

**Conveners Group**  
**Meeting with the First Minister**  
**Wednesday 24 October 2018**

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## **CONVENERS GROUP**

### **CONVENER**

\*The Deputy Presiding Officer (Christine Grahame)

### **MEMBERS**

- \*Clare Adamson (Convener, Education and Skills Committee)
- \*Bruce Crawford (Convener, Finance and Constitution Committee)
- \*Bob Doris (Convener, Social Security Committee)
- \*James Dornan (Convener, Local Government and Communities Committee)
- \*Bill Kidd (Convener, Standards, Procedures and Public Appointments Committee)
- \*Johann Lamont (Convener, Public Petitions Committee)
- \*Gordon Lindhurst (Convener, Economy, Energy and Fair Work Committee)
- \*Lewis Macdonald (Convener, Health and Sport Committee)
- \*Ruth Maguire (Convener, Equalities and Human Rights Committee)
- Jenny Marra (Convener, Public Audit and Post-legislative Scrutiny Committee)
- \*Gillian Martin (Convener, Environment, Climate Change and Land Reform Committee)
- \*Joan McAlpine (Convener, Culture, Tourism and External Affairs Committee)
- Margaret Mitchell (Convener, Justice Committee)
- \*Edward Mountain (Convener, Rural Economy and Connectivity Committee)
- \*Graham Simpson (Convener, Delegated Powers and Law Reform Committee)

\*attended

### **THE FOLLOWING ALSO PARTICIPATED:**

The First Minister (Nicola Sturgeon)

### **CLERK TO THE CONVENERS GROUP**

Susan Duffy

### **LOCATION**

Committee Room 2

## Scottish Parliament

### Conveners Group

Wednesday 24 October 2018

*[The Deputy Presiding Officer opened the meeting at 12:30]*

**The Deputy Presiding Officer (Christine Grahame):** I am pleased to convene the fourth meeting in the current session of Parliament between the Conveners Group and the First Minister. I welcome the First Minister to the meeting, along with teachers and pupils from Crieff high school and everyone else who has come along to watch.

This meeting gives conveners the opportunity to question the First Minister about the programme for government from the perspective of the Parliament's committees. We need to finish by around 1.55, as chamber business starts at 2 and we cannot overlap. That means that time is very tight—how often do I say that?—and I will therefore allow around five minutes for each exchange between a convener and the First Minister. If we have time at the end—we might have today—I will allow some further questions; the conveners can bid for those at the end. First Minister, do you wish to make an opening statement?

**The First Minister (Nicola Sturgeon):** No—I am happy to get straight into the questions.

**The Deputy Presiding Officer:** You see—take it from the First Minister; there is brevity for you.

## Local Government and Communities Committee

12:31

**James Dornan (Convener, Local Government and Communities Committee):** Prior to my becoming convener of the Local Government and Communities Committee, the committee discussed the impact of Brexit on local authorities. In your recent address to the Convention of Scottish Local Authorities at its annual conference, you stated:

“the Scottish Government is undertaking a significant programme of contingency planning”

in response to Brexit, and you noted the “essential” and “critical” role of local government in preparing for our departure from the European Union.

Can you set out the ways in which the Scottish Government is supporting local government's efforts in the area? How do you see the approach between Government and councils putting us on a better footing for the disaster that is coming with Brexit?

**The First Minister:** The Scottish Government is doing a considerable amount of contingency planning. It is not easy; we are doing it largely in the dark because none of us know the way in which the United Kingdom will leave the EU or the basis on which it will do so. We are working with a range of different stakeholders: partners in the business community, other organisations and—relevant to your question—local authorities.

Each local authority is responsible for its own preparation and contingency planning, and I know that many local authorities—all of them, I would expect—are doing that. COSLA has also been working with local authorities, and the Scottish Government has been working with COSLA and individual local authorities.

I will set out some of the practical steps that we have taken. An officials group has been established between the Scottish Government and COSLA; it meets monthly to look at operational preparedness. We have seconded a member of Scottish Government staff to help COSLA to co-ordinate its Brexit preparedness. Michael Russell met the president of COSLA earlier in the summer, and he will do so again next month, as that relationship is important in overseeing the work.

As I said, COSLA is working with individual local authorities. Conveners will have seen the work that the Fraser of Allander institute presented to Glasgow City Council earlier this month. It showed the impact just on the city of Glasgow. City of Edinburgh Council has developed a survey to look at sectoral workforce issues arising from Brexit,

the results of which are due to be published soon. I have given a sense of all the work that we are doing and the practical steps that we are taking, and we will continue to do it.

I will make two quick final points, one of which I alluded to at the start. We are really doing all of this work in the dark with our hands tied behind our backs. Five months before the due date for exit, we do not yet know what the basis of the future relationship will be, or even, given some of the issues with the withdrawal, whether there will be a deal at all or whether we will be in a no-deal scenario. Finally, while we will continue to do everything we can to mitigate the impact as far as we can, it is important that we are frank and honest with people. We are not going to be able to take away all the impacts of Brexit, particularly if we find ourselves in a no-deal scenario. Helping organisations and businesses to prepare for the impacts that cannot be mitigated will also be an important part of our process of work.

**James Dornan:** When this was discussed at my committee, it came out that the workforce of local authorities could be most affected. Is any work being done on that specifically? Do you have any plans that you can share with us?

**The First Minister:** It has been a particular focus of the Scottish Government to look not just in terms of local authorities but across the economy where the impacts of labour and skills shortages are likely to fall. The work that I mentioned that the City of Edinburgh Council has done specifically focused on workforce issues across different sectors. We have had and will continue to have discussions and look at where we can focus on the different sectors that we know are likely to be disproportionately hit. For example, we know that agriculture and the hospitality sector are two in particular that will feel the brunt particularly hard.

Of course, not just the private sector but the public sector is affected. The national health service, social care and the universities are already starting to feel the brunt; and anecdotal evidence suggests that that is already beginning to hit. We are working closely with different interests and, as we get more information and more certainty, we are looking at the plans that we will be able to put in place to mitigate as best we can. Obviously, Skills Development Scotland has a key role to play in that going forward, as well as in looking at skills needs across the economy.

## Culture, Tourism, Europe and External Affairs Committee

12:36

**Joan McAlpine (Convener, Culture, Tourism and External Affairs Committee):** First Minister, you referred to the possibility of a no-deal Brexit, which is obviously something that we do not want. However, should agreement be reached on a withdrawal agreement, the UK Government will be required to introduce the withdrawal agreement bill at Westminster, which will engage the legislative consent process here. What discussions has the Government had with regard to the potential content of that bill and the time that will be available for scrutiny of it by the Scottish Parliament?

**The First Minister:** I will take the different elements of that question in turn. However, before I go on to answer the question, which is based on the assumption that there will be a deal, I will say just a bit more about my concern that we are now heading for a no-deal scenario.

With almost every day that passes, instead of the UK Government opening up negotiating space that increases the possibility of reaching a deal that can then attract political support, it seems to be closing down that negotiating space and digging itself deeper into the hole that it has got itself into. I am increasingly concerned that the prospect of a no-deal scenario is becoming ever greater with every day that passes.

As things stand in what is often not a very fast-moving situation but is a fluid one, a no-deal scenario might be the most likely outcome, which is deeply concerning. Given that we are two and a half years on from the vote and five months away from exit, it is staggering incompetence that a Government has allowed the situation to get to this stage. Brexit is, frankly, shaping up to be the biggest failure of government policy and handling of a situation that any of us have seen in our entire lifetimes.

However, Joan McAlpine's question is predicated on there being a deal, and let us all hope that that will be the case. You are absolutely right that, if there is an agreement, a withdrawal agreement bill will then require to be introduced in the House of Commons and that bill will require the legislative consent of the Scottish Parliament. In short, the bill would substantially amend the European Union (Withdrawal) Act 2018, which, of course, this Parliament did not give consent to, but that view was ignored. The bill would postpone almost all the 2018 withdrawal act so that it takes place at the end of the implementation period. We have had preliminary discussions with the UK Government about the content of the withdrawal

bill. I will be frank: the engagement around that has so far been better than the engagement that we had in the run-up to the European Union (Withdrawal) Bill, although that would not be hard because the engagement there was pretty abysmal.

Finally, I guess that the timing really depends on when the date of exit would be. At the moment, the assumption is that it will be 29 March 2019. The bill has to be introduced within a timescale that will allow it to be enacted in good time before that. Time is running out for that; and if time is running out for the House of Commons, it is clearly running out even faster for this Parliament. My view is that we are getting into territory in which the extension of article 50 could not and should not be ruled out. If that was to happen, then clearly the timing of the bill might slip as well. The most recent meeting of the joint ministerial committee (EU negotiations) discussed the bill and one of the key points that Michael Russell made at that meeting was that it is absolutely essential that there is time for proper scrutiny in this Parliament. We will keep Joan McAlpine's committee and other committees updated as we get more information.

**Joan McAlpine:** Thank you. As you say, there are a great many ifs around the whole process. However, if such a process was to go ahead and there was a withdrawal agreement bill, are you planning to publish a legislative consent memorandum and, indeed, could you see yourself recommending legislative consent in any circumstances?

**The First Minister:** Briefly, the standing orders of Parliament require us to lodge a legislative consent memorandum for every bill that affects devolved matters and we would expect the withdrawal agreement bill, if it comes forward, to be such a bill. I would therefore expect us to lodge a memorandum that would explain the aspects of the bill that would require the Parliament's consent. The memorandum would set out whether the Government intended to bring forward a legislative consent motion, which we would do if our intention was to ask the Parliament to give consent. As we have made publicly clear, however, as things stand at the moment, it is not the Scottish Government's intention to recommend consent to any Brexit-related legislation that impinges on devolved matters, because we think that what happened over the 2018 withdrawal act was completely unacceptable in that this Parliament's view on consent was ignored. If the UK Government is going to take that approach, what is the point of the Scottish Parliament looking at and deciding whether it wants to give consent?

We have requested of the UK Government a fundamental look at how the Sewel and legislative

consent provisions are operating, and that would be required before we would feel able to ask the Scottish Parliament to give consent, with the knowledge that refusal of consent might well be ignored.

**Joan McAlpine:** Thank you.

## Delegated Powers and Law Reform Committee

12:42

**Graham Simpson (Convener, Delegated Powers and Law Reform Committee):** As you know, First Minister, there is an interparliamentary forum on Brexit that conveners of committees here, the UK Parliament and the Welsh Assembly attend—I represent the DPLR Committee there—and the next meeting is in Cardiff tomorrow. We have previously discussed how intergovernmental relations could work after Brexit. There has been a clear view that the joint ministerial committee mechanism is not fit for purpose. I understand that you agree with that view and that a review of JMC structures is happening. Can you say what your misgivings are and how you think that committees here—not just my own—could feed into that review and come up with something that is fit for purpose?

**The First Minister:** You have pre-empted my first remark, which is that I do not think that the current mechanisms are fit for purpose. I had come to that conclusion through past experience before we got to the Brexit discussions. However, the experience of trying to get the Scottish Government's voice heard on Brexit has confirmed my view that the mechanisms as they work at the moment are simply not fit for purpose.

That is not necessarily down to the theory of how the mechanisms are supposed to work or down to failures in how the memorandum of understanding is drafted; it is about the practice and the lack of political will to make the mechanisms work and treat them seriously and in good faith.

To give a more specific answer to your question, one of the serious flaws—while I obviously cannot put words into his mouth, I think that the First Minister of Wales would agree with this—in how the mechanisms work is that there is no way of ensuring compliance with how the intergovernmental machinery is supposed to work. It can be flouted and there are no consequences for that. If we therefore do not have the political will across all parties to make it work voluntarily, nothing can enforce compliance. As you rightly said, a review of the JMC mechanisms is under way. One of the points that must be seriously looked at is that there is no way of ensuring compliance.

The UK often, although not always, talks a good game around this but does not deliver in practice. If the Scottish Government was to treat some of our stakeholders and partners in as dismissive a way as the UK Government treats devolved

Administrations when it comes to consultation, we would rightly be roundly criticised for it.

12:45

**Graham Simpson:** The second part of the question was how committees here could feed into that review.

**The First Minister:** It is for committees to make their views known. The review is being taken forward through the JMC mechanisms. I am certainly happy to feed into the conduct of that review through Scottish Government offices, and to ask for a specific route by which committees that have an interest in it could feed in their views.

My view is that that would be helpful. It is the kind of thing that we should be encouraging committees to do. I obviously come at this very much from the perspective of the Scottish Government's role in how these inter-relationships work, but, as you rightly say, there is also a key role for Parliaments here.

It would also be useful for that to happen almost in reverse and for the intergovernmental part to look at how the interparliamentary part works to see whether lessons can be learned. I do not know what your view is, or what others' views are, of how well that works, but if the view is that it works reasonably well, maybe there are things that we can all learn in trying to get something that works better than is the case just now.

## Equalities and Human Rights Committee

12:46

**Ruth Maguire (Convener, Equalities and Human Rights Committee):** First Minister, Scotland faces a number of significant challenges to human rights protections, one of which is Brexit. My committee heard from Professor Alan Miller, chair of your advisory group on human rights leadership, during evidence on our inquiry into human rights in the Scottish Parliament. He told the committee that the closest things to a constitution in Scotland are the two pillars in the Scotland Act 1998 that require compliance with EU legislation and the European convention on human rights. He said that removal of one pillar—EU compliance—

“imperils our continuing adherence to the European convention on human rights.”—[*Official Report, Equalities and Human Rights Committee*, 3 May 2018; c 2.]

He believes that a new framework will be needed after Brexit. I am not asking you to preempt the results of the advisory group’s discussions, but I would be interested to hear your views on the need for the Scottish Government to carry out human rights impact assessments to ensure that human rights and a culture of human rights can be systematically mainstreamed and embedded into law, policy, practices, procedures and priorities of the Government.

**The First Minister:** That is a really important question. As you said, there are key formal mechanisms that effectively embed a human rights approach. One of those is the need to make sure that the legislation of the Scottish Parliament abides by ECHR requirements. Obviously, public bodies generally have to act in a way that is compliant with convention rights, whether or not that comes through the Human Rights Act 1998 route.

Brexit is a real risk to that. I have discussed that with Professor Miller on more than a couple of occasions. As you know, I asked him to convene the leadership group, which has been asked to consider three things. The first is how we make sure that, if Scotland is outside the EU at any stage, we do not fall behind current European human rights protections. The second is how we would keep pace with any developments in EU legislation even if we are not in the EU. The third is how we make sure that, whatever our constitutional arrangements, and whether we are in or out of the EU, Scotland is a world leader in human rights. Alan Miller’s group is due to report to me by the end of this year. I am sure that your committee will have a great interest in the recommendations that he makes.

On human rights assessments, I am very much of the view that we should embed that approach in all our policy making. There are good examples of how the Scottish Government and Scottish Parliament are already doing that. The Social Security (Scotland) Act 2018 is one example of where we embedded a human rights approach right at the start of the policy-making process. Looking ahead, that will be really important as we incorporate the UN Convention on the Rights of the Child. The success of these things is not about how many court actions are brought to enforce compliance; it is about whether we avoid that because we have embedded human rights at the outset. I am a huge supporter of that approach and want to see us put human rights at the centre of everything that we do.

**Ruth Maguire:** Thank you for that answer. The committee’s work and the Scottish Government’s advisory group have been focusing on human rights ambition and leadership. Do you agree that those assessments should not only focus on impact but identify opportunities, for example by giving more concrete expression to particular human rights or standards, or the implementation of court judgments on human rights or recommendations from the UK’s universal periodic review, United Nations treaty bodies or reports from special rapporteurs?

**The First Minister:** In short, I agree that those are the judgments and measurements that we should be looking at to assess whether our approach to human rights is changing people’s experience of public services or their social and economic rights. That means embedding human rights right at the start of the policy-making process.

Often, we see human rights as meaning that people have the right to take action when their rights are breached. That is important, but a proper approach to human rights is to ensure that everything that we do, whether that is legislation or policy, respects human rights from the start so that people do not have to be in that position. All the tools that Ruth Maguire talked about are really important in ensuring that we properly measure whether we are living up to that.

Scotland has a good story to tell on its work on human rights, but I want us to remain as leaders in the area. The work that Professor Miller’s group is doing and that the Equalities and Human Rights Committee is involved in will help to ensure that that is the case.



## Finance and Constitution Committee

12:51

**Bruce Crawford (Convener, Finance and Constitution Committee):** Perhaps it is inevitable that there is more examination of intergovernmental relations now than at any other time in UK political history. I will cover similar ground to Graham Simpson. It is easy to become despondent in the current atmosphere as far as the Brexit process is concerned, but I am trying to keep a sunny disposition and be as positive as I can.

The Finance and Constitution Committee recently had a useful visit to Brussels as part of its examination of common frameworks, which I think that we all accept will be necessary if we indeed Brexit. We met representatives of a number of states and sub-states, including from Norway, Germany, Switzerland and some German länder. At those meetings, the default position on intergovernmental relations was the complete opposite of what appears to be the position in the United Kingdom—the extent of that was striking to me and others. In the UK, the process seems to start with how to resolve disputes. In Brussels, we heard time after time that, by contrast, the priority in Europe is to avoid disputes through collective responsibility. That is built on a transparent, inclusive and consultative approach to intergovernmental relations, which starts at an early stage in the process and involves not just Governments but civic society, stakeholders and so on.

There are clearly different political cultures at play. I am interested to know your thoughts on how we can improve intergovernmental relations in the United Kingdom so that, instead of focusing on dispute resolution and having that as our starting point, we come to conclusions in a consensual way, which would help everyone in the country.

**The First Minister:** As Graham Simpson did, you are getting to the nub of some of the challenges and, also, some of the solutions. I agree that there are lots of examples of best practice that we could learn from in other countries with similar, although not quite the same, devolution models to ours.

However, it comes down to political will, attitude and approach as much as, if not more than, it rests on how all the policies and memorandums are drafted. As Bruce Crawford was speaking, I was trying to find, as an example, the current dispute resolution protocol that is in the memorandum of understanding. The protocol is

called the agreement on dispute avoidance and resolution, and it says things such as:

“In order to reduce to the minimum the potential for disputes to arise, the parties recommit themselves to the principles of good communication and cooperation”.

That sounds quite like the models that Bruce Crawford described, which makes me think that it is not necessarily that the policies, as written, are flawed—although no doubt there are ways in which they could be improved—but that, rather, it is how they are being applied.

I readily acknowledge that, when politics is involved, the situation can be difficult. As First Minister of the Scottish Government, I take my share of the responsibility for making those political relationships work and, no doubt, we have to take our share of the responsibility when they do not work. I do not shy away from that. However, we often find ourselves in a situation in which we try to apply those policies but the UK Government does not apply them in the way that it should do, sometimes probably not deliberately but because it has other things to worry about. The UK Government does not consult or take the time to allow the Scottish Government's views to be heard, so we end up in disputes that could have been avoided if there had been better communication, listening and meaningful dialogue at the start.

As I said to Graham Simpson, at the moment there is nothing that insists on compliance. It is all voluntary and, even when we get into disputes, it is very difficult to find a system of resolving such disputes that everyone can abide by. It comes down to political will and political relationships, and we all need to play our part in that. However, we are going to end up in these situations as long as we have a Whitehall culture that not always but often sees dialogue and engagement with devolved Administrations as an irritant and, if it needs to be done at all, a tick-box exercise rather than something that is meaningful.

With regard to the technical notices that have been published recently, I know that there are people in Whitehall who pride themselves on the fact that they have consulted with the Scottish Government much better than they have done previously. However, in most cases, that better consultation has involved our getting three days' notice to give any views on factual accuracy—that is not meaningful discussion and dialogue. We can rewrite all the policies, and no doubt there will be times when that will be necessary, but unless there is political will, a commitment to building relationships regardless of political differences and a proper respect for devolution, which is completely missing at the moment, the problems will continue.

**Bruce Crawford:** How do we reset the relationship in relation to common frameworks? Some of it is about culture and how we behave as politicians, but one idea that emerged from the Finance and Constitution Committee meeting this morning was the creation of a joint secretariat, which would be jointly financed by the UK Government and the devolved institutions, to support the drawing up of common framework agreements. That would be a potential mechanism that could help by acting as a buffer in the process to enable better discussion on common frameworks, which will be important for the future. Will the Scottish Government consider that idea?

**The First Minister:** I am very happy to consider what sounds like an interesting idea. Common frameworks provide a good case study in why the process does not work in the way that we all want it to work. We need to start from the premise that the devolved Government and devolved Parliament are responsible for their areas of responsibility. We have always said that common frameworks will be required in a number of areas, but they should be put in place by agreement, not by imposition. If we start with the premise that frameworks will be put in place by imposition if all else fails, as the UK Government has done, the process will not start on the right footing. We need to start with the right premise if we hope to get anywhere.

The work on common frameworks has not proceeded as quickly as all of us might have thought that it would, because a lot of energy has been diverted into no-deal planning. However, as that work starts back up, ideas such as the one that Bruce Crawford mentions will have a part to play, so I will be interested to look in more detail at what the Finance and Constitution Committee has come up with this morning.

## Rural Economy and Connectivity Committee

12:58

**Edward Mountain (Convener, Rural Economy and Connectivity Committee):** First Minister, you will be aware that my family has had a long-term interest in agriculture, which I have declared fully in my entry in the register of members' interests.

The Rural Economy and Connectivity Committee would be interested to know whether, post-Brexit, Scotland will need a bespoke agricultural bill to promote a progressive Scottish agricultural sector.

**The First Minister:** Yes, there will need to be legislation in the Scottish Parliament. Of course, part of our opposition to the approach that was taken to the European Union (Withdrawal) Act 2018 is that there will be limits on our ability to legislate in some areas, which is hugely frustrating. As you know, we have set out some of our thoughts in the consultation paper, "Stability and Simplicity: proposals for rural funding transition period", the responses to which are being analysed now, and final proposals will be published shortly. From now until 2022, we hope that there will be virtually no change, and then we are looking at a period of simplification through to 2024. We have set out what is probably the most detailed plan anywhere in the UK of how we want the transition to operate.

Inevitably, frameworks will be required in some areas, and there will be some around agriculture, where that is possible. For a variety of reasons, which I will be happy to go into if you want me to do so, we are not agreeable to the Agriculture Bill, which is currently going through the UK parliamentary process, applying to Scotland. I believe that, when we have decided the systems that we want to put in place, through appropriate consultation and dialogue with stakeholders, the Scottish Parliament should have responsibility for that.

13:00

**Edward Mountain:** That is an interesting point. The question is really about when any Scottish agriculture bill will come forward, because it will be critical to agriculture in Scotland to have clarity about its future direction. Can you clarify when that will happen? Do you believe that the indicative aggregate measure of support that has been submitted by the UK Government to the World Trade Organization will allow direct funding to agriculture in Scotland to continue?

**The First Minister:** I want to see our farmers and those in our food production sector continue

to be supported in the way, and at the levels, that they are. Clearly, as you well know, there are a number of issues on which we do not yet have clarity, as regards funding. At the moment, Scotland benefits disproportionately through common agricultural policy funding. We have no certainty from the UK Government—if it ever manages to get a deal, get Brexit into operation and get all those things working—about what share of that funding it will give to Scotland beyond the end of this decade. Therefore, there are significant uncertainties there. It is important that we—as a Parliament, not just the Government—continue to press the UK Government for that certainty as early as we can possibly get it.

I take issue with your view that the Scottish Government is not setting out issues with as much clarity as we can. The stability and simplicity consultation sets out very clearly what our approach to that will be. We will continue to give more detail on that—first, as we publish the final proposals after the consultation and then as we set out legislative steps. The important things that we need to continue to press for are clarity on funding and as much policy autonomy here as possible. We should also not allow ourselves to be boxed in by having powers in effect taken away from us or constrained, in the way that we have seen happen in the context of the withdrawal act.

## Health and Sport Committee

13:02

**Lewis Macdonald (Convener, Health and Sport Committee):** At our last meeting, in April, you talked about work that you had commissioned on corporate governance in NHS boards. You may have seen the report on governance that was published by the Health and Sport Committee in July. Since then, a number of further issues have arisen on leadership in the NHS. For example, we have seen reports that as many as seven chief executives either are serving notice periods or have indicated their intention to retire, that boards large and small are struggling to recruit for leadership roles and that some boards have faced well-publicised challenges in balancing their books. What conclusions have you reached about issues of leadership in our NHS, and what do you think that it may need to do differently in that area?

**The First Minister:** There was a lot in that. First, on vacancies—or imminent ones—in senior positions on health boards, recruitment processes are under way at different stages in all the boards. We should not see the fact that people retire or move on as being somehow inherently problematic; it is an issue that organisations have to deal with day in, day out. In all the health boards on which there are, or are likely to be, vacancies, such processes are already under way.

The Health and Sport Committee's report was wide ranging, very helpful and welcome in that it looked at staff and clinical and corporate governance. You asked specifically about the review of corporate governance that I spoke about the last time that I was before Conveners Group. It was carried out by John Brown and Susan Walsh, and is now complete. To ensure that we have quality and capacity in leadership in the NHS, we are committed to doing certain things around boards more generally—for example, ensuring that non-executive members are supported to be more effective in their roles, that boards are more representative of the communities that they serve, and that there is more meaningful and genuine engagement between boards and their communities. A range of work is being taken forward across those headings.

You mentioned issues in specific health boards. I am happy to go into those, if you want me to do so. I guess that you have NHS Tayside, in particular, in mind. I can go into detail on that, but in the interests of time I will end here and enable you to ask your supplementary question.

**Lewis Macdonald:** Thank you, First Minister. I welcome what you said about the conclusions of the review that John Brown led and I will be interested to see how they are applied, not just in

Tayside, which obviously has particular problems, but across the board.

The Health and Sport Committee is concerned about and has taken evidence on different perceptions of the role of strategic leadership at board level as it operates within a framework that is set by national policy. Do you have a view on that? Do we have the balance right between local NHS leaders as leaders and their responsibility as part of the wider team? Might changes be required?

**The First Minister:** I think that the balance is broadly right, but we must always keep that under review, and there will always be situations in individual health boards—as there will be in any organisation—where the balance has perhaps not been right and needs to be rectified. We keep talking about NHS Tayside, and that is one of the issues that has been and is being looked at in Tayside.

It is obvious that there are tensions—although I am not sure that “tensions” is the right word to use—in the relationship between Government and senior leadership in health boards. Leaders operate within a policy framework and have the job of delivering against that framework. I do not want to speak for them, but I am sure that at times leaders in NHS boards think that they should have more autonomy. Equally, when there is a problem with a local health board, the Parliament says that I, as First Minister, or the health secretary, must intervene and do something about it. In an area where there is—understandably and legitimately—strong political accountability, the balance is always going to be difficult to get right.

The final thing that I will mention, which I think that we talked about the last time that I was here, is that, in the delivery of some services, boards are increasingly collaborating on a regional basis. There is a need to make sure that there is still accountability through individual health boards for services that are delivered on a regional basis, because health boards remain the unit of accountability. As I said the last time that I was here, I am not of the view that we should start to undertake large-scale structural change in the health service, because such change simply diverts attention from the delivery of front-line services.

## Standards, Procedures and Public Appointments Committee

13:07

**Bill Kidd (Convener, Standards, Procedures and Public Appointments Committee):** A key part of the Standards, Procedures and Public Appointments Committee’s remit is procedures—it is in our name. We must consider how parliamentary procedures support the Parliament and its committees to fulfil their scrutiny roles effectively.

You have talked about some of this, but it would do no harm to go over the issue again. Given the challenges and additional demands that will result from Brexit, how will the Government seek to collaborate with the Parliament and its committees to ensure that they have the information that they need to plan and undertake scrutiny?

**The First Minister:** This is a very live issue. At the moment I think that it is most acute in relation to the planning for and management of the pipeline of secondary legislation that will require either to be consented to by the Scottish Parliament or to be laid as Scottish statutory instruments.

The minister for parliamentary business has, I think, written to all conveners to give our latest estimate of the volume of and likely timescales for the work—although I should say that the estimate is fluid, because we depend on UK Government approaches. There is significant interdependency between what we do and the approach that the UK Government takes, and of course there is still a lot of uncertainty about what we are actually preparing for.

I think that this information has been shared with conveners. Our current estimate is that, at UK level, about 800 to 1,000 regulations are likely to be needed to prepare for exit. At the moment, we estimate that around 140 to 160 UK Government statutory instruments will have devolved provisions in them and will require the Scottish Government to give notice to the Parliament that we intend to consent to those. That process is already under way and several notifications have already been made. In addition, we reckon that there will be about 50 Scottish statutory instruments that will have to be laid in the Scottish Parliament. We have not yet laid any of those and it is likely that they will be laid in December and January.

It is a significant additional volume of work for the Parliament. We are reliant on information and the state of the preparations at UK level to take some of the decisions that we must take and it is then incumbent on us to ensure that the Scottish Parliament is kept fully up to speed. We have undertaken to do that. Graeme Dey has made a

commitment to update committee conveners monthly on the changes that may arise in those estimates.

**Bill Kidd:** How much collaboration is being undertaken by Westminster in the knowledge of the amount of work that will have to be absorbed through SIs and SSIs in the Scottish Parliament? How much help is being given by UK departments in order to ensure that that volume of work will be able to be undertaken by the Scottish Parliament, given the number of people that we have both in committees and in the Parliament as a whole?

**The First Minister:** That is variable depending on the Government department. We are working as hard as we can to try to get as much information and involvement as we can as early as possible in the drafting and development of statutory instruments so that we can take decisions quickly about whether we want to ask the Parliament to consent to UK instruments in relation to devolved content or whether we consider that there is such policy divergence that we have to lay SSIs in the Scottish Parliament.

I am not telling anyone anything that they do not already know when I say that we are dealing with a Whitehall machine that is utterly overloaded by the nightmare that is Brexit. While I am always prepared to countenance the possibility that some of the difficulties that we find in getting information and engaging properly are deliberate, I know that some of those are because the Whitehall machine is overloaded.

It is difficult for us and it is not an easy process. We are trying to manage our way through as well as we possibly can so that we can help Parliament manage its way through as best as it can. It is not a situation that we want to be in.

From the Scottish Government's perspective, there is an awful lot of civil service time that I would rather was being spent on other things that is being consumed by such work and considering contingency planning around a no-deal scenario. All that time could and should be being spent on more productive matters.

## Social Security Committee

13:13

**Bob Doris (Convener, Social Security Committee):** There are proposals for some in-work claimants of universal credit to face conditionality, or rather sanction, by the Department for Work and Pensions if they fail to increase their rates of pay or hours of work. One witness told our committee inquiry:

"The idea that it is the sole responsibility of the claimant to increase their hours or earnings to satisfy the universal credit system bears no relation to reality."—[*Official Report, Social Security Committee*, 13 September 2018; c 10.]

Given that tackling low pay and boosting employment opportunities are also Scottish Government priorities, how will the Scottish Government seek to support that group of claimants to avoid potential sanction by the DWP? Has there been any formal communication between the Scottish Government and the DWP regarding designing a fairer system that might have a bearing on reality?

**The First Minister:** I will address the last part of the question first. There is much communication between the Scottish Government and the DWP on a range of issues, including universal credit. That has probably been provided to the Social Security Committee in some shape or form but, if it has not, we can make it available. Much of that communication will be us outlining our deep and growing concerns about universal credit and asking for universal credit to be halted.

Universal credit is an unfolding disaster that is bringing and will continue to bring misery to many individuals and families across the country. There have been some suggestions in recent days that the UK Government will agree to pause the roll-out. I do not know whether there is any substance to those suggestions, but I hope that there is, because I am deeply concerned about the impact of universal credit.

13:15

On sanctions and conditionality, I take the view that they are often morally dubious in the way in which they are applied. In addition, they are not effective, particularly when the things that claimants are expected to do are not within their control. It is not within the control of a claimant to suddenly increase the number of hours that they work for a company or their rate of pay. Sanctions and conditionality are aspects of universal credit and the benefits system more generally that unfairly penalise people who already struggle the most.

On low pay and fair work, we have a range of strands of work, many of which you will be familiar

with. We are working to increase the number of workers who are paid the real living wage. Scotland already has a higher percentage of such workers than other parts of the UK, but we still have work to do to increase that. We are also intensifying our work on fair work. We intend to apply greater conditionality to companies that access contracts or Government grants to make sure that they pay their workers fairly and do not have exploitative zero-hours contracts.

In addition, we have put in place a new system of employability support. Next year, a scheme will come into effect that will provide employment support for parents who are looking to get back into work. We are using a range of methods to get people into work and to ensure that that work is secure and that they are paid a decent wage for it, and we will continue to do that. The more power we accrue over the social security system—I hope that we will accrue more such power over a period—the more we can help to make sure that it is joined up and works as a coherent system.

**Bob Doris:** Our committee has also heard deeply worrying concerns that the transitional protections from potential benefit cuts that were promised for existing tax credit claimants when they are transferred over to universal credit could be lost if, for example, a woman flees an abusive relationship. Given that the Scottish Government has a variety of policies to end violence against women and girls, what is its position on the matter? Will that position be made clear to the UK Government?

**The First Minister:** Our position is one of deep and growing concern about that and other aspects. We will continue to make our views well known to the UK Government. At the moment, we do not know what the final arrangements for transitional protection in universal credit will be. We have responded to the Social Security Advisory Committee's consultation on the draft regulations—I think that we shared that response with the Social Security Committee. We have real concerns about the process for migration and transition in particular. Frankly, I think that the draft regulations, rather than giving answers, raise more questions but, until we see the outcome of the consultation and the DWP's response, we will not know about the full impact on transitional protection.

However, we know that transitional protection will be eroded. We are particularly concerned about the fact that the plans for managed migration will require people who are already on benefits to make a claim for universal credit. People who might have been on benefits for a significant period will suddenly find themselves having to claim afresh, and they will face a waiting period before they get the help to which they are

entitled. As we know from the roll-out areas, that will significantly increase rent arrears and drive people into debt.

I cannot stress strongly enough how concerned I am about universal credit. Bob Doris and I represent Glasgow constituencies. Glasgow is about to go through the full roll-out, and the impact of that on already vulnerable people will be severe. The sooner the whole system gets stopped in its tracks, the better.

## Education and Skills Committee

13:18

**Clare Adamson (Convener, Education and Skills Committee):** First Minister, you and the Government have made a commitment to education, particularly in the area of tackling the poverty-related attainment gap through the attainment challenge and other projects. What would success in that area look like?

**The First Minister:** I take the opportunity to restate my commitment to reducing the attainment gap in schools. Much of what we are doing in education at the moment has that aim firmly in mind.

As far as what success would look like is concerned, one of the conclusions that we came to early on, in consultation with a range of stakeholders, is that there is no single measure on attainment that can adequately capture the progress that has been made. As you will know, the 2018 national improvement framework set a number of measures that will be looked at. There are 11 measures, which cover literacy, numeracy and health and wellbeing at every stage of a child's development. That is intended to provide us with a rounded view of the attainment gap and to measure the progress that we are making on closing that gap.

The Deputy First Minister has tasked Education Scotland to work with Audit Scotland to implement a programme of inspections and to report on the progress that is being made on that, because it is important that Government has clear sight of that, and that Parliament and the public have the ability, through those measures, to hold Government to account.

**Clare Adamson:** With regard to the pupil equity fund, which is in the control of headteachers, what mechanisms does the Government have to ensure that the projects that are being run under the pupil equity fund are appropriate, that they are not backfilling what should be core-funded project areas and, most importantly, that best practice is identified and shared?

**The First Minister:** The projects that are being funded through the pupil equity fund should not be replacing or backfilling things that are already happening. We have taken a pretty robust approach to that, and we will continue to do so. The pupil equity fund is intended to provide additional money. That is absolutely the principle, and we will strongly adhere to that.

The issue of appropriateness is more difficult, because the philosophy behind the pupil equity fund is not just to provide additional resources but to provide them to headteachers so that they can

decide on their allocation in a way that they judge will best help to close the attainment gap. We have to be careful that we do not start making snap judgements on whether a particular headteacher is using resources appropriately. I have seen examples of the use of pupil equity fund money that I know will probably raise eyebrows. For example, during a previous session of First Minister's questions, I talked about a school that I visited where some of the money had been used to take children and parents on a weekend away. People might ask whether that is appropriate, but the headteacher's view was that it was getting parents who had previously been quite distant from the school to be more engaged with it, which would help to ensure better attendance. He was able to make an absolutely solid case about why he thought that it would have that impact. We have to be careful not to try to impose uniformity or a central interpretation of appropriateness on a scheme that is not intended to work that way.

That said, the pupil equity fund will be assessed as part of the overall evaluation of the Scottish attainment challenge. I mentioned the work that Education Scotland and Audit Scotland are doing. As part of that programme of inspections, they will also examine the way in which the pupil equity fund is used across schools. Further, attainment advisers, who have been appointed to help with that work, are looking at a sample of school-level improvement plans to see how the pupil equity fund is being used across schools. We will try to spread some of the best practice so that headteachers can look at examples of how the funding can be used. However, it is important to say that the key decision making with regard to the pupil equity fund should remain with the headteachers.

## Environment, Climate Change and Land Reform Committee

13:23

**Gillian Martin (Convener, Environment, Climate Change and Land Reform Committee):** First Minister, the recently published special report by the Intergovernmental Panel on Climate Change highlights that we need to treat climate change with even greater urgency. I am interested in your thoughts on how we respond to that as a country. Do you agree that the level of ambition in the Climate Change (Emissions Reduction Targets) (Scotland) Bill must respond to the latest report and match what science is telling us is now required in the next decade rather than what, to date, has been considered feasible?

**The First Minister:** Scotland's performance thus far on reducing emissions and tackling climate change has been genuinely world leading, as has been globally recognised. Already, our emissions are almost half of 1990 levels. We have met our last three annual targets and are on track to reach the increased 2020 target. We are outperforming the UK and I think that, across the EU, only Sweden performs better than Scotland. That is a track record to be proud of.

I will focus on what our bill does. The central recommendation in the IPCC report is that the world should become carbon neutral by 2050, and it is important to recognise that the bill as drafted delivers that for Scotland—the 90 per cent reduction in overall emissions delivers carbon neutrality by 2050. The bill in its current form is also recognised as an important contribution to implementing the Paris agreement. Earlier this year, I got a letter from Laurent Fabius, the architect of the Paris agreement, which described our bill as a “concrete application” of that agreement. We should first recognise what the bill does.

There are a lot of views that we should up the ambition and make the target 100 per cent by 2050. We want to get to 100 per cent as quickly as possible, so I share that ambition, but we have to be able to look people in the eye and tell them that we have a plan to deliver. We take our advice from the UK Committee on Climate Change, and its most recent advice tells us that, at this stage, 90 per cent is at the limit of feasibility. In light of the IPCC report, Roseanna Cunningham has asked the Committee on Climate Change to update its advice to the Scottish Government, and we want that updated advice to be available to the Parliament before we pass the bill. If that advice is that we can up the targets, we will do so.

My final point about the bill as drafted, which is an important one, is that, even if that is not the

advice, the bill puts obligations on us to regularly review targets so that, as soon as it is feasible, we move to the 100 per cent emissions reduction target overall. I want to get us there as quickly as possible. Given that we have annual targets to meet—it is not a faraway target that we can just set now and hope to meet—we will be held to account through those, so we must have a clear plan about how we get there.

**Gillian Martin:** Thank you for that comprehensive answer.

EU innovation funds might drive breakthrough technology in the area. How confident are you that the UK Government will replace those funding streams post-Brexit and reinvest in technologies that we have identified that we need to meet our targets, such as carbon capture and storage. The First Minister might be aware that, in Lord Deben's evidence to the committee yesterday, he mentioned carbon capture and storage as an absolute must-have. There were projects in Scotland that suggested that we would be a world leader but, as the First Minister will know, those were cut.

**The First Minister:** Indeed. Obviously, those projects were close to home for you. That is hugely frustrating for us, and we continue to try to work with the UK Government to make progress on carbon capture and storage. Some work on pilot projects is under way. We absolutely want investment in the technology that will allow us to move further and faster in reducing emissions. That requires the UK Government to give clarity on the replacement of EU funding streams and on its intentions.

The area of responsibility is split between the Scottish Government and the UK Government. Because of the Great Britain-wide nature of the grid, we need to work together to deliver as quickly as possible. We will continue to try to get collaborative working, not just in the UK but across Europe. Given the nature of the issue that we are dealing with, we will make further and faster progress if all countries work together collaboratively. The need to ensure international collaboration is why the Paris agreement and the conferences of the parties to the United Nations Framework Convention on Climate Change—one is coming up in December—are so important.



## Public Petitions Committee

13:28

**Johann Lamont (Convener, Public Petitions Committee):** As I have said in the past, the Public Petitions Committee has an interesting oversight of what matters to people. We deal with a range of issues, but I will focus on one area in which we have had a number of petitions, which is the support that is available to young people in relation to their mental health. The committee is going to do an investigation into the appropriateness of the support that might be available to young people. Will you outline how you ensure that the appropriate support is available to young people at the point when they need it?

**The First Minister:** In Scotland and in many other countries—Scotland is not unique in this regard—it would be wrong to start from the premise that we can say with confidence that mental health support is always available in the right place and at the right time to young people who come forward for it. We all welcome the fact that stigma around mental health is reducing, as it means that young people and people of all ages feel more able to come forward for help.

13:30

There is pressure on our specialist child and adolescent mental health services, and we are working to reduce that pressure and to ensure that the CAMHS system is able to cope with it. I set out some of our plans in the programme for government. We are trying to shift the balance much more towards preventative care and into communities. The key proposals in the programme for government were to increase the number of counsellors in schools, colleges and universities in order to ensure that there is a greater focus on mental wellbeing rather than simply on treating mental ill health, and that provision is available for young people where they are so that they do not have to access services elsewhere. We are also investing in the creation of a community wellbeing service for people who are aged between five and 24. Again, we set out some of the detail and funding of that in the programme for government.

There is no doubt that we need to invest more in mental health, but we also need to radically transform how and where young people access the support that they need, which is what we are trying to do. If we do that, we will also ensure that the specialist service, which will always be very important, is there for the people who need specialist care rather than—as sometimes happens now—people who would be better off accessing care in the community. At present, those people can end up accessing specialist

CAMHS because community care is not available for them, which puts more pressure on the system and means that everyone ends up getting a service that is not of the standard that they should get.

That is a big programme of work for the Government, which the Minister for Mental Health is leading. I look forward to the Public Petitions Committee's inquiry into and report on that area, which I am sure will be helpful.

**Johann Lamont:** That was a very helpful response, but what support is available to general practitioners, who are often the first port of call for a young person, to ensure that they signpost appropriately? Without such support, they might think that they do not have time so they might as well prescribe, when other approaches should be taken.

Secondly, you said that there would be counsellors in schools, colleges and so on. How do we raise awareness among people who are around young people of how they should respond to somebody who might simply be looking for help because they feel anxious or stressed so that that person is directed to the appropriate place? As a society, how do we become more educated in how we respond to young people who are looking for help? We need a response that falls between dealing with someone in a crisis situation and saying that there is nothing that we can do.

**The First Minister:** There are different components to that question. It is important that the right clinical advice is given to GPs. I am happy to have health officials provide your committee with some detail on the advice and support that is there for GPs at the moment, which might help to inform the focus of that aspect of your inquiry. Often, GPs will be the first port of call for people. Part of the wider transformation of primary care that we are undertaking is to ensure that, in health centres and GP practices, different health professionals are available so that people do not always have to see a GP and will get to see the right person instead. That helps to reduce some of the pressures that GPs are working under.

The second bit of your question was about the people around young people. I should have mentioned in my first answer that the programme for government work that we are doing includes work on teacher training. Teachers are often the key point of contact for young people outside their own homes and families, so that is an important aspect.

Lastly, the wider societal point is important, and work on that is already under way. We are all much more literate on mental health than we were previously, and that is the case across society.

Many charities and third sector organisations that work in mental health have done a lot of work, and they will continue to have a big role to play in helping to ensure that that progress continues.

We need to ensure that mental health awareness is not just something that mental health professionals have, but something that teachers, police officers, people who work in our prisons and other people who work in GP surgeries have. That is an on-going challenge, but I think that change is under way and will continue to accelerate.

## Economy, Energy and Fair Work Committee

13:34

**Gordon Lindhurst (Convener, Economy, Energy and Fair Work Committee):** First Minister, the programme for government says that the Scottish Government will introduce fair work criteria

“through Regional Selective Assistance and other large Scottish Enterprise job-related grants”.

That can only happen through a change in approach by Scottish Enterprise. How does the Scottish Government intend to achieve that change in approach? Does it agree with Scottish Enterprise that, in dealing with Scottish enterprises and businesses, positive influence rather than a directional approach is appropriate?

**The First Minister:** I stand to be corrected if am wrong, because I might well be, but from memory, I think that the programme for government recognises that Scottish Enterprise is taking the lead here. It is looking at how it will introduce the element of conditionality to RSA grants in the future.

In due course, we will set out more details on the specific issue and on the wider change of approach that we announced recently when we announced what we call the fair work first approach. In the rest of the current parliamentary session, we intend to apply the same approach to as many Government grant streams as we possibly can, and we will look to embed that even more firmly than it is already embedded in the public procurement system.

That approach comes from a fairly basic principle. If companies benefit from taxpayers' money, as we want to them to, we want to encourage them to act in a way that benefits the overall economy and the living standards of the people who work for them. All the evidence now says that companies that are more inclusive, that engage their workers and that pay a decent wage and so on tend to do better.

The final part of your question was about the balance that we always have to think about striking between the carrot and the stick—for want of a better expression—in such approaches. The business pledge that we introduced and our approach to the living wage accreditation campaign are rightly based on encouraging businesses to do the right thing because it is the right thing to do and because it is good for those businesses. When we apply significant sums of public money, it is also right that we should look at where we can use that encouragement in a more

directive way. That is a balance that we will always try to keep under review and get right.

**Gordon Lindhurst:** You mentioned public money. Another item in the Scottish programme for government was a proposal to set up a publicly owned energy company, although I do not think that any detail was given on that, because it is to be looked at as we move forward. Has the Scottish Government considered the examples of some of the companies that are already in existence, such as Bristol Energy, which has posted losses in the millions? How will the Scottish Government ensure best value for the taxpayer when it comes to the publicly owned energy company that it is looking to introduce?

**The First Minister:** We are looking at all sorts of different models. You will be glad to know that we do not intend to replicate the experience that you have just highlighted.

**Gordon Lindhurst:** One would hope not.

**The First Minister:** I know that your committee is looking at the issue at the moment. That work will be useful when the Government takes forward its own thinking and work. In April, I think, we published our initial report, which looks at some of the options. We are now in the process of commissioning an outline business case that will look at detailed options for a public energy company. We think that we will take forward the proposal on a phased basis, which I think is sensible. We have also asked the Convention of Scottish Local Authorities to play into the work and look at how it can be part of putting it together.

A lot of work is being done but, as far as decisions are concerned, the process is still at a reasonably early stage. We obviously want to make sure that your committee has the opportunity to feed into that work, so we will keep in close contact with your committee as the work develops.

## Justice Committee

13:38

**The Deputy Presiding Officer:** Margaret Mitchell, the convener of the Justice Committee, is unavoidably unable to attend, but she has authorised me—brave woman—to ask questions on behalf of the Justice Committee. It is like old times.

The evidence that the Justice Committee and the Justice Sub-Committee on Policing have taken as part of their pre-budget scrutiny and during the year points to a number of substantial additional costs in that portfolio. Although the convener of the Justice Committee realises that you will not be able to give full details now, will you outline what priority you place on the justice portfolio and matters such as increased support for victims and issues such as domestic violence? In particular, will you commit to increasing funding in the justice portfolio, which has seen funding fall from just over £3 billion in 2014-15 to £2.856 billion in real terms in the current financial year?

**The First Minister:** I am tempted to answer by saying that the budget will be published on 12 December.

Obviously, I cannot go into decisions that will rightly be taken in the course of our budget considerations over the next few weeks. Some of those decisions—not all of them, but some of them—will depend on what is in the Chancellor of the Exchequer's budget next Monday.

We have given significant priority to the justice portfolio overall, and to particular priorities within it. For example, we have already given a commitment to protect the police revenue budget in real terms for the remainder of this parliamentary session, which is important with regard to enabling the Scottish Police Authority to take decisions to ensure that policing is on a strong footing. Part of that is, of course, the pay deal for police officers that we announced in the past few weeks.

On domestic violence, the programme for government announced additional investment, which will be reflected in the budget, to speed up access to support for victims of rape and sexual assault, because tackling domestic abuse and sexual assault is a key priority for us. We know that Rape Crisis Scotland and other organisations that work in this field have struggled with the backlog of cases, so we want to help them to speed up access to services.

Through the budget decisions that we are taking, we are already demonstrating our commitment to action in a range of areas. However, I am sure that the Justice Committee will

give close and careful scrutiny to the budget when it is published in December.

**The Deputy Presiding Officer:** The chief constable has SPA support for an outline business case for a new and vital information technology project to support front-line officers in doing their job, which will cost nearly £300 million. If the funding is not provided, the project will be delayed and phased. Doing nothing will cost nearly £90 million anyway. What assurances can you provide that additional sums of money will be found, outwith existing budget lines in the justice portfolio?

**The First Minister:** You can say about anything that, if the money is not provided for it, it will not happen. That is an obvious point to make with regard to any area of budgeting and Government policy. Our job, through the budget that we provide to the police, is to support the police to deliver their objectives. The work on the IT programme to which you refer is important. We must ensure that our police officers are supported with the best available IT, in terms of their own equipment and the IT that underpins and supports the police service more generally. That is important work that will be fully factored into the decisions that we take around budgeting. However, I cannot go into the detail of what those budget decisions will be today, because that is for the Cabinet Secretary for Finance, Economy and Fair Work to set out in the budget in a few weeks' time.

**The Deputy Presiding Officer:** Yes, but I think that the convener wanted to put down markers. I am just the messenger.

We have some time in hand if any convener has a question.

**Bruce Crawford:** First Minister, I think that I am right in understanding that you said that the most likely outcome of the Brexit negotiations now was no deal. It would be useful to hear from you what you think the political consequences of such a scenario will be and what the impact will be on the people of Scotland.

**The First Minister:** I might be repeating what I said, but I would like to set out some context. I think that, as of today, increasingly the most likely outcome, as I look at it, is that the EU and the UK will be unable to conclude a withdrawal agreement. When you look at the issues that they are still trying to resolve, you realise that the differences between them are fundamental. Two and a half years have now passed and those issues have not been resolved. It is hard to see that they will be, particularly as every statement that the Prime Minister makes at the moment—it is entirely up to her what is in her statements—seems to reduce her room for negotiation rather than open it up, and, of course, commitments that

were made in December about the Northern Ireland backstop are being rowed back from. It is difficult to see how all the pieces can come together, but who knows? Tomorrow or next week, things might look different. However, as of now, I find it hard to see how we can get to a position, in a matter of weeks, in which we have a withdrawal agreement with the Northern Ireland issue, in particular, resolved.

If there is a failure to reach a deal, we cannot simply accept that the UK careers out of the EU and off that cliff edge next March. Regardless of that, at that point, the House of Commons has to assert itself. There are alternatives here. All the problems that are currently being encountered in the withdrawal agreement negotiations would be resolved at a stroke if the UK decided to stay in the single market and the customs union. In my view, looking at it objectively, although that would not be easy, that remains the only option that I think has any chance of commanding a majority in the House of Commons.

13:45

Requesting an extension to article 50 would have to be another option for the House of Commons to consider. There is also the court case that started in the Court of Session here, which is currently with the ECJ, about whether the UK can unilaterally revoke article 50. When we get the outcome of that court case, that might add an extra dynamic.

I do not think that we can get ourselves into a situation in which, if a withdrawal agreement is cobbled together, the House of Commons just has to accept it however bad it is, because the only alternative is no deal. I do not think that that fire or frying pan choice should be accepted by the Commons. If there is no withdrawal agreement, the Commons presumably has to assert itself and get us into a better position, in which the extension of article 50 is requested to allow the commonsense approach to leaving the EU—which involves the single market and customs union—to come back on the table.

**Joan McAlpine:** As a supplementary to Bruce Crawford's question on a no-deal Brexit, the UK Government has now published more than 100 technical papers on the consequences of no deal across different sectors. One area on which it has not published a paper is what will happen to EU citizens in that event. The Prime Minister was asked about that on Monday, and she has given verbal assurances about it, but my committee is aware that the European Parliament does not have any confidence that the deal that is on the table at the moment—a negotiated deal—would put the right guarantees in place for EU citizens. That is because the European Parliament does

not trust the UK Government to stand by any commitments that it makes to EU citizens. What do you think of the fact that nothing has been outlined as to what will happen to EU citizens in the event of no deal? Do you have confidence in the Prime Minister's reassurances on that?

**The First Minister:** It is shameful, to be blunt about it. There are many shameful and deeply regrettable aspects of the whole Brexit fiasco, but probably the most shameful is the way that EU citizens living here and British citizens living in other EU countries have been left to wonder what the future holds. They should have been given categorical, cast-iron assurances on day 1—the day after the referendum. They should have been told, “No matter what else happens, your future and your status here are secured.” The fact that, two and a half years on, that is still not the case is utterly shameful, in my view. We will all have constituents who are now left hoping that things will be okay, but they still do not know for sure. They do not know for sure, even if they get to stay, what the arrangements will be for families who come to visit and so on. It is unconscionable that people are in the position in which aspects of their lives are, in effect, on hold as a result.

You asked whether I have confidence. I do not want to say that I do not take in good faith what the Prime Minister is saying, but I do not think that anybody can have confidence that verbal assurances will turn out to be adhered to. We have a situation, as I indicated in my response to Bruce Crawford, in which even though the UK Government signed up to the Northern Ireland backstop in December, ministers such as Michael Gove and ex-ministers such as Boris Johnson, who sat round the Cabinet table at the time, are now pretending that they did not know what they were signing up to, and they and the whole UK Government, including the Prime Minister, are trying to back away from it. If they are doing that on things that are there in black and white that they signed up to, why should any EU citizen think that verbal assurances are worth anything?

It is a pretty sorry state of affairs, and I feel desperately sorry for EU citizens, for my part and on the part of the Scottish Government. All that we can continue to do is to take every opportunity to tell every EU citizen who lives here that they are welcome, that we want them here, that this is their home, that we want them to stay and that we will do everything we can on a practical basis—whether on tuition fees for students or through our commitment to pay the settled status fees of those working in devolved public services—to give them the certainty that they should have had a long time ago and that it is so awful that they do not yet have.

**Gordon Lindhurst:** On a point that you made in reference to the ECJ, I think that the Court of Session has been asked to refer the matter to the Supreme Court, rather than it going to the ECJ. Do you accept that that is a matter for the Supreme Court to decide—if the matter does come before it on the Advocate General's reference—and not the ECJ?

**The First Minister:** I stand corrected if that is the case. The point that I was making is that there is a case that is winding its way through the courts that may have an impact on the issue of the extension or revocation of article 50.

**The Deputy Presiding Officer:** That was a lovely exchange between lawyers, which I enjoyed.

**The First Minister:** Gordon Lindhurst has been a lawyer more recently than I have.

**The Deputy Presiding Officer:** Don't underestimate yourself—I am sure you don't.

There are no other questions. Do you wish to make any final remarks, First Minister? We have covered a great deal.

**The First Minister:** No—we have covered a fair few issues today. Thank you, as always, for your time.

**The Deputy Presiding Officer:** Thank you very much, First Minister. I always find these meetings much more interesting than First Minister's question time, because we get lengthier answers and exchanges.

I thank all the conveners for their questions. I remind you that we have agreed on biannual meetings with the First Minister, and the next meeting will be in April 2019.

*Meeting closed at 13:50.*

