



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Culture, Tourism, Europe and External Affairs Committee

**Thursday 31 October 2019**

**Session 5**



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**CULTURE, TOURISM, EUROPE AND EXTERNAL AFFAIRS COMMITTEE**  
**25<sup>th</sup> Meeting 2019, Session 5**

**CONVENER**

\*Joan McAlpine (South Scotland) (SNP)

**DEPUTY CONVENER**

\*Claire Baker (Mid Scotland and Fife) (Lab)

**COMMITTEE MEMBERS**

\*Donald Cameron (Highlands and Islands) (Con)

\*Annabelle Ewing (Cowdenbeath) (SNP)

Kenneth Gibson (Cunninghame North) (SNP)

\*Ross Greer (West Scotland) (Green)

\*Stuart McMillan (Greenock and Inverclyde) (SNP)

\*Mike Rumbles (North East Scotland) (LD)

\*Alexander Stewart (Mid Scotland and Fife) (Con)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Luke McBratney (Scottish Government)

Michael Russell (Cabinet Secretary for Government Business and Constitutional Relations)

**CLERK TO THE COMMITTEE**

Stephen Herbert

**LOCATION**

The James Clerk Maxwell Room (CR4)



# Scottish Parliament

## Culture, Tourism, Europe and External Affairs Committee

Thursday 31 October 2019

*[The Convener opened the meeting at 08:15]*

### Article 50 (Withdrawal Agreement)

**The Convener (Joan McAlpine):** Good morning, and welcome to the 25th meeting in 2019 of the Culture, Tourism, Europe and External Affairs Committee. I remind members and the public to turn off mobile phones. Any members who are using electronic devices to access committee papers should ensure that they are turned to silent, please.

Agenda item 1 is the committee's continuing inquiry into the progress of the article 50 withdrawal negotiations. I welcome to the meeting from the Scottish Government Michael Russell, the Cabinet Secretary for Government Business and Constitutional Relations; David Barnes, head of European Union exit strategy and negotiations; and Luke McBratney, head of EU exit legislation.

I invite the cabinet secretary to make an opening statement.

**The Cabinet Secretary for Government Business and Constitutional Relations (Michael Russell):** Thank you, convener. I will be very brief.

Yesterday, I had the opportunity to address in the chamber the current issues of the revised withdrawal agreement and political declaration. We published a document yesterday that gives the comparisons that we think are important. I would be very happy to answer questions on them.

**The Convener:** Thank you very much. That was very brief.

As you said, you made a statement to Parliament yesterday. I want to focus on one aspect of the European Union (Withdrawal Agreement) Bill, which, of course, may or may not come to fruition. The committee's adviser, Dr Eve Hepburn, has identified a number of areas in that bill that could pose problems for EU citizens—notably the risks of deportation and the uncertainty and reduced rights of pre-settled status citizens. Will you share the Scottish Government's view on how citizens' rights have been addressed in the bill and what concerns you may still have?

**Michael Russell:** We still have considerable concerns about citizens' rights, some of which I addressed yesterday. There is the macro impact. The general debate on the issue is hostile and off-putting to EU citizens who live here or would wish to come here. As a result, the damage of ending freedom of movement to the Scottish economy, let alone to the health of Scottish society, will be substantial.

The text of the European Union (Withdrawal Agreement) Bill offers protection to EU citizens, but that protection is not unilateral. We have heard concerns about that aspect for a considerable time. In fact, since the beginning of the process—I think that I have mentioned this in evidence to the committee before—we have thought that there should be a unilateral declaration of EU citizens' rights and that the legislation should be put into effect no matter what the conclusions and outcomes of the process are. That would provide a degree of certainty.

We are concerned about the comparatively low level of take-up of settled status and issues to do with pre-settled status. Overall, this is a difficult and very worrying time for EU citizens who live in Scotland. I am sure that, as individual MSPs, we have all held or been involved in events that have tried to assist EU citizens, so I think that we all know that there is considerable angst and upset. The Scottish Government as a whole wants to do everything that it can to help, but it cannot, of course, grant citizenship, which is the key thing that people wish to have.

**The Convener:** Of course. I know from my constituency case load that there is a great deal of anxiety among EU citizens in the south of Scotland about their future. You mentioned the number of EU citizens registering for settled status. The Home Office has released records that show that the proportion of EU nationals registering for status through the United Kingdom's EU settlement scheme is significantly lower in Scotland. Apparently, about 25 per cent of EU nationals in Scotland have registered. That compares with the UK average of about 50 per cent. Do you have any insight into why that might be?

**Michael Russell:** There has been a lot of talk and thinking about the issue, but it is difficult to say why that might be. Some of it might reflect the temporary nature of people coming and going, particularly those who work in agriculture. Those people may feel that they do not need or wish to register. They are wrong about that, but that is how they feel. It could also be because of people's incredulity that registration is required of them and their feeling that, as Scotland is different, they do not need to do it.

I have been very clear, as the Scottish Government has, and I want to be clear again today that the Scottish Government's advice to EU nationals in Scotland is to apply for settled status. We do not like that situation. I think that it is offensive that people are being asked to do that, particularly those who have lived in this country for a very long time. I have met several such constituents who have been in Scotland for 20 or 30 years—one has been here for almost 40 years. It is very wounding and offensive for them to be asked to apply for settled status. However, that is what we advise because problems could occur for them if they do not do that and do not observe the law. We will continue to offer that advice.

There might be other reasons for the low registration rate, but those are the ones that we are thinking about at the moment.

**The Convener:** It is only the UK Government that can enshrine residency rights under the law, but is there anything that the Scottish Government can do to protect other rights, such as the right to healthcare? Are there other areas of devolved competence that might give EU citizens more reassurance?

**Michael Russell:** Those rights are guaranteed, and there is no question but that they will continue to be in existence. We will willingly honour them to the full.

There is a central problem. It would be wrong of us to say to people that we can do things that we cannot. The key issue is residency and the continued right of residence, and the Scottish Government cannot yet provide those rights to individual citizens—I look forward to the day when we can. We will do everything that we can to help those citizens. I continue to help in every case in which I can do so. We want to do more. However, I do not want to say, “Don't worry about this. We can sort it, right?” If people register and get settled status, they will have legal rights. I have made it very clear that we will do everything in our power to defend people who have those legal rights, because they should not be threatened in any way. However, if people do not apply for settled status, it becomes much more difficult.

**The Convener:** If the withdrawal agreement were to go through, the transition period would be very short—it would be to the end of 2020. What are the implications of that short transition period for any EU citizens who have failed to register?

**Michael Russell:** The cut-off date cannot be more than six months after the end of the transition period, and the end of the transition period is currently given as the end of 2020. That would put the cut-off period into 2021, but there is no detail on how that will operate.

There is also a great insecurity about the transition period. Anyone who reads the documentation and looks at the politics around it will quickly come to the conclusion that there is at least a possibility—some of us would say a likelihood—that the UK Government will want to leave at the end of 2020, whether or not it has finished the most complex piece of negotiation that it has ever been involved in. In those circumstances, the cut-off becomes a real pressure.

The simple advice to EU citizens is: register and ensure that you have settled status. If people run into difficulties with the registration, advice is available. The Scottish Government is supporting citizens advice bureaux in providing face-to-face and telephone advice. Individual MSPs can signpost to that advice and offer help. People should register and make sure that they have settled status. In those circumstances, much more can be done to help and protect them, should anything happen.

**The Convener:** Thank you for that.

**Claire Baker (Mid Scotland and Fife) (Lab):** To all intents and purposes, the withdrawal bill is currently shelved or paused, and we are facing a general election. No one knows what the outcome will be following that.

Just before the recess, the Deputy First Minister, John Swinney, made a statement on no-deal planning in which he committed to a poverty mitigation fund. The assessment of the current withdrawal agreement that was published yesterday—or what I have managed to read of it so far—seems to focus on the economy. It talks about how much the economy would lose per individual—£1,600—but it is more about trade and the economic impact. Does the Government intend to look at mitigation measures, such as the poverty mitigation fund commitment that was made in the event of there being no deal? Given that the Government has concerns about the deal that is in front of us, are there plans to make similar proposals that are more directed at social issues and impacts?

**Michael Russell:** That is a very good question. Things have to be dealt with sequentially. We dealt with no deal in enormous detail, and we continue to do so. I suppose that one would say that the no-deal preparations are paused again, but they certainly have not gone away. There were no-deal preparations up to March/April, which were paused, and then we went back into them. Vast sums of money have been spent, and money is not being recouped from the UK; the UK Government's attitude to that has not been helpful. The no-deal preparations are now paused again, but we need to be aware that they could kick in and run forward at any time.

On the current deal, we have provided an initial analysis of what we think the key issues are, and we will look at the implementation of the deal, if it happens. Let us remember that there is to be an election. I know that the Presiding Officer does not want us to talk about that, so I will not talk about voting for anyone. However, in an election period, things can change.

If the European Union (Withdrawal Agreement) Bill were to go through the House of Commons in January and we were to leave the EU at the end of January, we would want to have in place an understanding of how everyone in Scotland would be affected, and that would certainly include the most vulnerable.

In both the run-up to March/April and the recent run-up, we were very mindful that, whatever happened, the poorest and most vulnerable in society would be worst affected by Brexit, which is a recipe for disaster, and by the slowdown and weakening of the economy that would happen as a result of Brexit, which there is no doubt about.

**Claire Baker:** The political declaration will take us through the transition period if the European Union (Withdrawal Agreement) Bill is passed. The bill deals with three areas: EU citizens' rights, the financial settlement, and the Northern Ireland situation; everything else has to go in the political declaration. What are your views on the current political declaration? I think that I know the answer to the question that I am about to ask, but has the Scottish Government had involvement in discussions with the UK Government about what should be in it?

**Michael Russell:** I made the point yesterday—it is a telling point, and I make it again—that, of the 500 pages of the withdrawal agreement, not a single paragraph or a single line was cleared by or agreed to by the devolved Administrations before it was agreed between the UK and the EU. That is the reality of the situation.

The answer to your question about the political declaration is no, there has been no agreement to it. It is always presented as a *fait accompli*, with the comment that our interests have been taken into account, without there being any evidence of that—in fact, there is lots of evidence to the contrary.

Of course, in one sense, the political declaration is a wish list. It is a set of aspirations for what it is hoped that the relationship will be. It has no legal force. However, legal force applies to the fact that nothing outwith that is meant to be in the final agreement. In other words, what is in the political declaration is meant to guide or lay down the tracks for what the final agreement will be. Therefore, we have to say that the political declaration gives us the shape of the likely

agreement, which is a very unambitious trading agreement that is broadly similar to the Canada agreement but would not be as advantageous to the UK as the Canadian agreement is to Canada.

It is also clear that the issue of the level playing field—which always sounds very technical but is absolutely crucial to what happens next—has gone from the withdrawal agreement into the political declaration. The level playing field is therefore an aspiration to work in such a way, and not a binding commitment to work in such a way.

There is a lot of expectation that there will be a desire to reduce commitments on workers' rights, employment rights, environmental protections and other areas. That is a desire on the UK's side, not on the EU's side. That has been absolutely clear. No one can be in any doubt of that, given the language that has been used. Monsieur Barnier said:

“No tariffs, no quotas, no dumping”.

That underlines that the UK will not be able to have its cake and eat it—if I may use that phrase—so there will have to be a level playing field and, if there is not a level playing field, there will be no agreement, even of the nature of the Canadian one.

The aspiration on services in the political declaration is exceptionally unambitious. It is no more than an alignment. In those circumstances, the considerable export of services that takes place within the present arrangements simply will not happen.

**Claire Baker:** I will follow on from the convener's questions about the transition period, which, as you said, is due to end in 2020. Do you have concerns about the shortness of the timescales and about whether the necessary trade agreement can be finalised within that period?

08:30

**Michael Russell:** I do not believe that it is possible to finalise a trading agreement of any description between now and the end of 2020. Moreover, if we look at the details, we see that any extension of that period must be decided on by July. For the sake of argument, let us say that, if we left the EU at the end of January, there would be only five months in which to assess what progress has been made and what more needs to be done. We should look at the history of the past three and a bit years. That was meant to be the easy part, but it has been extraordinarily difficult.

We are now going into a far greater element of complexity than what we have seen, and we are doing that with—to be blunt—the world's best negotiators. One of the lessons is that the EU is immensely skilled in trade negotiation. The

Americans and the EU are the two most skilled trade negotiation blocs in the world. In those circumstances, I do not believe that the UK can come to an agreement. It could extend the period, although the bill is difficult on that. The Government can extend but, presently, the House of Commons cannot. That might change; there might be a change to the bill. In all those circumstances, we are in for another rough ride if the UK leaves.

That gives the lie to “Get Brexit done”, which is an absolutely ludicrous statement. Because of the situation that we are in, we will be in the same or a deeper mess this time next year.

**Alexander Stewart (Mid Scotland and Fife) (Con):** Over the past month or so, there has been lots of speculation that no meaningful negotiation was taking place between the UK Government and the EU. Member states had made it clear that they did not believe that the agreement could be reopened and renegotiated in any way. However, their position seemed to change. Even Ireland has signed up to the new agreement, along with Germany and France, were raising strong voices about where they were. We are now in a new situation.

We have touched on the transition periods and the new political declaration. There is no question but that the timescale is tight. However, I will ask about the meaningful negotiations. You have made it abundantly clear that the Scottish Government was not involved in any part of those negotiations. If you had been, you would have put forward the Scottish Government’s case. I am perplexed by some of this. I believe that we have the right to make our case—there is no question about that—but the issue now is how the situation will be managed. We are where we are. We are in an election campaign, and things might change. We do not know what the outcome of any of it will be, but we know where we are at present. It would be good to get an idea of your thinking on where we are and what you can impart about that.

**Michael Russell:** I will separate those two important questions. The first question is about the negotiation process and what can be achieved in it. It is predicated on the idea that Boris Johnson is a master negotiator, which is an idea that, in a moment, I would like to demolish. The second question, which is significant at this moment, is about how the devolved Administrations would be involved in negotiations. I will come back to that.

On the first question, if we capitulate, it is always possible to get change. The backstop has become the frontstop. The day after the agreement was agreed, I said to a senior UK Government minister—who was lauding the fact that Boris Johnson had got the agreement and that the EU was enthusiastic about it—that the EU

was sighing with relief because it has persuaded Boris Johnson to continue with the backstop and, in fact, to make it even more demanding than it was. Now the EU is sighing with relief because it thinks that it might get rid of him. Frankly, there is such an exhaustion in the EU about the process that it was willing to make what were, in my view, small concessions and for him to make big concessions, just to get it over with, because it wants to move on, but it is still not over with.

You could say that, rather than Boris Johnson being a master negotiator, even his capitulation did not produce the result that he wanted. You and I are not going to agree on that, but I do not believe that there was a master negotiator at work—quite the reverse.

On your other point, we might be closer to agreement. I am glad that you recognise the right of the devolved Administrations to be involved in the process. That has been a really big issue in the joint ministerial committee for the past two years. The question is: what is the relationship between the different parts of these islands? It was accepted—almost two years ago now, by the then Prime Minister—that there should be an intergovernmental review of the matter. The thesis is—you will have heard me say this before, and the Welsh have said it, too—that Brexit has been too heavy for devolution to bear and change is needed.

There are a lot of proposals on the table. Mark Drakeford and I gave fairly detailed lectures to the Institute for Government. The Welsh have published on the matter. We will publish our views at an appropriate time, and that will broadly reflect what I said to the Institute for Government earlier this year.

We have had enormous difficulty getting the UK to the table on this issue. The Johnson Government has added an extra dimension. We had an agreement with the previous Government at the British-Irish Council in Manchester in June. In the margins of that, we had a JMC meeting, where we finally agreed a timetable. We agreed that, by the end of September, we would have the initial outline of what should happen and that the work should be finished by the end of the year. That is not going to happen. We have not had the initial outline—we have still not seen anything, and it is almost November. In my view, there is no point in having that conversation in November, because the election will take precedence, and what will happen on this matter will be guided by what happens in the election.

There is a potential solution, which is to recognise that the detailed negotiations will involve devolved competencies. You could theoretically argue that the withdrawal agreement and the political direction do not involve devolved



competencies. I disagree with that, but you could argue that they are covered entirely by the international relations reservation. The fact that the UK Government has had to seek legislative consent for the withdrawal agreement bill rather gives the lie to that, but that is in the past.

Undoubtedly, what will happen now is that negotiations will take place on devolved competencies. There is a model that we might want to apply, but the really interesting thing is that it is being interpreted in different ways. The model is the comprehensive economic and trade agreement between Canada and the EU. Canada negotiated CETA with the EU with the provinces in the room, because many of the elements in the agreement were being dealt with in that negotiation. The provinces were in the room for the simple reason that it meant that they could agree on those matters and the agreements would be binding.

That is the lesson that the UK Government should take from CETA: there should be an engagement with the devolved Administrations in which they are part of the process and can make decisions about what is done on the devolved competencies. There is no hierarchy of Governments—there is a hierarchy of Parliaments. There are things that are only ours. Regrettably, however, the UK Government has taken another lesson from CETA, which concerns what happened with the Flemish Parliament. At the very end of the CETA process, you might remember that the Flemish Parliament almost blocked the agreement because of its reservations. The UK Government does not want the devolved Administrations to go anywhere near the negotiations, because it is afraid of that happening.

Unless there is a linkage between the intergovernmental review and the process of agreeing on what happens in the next stage, we will simply have a repetition of where we currently are, and that would be a waste of everybody's time. So far, there is not the slightest sign that the UK Government recognises that. In fact, I can tell you that the latest proposal from the UK Government on these matters, which was made at the JMC three weeks ago today, was rejected out of hand by both Wales and Scotland. Matters had progressed from where we thought that we had got to in terms of an agreement. At present, we are very far away from resolution.

**Alexander Stewart:** There has to be a role in the process for the Scottish Parliament and the Scottish Government. Without that, there will be no real progress, and we will end up continually having a war of words—or a war of committees—with one another about what might or should take place. Without stability in the process, it will break

down, and continue to do so. I, for one, regret the situation, but that is where we are. There has to be meaningful negotiation and discussion on a level playing field, to an extent, to ensure that this Parliament's views and opinions are being taken into account.

**Michael Russell:** I am very glad to hear that. I hope that Mr Stewart is in regular dialogue with Michael Gove and others to tell them that, because that point is extremely important. I will go a step further and say where there are devolved competences, the decision on those devolved competences must be made by the devolved Administrations, not by anybody else.

The view that Mr Stewart espouses, which is very welcome, is widely held. Philip Rycroft, who is a former senior Scottish civil servant and was until March the permanent secretary of the Department for Exiting the European Union, when giving evidence to the House of Commons this week, talked about the lack of thinking about future relationships. He said that the current Prime Minister Boris Johnson would have a "greater chance of succeeding" if he involves the devolved Administrations early in discussions about the UK's position, and develops a common negotiated position that Scotland, Wales and Northern Ireland can promote.

There is a widespread view that, whatever people's views are on independence, we need a new structure to cope with any period of negotiation, if that were to come about. Regrettably, the only people who do not share that view are the same people who have done nothing to move the intergovernmental review forward: the people in the UK Government. However, without them, the negotiations cannot move forward.

**Mike Rumbles (North East Scotland) (LD):** I know that you have been, quite rightly, busy preparing for the worst with Brexit, but my question takes us off in a different direction and I am interested in hearing your and Luke McBratney's comments on it. I hope that the Early Parliamentary General Election Bill will get royal assent today. Following that, all legislation at Westminster will fall, including the European Union (Withdrawal Agreement) Bill—it will not exist; it will be gone. The people of the United Kingdom will have the opportunity on 12 December to choose a Parliament and therefore a Government that would take us in an entirely different direction. As far as Westminster is concerned, no legislation will be going through. What are the implications of that for all the subordinate legislation that is coming through the Scottish Parliament committees? That issue came up yesterday at my other committee, the Rural Economy and Connectivity Committee. What is the point of pursuing all that subordinate legislation when nothing is happening legislatively

in Westminster and there might be a complete change of direction? I say that as a Liberal Democrat and therefore as an eternal optimist.

**Mike Rumbles:** That is a good question. I will ask Luke McBratney to address it, then follow up on what he says. He is the expert on the minutiae of legislation.

**Luke McBratney (Scottish Government):** The current legislative project being co-ordinated between the two Governments and the two Parliaments is about providing for continuity of law at the point of exit from the EU, which is done under the European Union (Withdrawal) Act 2018. That project is required, no matter what date we might leave the EU. Obviously, we have prepared legislation recently for the possibility of leaving the EU next March. However, some adjustments were required for leaving in October and further adjustments will inevitably be required if the date of exit changes to the end of January 2020. However, the background to that work, no matter the date of leaving the EU, is the possibility of a no-deal exit, which is what will take place in the absence of a withdrawal agreement being approved and given effect in law.

The European Union (Withdrawal Agreement) Bill will fall on the dissolution of the UK Parliament. If a withdrawal agreement bill were reintroduced, the standing orders of the Scottish Parliament would require us to lodge a further legislative consent memorandum in respect of that bill. However, until the provisions of a withdrawal agreement bill—in this context, the most important provisions would be those that relate to the implementation period—are law, the legislative work that the committees of the Scottish Parliament and the UK Parliament are doing is to prepare for the possibility of continuity of law under the European Union (Withdrawal) Act 2018 on exit day.

**Mike Rumbles:** That is helpful. I understand that that is right from a civil service point of view, but a political dimension overlays the situation, which is what I am more concerned about. Would it not be politically sensible to pause—after all, it is only six weeks away—until we know what the situation at Westminster is likely to be? If we do not pause, we could be involved in quite a bit of subordinate legislation, which might turn out to be completely unnecessary. As I said, I am an eternal optimist.

08:45

**Michael Russell:** I have some sympathy with your position. An enormous amount of time and effort has gone into the subordinate legislation programme. At one stage, we had to draw in

drafters from elsewhere, and, as you know, committees have had their timetables disrupted.

However, Luke McBratney's point is an important one. The work is to prepare for a—non-existent, I hope—no deal. If we were not fully prepared and no deal happened, for example, at the end of January, we would be scrabbling around in January to finish that work. At the moment, my view is that we should continue the work and get it finished, but I am not unsympathetic to your point. If committees were saying, "Good gracious me, here are three more things that we have to do before Christmas", we would sit down, talk to them about it and see what we could do.

On the legislative consent memorandum, when the bill falls, it falls, and we will just go back to it. That will affect other things, including areas in which Mike Rumbles has shown a particularly strong interest, such as agriculture and regulation for agricultural payments.

It is no way for the UK Government to run a country, but we have to be ready for any eventuality.

**Ross Greer (West Scotland) (Green):** There has been substantial discussion about Northern Ireland in the latter stages of the Brexit process—if there had been such discussion before the referendum, we might have been in a different place. The final withdrawal deal, as negotiated by the UK Government, puts Northern Ireland in a particular set of circumstances. Will you talk a little bit about the work that the Scottish Government has done on the impact of the deal, if it is agreed, on the economic relationship between Scotland and Northern Ireland?

**Michael Russell:** We are looking at that closely and I hope to provide information on it as soon as I possibly can. We know that the UK Government has done no such work, and did no such work in the run-up to the agreement. I asked that question directly of the UK Government and I have not had a satisfactory answer.

The advantage issue falls into three parts. I make it clear that we are not in any way arguing that that advantage should not happen—that is necessary. We are not even arguing that if it happens in Northern Ireland, it has to happen here. We are simply saying that we cannot envisage a situation in which it happens there and Scotland is disadvantaged by that. Further, I have heard English politicians cogently argue that those advantages, if Northern Ireland can have them, should not be denied to England, given the inevitability of economic decline.

Essentially, as I say, there are three parts to the issue as it relates to advantages. The first part is the pure economic disadvantage. If someone

intended to invest in something, would they rather invest in Northern Ireland or Scotland? At present, from what we can see, that decision would be weighted towards Northern Ireland, given its advantages, particularly if they wanted to work in the EU or take advantage of single market conditions. There are additional worries about that with regard to fishing and agriculture.

The second part is the impact on Scotland with regard to infrastructure and customs proceedings. Down in the south-west, the number of checks would have to increase, and they would not be simple. There would be four types of checks, because there would be checks on goods each way: goods going to Northern Ireland and goods to the Republic of Ireland, and goods coming from the Republic and those coming from Northern Ireland—plus, for the Republic, that would include goods going to or coming from the rest of the EU via the Republic. Those would all have to be subject to some level of check, whereas, although there are occasional security checks at the present moment, there are no customs check of that sort. That is a big issue, it will continue to be a big issue and it will have to be dealt with as such.

The third part is a democratic one. If this situation is arranged for Northern Ireland, and the Northern Ireland Assembly—if it comes back, which one assumes it will, at some stage—has to make a decision on it, and not only one decision, as there would be a calendar of decision making every four or eight years, why is there no democratic element for Scotland? As I pointed out yesterday, Scotland rejected leaving the EU by a bigger margin than Northern Ireland did, so that seems inconsistent.

We will deal with those three elements. We have published information on some of them and we will continue to do that. I again make the point that we not saying, “Don’t do this.” We are saying, “Scotland really cannot be put at a disadvantage.”

**Ross Greer:** You mentioned the infrastructure at ports. My understanding is that the geographical situation at Cairnryan in particular massively restricts the ability to add substantial extra infrastructure. There is an acute challenge there, which I presume will form part of the work that the Scottish Government will do.

**Michael Russell:** As you know, work on that was included in our no-deal plan. I noted the irony—I am sure that the convener did, too—of the fact that it was reported in the local papers in the south-west that the principal objector to the proposal was the Secretary of State for Scotland, who is the local member of Parliament. Despite his willing of Brexit on a country and a constituency that did not want it, he did a wonderful nimby act immediately afterwards. The irony of that should not be lost on anyone.

The reality is that it is a very difficult set of circumstances. The infrastructure and the road system are constrained, but we will have to find ways to make things operate.

**Ross Greer:** You mentioned that, as part of the no-deal scenario planning, the lorry park would be down the road from Cairnryan. I presume that, just as the UK Government’s no-deal planning is partially suspended, you will look to revisit those arrangements later in December and in January 2020.

**Michael Russell:** Yes. The no-deal planning needs to remain live, but it does not have to be implemented. The status of the no-deal planning work that was done is that it remains live and available to us. It can be enacted and moved into an operational phase very quickly, but it is clear that that will not happen at present, because there is an election on.

**Ross Greer:** I jump back from no-deal planning to the deal that is proposed and the further work that you mentioned that you are doing. Assuming that we are still working to the 31 January 2020 date, I presume that the Scottish Government’s aim will be to publish as much as possible before Christmas, and certainly before 31 January.

**Michael Russell:** The election complicates the situation even further. A baffling matrix of issues comes in as a result. We will endeavour to do as much as we can, within the confines and restrictions of purdah, which will kick in shortly.

**Ross Greer:** Thank you.

**Annabelle Ewing (Cowdenbeath) (SNP):** Good morning, cabinet secretary. In response to earlier questioning, you made the point that, even if the withdrawal agreement bill returns to the House of Commons in the same form or a slightly different form after the Westminster election and proceeds, that would not mean that Brexit would be done—Brexit would be far from being done. Could you elaborate on that point, please?

**Michael Russell:** Yes. The “Get Brexit done” slogan is preposterous, because it is immensely dishonest. It plays on the enormous weariness that the public have of Brexit; I have it, too. Goodness gracious me—why wouldn’t I have it after three and a bit years? “Get Brexit done” says to people that there is a magical solution, whereby we can wipe the issue away, in the same sense that there is now, I believe, a television channel that does not carry Brexit news. People are being told, “It’s going to be done—if you put your cross in this box on 12 December, it will all be over.” That is preposterous nonsense.

If Brexit continues, all that will happen is that we will move from one phase of Brexit to another phase of Brexit. Moreover, we will move from the

phase that was meant to be the easy one to the one that is meant to be immensely more complicated—I have heard it said that it will be 10 or 15 times more complicated. That phase is the one that will affect most people's everyday lives, because it is to do with the minutiae of the trading arrangements, the institutions and the whole issue of the pattern of the future relationship and how that will work. It will be an endless process.

This has not been done before. A trading agreement has been entered into, but a trading agreement has never been entered into by a former member. A curious remark is sometimes made about the relationship between Switzerland and the EU, which is an extremely complicated treaty-based relationship: it is said that a third of the Swiss civil service are in the air at any one time, on their way to or their way back from Brussels.

The resources of the civil service in London have already been utterly absorbed by Brexit. Anybody who has had anything to do with the UK Government in the past two or three years knows that Brexit has been a black hole that has sucked in all the other work—the energy and resources—and that hole is just going to get bigger. More time and effort will be absorbed by Brexit in every single department.

The regrettable thing is that people will wake up to that pretty early in the new year, if the deal is agreed to, and they will realise that they have been sold a pup. It will not even be as nice as being sold a pup. It will be a horrific experience, and we need to say that to people. Agreeing the deal is not getting Brexit done. The only way to get Brexit done is to stop it—to say that it was absolutely daft and cannot work. Crucially, Scotland did not vote for it.

**Annabelle Ewing:** I entirely agree with that, cabinet secretary. Looking at the proposals that the UK Prime Minister has on the table as we speak, which Tories both north and south of the border support, it appears that what is envisaged is a more distant relationship with the EU than even Theresa May proposed, particularly, for example, with regard to the regulatory alignment issues that are crucial to businesses in Scotland that trade with the European Union. I understand that, in the previous text, there was a suggestion of at least some areas of alignment via a common rule book, but that is not the case in the current text.

I am the constituency MSP for Cowdenbeath and I represent Rosyth. The cabinet secretary will be well aware that Mowi has a major centre of operations in Rosyth, with more than 600 workers employed in its salmon processing plant, many of whom are EU nationals. There must be considerable worry in Mowi, the Scottish salmon

industry and the general food and drink sector in Scotland about what on earth will happen. A no-deal Brexit was obviously seen as catastrophic but, even leaving that to one side, what can be said to those economic operators at this time to give them any comfort about issues of certification and transportation? What is the UK Government saying to give them any comfort?

**Michael Russell:** The food certification issue is important. Inevitably, if we are not part of the EU, the requirements on businesses for certification will become more onerous. If we are in the single market the requirements are minimal, because everyone has and operates the same standards, which are enforceable in law. That is really important: those standards are enforceable through the European Court of Justice, so people can trust what is happening. The moment that we are outside the EU, there will be no enforceability of the common standard and the EU will be much tougher about ensuring that its standards are met. That requires a rigorous programme of inspection.

I know from the aquaculture sector in my constituency—which is important there, as is processing—that the number of certificates will go up by a factor of between 10 and 100. That is very vague, but there will be a massive increase in the number of certificates required and there are simply not enough officials to do that work. That is one of the areas in which we have worked very hard to try to find solutions. There is a proposal to centralise certain functions, and the UK Government eventually gave us some money to move forward on trying to get that to work ready for a no-deal Brexit. It needs to be kept on the agenda in case there is no deal, but even with a deal it will be difficult to cope with.

On a wider canvas, we need to remember that regulatory alignment is more important even than tariffs, because it allows the free passage of goods. Tariffs are to some extent 19th century barriers, whereas regulatory alignment takes away 20th and 21st century barriers. The failure to have regulatory alignment will have an impact.

There are those difficulties within the relationship and, if it is a free-trade relationship along the lines of Canada-minus, there are obvious boundaries to it. I commend to the committee the step chart that we have published more than once in documents and which you will have seen. It indicates the types of agreement and relationship with the EU that can be had depending on the red lines that are brought to the table, and the Canadian relationship is right at the far end—almost off the chart.

We could have one of a range of other relationships that were on offer. Many options were available for people who honestly believe in leaving the EU—Scotland, of course, did not. For

example, at no time during the debate in 2016 was it said that the way to leave the EU was to leave the single market and the customs union; it was quite the reverse. Even the lead proponents of Brexit in the campaign said that there would be no need to leave the single market. As you go down the step chart, you realise the disadvantages. We are right down the step chart, which will be obvious in every business.

09:00

**Annabelle Ewing:** The situation is very worrying, and it is unacceptable that the UK Government has not seen fit to offer any indication of what non-tariff barriers there might be, particularly in relation to Scotland's food exports, which are hugely important to Scotland's economy.

I will pick up on a point that is raised in your paper, "Scotland's Place in Europe: Our Assessment of the Revised Withdrawal Agreement and Political Declaration", which was published yesterday. The paper cites conclusions to the effect that, under the basic trade agreement that the UK Prime Minister and the Tory party envisage, Scottish gross domestic product is estimated to be 6.1 per cent lower within 10 years than it would be if we stayed in the EU. Can you expand on the basis of that conclusion?

**Michael Russell:** In a sense, it is not a surprising conclusion. As you know, we have done a lot of work comparing the situation that exists with EU membership, the situation that would exist with an option that includes membership of the single market and customs union, the situation that would exist with the May deal and the situation that would exist with the so-called World Trade Organization option, which is the no-deal option. The impacts get progressively worse, and we estimate that the Prime Minister's deal is slightly worse than the May deal. Yesterday, there was interesting confirmation from the National Institute of Economic and Social Research, which estimates that there would be a £70 billion hit within the 10-year period. There is broad confirmation that that is around where the impact would lie. I take Mr Greer's point, because the estimates do not fully take into account the impact in relation to Northern Ireland, which still has to be assessed. One could say that the £3 billion figure might be the best estimate, but there would still be an impact.

Can we mitigate the impact? There might be ways in which some companies can mitigate things, but there might be other things that we have not taken into account, because there will be unexpected consequences. Some companies have been very clear that they are not going to get involved in a public debate about the issue, but

they think that there might be consequences. People who are involved in just-in-time manufacturing, for example, are very doubtful that they can make the type of arrangements that are proposed under the Prime Minister's deal work, and some Scottish food and drinks companies are worried. The impact on agriculture is difficult to quantify, given that the sectors are different, but the sectors are already showing signs of strain. That is where many of us will see severe damage done to our constituencies.

**Annabelle Ewing:** That is very depressing. It is clear that the 62 per cent of people in Scotland who voted to remain did so for very good reasons.

**Donald Cameron (Highlands and Islands) (Con):** I have a question about legal effect, which might be one for the cabinet secretary's officials. Am I right in thinking that the provisions of the withdrawal agreement must be given direct effect in the UK?

**Luke McBratney:** Yes. There are parts of the withdrawal agreement that must be given direct effect in the UK. That would be achieved in the withdrawal agreement bill through a combination of clauses 1 and 2, which provide for the implementation period, and clause 5, which, in effect, has two purposes. First, it washes up the rest of the withdrawal agreement and transposes it into law. Secondly, it gives the withdrawal agreement the status that it requires, which, in effect, is the same status that EU law has presently in the UK's legal systems. We can see that through the words that the parliamentary draftsmen have used in clause 5, which are, in effect, identical to the words in the European Communities Act 1972 that are used to give EU law its current status in the legal systems.

**Donald Cameron:** Am I right in thinking that the withdrawal agreement will benefit from the adoption of the supremacy of EU law?

**Luke McBratney:** Absolutely—to the extent that that is provided for by the withdrawal agreement bill, were it to become law.

**Donald Cameron:** Thank you. Convener, I have a question about delegated powers, but I know that Stuart McMillan is going to ask about that, so it may be better for me to wait and come back after he has done so.

**The Convener:** That is very polite. I will ask Stuart McMillan to go ahead.

**Stuart McMillan (Greenock and Inverclyde) (SNP):** Thank you; I will deal with delegated powers first, then. Cabinet secretary, does what you said earlier mean that more delegated powers will come forward over the election period and beyond?

**Michael Russell:** I do not think that they will come forward during the election period. The UK Parliament will be dissolved on Wednesday, and after then, there will not be anything coming forward. I do not know whether the Government can rush anything through by Wednesday, but I think that its focus is on other things. I think that what we have got is more or less what we are getting.

Over the past 12 months or so, our experience has been that things pop up that we are not expecting. Suddenly, one of my colleagues will get a letter from a UK minister that says, "We have forgotten about this one—could you rush this through in the next few weeks?" We have had to be pretty firm about those and, to be fair, the committees have been very helpful about that. I might be proved wrong, but I do not think that we will see much, if anything, between now and Wednesday, and, if so, there will not be anything until Parliament comes back. If that is the week before Christmas, I do not suppose that it will do much, so I suppose that we would be talking about January before there is anything new.

**Stuart McMillan:** If that were to be the case, would it mean that January would be fairly busy with delegated powers that were before this Parliament's committees in the run-up to the end of January?

**Michael Russell:** I would not necessarily say so, because what we have done, we have done. We are prepared for no deal. Mr Rumbles is right that some work is still going on, but we are prepared for it. The pressure in January would be on the withdrawal agreement bill, which I presume the Government would endeavour to get through in five days or so, so we would have to come back with a legislative consent memorandum. I have made a commitment to have the chamber debate it, but I know that the Finance and Constitution Committee would want to look at it as well, so we would have to make sure that our timetable allowed that to happen.

I think that I am right in saying—Luke McBratney will correct me if I am wrong, as he often does—that we would not table the legislative consent motion, but if we did, it would have to be before the last amending stage of the bill.

**Luke McBratney:** Yes. It is typical to try to have the Parliament express its views before the last amending stage of a UK bill, in order that changes can be made to the UK bill to reflect the views of the devolved legislatures.

**Michael Russell:** That would be the committee stage in the Lords.

**Luke McBratney:** Yes—the report stage in the Lords.

**Michael Russell:** So that is where we would get to, with regard to our involvement. If the Government was going to do the bill in a week or 10 days, I think that we would try to do it at the earliest opportunity in that time, allowing the committee to have an opportunity to take evidence on it and then for us to have a debate. If the bill is the same as it is now, we would introduce a legislative consent memorandum but we would not move a legislative consent motion and we would ask the Parliament to approve that decision.

**Stuart McMillan:** I will turn to a different area. On page 22 of "Scotland's Place in Europe", which was published yesterday, there is a table about EU and non-EU nationals in the workforce. It has a set of statistics about the reduction in our workforce, which I suggest would be sobering for any reader. Bearing in mind that Scotland has an ageing population, it is clear that we need more immigration—more people to come in to work and contribute.

The third aspect of the table says:

"The employment rate for 16 to 64 years was highest for EU nationals".

I suggest that that contradicts the obscene narrative in society that EU nationals just come here, sit on the dole and take our money.

**Michael Russell:** We know that EU nationals and migrants in general contribute more tax per head than others. We can see that the work rate of EU nationals is substantial. You are right about the people who are leaving—it is a very worrying statistic. I represent a Highlands and Islands constituency, and Mr Cameron is a Highlands and Islands list MSP. In the Highlands and Islands, there is no natural growth of population. As I have said before, to put it bluntly, we are not breeding. In those circumstances, we need people to come in. If they do not, the population will fall.

There is an ageing population in the Highlands and Islands so, given the demographics, the workforce is estimated to fall by about 20 per cent in the next 10 years. If we do not have a net increase through freedom of movement, we will suffer and all our services will suffer because depopulation leads to a decline in services. That is true across Scotland but it is particularly true in rural Scotland.

If committee members have not looked at the map that we published online three weeks ago, I can tell you that it covers 7,000 data zones in Scotland and you can see the impact of Brexit on each of those data zones. Argyll and Bute, my constituency, is the third worst affected in Scotland. In fact, if you take out Helensburgh and Lomond, which I do not represent, it is probably the worst affected in Scotland. The whole of rural Scotland is badly affected, but urban Scotland is

badly affected too, and we need freedom of movement—no ifs, no buts.

**Stuart McMillan:** I have had discussions about trade with a couple of organisations in the past few weeks. Is the Scottish Government in regular dialogue with the airports and the ports—not the ports that link us to Northern Ireland but the other ports in Scotland—to see whether more freight can be shipped directly from Scotland, instead of it having to sit in a car park in Kent, with the possibility that food will go rotten before it gets to market?

**Michael Russell:** Part of our no-deal preparations involved examining that issue and we will continue to examine it. I know that officials are in regular contact with the ports and airports. No deal is not just about what comes in; it is also, as you rightly say, about what goes out. Food was not in category 1 in the UK categorisation for no deal; medicines were in category 1. However, arrangements were being made to use outward capacity to take food exports, and fish and seafood products were central to those arrangements. There are possibilities around that, but it would be nothing compared with what free movement allows to happen. Of course, we have always been mindful of that issue and we will continue to be so.

**Stuart McMillan:** There are three new cabinet committees at the UK Government level—the EU exit strategy committee, the EU exit, economy and trade committee and the EU exit operations committee. Are Scottish Government ministers attending any of those committee meetings?

**Michael Russell:** We are, on occasion, part of the daily meeting of the EU exit operations—XO—committee, but only by invitation when Michael Gove thinks that it is relevant. There must have been more than 60 of those meetings and I think that we have only been involved in about 12 to 14 of them. We know that matters that are relevant to areas of devolved competence have been discussed at some of those other meetings.

As unsatisfactory as its predecessor committee was, there was more regular engagement with it. It was chaired by David Lidington, although the Prime Minister chaired it from time to time, and it met in London, not daily but weekly. I went to that committee on a number of occasions, John Swinney went to it and the First Minister went to it. Attending the XO committee has been a grace and favour arrangement, and engagement has been down. The issue is not about getting to the meeting; it is a daily meeting and technology is being used for people to talk down the line.

**Donald Cameron:** One of the themes in the withdrawal agreement bill is that a lot of the powers are left to the Executive over the

legislature. That applies to the UK Government and the Scottish Government and to reserved and devolved areas. Is that something that the Government is acutely aware of? I am sure that it is, but as a veteran of the proceedings of the UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill, the cabinet secretary will recall that these are often controversial aspects of legislation. Can you give a broad observation on that?

09:15

**Michael Russell:** That is a good point. We have been nervous about the Henry VIII powers, as they are called. We would rather that the UK Government did not legislate in this way, but if it is going to, we can understand why it would want to have those powers in there.

I made a commitment to the Finance and Constitution Committee—I might have made it to this committee, too—that we would ensure that any exercise of the powers that Scottish ministers have that parallel powers of UK ministers would be exercised under full committee and parliamentary scrutiny. I give that commitment again, because I would not want to exercise them in any other way.

We are veterans of the continuity bill and we know how difficult it is to make these things up as we go along, but we need to find a way of proceeding. We have a protocol with the Scottish Parliament about scrutiny, and I am happy for it to continue and for it to be developed further if these powers eventually come into being.

If I can extend the discussion slightly, I am as concerned about the proposal that exists in the bill in relation to the powers of the joint ministerial committee (EU negotiations), because it seems to me that that is where major powers will be held, and there is no provision for devolved Administration engagement and involvement in it.

**Donald Cameron:** The JMC(EN) was going to be my next subject. As I understand it, it is co-chaired by a UK and an EU representative, and it has a number of specialised committees underneath it.

What would be your best-case scenario with regard to the involvement in that of devolved Administrations? Would you want to be on one of those sub-committees?

**Michael Russell:** You have to start with the principle that there should be no discussion of or decisions on—I put both of those things together—matters of devolved competence without the presence and involvement of the devolved minister and the involvement of the devolved Parliament.

There is a further area, which concerns reserved matters that have an impact on devolved matters, such as migration and the situation with regard to EU residents. With regard to those matters, there should be the presence of devolved ministers and there should be joint decision making.

The terms of reference of the JMC(EN) include the word “oversight”. Therefore, there is already an arrangement on paper for oversight of all of those activities. However, that does not take place—there is no oversight. I frequently say at meetings of the JMC(EN)—David Barnes heard me say this at the most recent one—that, in actual fact, you would learn as much from reading the newspapers or watching the BBC as you would learn from going to the joint ministerial committee.

The principle is that we must be involved when things for which we are responsible are being decided on, and we must be decision makers in those matters, because that is what the devolved settlement says.

**Donald Cameron:** On a totally different matter, is it right that the withdrawal agreement bill protects geographical indications, with regard to article 54(2)?

**Luke McBratney:** The withdrawal agreement bill is, effectively, neutral with regard to quite a lot of the content of the withdrawal agreement. As you have already mentioned, it either provides powers to make the appropriate changes to law in order to implement the withdrawal agreement or points to the withdrawal agreement and transposes its provisions into law.

**Donald Cameron:** I was talking about the withdrawal agreement rather than the bill—my question was not clear, sorry. We are advised that the withdrawal agreement protects geographical indications as they are protected in EU law on the last day of the transition period, and will continue to do so. Is that correct?

**Luke McBratney:** That is the case under article 54(2) of the withdrawal agreement, yes.

**The Convener:** I have a question that will wrap up our discussion. Professor Tobias Lock has done some sterling work for us. He has gone through the explanatory notes for the withdrawal agreement and compared them with the Scottish Government’s legislative consent memorandum, and he has outlined the areas that the UK Government believes requires legislative consent and the areas that the Scottish Government believes require legislative consent. He has identified 10 areas where the Scottish Government believes that legislative consent is required but the UK Government does not.

How serious do you think that that disagreement is? Obviously, the bill will fall at the end of the Westminster parliamentary session. However, if it comes back in the next session, how can we overcome the disagreement on those 10 areas?

**Michael Russell:** It is not uncommon to have that sort of disagreement, but we think that the issue is serious, because we are convinced that legislative consent is required in those 10 areas. I think that we make that clear in the legislative consent memorandum, and we will make it clear whether we agree to consent in those areas. I would not hold your breath for that answer—indeed, I think that you know the answer already.

If you remember, we had this type of dispute over the issue of frameworks and what were, essentially, intersecting Scottish competences and EU competences. There were a number of areas of disagreement, and we eventually honed them down to the point at which, of the list of 24 framework areas, there were only two, I think, on which we failed to agree.

That points to another major weakness in the devolved system. Under the current intergovernmental arrangements, the judge and jury in such matters is the UK Government. The Scottish Government can say until it is blue in the face what it thinks that the situation is but, in the end, there is no mechanism for saying that we need somebody else to make the decision, whether that might involve arbitration or independent advice.

**The Convener:** Since you were last before the committee, in April, we have had a new Prime Minister. Obviously, we do not know the outcome of the election and, of course, you are not going to predict it here today. However, can you say whether your discussions with the UK Government have changed under the new Prime Minister and, if so, what those changes might be?

**Michael Russell:** It is fair to say that, over the past three years, the situation has got progressively worse. The new Administration has been even harder to deal with than the previous one. That is regrettable, because I would have liked to have got into a situation in which we were able to have better discussions.

Yesterday, I tweeted a brief tribute to David Lidington. Regardless of the fact that we did not agree on things, I had the greatest respect for him and I felt that he was hamstrung by the Prime Minister. I feel that he would have done more if he had been able to. However, it was possible to have a conversation with him—and with Damian Green—in which we respected each other’s positions but chose to disagree.

As I have said publicly before, when we started on the process of discussing potential no-deal



situations, I came to an agreement with David Lidington. Mark Drakeford, when he was my counterpart in Wales—Jeremy Miles has that position now—came to the same agreement. David Lidington and I disagreed profoundly on the politics of the situation and on Brexit, because I did not want Brexit to happen. However, we agreed that, on the detail of no-deal Brexit, there was no room for politics. We agreed that we had to work together so that we were prepared for it.

When the new Government came in, we saw that, in my view, it thought that a no-deal Brexit was an acceptable outcome. It was never an acceptable outcome to David Lidington and others—they wanted to avoid it. The new Government thought that it was an acceptable outcome and saw it as a political tool that it could use to get its own way. Further, it saw it as an opportunity to try to beat the devolved Administrations when it chose to do so. I have to say that we have seen that approach particularly from Michael Gove over the past few months. That is deeply regrettable, because there is enough that divides us on this issue. We are profoundly opposed to Brexit, but the situation has got worse and will continue to get worse until either there is no Brexit or Scotland is an independent member of the EU.

**The Convener:** Thank you, cabinet secretary. I thank our witnesses giving evidence today. We now move into private session.

09:23

*Meeting continued in private until 10:38.*



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