



OFFICIAL REPORT
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European and External Relations Committee

Wednesday 14 September 2016

Session 5



The Scottish Parliament
Pàrlamaid na h-Alba

Wednesday 14 September 2016

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EUROPEAN AND EXTERNAL RELATIONS COMMITTEE

5th Meeting 2016, Session 5

CONVENER

*Joan McAlpine (South Scotland) (SNP)

DEPUTY CONVENER

*Lewis Macdonald (North East Scotland) (Lab)

COMMITTEE MEMBERS

*Jackson Carlaw (Eastwood) (Con)

*Ross Greer (West Scotland) (Green)

*Rachael Hamilton (South Scotland) (Con)

*Emma Harper (South Scotland) (SNP)

*Richard Lochhead (Moray) (SNP)

*Stuart McMillan (Greenock and Inverclyde) (SNP)

*Tavish Scott (Shetland Islands) (LD)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Nicola Sturgeon (First Minister)

CLERK TO THE COMMITTEE

Katy Orr

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

European and External Relations Committee

Wednesday 14 September 2016

[The Convener opened the meeting at 12:31]

Decision on Taking Business in Private

The Convener (Joan McAlpine): Good afternoon and welcome to the fifth meeting in session 5 of the European and External Relations Committee. I remind members and the public to turn off mobile phones to ensure that they do not interfere with the broadcasting equipment. Members who are using electronic devices to access committee papers during the meeting should ensure that they are switched to silent.

No apologies have been received.

Agenda item 1 is a decision on taking business in private. Do members agree to take item 3 in private?

Members *indicated agreement.*

European Union Referendum (Implications for Scotland)

12:33

The Convener: Agenda item 2, which is our main item of business today, is an evidence-taking session with the First Minister on the European Union referendum and its implications for Scotland. I welcome to the meeting the First Minister, Nicola Sturgeon, and Karen Watt, director for external affairs in the Scottish Government.

First of all, I invite the First Minister to make an opening statement.

The First Minister (Nicola Sturgeon): Convener, thank you very much for the invitation to be here today. I am looking forward to this opportunity to update the committee on the work of the Scottish Government since the referendum on 23 June.

It will not surprise anyone on the committee to hear me say that I remain profoundly concerned about the implications of Brexit. We are now hearing some voices saying that because the sky has not fallen in so far, it will all be fine. That is a deeply misguided view. We must remind ourselves that Brexit has not happened yet—it has not even started. When it does start, and when its implications begin to hit home, the impacts on the economy, jobs, trade, investment, our universities and the lives of EU nationals living here, and British citizens living in other EU countries, are likely to be severe; how severe will depend, of course, on the type of Brexit that we are looking at and what the future relationship with the EU is likely to be. Although there are precious few answers to those questions from the United Kingdom Government at this stage, it is fair to say that the early signs are not encouraging.

In my view, all that would be bad enough, but the situation is made worse by the fact that Scotland did not vote to leave the EU. The majority of those who voted in Scotland voted to remain, and that is why I am so determined that the Scottish Government will explore all options to protect Scotland's interests. Over the summer, I set out what I see those interests as being: our democratic and economic interests, our interests in social protection and solidarity and, of course, our interest in continuing to have influence in the world that we live in.

In terms of how we will seek to protect Scotland's interests, I have made it clear that we will seek to embed ourselves as firmly as possible in the UK's process of developing its negotiating strategy. As we go through today's session, I will

be more than happy to update the committee on where we have got to in that effort.

In terms of how we will seek to use our influence, as I set out to the chamber last week, first we will seek to make common cause with those of like minds across the UK, to try to reach the least-worst outcome for the UK as a whole. In my very strong view, that means remaining in the single market. At the moment, there is a lot of conflation between membership of the single market and access to the single market, which are two very different things. Membership of the single market is important.

Secondly, we will seek to explore differential options for Scotland. Our standing council of experts is already working on a spectrum of options, about which I can talk in more detail later.

Thirdly, of course we will make sure that the option of independence remains open, if we conclude that it is simply not possible to protect Scotland's interests in the UK.

That is a very brief summary of where we stand at the moment. Clearly, there is a lot of detail that the committee will want to go into. We are at the start of what is likely to be a very long and perhaps a very tortuous process. As I said to the chamber last week, as we navigate our way through that process, protecting Scotland's interests will be the guiding principle that the Scottish Government operates by. I am happy to expand on that and on any of the other brief comments that I have made.

The Convener: Thank you very much, First Minister. When the Prime Minister visited you in July, she said that she would not trigger article 50 until there was a UK-wide approach. She said:

"We've discussed the upcoming EU negotiations and I am very clear that I want the Scottish Government to be fully involved".

That was almost exactly two months ago. Do you believe that there has been a UK-wide approach so far, given Scotland's remain vote, and has the Scottish Government been fully involved in any negotiations that Theresa May promised would happen?

The First Minister: You accurately quoted what the Prime Minister said when she came to Edinburgh, which was shortly after she took office. In the intervening period, we have been trying to turn that very clear commitment, which she gave me and then narrated publicly, into reality. There have been extensive discussions, which are on-going, between Scottish Government officials and UK Government officials about what the process that will ensure that the Scottish Government and other devolved Administrations are meaningfully engaged will look like.

As I said, those discussions are on-going. They are not proceeding as quickly as I would like them to, but I hope that we will see some progress in the next few days. Mike Russell is going to London to meet David Davis tomorrow, and I hope that in October a multilateral meeting will take place, involving all the devolved Administrations. I will keep the committee fully updated as those discussions conclude.

I have a couple of other points to make. I said in the chamber last week that I want the Scottish Government to be fully and meaningfully engaged in the process, principally from now until article 50 is triggered, because that is when the UK's negotiating strategy will be formulated, although obviously we will require to be involved after that as well. What I am not prepared to do is to allow the Scottish Government to be used as, in the phrase that I used last week,

"window dressing in a talking shop".—[*Official Report*, 7 September 2016; c21.]

We want to be engaged in a way that gives us input into the decision making, rather than being treated as another consultee.

I know that that view is shared by the First Minister of Wales, who, when the British-Irish Council met in the summer, said that he thought that there was an argument for the Parliaments in different parts of the UK to have a say before article 50 is triggered. Although I cannot speak for the other devolved Administrations, I think that there is a common view that we are not going into the process just to be consulted; we want to be part of the decision making. That is what the discussions that we are engaged in are trying to achieve. Those discussions have not concluded yet, but as soon as they do—or when there are material developments—I will ensure that the committee is fully advised of that.

The Convener: I want to drill down into that. Has there been a change of tone from the UK Government? I note that the Scottish secretary, David Mundell, recently gave a television interview in which he seemed to back away from Mrs May's reassurances and insist that the UK Government was in the lead on the matter. What are your reflections on that? Was he perhaps expressing a personal opinion, like his colleagues Liam Fox and David Davis?

The First Minister: That seems to be the in thing at the moment. I am genuinely not sure—and I am not trying to be pejorative or party political here—that we can read too much into what any given minister of the UK Government happens to be saying on any particular day. We saw that very clearly last week with David Davis's comments, which were immediately disavowed by the Prime

Minister, and—similarly—with Liam Fox's comments at the weekend.

At this stage, we are seeking to get to a point of agreement on the process in relation to not just the process of how things develop but, more pertinently, the substance of the rather—if I can put it politely—underdeveloped UK Government position. I have been frustrated that that has not been moving more quickly and I hope that it concludes over the next few days. If we have a process that will be a mixture of a bilateral stream—involving direct discussions between the Scottish Government and the UK Government, with us bringing forward our views on the interests at stake and on different options for Scotland—and a multilateral discussion, involving all of the devolved Administrations, it must be meaningful. I cannot stress that point enough.

There are other aspects—that we will no doubt get into—of the UK Government's position that have to change. The lack of any answers to basic questions about what the UK Government is seeking to achieve three months on from the referendum is unacceptable, and becomes more unacceptable with every day that passes. Also, the idea that there can be a cloak of secrecy over the UK Government's position as it develops is untenable. So I hope that we will start to see more detail and definition of that before too much longer.

The Convener: There has been a significant recent intervention by the House of Lords Constitution Committee, which has said that it believes that the UK Parliament should be involved in triggering article 50 and that the royal prerogative is not enough. That is very different from the position that the Prime Minister has taken. What is your view on that?

As you are aware, there is also a legal action on that issue. If it were the case that the process of triggering article 50 had to go to the House of Commons, what should the role of the Scottish Parliament be? For example, should there be a legislative consent memorandum?

The First Minister: Let me unpack that a bit as there are a couple of stages to that. I read the House of Lords report yesterday and legal actions have been raised in England and Northern Ireland. The expectation—although I am not privy to the decision making on this—is that one or both of those actions will end up in the Supreme Court.

As I understand it, the argument at the heart of those actions is that, because our membership of the European Union was delivered by statute—the European Communities Act 1972—and the triggering of article 50 would start a process that would, to all intents and purposes, nullify the 1972 act, the triggering of that process cannot be done

under the royal prerogative; it would have to be done by an act of Parliament, otherwise there would be a situation where primary legislation could be overturned by executive action.

12:45

I am sure that the argument is more complicated than that, but that is what lies at the heart of these actions. This is not a legal view, obviously—it is my personal view; but that sounds pretty compelling to me. Therefore, the role of Parliament is an issue that might well come to the fore. Obviously I have no inside knowledge on it, but we might well get to a stage at which we have a court decision that says that Parliament must be involved in that way.

The Scottish Government is keeping a close eye on the court actions and will assess them at all stages as they proceed to see whether there is an argument for us to become more directly involved to make sure that the Scottish Government and Scottish Parliament are protected.

I am speculating now, but if there is a decision that Parliament has to pass legislation, it brings the issue of an LCM into sharp focus. As I understand it, the Northern Irish action is very much about the need or otherwise for an LCM in the Northern Irish context, and it is that argument that could give the Scottish Government an interest in the situation as it develops. If there is House of Commons legislation, my view is that that would require an LCM, so the views of the Scottish Parliament would become central to the process.

As I say, I am talking about a legal action. I hope that we get to a position where, notwithstanding any legal action, the Prime Minister's commitment that the Scottish Government and the other devolved Administrations will have a meaningful role in the decision-making framework will mean that the legal action is more of a moot point. Nevertheless, these are really important issues that are just some of the many issues that are at play just now that make me think that, rather than becoming less complicated as we move on from the referendum result, the road ahead will become more complicated across a whole range of different areas.

Lewis Macdonald (North East Scotland) (Lab): First Minister, I take it from what you have described that tomorrow's meeting between Michael Russell and David Davis will be the first ministerial meeting to discuss this issue since your own meeting with the Prime Minister some time ago. If that is the case, can you tell us what official contact there has been at senior civil servant level between the two Governments about the basis for

discussions going forward and the basis on which the UK intends to proceed with negotiations?

The First Minister: Not long after he was appointed, I had a telephone conversation with David Davis, so tomorrow's meeting will not be the first discussion, although it will be the first ministerial meeting in the way that you describe.

Extensive discussions have been held between our respective civil servants and those are on-going. The permanent secretary to the Scottish Government is involved and Karen Watt, who is the relevant director, and Ken Thomson, who is one of our directors-general, are also involved. Those discussions have been intensive as we try—to use the shorthand that I used earlier—to turn the Prime Minister's commitment into a mutually agreed and understood process.

As I say, discussions are on-going, therefore I cannot tell you what the concluding point will be, but we are looking at developing a process of bilateral discussion between the Scottish Government and the UK Government and a multilateral forum that will allow all the devolved Administrations to feed directly into the process.

Lewis Macdonald: I understand that you are not at the point of conclusion, but are you at the point at which you can say to us today that the discussions have made progress and that we are getting to the point at which we can see the future shape?

The First Minister: I hope so. I am optimistic and I hope that the meeting between Michael Russell and David Davis will move the discussions on even further.

That said, when I made my statement to Parliament last week, I probably hoped that the discussions would have reached a conclusion by today—maybe I am being impatient, but with good reason. Therefore, without overstating it, I would say that they are not progressing quite as quickly as I would have liked them to do, but I think that they are making progress. At this stage, I am optimistic that they will conclude soon and in a form that will enable the Scottish Government to go in good faith into a process that allows us to have our voice meaningfully heard.

Lewis Macdonald: I am encouraged that one of the end points that you see potentially coming is a multilateral engagement with the other devolved Administrations. It is clear that Wales and Northern Ireland will be at that table. Do you expect that the mayor of London will be at the table, given the particular perspective of London on all this?

The First Minister: I will not try to speak for the mayor of London, as he will have his own discussions. We are talking here about the

devolved Administrations and the discussions that will take place in that respect. I would certainly be very happy to have the mayor of London fully involved; he has in many respects the same concerns as I have about Brexit, and I have had very good discussions with him since the EU referendum.

The Crown dependencies, although they are involved in the British-Irish Council—which will also be an important forum as we go through the process—have different relationships with the European Union but are very centrally affected by the decision. Gibraltar is also affected, of course; I have met the Chief Minister of Gibraltar since the referendum. There will be different forums in which different players—if I can use that term—will participate. Obviously, what I have been talking about so far relates to the devolved Administrations.

Lewis Macdonald: Presumably, therefore, that would be in the format of the joint ministerial committee or something.

The First Minister: It is not finally agreed yet, but that is the kind of framework that I would hope we would get to the point of agreeing.

The Convener: Richard Lochhead has a question. Is it on the same subject?

Richard Lochhead (Moray) (SNP): It is on the negotiation of the options, so it is kind of the same.

The Convener: I will bring you in, followed by Jackson Carlaw.

Richard Lochhead: Good morning—or good afternoon—First Minister. With regard to the Scottish Government's negotiations with the UK Government, it is clear that the Scottish Government's position is that all options should be explored to continue our relationship with Europe, in particular access to or membership of the single market. That would require the UK Government either to pick up Scotland's demands and negotiate them with EU institutions and other member states, or to give its blessing for Scotland to deal directly with the EU institutions and other member states. Is there any indication so far that the Prime Minister is willing to use either of those two routes?

The First Minister: First, you rightly put your finger on why we view the process of developing the UK's negotiating strategy with the importance that we do. If we want to ensure that Scotland's interests are protected in this process, we have to ensure that we are embedded in the process.

I have just answered questions about the fact that we are still discussing the process by which we will do this, so it would be wrong to say that we are yet at the stage where we are into the substantive discussion about what that position

might be and therefore what Scotland's particular asks in that respect might be. Obviously, we are doing work on our own part through the standing council of experts to develop what those options would be and to look at what options we might want to put on the table in that process.

Some of that will obviously depend on which way the UK Government decides to go and what it is seeking to achieve. We are at a very early stage of the process. In some ways, it is gobsmacking—to use what I hope is not unparliamentary language—that we are at such an early stage. We are three months on from the referendum, and basic questions about what the UK Government is seeking to achieve have not been answered—for example, are we in or out of the single market?

On my way through here today, I caught part of Prime Minister's questions. The question was, "Do you think we should continue to seek visa-free access to the European Union?", and there was no answer to that question. I remember all too well in the independence referendum being pressed for not just plan A, but plans B, C, D and E right through to Z on every single issue. Here we are, three months after a referendum, and the UK Government does not even have plan A. It is absolutely breathtaking.

Jackson Carlaw (Eastwood) (Con): Good afternoon, First Minister.

Of course, if the Prime Minister, having said that she wants to involve the devolved Administrations meaningfully in the discussions that take place, were to unilaterally announce positions now, that might be taken as not having given a proper place to the devolved Administrations in contributing to whatever that position happens to be.

I want to ask a couple of questions that follow on slightly from what Richard Lochhead said, concerning events over the summer and the committee's visit to Brussels. In your statement last week, you made mention of having met three EU member state heads of Government. The Prime Minister spoke with them all. That is just a function, I imagine, of the fact that she is the head of the member state—the United Kingdom—in the discussions that are taking place.

What conclusions have you drawn and what thoughts have you evolved on how Scotland can engage with EU member states, given the protocols that currently exist, which perhaps inhibit member states in feeling that they can meaningfully engage directly with the Scottish Government?

The First Minister: In response to the preamble to your question, there would be no objection from me—and, although I cannot speak for them, I cannot imagine that there would be much objection from the First Minister of Wales or even

the First Minister of Northern Ireland, who took a different view on the referendum from the one that I did—if the Prime Minister were to say now, "Yes, I want the UK to stay in the single market." I do not think that there is any barrier to such basic questions being answered. Sooner or later—hopefully sooner—those questions will have to be answered.

Jackson Carlaw: But it could become an extended list.

The First Minister: Three months on, the answers to what are very basic questions should not still be a blank sheet of paper.

As far as your question about protocols is concerned, I have not found that there is any great inhibition about speaking to the Scottish Government among the people in the European institutions or the member states to whom we have spoken. In addition to my discussions, the Cabinet Secretary for Culture, Tourism and External Affairs has met representatives of a number of member states at ambassador or consul general level. A very warm and open-door approach has been shown to the Scottish Government.

However, there is also a recognition that—as I have always readily accepted—when article 50 is triggered, the negotiation will be between the EU and the UK Government. That is why it is so important that our voice is heard in the development of that position. The inhibition that I have detected—in fact, this is stated openly—is that there is an inability to engage until the UK Government says what its position is and triggers the start of that process. If I am picking up any inhibition at EU level, that is because people do not know what the UK Government is asking for, so it is not possible for them to have a meaningful discussion about what their position might be.

In relation to the approach and the response to Scotland, we need to remember that we are not yet in the position of asking for anything—the discussions that we are engaged in are about raising awareness and making sure that the Scottish Government's position is understood. There has been a receptiveness, a warmth and a willingness for Scotland's view to be honoured and respected, as far as that is possible. I have been very encouraged by the approach that has been taken so far.

Jackson Carlaw: I have a final follow-up point. When we met EU ambassadors from member and other states, there was recognition that there can be distinctive representation of Scotland's position in any final agreement that is arrived at and that member states would wish, if they could, to participate in those discussions directly, but that that would be conditional on the lead member

state—the UK—consenting to that. Were that not to be the case, the expression that was used was, I think, that “shutters could come down”. Those to whom we spoke felt that such distinctive representation of the devolved Administrations was conditional on the Scottish Government and the other devolved Administrations entering into the discussions that are to take place sincerely and in a non-partisan way. At the heart of the issue, there is always the political argument about Scotland taking a different view from the rest of the UK, which you addressed right at the start of your remarks: you said that you wanted to represent that.

How do you square that circle and ensure that, in forcing the point that you wish to make, that does not compromise the UK in any way and lead to its subsequently saying that it is not comfortable with member states from the rest of the EU having engagement that might lead to differentials in any settlement that is finally arrived at?

The First Minister: I am trying to keep track of where you ended up.

I hope that we do not reach a situation in which the UK Government says that it is not comfortable with the Scottish Government representing its interests at European level. To be fair to the UK Government—these remarks do not apply only in a Brexit context—it has shown understanding of and respect for the fact that the Scottish Government engages with other Governments on a range of issues, and I hope that that will continue in all circumstances.

You asked me how I square the circle. In the discussions that I have had with people so far, I have done that by being perfectly straight with them. I do not think that I am betraying any secrets to tell people that I am somebody who believes that Scotland should be independent. I have always believed that, and I still believe that.

13:00

However, as I said immediately after the referendum in June, I am not taking that as my starting point in the post-Brexit discussions. I believe that Scotland’s interests are compromised and damaged by Brexit; the UK’s interests, too, are compromised and damaged but as First Minister of Scotland, I believe that it is Scotland’s interests that are damaged and compromised, and my starting point, therefore, is: how can I protect those interests as best I can?

That is why I am very clear about seeing whether we can make common cause with others across the UK—I hope that Jackson Carlaw would be on the same side on this, although I do not know—and say, “Look, let’s try to keep the UK in the single market.” In my view, that is not as good

as being full members of the European Union, but it is not as bad an option as some of the other options such as access to the single market on the basis of a free-trade agreement or following World Trade Organization rules.

I am taking that very interest-driven approach to the issue. The difference between you and me, Jackson, is that because I am being driven by Scotland’s interests, I am not prepared to rule out certain options that might be necessary to protect those interests. In the discussions that I have had so far, that approach has been very warmly met. Like many people round this table, I campaigned very hard and made the argument for the whole UK to stay in the European Union, so this is not being driven by my own views on Scotland’s constitutional future. This is about how we protect our economic and other interests in the best possible way, and I will continue to be guided by that principle throughout this entire process.

Jackson Carlaw: Thank you.

Ross Greer (West Scotland) (Green): First Minister, you have said that the UK Government has hinted at a particular form of Brexit that we would certainly regard collectively as being against Scotland’s interests. Does the Scottish Government have any criteria that would mandate a second independence referendum if the terms of Brexit failed to meet them?

The First Minister: I have set out at a high level the five interests against which we will seek to assess different options: our democratic interests, our economic interests, social protection, solidarity and influence. Obviously, underneath all of those, there are much more detailed assessments that we will be required to carry out, and that is part of the work that we are doing as we work across the whole of Government to assess the impact on different sectors. Again, as that work develops, the committee will have an interest in scrutinising and overseeing it.

I have said all along—indeed, I have made this absolutely clear, and I assume that it will be the difference between us and others around the table—that I believe that as part of a process driven by the question of how we protect Scotland’s interests, if we get to a point where we cannot protect our interests in the UK because it is heading for a hard Brexit that denies our financial services industry passporting rights, that has our exporters jumping over all sorts of hurdles to sell their goods in European markets, that has our universities locked out of horizon 2020 and our students locked out of the Erasmus programme and that has restrictions on free movement that damage our economy, it would be wrong to deny people in Scotland the right to consider whether independence is a better way of protecting those interests.

However, as I said to Jackson Carlaw, that is not my starting point. I will methodically and systematically work through all the options, some of which will have to be explored in parallel, to see how we can best protect our interests. That, as I keep saying, is the guiding principle that I will continue to have in mind.

Ross Greer: I want to explore that hypothetical slightly. If what you suggest were to happen, what co-operation would you expect to get from the UK Government with the referendum itself and with any potential direct Scottish negotiations with the European Union?

The First Minister: We are not yet at the stage where I can say what position the UK Government would take if and when we got there—I think that I would be getting several steps ahead of myself. Obviously, I hope that we would have a co-operative and constructive approach from the UK Government, but at this stage that is perhaps more a case of hope over expectation.

These are things that we have to work our way through. I know that people in different political parties will perhaps raise an eyebrow when I say this—I hope that they will not—but if we can get to a conclusion in the discussions around the process that I have talked about, we will go into this in good faith, trying to examine all options to protect our interests.

I believe that the whole of the UK will be better served by remaining in the single market. If we can be part of a coalition of interests across the UK—let us call it a progressive alliance—in which we can make the case for continued single market membership, we will do that, but obviously, if that is not possible, we will have to explore different options up to and including the independence option.

I hope that the UK Government would respect the views of the Scottish people. Obviously, independence would ultimately depend on the views of the Scottish people, but I hope that there will be respect for the views of the Scottish Parliament and the Scottish people.

We should never forget in all the debate—I know that this is harking back, but it is a pertinent point—that when people in Scotland voted in the independence referendum, they were told that voting no was the way to secure our European Union membership. Two years later, here we are with our European Union membership in real jeopardy because we are not independent.

Emma Harper (South Scotland) (SNP): Thank you for coming to the meeting, First Minister.

You spoke recently at the Institute for Public Policy Research about the UK being headed for a hard Brexit. Whether we establish negotiations

through a joint ministerial council grouping or whatever interministerial arrangement, can you see the negotiations taking a long time—even as long as 10 years?

The First Minister: A long process lies ahead for the UK, and all the implications are not yet fully understood or appreciated.

Let us take article 50. The two-year period relating to it that is talked about is for the UK exiting the EU. That does not necessarily determine the new relationship between the UK and the EU, which will take goodness knows how many years after that. I presume that a transition period will be required.

On the length of time that it will take to put in place new trade deals between the UK and not just the EU but other countries, how long is a piece of string? There is a real risk that the UK is facing right now a lost decade or more in which the uncertainty and turmoil of Brexit and everything that will come after that before there is clarity about the UK's place in Europe and the world will dominate. The damage that that will do to our economy and other areas of our society and lives will be deep and severe. That is why I am so concerned.

Everybody should feel right now the frustration that I feel every time we hear people say things. This morning, I have seen comments on social media about the unemployment figures. It was said that unemployment is down and that that shows that Brexit has not damaged the economy. However, Brexit has not happened yet. We are not even at the starting point in the process that will see those implications start to hit home.

I am not saying this to try to depress everybody, but we have to be really open-eyed in going into the process. Nobody is doing anybody any favours by trying to suggest that we are through the worst. We have not even started the process yet. The potential for a lost decade for the UK should make us all sit up and take notice. That should make us think very carefully in Scotland about whether there are better alternatives to just accepting that we have to be part of that.

Emma Harper: Thank you.

Rachael Hamilton (South Scotland) (Con): Good afternoon, First Minister. I have some very practical questions for you.

How many extra civil servants have been recruited by the new Brexit minister, Mike Russell? Has a budget been allocated to the new department? Assuming that Mike Russell has a team in place, what discussions are taking place between his team and the UK Government's civil servants to achieve our objectives?

The First Minister: I have already talked a lot about the discussions that are taking place between the Scottish Government officials and the UK Government officials, so I will not go over all that again, unless there are particular elements that you want me to go into in more detail.

Karen Watt is one of the lead officials in Mike Russell's team. There is a team of officials. As members would expect, because we are still trying to work out exactly what the process with the UK Government will look like, we are still in the process of ensuring that that team is fit for purpose. It will require to be flexible as the demands become clearer.

It would be wrong to look at the issue just in terms of the discrete team in the civil service in Scotland that supports and will continue to support the work that Mike Russell, Fiona Hyslop and I are doing, because that work extends right across Government. Our agriculture, fishing, economy and education officials are, in addition to all their other responsibilities, centrally involved in trying to assess the implications for Scotland and develop the positions that we will then want to feed into the UK Government. Although we can provide in the next period details of the numbers of civil servants and suchlike who are supporting Mike Russell, and however important that is, I caution against thinking that that is the only impact of Brexit on our civil service. It is probably not much of an exaggeration to say that Brexit will have an impact on pretty much everybody working in the Scottish Government.

The Convener: Can you provide more information on the work that the standing council is undertaking? I know that it will have sub-groups. Will they be able to update the committee on the work that they are doing?

The First Minister: I am keen for the committee to be closely updated on the work of the standing council. So far, there have been two meetings of the council in plenary session. The note of the first meeting has already been published and the note of the second meeting will be published shortly. There are a number of sub-strands to the work. One is looking at the different options that might be open to Scotland, one is looking at education and one is looking at particular economic impacts. I wrote to the committee last week with some early thoughts on how we keep the committee updated. I am keen to hear the committee's views on what flow and form of information would be helpful.

To focus on the options work so far, the committee will understand that we will be constrained to an extent in the development of different options for Scotland before we know what options the UK Government will try to achieve. Notwithstanding that, we are trying to get as prepared as possible, so the standing council is

undertaking work to look at a spectrum of options. To summarise, those go from how we protect different aspects of our relationship with the European Union, such as horizon 2020, Erasmus and Europol, right through to what I describe as more holistic and wholesale solutions under which Scotland would have a very different relationship to the European Union or the single market from that of the UK as a whole. By definition, and because of the UK Government's position, that work is in its early stage. There is a lot of detail behind that work but, as it develops, I am keen for us to have a working arrangement with the committee that allows you to be kept apprised of that work and to be able to engage with it as well.

The Convener: Excellent—thank you.

Stuart McMillan (Greenock and Inverclyde) (SNP): In the previous parliamentary session, after the independence referendum, we had the Devolution (Further Powers) Committee and went through the process for the Scotland Act 2016. One issue that was key in that debate was that of intergovernmental relations. How has the Scottish Government used that experience of going through the discussion and debate about IGR at the time of that piece of legislation to help to fashion your discussions with the UK Government now?

The First Minister: There is a well-developed system of intergovernmental relations. They are not perfect and you rightly talk about the work of the Smith commission and work after it that was all about trying to strengthen them. In short, the intergovernmental work operates through the joint ministerial committee in plenary session and there is also a joint ministerial committee that deals with Europe. That is a long-standing committee and it does not deal with Brexit issues; it deals with the on-going business of the European Union. There is another sub-committee that deals with domestic issues.

It is essential that we have something additional to that to deal with the negotiations on Brexit and we are in the process of trying to finalise that. The experience of the strengths and weaknesses of intergovernmental working is useful in trying to devise a process that will be meaningful and able to cope with a set of discussions that are much more complex than those that we have had to deal with prior to now.

13:15

Stuart McMillan: Thank you for that. What should be the process for triggering article 50? Who should be involved?

The First Minister: That goes back to the question that the convener asked me. I stated an opinion about the legal actions and the Lords

committee report. I think that the argument that the House of Commons should be involved in the decision to trigger article 50 is compelling. The UK Government has taken a different view and we will see where that argument goes. If that happens, it will bring the LCM question to bear very centrally, which is why we are keeping a close eye on the court cases, as I said.

However, regardless of all of that, it just seems to me that, given the nature of what we are talking about and adding in the different way in which Scotland and indeed Northern Ireland voted, there must be a central role for the Scottish Government in decision making here. We must not just be consulted, but have a role in decision making.

I think that I have already mentioned this—forgive me if I am repeating myself—but after the most recent British-Irish Council, Carwyn Jones said that he thought that there should be a role for all the Parliaments in the UK to agree the position before article 50 is triggered. That should be seriously considered, because we are all affected by this. If the Prime Minister's words when she came to Edinburgh are to be given real meaning in practice, it strikes me that some kind of arrangement like that, or a multilateral process that involves us in the actual decision, is essential. That is still part of what we are seeking to work our way through.

Stuart McMillan: How optimistic are you that the acquired rights of EU citizens who live in the UK and those of UK citizens who live in the EU will be protected post-Brexit?

The First Minister: I am sorry to say that I am not optimistic. The name of the particular expert escapes me just now, but somebody who gave evidence at a committee yesterday—I now have his name; it was Professor Alan Vaughan Lowe QC—described the chances of EU citizens who live here retaining all their rights as “zero”. That is only an opinion, and I hope that he was wrong, but this is one of the questions that, until we start getting answers from the UK Government on what the position actually is, nobody can answer with any certainty. Of course, it applies not only to EU citizens who live here—I mean non-UK EU citizens; we are all still EU citizens—but to UK citizens who live in other EU countries. As I have said before, it is absolutely shameful and disgraceful that these questions, which affect people's lives and livelihoods, their families and their careers have not even started to be answered.

There is another, related question—it is not the same, but it is related—about our ability to travel. We heard at the weekend—although some of us tried to make this point during the referendum, it is only now that we are starting to hear it, and to hear the home secretary concede it—that it is

entirely possible that we will all have to apply for visas to travel to other EU countries. These are utterly depressing things to be contemplating in this day and age when we have all enjoyed free travel across the European Union for as long as we have.

It is essential to give people who have made their lives here and done us the honour of coming to live in and contribute to our country some certainty. We owe them that. Today, I call again on the UK Government and the Prime Minister to start providing that certainty.

Stuart McMillan: Thank you.

Tavish Scott (Shetland Islands) (LD): First Minister, I want to ask you about an answer that you gave to Jackson Carlaw. I absolutely take your point that there are no inhibitions on any discussions with Europe at this time. In the lack or complete absence of any UK position, that is an entirely fair point. In that context, however, do you accept that there are other EU member states that have profound concerns about Scottish independence because of their internal political dimensions?

The First Minister: Absolutely, but the discussions that we are having across Europe just now are not about Scottish independence per se but about how Scotland can best protect our place in Europe. It is a very different discussion.

Of course I accept that there are a range of different views. One of the things that I always try to do, which a person I spoke to in Europe in the past few weeks, whom I will not name, said to me is something that the UK Government never tries to do, is to put myself in the shoes of other European countries.

The UK Government always decides what it thinks is right for the UK and then expects everybody else to fall in line, whereas we are dealing with a range of different countries and, of course, I am aware of the different views.

I am in a position that I did not ask to be in and did not want to be in. We are taking a case to other interests across the European Union that says that it is probably quite good for the European Union as well as for Scotland to work out how we can protect these relationships rather than have a situation in which we are all wanting to leave and rip them up. Because of that, the mood music around it is quite warm.

I do not underestimate the challenges or the difficulties that we face in all this. I have said that from the first moments after the referendum. We face a really challenging period, but I have a duty to try—in all of what lies ahead of us—to protect Scotland's interests as best I can. I would not

deserve to be sitting in this seat right now if I was not determined to do that.

Tavish Scott: That is very fair. I am grateful for that answer.

I have one other question. You gave me a perfectly straight answer on the issue of the fishing industry voting to leave earlier in the summer. You mentioned that your civil servants are now doing assessment work in domestic policy areas such as agriculture, fisheries and the environment. Can I take it, on behalf of all those people who have profound concerns about the continuation of a policy that they think has failed over many years, that your officials are working on that so that there will not be just a continuation of everything that they have put up with over many decades? I quickly hazard that that did not happen under any particular Government.

The First Minister: Absolutely. I am acutely aware of the fact that, although a clear and substantial majority of people in Scotland voted to remain, a number of people voted to leave for a variety of reasons. Particular sectors, of which the fishing sector is probably the best example, gave some strongly expressed reasons. We are seeking to engage with those sectors so that, notwithstanding that difference of opinion, we can ensure that, in all the work that we do, we represent their interests as well. We received a letter just yesterday from the Scottish Fishermen's Federation, making some of those points again. Fergus Ewing will continue to engage with it—as he is doing with the farming community—to ensure that, as far as possible in the process that lies ahead, we put forward a set of arguments that represent the interests of all the different sectors that it is our duty to represent.

The Convener: I think that Richard Lochhead wants to come back in.

Richard Lochhead: I was going to ask the First Minister for her view on that issue, but she has partially answered the question in response to Tavish Scott. Does she agree that it is important that, in the times ahead, we—the Government, the Parliament and all parties that believe in European Union membership—articulate the reform programme that we would like to see put in place, given that 38 per cent of the population voted to leave the EU?

The First Minister: Absolutely. I totally agree with that.

One of the frustrations of the position that we are in just now is that very legitimate arguments about European Union reform get lost because the debate is about whether we are in or out. I have never argued that the European Union is perfect, and I do not know anybody who does. There are various things about the European Union that we

should be working to reform. The difficulty now is that our ability to do that is compromised by the almost existential debate that we are having about whether we are in or out. However, as we develop our positions and engage with the different sectors, it is important that we do not lose sight of the fact that some sectors want to see real change in how Europe does certain things. As we make our arguments and put our case forward, we must not forget that fact or lose sight of it.

Richard Lochhead: I have one other brief question. Up to when Brexit happens—if it happens—we will still be a member of the EU. Given that there is unlikely to be a lot of good will in on-going negotiations over fishing, farming and the environment, is there not a case for Scotland asking for a greater role in those negotiations, especially as we have the good will of other member states and a long-term interest in the outcome of those negotiations?

The First Minister: Glancing around the table, I can safely say that you are the person with the most direct experience of European negotiations. You will know from your experience how much good will there is as well as how much more difficult the current situation makes things.

I think that you are right. As we go through the next period, particularly when article 50 is triggered and there are a couple of years—if that is what it is—of initial negotiations, our on-going interests in the European Union should not be lost sight of. There is a very strong case for Scotland having an even greater role in some of the Council discussions and other negotiations that will take place.

The Convener: I have a supplementary question on that, following on from our earlier discussion on fishing. The Norwegians arrived at their position through the European Free Trade Association and the European Economic Area partly to protect their fishing rights. However, as far as I can see from our discussions in Brussels and elsewhere, the EFTA-EEA example involving Norway is the only example of a non-EU member being in the single market. Notwithstanding the fact that we do not know what the UK Government's position is, the Prime Minister recently ruled out the EFTA-EEA approach when she said that we were not going for—

The First Minister: That was a personal position.

The Convener: Yes, quite possibly. What was your reaction to that?

The First Minister: I do not know for sure that EFTA-EEA membership is ruled out, but I certainly hope that it is not. Let me just be quite simple about this. I think that EU membership is the best relationship. Despite all the imperfections that we

have talked about, I think that being in the EU as a full member is the best relationship because that avoids our being subject to all the rules of the single market without having any ability to influence them.

However, if you are asking me what the second-best option is, I think that it would be that EFTA-EEA type of relationship because that would secure membership of the single market. It would not secure membership of the customs union, so it is not perfect, and it would also put us in the position of having less influence over the rules of the single market.

The report from the Institute for Fiscal Studies tries to quantify in economic terms some of the differences between those different types of relationship. People talk about access to the single market, but any country can have access to the single market. It comes down to agreeing the terms of that access. Access on the basis of a free-trade agreement is not the same as access on the basis of membership. Presumably, a free-trade agreement that gave us access would principally be about taking tariffs away from the export and import of goods. What would it mean for services and the whole array of non-tariff barriers to trade, such as licensing and regulation? For a country that is outside the single market seeking only access to it, all those things are on the table and up in the air—if it is possible to be on the table and up in the air at the same time; you know what I am trying to say.

We have to be very clear about the difference between membership of the single market and just seeking access to it. Those two terms are used interchangeably at the moment, but it is completely wrong to do that.

Lewis Macdonald: I want to follow up on the last couple of answers and look ahead a little to the end of the process that you have described already today. If the bilateral and multilateral discussions produce a UK Government approach to the negotiations that supports membership of the single market, rather than simply access to it, and if Scotland has a greater role in discussions in the Council, for instance, in the way that you have described, would that mean that the Scottish Government would sign up to the proposition of a British exit from the European Union, but on the basis that these are the terms on which that exit will happen? How do you engage in that negotiation?

The First Minister: For very understandable reasons, you are trying to take me to the end of a process that has not started yet, but I am going to resist doing that, for very good reasons. I want us to stay in the European Union, and I do not want to lose sight of that. That is not just what I think is in our best interests, but what Scotland voted for.

However, I recognise that we are where we are in all of this and that therefore we have to look at what the least-worst options are. There is no doubt in my mind that the least-worst option is for us to remain within the single market. I do not think that that is as good an option, which is why I am not describing it as the best option, but it is the least-worst option, and that is why I have put such emphasis on it.

I am not going to take myself to the end of the process because I think that, notwithstanding anything that I have said—which I stand by—about the lack of any real answers or detail from the UK Government, if we tried to read the smoke signals, we would see that they all say that what you outlined is not where the UK Government is heading, and that it is heading towards a position that is outside the single market, seeking access to it. That is why it is premature to say that I think that we will get to the position that you outlined, although we will try to do that.

Lewis Macdonald: Will the discussions that you have with the UK Government be intended to persuade it to take that route?

13:30

The First Minister: Yes. When I talk about the options that we are exploring, I know that there may come a point where not all those options can be explored in parallel. I talk about trying to get the UK Government into the least-worst option, looking at differential options for Scotland to retain our relationship with Europe, and making sure that there is an independence option. Those are all options that we will continue to pursue in parallel, to protect our interests and to ensure that we are keeping as many options to protect our interests on the table as we can. We will get to a stage where some of those options, for one reason or another, fall off the table. However, at the moment—and for as long as possible, given the complexity and likely timescale of the process—keeping as many options as possible on the table to best protect our interests for as long as possible is the right thing to do.

The Convener: We are just about on time, as we were due to finish at half past 1.

First Minister, I would like to ask you about something that a number of witnesses to this committee and others speaking outside it have said about the opportunities for Scotland if the rest of the UK exits and Scotland remains within the EU, either as part of the UK through some differential agreement, or through independence. Do you think that we should be exploring those opportunities, which were raised in committee by Virgin Money and others?

The First Minister: We always have to look to take the good out of any bad situation that we are in—of course we do. However, I am yet to be convinced that the good opportunities that come from this situation will come anywhere close to outweighing the real downsides. Therefore, although there will be a whole variety of reasons why some people—notwithstanding what they said before the referendum—say that we just need to shrug our shoulders and get on with it, I think that the potential implications are so damaging for us across a whole range of different areas that we should not give up the fight. We should try to do what I have been talking about and protect those interests.

Does that mean that I will not always try to look for silver linings? Of course we will do that, but let me be clear that the downsides of the decision, in my view, massively outweigh any potential so-called opportunities that arise from it.

The Convener: Thank you for coming to speak to us today.

13:32

Meeting continued in private until 13:33.

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