundee—and in other places including Kilmarnock, Cumnock and Irvine.

As people who live in tenements know, every day is affected by the building's integrity and by the quality of communal property that is shared among neighbours. Is there a decent lock on the door for security and to keep the wind at bay, or can anyone just walk in? Is the stair clean, well presented and properly lit, or is it messy, covered

in graffiti, unpleasant and dark? Is the back green kept well for enjoying with friends and family, or is it a dumping ground for fly-tippers?

For people who live in tenements—as do hundreds of my constituents and hundreds of thousands of people across Scotland—maintenance of communal property is important not only for enhancing their quality of life and for issues to do with wellbeing; it is also, of course, essential for securing the infrastructure of the buildings and for preserving and improving our shared urban environment. Roof repairs, masonry work, drainage and energy efficiency measures are all vital in ensuring that tenement buildings are safe, habitable and sustainable in the short, medium and long terms. Those things are important not just for people who live in or who own tenements, but for all of us who care about the integrity and security of our major cities and our urban communities.

It is clear—from what we hear from constituents at advice surgeries about issues with their tenements, from visiting people whom we know who live in tenements, and from listening to MSPs or stakeholders—that poor maintenance of buildings that are in common ownership is prevalent throughout Scotland. That is the case irrespective of location or of whether third-party management arrangements—factors, as they are more commonly known—are in place. It is a national problem that requires national and local solutions.

It is also clear that, in many instances, the measures that we currently have in place to maintain tenement buildings are not working as effectively or as comprehensively as they need to work. Short-term ownership of tenements can result in there being little or no interest in the upkeep of common areas, and absentee landlords are often indifferent to maintenance. We need measures to push owners to change their mentalities in respect of maintenance, and we need to establish new practices for shared repairs.

The Tenements (Scotland) Act 2004, although it is good legislation, is not consistently fulfilling its stated intention—namely, to encourage owners to establish effective arrangements for managing communal repairs and undertaking maintenance. The act was recently usefully amended by the Housing (Scotland) Act 2014 to allow local authorities to pay and then to recover missing shares of costs that are incurred through decisions that have been made under the tenement management scheme in the 2004 act. That is welcome and helpful and it is making a difference, as is the Scottish Government's under one roof website initiative.

However, despite that meaningful progress, there is still much more work to do to facilitate, to

encourage and, if necessary, to enforce adequate tenement maintenance consistently in communities across Scotland. The motion and the debate are about taking forward collective work on a cross-party basis, constructively with the Scottish Government and collaboratively with stakeholders.

Tenement maintenance is a very complex area of law and policy, in which there are overlaps between the primary legislation, private housing deeds and factoring arrangements. More action is needed. Where there is a will, there is a way. With our cross-party interest and engagement from industry bodies including the Royal Institution of Chartered Surveyors, the Built Environment Forum Scotland and groups of architects and other relevant professionals and academics, there is growing momentum in the housing sector to make progress on this increasingly important issue.

New ideas include several possible initiatives. We could, for example, establish compulsory factoring, although factoring has its problems despite the Property Factors (Scotland) Act 2011. We could use the proposed warm homes bill to create new maintenance obligations that are associated with energy efficiency. We could allocate more funding for repairs, as happened in the 1980s, or we could collaborate on new solutions with financial organisations such as credit unions.

We could require owners to pay into sinking funds and we could press the UK Government to provide VAT relief on repairs. We could insist on routine inspections for residential properties, like the inspections that the Health and Safety Executive undertakes in workplaces, or we could create legal obligations such that trained professionals must undertake housing checks regularly, perhaps every five years, as the RICS has proposed, thereby creating an enforceable tenement health check that would be similar to MOTs for cars and which could be linked to home reports.

Whether we use the carrot or the stick—voluntary or obligatory mechanisms—we need to go further to motivate, to enable and, if necessary, to compel owners to take more responsibility for their tenement buildings, because too many owners are simply not diligent enough or proactive enough. We need to make it easier for owners to come together to instruct works because, at the moment, that does not happen expediently enough.

Anas Sarwar (Glasgow) (Lab): I thank Ben Macpherson for his speech and agree with all the points that he is making. I will add two other suggestions. First, we should make it easier for owners to identify the other home owners in a tenement close and, secondly, we should give

more relaxed powers of compulsory purchase to local authorities and housing associations.

Ben Macpherson: I acknowledge those points.

I have met the Minister for Local Government and Housing on the issues, and am grateful to know that he is open minded about considering them on an on-going basis. Therefore, I ask the Scottish Government to explore comprehensively all the possibilities for further action to improve tenement maintenance, including the ideas that have been mentioned. I would be grateful if the minister could respond to that request in his closing speech or thereafter in writing. I, other MSPs and stakeholders are in agreement about setting up a working group to do whatever we can to help to support such a Government review and any resultant action. I hope that, together, we can produce a robust report, a set of collective determinations and a robust set of ambitions and strategies similar to those that the Scottish Executive produced in the early part of the century, and that we will be able to build on the report's findings. I strongly believe that, working collaboratively, the Scottish Government, Opposition parties, local government and wider society can and should make the difference to ensure that everyone in Scotland has a safe, warm and high-quality place to call home.

17:28

Graham Simpson (Central Scotland) (Con): I thank Ben Macpherson for securing this important debate and for his considered contribution. I suspect that we will all agree on the subject, because there is cross-party consensus on the need to act. There can be nothing more important than having a roof over our heads; nothing more important than having warm, comfortable, well-maintained housing—a place to call home. It affects our physical and mental wellbeing. Good housing is a good society.

The focus of our housing debate in Scotland has been the delivery of new homes. That is understandable, but we do not hear as much about the homes that already exist. By 2050, 80 per cent of our current homes will still be in use. It is good to build new homes but, if the current stock falls into disrepair, all that good work could be undone.

In Scotland, a quarter of all domestic dwellings—579,000—are tenements and 38 per cent of those are pre-1919 buildings. In fact, one home in five is a pre-1919 building. According to the Scottish house condition survey of 2016, 6 per cent of all properties have extensive disrepair, 28 per cent have urgent disrepair and 48 per cent have disrepair to critical elements. Five per cent of

pre-1919 properties have critical, urgent and extensive disrepair.

Newer properties need work, too. I live in East Kilbride—you know it well, Presiding Officer. Many of the homes there were built around the same time—70 years ago—and, together, will be reaching the end of their useful lives unless something is done. We are fast reaching a condition cliff edge and, if we do not act, we are going to face a crisis.

It is true that owners of tenements are responsible for their own buildings. It is also true that councils have powers to get work done. I had a look to see whether those powers were being used. I asked all of Scotland's councils how often they had used the powers to issue maintenance orders, work orders or even closing orders in the past five years. Seventeen councils have not issued a single work notice, 30 of the 32 councils have never issued a maintenance order and 18 have not used closing orders. In some years, including last year, as many as 25 councils did not issue work notices, which are the most favoured of their powers.

There are exceptions. Aberdeen, Argyll and Bute, and South Lanarkshire have made consistent use of the powers, but on a small scale. Edinburgh has its own scheme. Glasgow issued 1,300 work notices over five years. Therefore, apart from by a handful of councils, the powers that councils have are not being used. That begs the question: why not and what is to be done?

I followed up my survey by writing to all councils. I am still collating the results and I will release a detailed analysis very soon, but it is clear that councils do not have the money or the time to make use of the powers that they have. They do not want to risk not being able to get the money back if they pay for the work to be done.

The RICS has called for regular tenement health checks, and I back that. It is also surely right that we take a further look at existing legislation and ask whether it is fit for purpose. I am also sympathetic to calls for factors to be made mandatory.

Our aim must be to ensure that the standard of Scotland's homes is improved. We need a system that finally delivers, and that is why a cross-party working group will be set up immediately after this debate to look at the issue in detail and to advise and help Government. I will play my part in that, and I know that others, such as Ben Macpherson, will too. I look forward to collectively finding solutions.

17:32

Sandra White (Glasgow Kelvin) (SNP): I thank Ben Macpherson for securing this debate, which is on a matter of importance to my constituency of Glasgow Kelvin, which has a high concentration of tenement housing, some old and some new. I must admit that I am a tenement dweller.

There can be a mix of tenures and tenancies in this type of building. Other issues, some of which have been raised by members, include absentee landlords, the cost of maintenance, the need to encourage those who do not have a vested interest in the property to think about repairs in the long term and the impact on housing stock when buildings fall into disrepair or are damaged. I know that there are not as many factors in Edinburgh as there are in Glasgow, where they are more widely used, but we need to look at the issue of factors, too.

I want to consider the actions that I have seen being taken. The Tenements (Scotland) Act 2004 and the Property Factors (Scotland) Act 2011 have already been mentioned. There is also the Scottish Government's under one roof website, which provides good detailed advice for homeowners on the maintenance and repair of tenement buildings. Further, consultation is under way on the draft revised code of conduct for property factors. That consultation closes on 15 January, and I encourage members to publicise it on Twitter or on their websites—I did so today—in order to get people to take part in it.

As I said, my constituency has a great deal of tenement buildings, with properties that are rented out by absentee landlords, properties that are registered as houses in multiple occupation and socially rented properties. Those buildings can bring pleasure but also problems, as others have mentioned.

I will talk about an issue with a tenement just off Dumbarton Road in my constituency. The residents of the building have been out of their homes since August 2016, because part of the building collapsed. There is a big problem to do with getting money, and the building is factored. There are 13 residents and a restaurant at ground level. Money has been collected from the 13 residents, but the restaurant owner has refused to pay their share. Those people cannot get into their homes, even though every one of them has managed to get the money. That is why we need to look at the legislation to see whether it is enforceable.

The issue is not unique in my constituency. It is something that happens all the time. We have tried everything that we can, including speaking to Glasgow City Council. I spoke to the council today and it is in talks, so I hope that eventually some

arrangement is arrived at. The council told me that it tries to encourage owners to take responsibility for the condition of properties. It offers grant assistance, which is awarded on the proviso that a building is factored, which is fine. However, although the building that I am talking about is factored, the residents still cannot get the grant. That should be looked at.

There are powers to carry out the statutory works, but using them is considered as a last resort and is subject to the availability of resources.

We need to look at what is happening not just in private tenement properties but in factored properties. Sometimes factors do not live up to expectations or do what they are supposed to do.

Glasgow City Council told me today that it will undertake a housing conditions survey in the next financial year. It will look at pre-1919 tenement stock in particular to see whether it can do something about the condition of such buildings, particularly if they are subject to negative equity.

I call on the Scottish Government to listen to people such as my constituents, and others who are not living in their own homes. There is still a lot of work to do.

17:36

Daniel Johnson (Edinburgh Southern) (Lab):

I, too, thank the member for bringing forward the debate. It is telling that the issue does not just bring members of different parties together—we are even hearing agreement between MSPs from Edinburgh and MSPs from Glasgow. There is no greater testament to the importance of the issue than that.

Tenemental living is distinctive of urban life in Scotland. Tenements reflect the way that we developed our cities. We tended to build up rather than out; whereas other cities built terraced housing, in Scotland we built tenements. I think that that leads to better cities. It means that our cities are higher density, which leads to a better urban environment. In an age when we think about the environment, it also means that we have more efficient cities.

Maintenance has always been an issue, for the fundamental reason that although individual flats are owned as individual bits of property, there are multiple owners of but one building. In a sense there is a single bit of property, which is not always captured by the law as effectively as it needs to be. That is why this debate is so important. We have to make it easier and more straightforward to maintain our tenemented buildings.

We must also acknowledge that the issue has evolved, because we are no longer talking only about Victorian tenements. A large number of tenements built by local authorities now have multiple tenures all within a single block, whether they are owner-occupiers, council tenants or private tenants. That makes the issue yet more complicated. We need to acknowledge the wider issues of maintaining a common building, as well as the different types of tenures and the issues that arise from that.

There are three core issues that we need to look at when we are addressing the issue. The first is one that other members have mentioned, which is co-ordination and shared responsibility among different owners in a tenement building. We need to look at how we can ensure that that shared responsibility is honoured by all owners. We need to facilitate decision making, because that is often where these things fall down. Collective decision making is difficult. People must honour the need for collective maintenance, which, at the moment, tends to require unanimity. We need to look at the structures and mechanisms that are in place.

The second key issue is one of financing. When we are talking about maintenance of these buildings, we are often talking about very large sums. We have all heard the horror stories from our mail bags and case work about roof repairs and the sums that can be involved. Connected to the sums of money is the unwillingness of contractors to undertake work because of the nature of the collective undertaking. They will start work only once they have been paid in full by each and every one of the owners of the building. As we all know, it is never a good idea to pay a builder up front, so we need to have a look at the mechanisms that we put in place for the financing of such work.

The third key issue is redress. We must ensure that, where people have an obligation and a responsibility for their share of maintenance and for undertaking works, owners are able to get money back when relationships break down.

I am pleased that there is a group of us in this Parliament seeking to form a cross-party group to look at those issues and to work with the Scottish Government, so that we can consider options for improving the situation. There are a number of solutions, as members have mentioned, such as sinking funds and ownership registration, to make it easier to form stair committees. Those are all good solutions and should all be considered. Likewise, there may be non-governmental solutions, or non-legislative but governmental solutions, but we also need to look at whether new legislation is required, perhaps to alter title deeds or to make some requirements, such as having a stair committee, obligatory. By working together

we can come up with a manifesto—a blueprint—for what needs to change, so that we can make tenement living better and ensure that we maintain our tenemented buildings.

17:41

Ivan McKee (Glasgow Provan) (SNP): I start by thanking Ben Macpherson for bringing this important subject to the Parliament for debate. Over a third of the population of Scotland lives in tenements or purpose-built blocks of flats. That proportion is much higher in our cities, reaching almost 70 per cent in Glasgow. My constituency of Glasgow Provan contains a significant number of such properties. Like many people in Scotland, I have lived much of my life in tenements and as a tenement owner—I refer members to my entry in the register of members' interests—I have a genuine appreciation and fondness for the blend of privacy and community that tenement life affords.

However, flats and tenement-style housing give rise to issues that need to be dealt with, so that we can protect the integrity of that type of living for future generations. I understand why the focus of the debate in parts of the country—Edinburgh, for example—is on the lack of a much-needed mechanism for ensuring collective oversight of maintenance and use of buildings and the very real problems that that lack causes, but I would caution people to be careful what they wish for, based on the experience in Glasgow, where property factors are common but where the market has often proven incapable of meeting those needs in a satisfactory manner.

Unsatisfactory factors feature regularly in the cases that constituents bring to my office, and horror stories abound. Top of the list is the high cost of repairs, and constituents are often suspicious of questionable links between contractors and factors. There are litanies of defects that have been reported and repairs that have been requested being ignored, to the detriment of housing stock. There is a lack of action when householders complain, and obfuscation on the part of factors leading to confusion among householders regarding their rights and responsibilities. Communal insurance policies are imposed on householders at costs that are demonstrably many times the market rate, and soaring service charges often bear no relation to the cost of living or to the quality or quantity of services received. All of that is compounded by a lack of consultation, accountability and transparency and by the fact that many householders are a captive audience, locked in by title deeds that make it very difficult, or in effect impossible, to change factors—even non-performing factors.

John Mason (Glasgow Shettleston) (SNP): Despite what the member says, will he accept that, when there is no factor at all, the situation is even worse and repairs just do not get done?

Ivan McKee: I absolutely accept that. I am just laying out the next stage in the process by stating that simply having a factor in place is not the answer to everything, and that there could still be many, many problems in a factored environment.

Many householders do not even bother changing factors and are hostages to fortune. Many others find that it is merely Hobson's choice—more of the same, with little to choose between different agents. No wonder factoring is often described as a licence to print money.

Factors were first regulated by law in Scotland in 2012 and the Scottish Government's current consultation on a draft revised code of conduct for registered property factors aims to strengthen and clarify matters. That is a very welcome step. In tandem with that, I would like to offer some thoughts on how the situation could be improved.

We need to acknowledge that, as a widespread rule, householders are vastly underserved by factors and that, left to the market, the system is failing.

Initiatives such as the under one roof website, which has already been mentioned, need to be promoted to improve awareness among householders about rights and responsibilities, including legal ones, associated with arrangements pertaining to the property in which they live. Where disagreements arise, householders need assistance with interpreting and cross-referencing the relevant legislation so that they are not bamboozled by unscrupulous factors. The closure of loopholes in deeds of conditions to ensure that factors and developers are not able to prevent a majority of owners from dismissing the current factor and appointing an alternative is long overdue. A basic qualification in factoring administration, and specialist training where appropriate, should be mandatory. Crucially, individual company accreditation with an independent body should be a condition of trading, bringing with it requirements to undergo external audits. Some thought should also be given to an oversight body conducting an annual factoring survey.

In conclusion, I look forward to the outcome of the Scottish Government's consultation and hope that it will provide improvements to legislation that will ensure a fair deal for householders, allowing them to enjoy the advantages of flatted and tenement living without the tribulations caused by rip-off factors, and will ensure that the integrity and quality of this very valuable housing stock are protected for future generations

17:46

Andy Wightman (Lothian) (Green): I thank Ben Macpherson for bringing this debate. It is on a topic in which I have a long-standing personal interest and that the Scottish Greens agree needs urgent action.

As Graham Simpson pointed out, 48 per cent of domestic properties have disrepair to critical elements. With a rising proportion of people living in private rented accommodation, it is notable that 63 per cent of private rented sector accommodation is flatted. That is one of the reasons why, in our 2016 manifesto, we advocated a not-for-profit repair service to manage major repairs, and new financial mechanisms for paying for them, including sinking funds, which Ben Macpherson referred to, and deferral of payments until houses are sold.

Unlike other members, I have no interest in property: I do not own any. That is partly because of my personal experience in the early 1990s, when I tried to organise common repairs in a top-floor flat that was leaking. It cost us £5,000 per flat. On a number of occasions, I was threatened with assault by one of the neighbours, for having had the temerity to initiate such action. Once the work was complete, we were told by the architect that we were liable for another £10,000-worth of work per property, so five out of eight of us owners sold up. Of course, we did not tell the new owners, who were blithely unaware that the property was falling down. Despite feeling quite guilty about that, I think that it is an indictment of the way in which we manage tenement property.

There is an urgent need to improve the legal and financial framework under which common property is maintained. I thank all those who have contacted us, such as BEFS, the Royal Incorporation of Architects in Scotland and RICS.

The problem is not new. On a recent visit to Edinburgh city chambers, I went into a room with a sign that said, "Do not enter". In that small, dark room I found cabinets of index cards, all noting inspections that had been carried out by the council of tenement property across the city, street by street, up until the early 1980s. So, while I do not know what it was, we used to have a system in place that provided some sort of health check. However, it is clear that the current legal framework is not sufficient to ensure that existing communal property is maintained in the way that it should be. As members have pointed out, that is not only bad for the future of our housing stock, but causes real misery, anxiety and stress to occupiers and owners of flatted property who take their responsibilities seriously, as constituents regularly tell us.

It is clear that we need reform, but, as with many reforms on domestic property, it feels as though the Government is nervous about anything that places what it perceives to be a greater burden on homeowners and landlords. That is a fundamental problem in securing consensus on how to resolve such questions and it is based on a flawed premise.

Much of the flatted property here in Edinburgh and in Glasgow was built more than a century ago, and in the old and new towns more than 200 years ago. With proper maintenance and refurbishment, such buildings should last many more centuries. In that light, such properties are part of the public infrastructure of our cities, just as the streets, sewers and utilities are. Within that public infrastructure, there are temporary private interests, which are those of the owners and occupiers for the time being of the homes concerned. It is their essentially short-term interests, of typically 10 to 20 years, that too often prevail and frustrate the necessity to undertake the longer-term maintenance that can ensure the long-term good condition of shared property. So let us frame this debate as one concerning public infrastructure in the first instance, rather than private property.

I am persuaded by the argument of RICS, BEFS, RIAS and others that urgent reform is necessary. That has to include new legislation. It is vital that such legislation be designed to incentivise regular maintenance, but it must also contain mandatory provisions that compel owners of common property to contribute to that, as some might be unwilling to do so. That could involve sinking funds and log books, for example, so that we are assured that people who live in the property in the future will live in a property that meets basic standards of repair.

I would be very happy to work with Ben Macpherson and other members as part of the MSP working group that Ben Macpherson has initiated and to engage with others in developing the case for and the content of the reforms that we need.

17:50

Gordon Lindhurst (Lothian) (Con): This debate is on a very important matter that affects thousands of residents in buildings in Edinburgh and the Lothians region alone, not to mention the rest of Scotland.

Like Ben Macpherson, who has brought the debate to Parliament, I have to declare an interest as an owner-occupier of a tenement flat in Edinburgh. I refer members to my register of interests. I do not know whether I need to declare as an interest that I have been the owner of a flat

in Edinburgh that was very successfully repaired under a common repairs scheme that was run by the City of Edinburgh Council. I had a more positive experience of that than Andy Wightman, sadly, appears to have had in his situation and circumstance. Sadly, that statutory notice scheme is no longer run by the City of Edinburgh Council; it was ultimately scrapped for reasons that many members will be aware of. However, there have been times in Edinburgh and Scotland when there have been effective schemes to look after our buildings.

The debate about tenement repairs is, of course, critical to Edinburgh in particular—perhaps more so than to some other towns and cities. The most recently published Scottish housing condition survey tells us that, in Edinburgh, 48 per cent of properties were built pre-1945, 56 per cent of which are flats. Fifty-seven per cent of the tenure across the capital is, of course, owner-occupied.

We are incredibly fortunate in Scotland and Edinburgh to have the stone-built heritage that we have. However, the reality behind it all—behind the facade that we see—is that many buildings are badly in need of repair, some critically so. As has been pointed out, that is a Scotland-wide problem, particularly with some very old housing stock. That is a picture of a pressing problem now rather than later.

It may be that, at some point in the past, owners took their responsibilities more immediately seriously than owners do now. I recall that, less than 20 years ago, one of the estates that built an entire section of Edinburgh's Victorian tenements still retained a flat in the city centre that was used to store thousands of sash-and-case frames. Those window frames were made in Victorian times at the time of the construction of the flats so that windows could be replaced as and when that was needed. In the past 20 years—over a century later—that supply had not yet been exhausted; it was still being used for that purpose.

Most people who live in flats or tenements, of course, do not have the means or resources to prepare for the future in such a way but, as has been pointed out, other ways need to be considered to maintain our buildings in the long term. Simply building new houses will not address the state of the existing stock. Often, the difficulty may be neither the lack of will nor resources but of initiative on the part of one of the owners to research what repairs are needed, seek the agreement of other owners, instruct work, check the work, and try to collect the cost of works from fellow owners.

Some of the ideas that have been floated, such as those behind the tenement health check policy, may be welcome, but the potential solutions may be a bit more difficult, and a whole change of

culture may be required in terms of owners in Scotland. We need practical solutions that will work, not new measures that will not be implemented.

17:54

John Mason (Glasgow Shettleston) (SNP): I thank Ben Macpherson for securing the debate. As we are approaching the 50th anniversary of the hurricane that caused huge damage in Glasgow and killed 20 people on 14 January 1968, the timing is appropriate. The connection between the debate and that event is that, at that time, tenemental maintenance was poor and, sadly, that continues to be the case in many areas today.

I declare a personal interest in the topic. I will describe the estate where I stay. I live in a post-second world war tenement in Barlanark, which is part of greater Easterhouse, in a street that previously had such a bad reputation that, when a car was stolen in Glasgow, it was one of the first places that the police looked. However, Bellway Homes took over the whole area from the council and, from 1989 onwards, it has carried out a very good renovation of the tenements. We now have 272 flats, with a mixture of owner-occupiers and private rented property. When I bought my flat, in 1990, it cost less than £25,000; if a valuation were carried out now, it would be worth about £50,000.

The factors that we have in place are Cumming, Turner and Watt, and I find no fault with that company. I know that it has a considerable amount of outstanding debt from owners in our estate. Over those 29 years, the factors have handled the common gardening, the building insurance and emergency repairs, but that is really all that has been done. There has been no regular maintenance and no inspection of the roofs—there has been nothing for 29 years. Sadly, that is the case for much tenemental stock in Glasgow.

I have looked at the case work that I have been involved in over the years, and the worst situation is usually where there is no factor at all. I accept that, as Ivan McKee has pointed out, there are good and bad experiences of factors—I get complaints about them from time to time—but at least when factors are in place there is a structure for potentially getting common repairs done.

At the other end of the spectrum are housing association properties where part of the rent is set aside each month and funds are built up for reactive and cyclical maintenance. Members could go into neighbouring closes in my constituency and see one that is very run down whereas the next is in great condition. I am pretty sure that the former has no factor in place whereas the latter is run by a housing association.

Going back to my personal experience, although a factor is in place, there is no sinking fund and no cyclical maintenance. Why is that? In some cases, the residents do not have the money for those things; in other cases, residents have the money and they can manage to replace the windows, refit the kitchens and the bathrooms and incur other expenditure pertinent to their own property. What can we do about the situation? Should we overrule the title deeds and impose factors? Should there be compulsory sinking funds for maintenance? That might be easier for new owners, but what about existing owners who have no resources? I accept that it is a tricky subject and that the answers are not easy.

As other members have said, it is a challenge for us as a nation, not just as individual owners. We all benefit from the fabulous tenemental properties in our cities, so we all have a joint responsibility to tackle the issue, which is a societal problem. I welcome the increasing recognition of the problem. Last week, I had encouraging emails from the Property Managers Association Scotland and the Scottish Association of Landlords, both of which recognise the issue as a serious problem.

I very much welcome Ben Macpherson taking a lead on the issue, and I hope that there can be cross-party agreement that we need to find a way forward.

The Deputy Presiding Officer: I am sure that all members would like to hear the minister's response. To enable that, I am minded to accept a motion without notice, under rule 8.14.3, to extend the debate by the time necessary—as long as he does not speak for longer than half an hour.

Motion moved,

That, under Rule 8.14.3, the debate be extended by up to 30 minutes.—[*Ben Macpherson*]

Motion agreed to.

17:59

Jeremy Balfour (Lothian) (Con): I, too, congratulate Ben Macpherson on bringing the debate to the chamber, and I remind members that I am a former Edinburgh councillor. During the five years before I was elected to the Scottish Parliament, I was the convener of the governance, risk and best-value committee at City of Edinburgh Council. For those five years, the topic that dominated our agenda more than any other was probably that of statutory repairs and what went wrong here in Edinburgh.

I have been particularly interested to hear Ben Macpherson's suggestions on a way forward, some of which have merit and need to be explored. It became clear to me, as the convener

of the committee, and to my Edinburgh councillor colleagues that our previous system was not working. It was not working because of the incompetence of some council officers and because some people were acting illegally, and it drained the council of valuable financial resources.

We must recognise that, whatever solution we come up with, local authorities will probably end up having to deal with the matter. If that is the case, what resources will councils be given to deal with it? As members of the Scottish Parliament, we must be careful when we delegate to local authorities.

Ben Macpherson: Given the complexity of the situation before us, the diversity of practices in different cities and the diversity of the potential solutions, does Jeremy Balfour support my proposal that we collaborate in reviewing the potential solutions and that we carefully, robustly and diligently explore them?

Jeremy Balfour: As a famous musician might have said, Ben Macpherson took the words right out of my mouth. I absolutely agree that a working group will be an excellent way forward. My plea as a former Edinburgh councillor, and other members who have been councillors will surely agree with me, is that, whatever solution—or solutions, as I suspect there will be—is found, the extra resources that will be required by local authorities to take forward that solution must be worked out.

The present system in Edinburgh is not working either. Having only emergency repairs done means that some properties are not looked after by landlords and owners and that, in a few years' time, we will end up with a major crisis on our hands. That will be the case in other parts of Scotland, too.

The biggest challenge is with buildings where there are absentee landlords. There are parts of Edinburgh where three quarters of the flats, if not more, are owned by absentee landlords. That ends in situations such as one that I heard about recently, which was experienced by a lady who is in her 80s and lives in a top-floor flat. A roof repair was required and, as water was coming into her flat, she fixed it. However, she could get none of the other flat owners to pay their part of the cost. That is unacceptable for that lady and for the future of the property, so we need to find a solution.

In order that we are not here for 45 minutes, I will conclude my speech. I welcome Ben Macpherson's work. We need to find different solutions, and we need to learn from good practice. However, I return to my main point that, whatever solution we come up with, local authorities must be appropriately funded to make sure that it works not just in theory but in practice.

18:03

The Minister for Local Government and Housing (Kevin Stewart): A happy new year to you, Presiding Officer, and to all members in the chamber. This afternoon's debate has been fairly consensual and I am grateful to Ben Macpherson for raising the issue. I am sure that we all agree that it is an important issue and I thank everyone who has spoken in the debate.

There has been a marked and sustained improvement in the quality of housing in Scotland. The latest Scottish house condition survey showed a continued long-term trend of improvement in levels of disrepair and a 5 percentage point improvement on 2015.

However, 68 per cent of homes in Scotland still have some degree of disrepair. Measures of disrepair range from fairly minor problems, such as leaky taps, to the 3 per cent of cases in which disrepair is critical, urgent and extensive. Disrepair is worse in older buildings, and I appreciate and recognise that there can be particular difficulties in dealing with common repairs in tenements, which require co-operation between owners and can cut across tenures, as many members have already said.

Both the Minister for Community Safety and Legal Affairs and I receive regular correspondence on tenements. Problems can affect newer buildings as well as older ones, and they occur right across Scotland. We have heard today about issues in areas as diverse as Edinburgh, Glasgow and East Kilbride. I would like to add my constituency in Aberdeen to that list.

Although we must not be complacent, the improvement in levels of disrepair is a reflection of the positive actions that we have already taken. We have introduced new powers in the Housing (Scotland) Act 2014 to allow local authorities to pay and recover missing shares on behalf of owners who do not contribute to their share of common works.

I have been very pleased to learn that local authorities including Glasgow and Edinburgh have found those powers useful in supporting owners who want to look after their property. I encourage all local authorities to consider those powers and to share examples of best practice. I hope that we can all agree that that is required.

Graham Simpson: Does Kevin Stewart accept that the figures that I have come up with show that councils are not using the available powers widely and that there is a nervousness to do so among local authorities, mainly because of the financial risk that they perceive around getting work done?

Kevin Stewart: I accept that there are a number of local authorities that are not using the powers.

They are quite new. I think that local authorities need to look at the work that is going on in areas that are using missing share powers—Glasgow and Edinburgh in particular.

I have been trying to encourage Aberdeen City Council to use missing share powers for a number of cases that I know of in a constituency capacity. I hope that it will do so and I hope that others will look at the best practice that is going on and look very carefully at implementing those powers within their areas.

Presiding Officer, I restate my intention to extend the missing share powers to registered social landlords. Regulations will be introduced on that later this year. I think that Mr Mason made some very good points about the fact that where housing associations are involved, the state of repair is much better. I intend to extend the missing share powers and I will introduce regulations later in the year.

For owners who require essential repairs and energy efficiency improvements, including common works, we are piloting a £10 million equity loan scheme in Glasgow, Argyll and Bute, and Perth and Kinross. Loans from the scheme can be repaid when the house is sold, and we will consider expanding the pilot across Scotland once it has been completed and analysed.

I certainly appreciate that some owners feel frustrated by private landlords who do not contribute to common works. Although there are many good landlords, I have made it clear in this chamber that I expect local authorities to use all the powers that are already at their disposal to tackle poor-quality housing in the private rented sector. Those powers have been enhanced by recent legislation, including through enhanced enforcement areas and the power to report breaches of the repairing standard to the First-tier Tribunal on behalf of vulnerable tenants. I encourage more local authorities to use those powers, in particular to help some of the most vulnerable people in our society.

The under one roof website has been mentioned a number of times in contributions today, by Mr Macpherson, Mr McKee and others. The Scottish Government contributed to the development of that resource and I am pleased to say that it is widely recognised as an invaluable source of information and advice for owners on their rights and responsibilities. It is a tool that I use quite a lot in my constituency, and I encourage all members to make their constituents aware of that website.

Some of the ideas that have been raised by members in today's debate were previously raised in the Scottish Government's common housing-quality standard forum, including sinking funds and

five-yearly tenemental surveys, which have been suggested by RICS, the Built Environment Forum Scotland and the Chartered Institute of Housing.

We have already consulted on improving condition standards in the private rented sector, and draft regulations are proposed for later this year. I intend to invite public consultation on other specific issues that affect tenemental property later in the year.

We are consulting on proposals on a revised code of conduct for property factors. As Ms White mentioned, that consultation ends next Monday and I have encouraged everyone with an interest in the issue to respond. I am especially keen to hear from and to reflect the views of home owners, and I encourage members to help to ensure that constituents express their views if they have not already done so. I also encourage members to express their own views in response to the consultation.

I recognise that, as Ben Macpherson and other members have said, other ideas have been put forward to help to improve how tenements are maintained. Although there is no monopoly of good ideas and we will look at all possible solutions, I am reluctant to rush into legislation, especially when recent changes are still to bed in and there are some areas where existing powers are being underused, as Mr Simpson has found out during his survey work.

Some of the suggestions that have been put forward would lead to costs for owners, and there would be significant issues in relation to enforcement. What would happen, for example, if an owner refused to pay into a sinking fund, said that they had no money to pay or refused to participate in an owners association? Members will undoubtedly recall that we have previously debated the concerns of those who are unhappy with their factors, which Mr McKee highlighted in his speech.

I want to look to the future and say something about Scotland's energy efficiency programme. By 2035, we will have transformed the energy efficiency and heating of our buildings so that, wherever it is technically feasible and practical, they will be near zero carbon. We have committed to investing more than £0.5 billion in that programme over the next four years. It is absolutely vital to the success of our plans to transform the energy efficiency of our homes that they are in a good condition so that improvements can go ahead and we can meet our fuel poverty and climate change obligations.

I again thank Ben Macpherson for securing the debate and providing an opportunity to shine a light on these important matters. I am glad that it has been a consensual debate. Let us all continue

to work together to improve properties right across Scotland.

Meeting closed at 18:13.

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