



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Culture, Tourism, Europe and External Relations Committee

**Thursday 11 May 2017**

**Session 5**



The Scottish Parliament  
Pàrlamaid na h-Alba



---

**Thursday 11 May 2017**

**CONTENTS**

	<b>Col.</b>
<b>DECISION ON TAKING BUSINESS IN PRIVATE .....</b>	<b>1</b>
<b>EUROPEAN UNION REFERENDUM (IMPLICATIONS FOR SCOTLAND) .....</b>	<b>2</b>

---

**CULTURE, TOURISM, EUROPE AND EXTERNAL RELATIONS COMMITTEE**  
**12<sup>th</sup> Meeting 2017, Session 5**

**CONVENER**

\*Joan McAlpine (South Scotland) (SNP)

**DEPUTY CONVENER**

\*Lewis Macdonald (North East Scotland) (Lab)

**COMMITTEE MEMBERS**

\*Jackson Carlaw (Eastwood) (Con)

\*Mairi Evans (Angus North and Mearns) (SNP)

\*Ross Greer (West Scotland) (Green)

\*Richard Lochhead (Moray) (SNP)

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

Tavish Scott (Shetland Islands) (LD)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Ian Mitchell (Scottish Government)

Michael Russell (Minister for UK Negotiations on Scotland's Place in Europe)

**CLERK TO THE COMMITTEE**

Katy Orr

**LOCATION**

The Mary Fairfax Somerville Room (CR2)



## Scottish Parliament

### Culture, Tourism, Europe and External Relations Committee

Thursday 11 May 2017

*[The Convener opened the meeting at 09:00]*

### Decision on Taking Business in Private

**The Convener (Joan McAlpine):** Good morning and welcome to the 12th meeting in 2017 of the Culture, Tourism, Europe and External Relations Committee. I remind members and the public to turn off their mobile phones. Any members using electronic devices to access meeting papers should ensure that they are switched to silent.

Before we begin, on behalf of the committee I thank former member Rachael Hamilton for her work during her time on the committee.

Our first item of business is a decision on whether to take in private agenda item 5. Are members content to do that?

**Members** *indicated agreement.*

## European Union Referendum (Implications for Scotland)

09:01

**The Convener:** Our second item of business is an evidence session with the Minister for UK Negotiations on Scotland's Place in Europe on the European Union referendum and its implications for Scotland. I welcome the minister and his official, Ian Mitchell, and I invite the minister to make a short opening statement.

**The Minister for UK Negotiations on Scotland's Place in Europe (Michael Russell):** Thank you for the invitation to give evidence to the committee again. I compliment the committee on the series of reports that it has produced and on the way in which it is building a corpus of important work that informs the Brexit situation.

I am happy to take the opportunity to update members on where the Brexit negotiations are following the triggering of article 50. I was very disappointed, as was the Scottish Government, that article 50 was triggered without any meaningful consultation—indeed, without any consultation at all—with the Scottish Government about the content of the letter and without proper consideration of the compromise proposals that we put forward in the “Scotland's Place in Europe” paper. The formal response, and the pantomime around that with regard to access to information, indicated a lack of serious consideration of what were important and very workable proposals.

Nonetheless, we are where we are. We intend to continue to engage as constructively as we can in the joint ministerial committee (EU negotiations) process, although that process will have to return to the intentions that are in the terms of reference.

We continue to believe that the United Kingdom Government's harder and harder Brexit approach presents a highly significant threat to jobs and prosperity in Scotland. There is a clear consensus in Scotland that leaving the European Union will damage the Scottish economy, just as it will damage the UK economy.

There are wider issues, to which I am happy to refer today, with regard to the rights of EU nationals and, as we are all EU citizens, the way in which our rights will be affected. I have spent some considerable time in recent weeks talking to EU nationals about the difficulties in which they find themselves, and I am happy to elaborate on that.

The UK Government's stance continues to undermine the expressed democratic will of the Scottish electorate. The people of Scotland did not vote for Brexit and they have the right to reject it

and to make a different choice. That is why the First Minister was mandated by the Scottish Parliament to hold a second referendum on independence, to be held between the autumn of 2018 and the spring of 2019, once the terms of Brexit are known. That will be the choice: between the UK's negotiation of Brexit and a Scottish future as an independent country in Europe.

We will do all that we can to ensure that Scotland's interests are represented in the process of negotiation. I repeat publicly that we do not believe that a hard and bad Brexit will be good for Scotland. There has to be a better deal than that and we will do everything that we can to assist in getting it. We need to reset the JMC process to achieve that, and we need a great deal more information than is presently forthcoming. When we come on to matters such as the great repeal bill, I will indicate to you where not sharing with us the information that we know exists is already presenting considerable problems.

Two weeks ago, the committee heard the views on Brexit of young people, which is one of the groups that will be most affected. I continue to work with young people and other organisations to ensure that I understand their concerns and can fold them into the process of negotiation and representation.

I also do increasing work with the widest range of stakeholders, so that I understand their position and can assist them in articulating their views so that they are heard more widely. We all welcome the engagement that is taking place with Scotland's Parliament and its committees, with the Scottish Government and with the people of Scotland on those issues. I look forward to discussing those and future engagement plans with the committee today, and no doubt in the future.

**The Convener:** Thank you, Mr Russell. In David Davis's response to the Scottish Government, he states his belief that the Scottish Government and the UK Government

"agree on the large majority of subjects".

The impression that he gives is that there is very little between you. Many people will be confused by that statement. Can you clarify it?

**Michael Russell:** I have to say, with the greatest respect to David Davis, that he has been saying that for a considerable period of time, as has the Prime Minister. I have never believed that it was true, and you will note that, in our exchange of letters, I have made that point to him yet again in my response to his letter of 29 March. Indeed, his letter of 29 March said that we were in agreement on the

"majority of subjects we have discussed",

so I went to the bother of looking at the agendas for the four JMC meetings that have been held, and I could find only two items on which there was any measure of agreement at all. On almost all the others we reserved our position and made it clear that we did not agree. Most of the JMC items—in fact, all the substantive items—were simply taken away after discussion for officials to consider, and they have never re-emerged.

I therefore do not think that it is true to say that we agree. In fact, you can see that we do not agree on the largest issues, such as membership of the single market. It is not enough for the UK Government to say that it does not want us to be a member of the single market, but that it wants everything that the single market provides and none of the conditions of being in it. That is not an agreement. I can agree with the UK Government on the need for world peace, but I think that we would find our approaches to be very different.

**The Convener:** The Prime Minister made a statement recently in Downing Street about the process of the negotiations. How will that affect the negotiations in the coming weeks?

**Michael Russell:** I think that it was extremely foolish. I said that to her at the time, I said that to the First Minister and I am happy to put that on the record again. To take those very sensitive negotiations and to try to use them to stoke up an election issue that creates resentment towards the EU is an incredibly foolish thing to do. It will have produced, and it has produced, a resentment among the 27 member states. If the UK negotiating tactic is, as it often appears to be, to divide and rule and to find weaknesses in the unanimity of the 27 and to probe into them, it seems foolish, even on a basic negotiating premise, to do something that would solidify the feelings of the 27, but that is precisely what the Prime Minister did. I also think that the language was utterly wrong. There needs to be a sensible process of negotiation.

There is a parallel here. We have tried since the establishment of the JMC—indeed, we have tried since the JMC plenary last September, and the First Minister tried earlier than that, in the early discussions that she had with Theresa May—to establish a way forward that would allow us to have meaningful negotiations within these islands, and we have constantly been stymied by the approach of the Prime Minister. It seems that, having taken that as a template, she is now trying to do it in the wider EU negotiations. It is foolish.

**The Convener:** Have you been given any indication in your discussions as to who is likely to be conducting the negotiations? The Prime Minister has given the impression that she will be conducting the negotiations, but the EU has ruled out heads of state conducting them, and I

wondered whether you had heard anything that would enlighten us.

**Michael Russell:** Heads of Government will clearly be influential. My experience of the process is that the Prime Minister tries to decide everything. I cannot imagine a negotiation moving forward without her very substantial influence, but a great deal of the work of negotiation will be done by the sherpas and by officials representing the ministers, and a great deal of it will be done before ministers get anywhere near each other. However, we do not know the formal structure of it and we do not know our own place in it. There has been an attempt at each JMC—although perhaps not at the first one—to find out what the intentions of the UK Government were as regards the involvement of the devolved Administrations in whatever negotiating structure would be established. We know no more about that.

The position of the Welsh Government has been that the devolved Administrations should be at the table when devolved issues are discussed and in the room when all other matters are discussed. We have not expressed it in that way, but I support that view. Certainly, we need to have a substantive involvement in the process, and we do not know anything about that. The reasoning that we have been given for that is that the UK Government itself did not know how the process would work. That may well be true, but it has far more idea about it than we have. We have still had no indication at all.

**The Convener:** What is the Scottish Government's position on the EU's negotiating position? We know what the EU's red lines are. Does the Scottish Government have a position on those red lines?

**Michael Russell:** We are expressing our views on each of the issues as they arise, and we will share our thinking on the issue of the debt that is owed. Certainly, we do not believe that Scotland should pay any share of that money. We did not vote for Brexit, so there should be no detriment to the Scottish budget or the economy as a result of the decision. We will share our views on such issues.

I am keen to bring together the views that we have already expressed on many of the issues and to make them widely available. I agree with the EU's approach on transparency. We will put our views up transparently and let people see them.

I gave a lecture in University College Cork about three weeks ago—it was the annual lecture for the Irish Association for Contemporary European Studies—in which I talked about our strong support for the work that is being done by the UK Government and the Irish Government to ensure

that the border issue is settled constructively. We have taken positions on that issue as well as on EU nationals and the need for what should have been immediate recognition of their right to remain—frankly, that should have been cleared off 11 months ago.

**The Convener:** My final question is on the Scottish Government's position. Last year, you published the paper "Scotland's Place in Europe", which has been dismissed by the UK Government. What does the Scottish Government hope to get out of future negotiations? Is it still your position that you want a differentiated solution?

**Michael Russell:** If a differentiated solution was to re-emerge as an issue, of course that would be our position. However, I do not think that it will re-emerge as an issue. There was a strong attempt by us and by the Welsh to ensure that Wales and Scotland were referred to in the article 50 letter as areas where there should be a differentiated approach, just as Northern Ireland was referred to. There appears to have been some forgetfulness in that Gibraltar was not mentioned in the letter, which we might have been able to help with had we been consulted on it. That was a key issue, and our view was that, had that been in the article 50 letter, it would have been placed on the table and would have been part of the negotiating process. We believe that that was a perfectly feasible thing to happen.

We are where we are. A lot of the work in "Scotland's Place in Europe" is still very valuable—it would not be impossible for the Prime Minister to look at the devolved issues again and say that what is in that document makes a great deal of sense. We have now laid out what we believe should happen. The process of negotiation will continue—we will support that and we will try to assist the UK to get the best possible deal—but it is right that, whatever the outcome is, the people of Scotland should be able to choose independence and the position of Scotland as an independent member of the EU. That is the right choice for the people of Scotland to make, and we will ensure that they are able to make it. That is also the view of the Scottish Parliament, which voted in the majority to support that view.

**The Convener:** Thank you. I will hand over to Lewis Macdonald.

**Lewis Macdonald (North East Scotland) (Lab):** Minister, you have referred to the election. You will accept that it is important to acknowledge at the beginning of this evidence session the democratic right of the British people to choose a different Government and strategy in relation to Brexit. I therefore want to distinguish between the relationship of the Scottish Government with our future UK Government and what we have seen in

recent months in its relationship with the outgoing Conservative Government.

I will start with the exchange of letters that you released a few days ago. David Mundell wrote to the committee on 3 April and referred to a letter that you had received from David Davis on 29 March. Why did it take from 3 April until 27 April for either Government to release that document? What were the circumstances?

09:15

**Michael Russell:** I will be very happy to answer, but before I do, I simply acknowledge the point that you are making about the choice of Government. An election is pending; we cannot second guess its outcome, but our view is that Scotland should be within the EU.

There is an interesting set of issues. We were asked by the committee's clerk for the letter. The Scottish Government replied that we could not, under the provisions of the memorandum of understanding between the UK Government and the devolved Administrations, supply a copy because the UK Government was considered to be the owner of the letter and it had not been released into the public domain. In other words, we would have had no objection, but there is an MOU that says that the owner of the letter has the say over publication so, quite rightly, we said, "Go and ask the UK."

We did not expect the Department for Exiting the European Union to say that it did not want to release the letter. That was its decision—it did not want to release the letter. There, the matter would probably have stayed: I was perfectly happy for my response to be published—there was no difficulty with that at all—but the Secretary of State for Scotland then said in the House of Commons:

"I have been clear that Scotland's place in Europe did play an important part in the Government's thinking—*[Interruption.]* Just so that the hecklers on the Opposition Benches are clear, the Government formally responded to the Scottish Government in relation to Scotland's place in Europe. Surprisingly, the Scottish Government asked us not to publish our response."—*[Official Report, House of Commons, 19 April 2017; Vol 90, c 658.]*

That is untrue. There was no such request not to publish. My view, given those circumstances, was that both letters should then be published. I might have breached the memorandum of understanding, but I did so because that statement was untrue. Members now have the letters in front of them—you can see what the exchange was about and you can see the difference of opinion.

The letters are perfectly polite. The context is that I saw David Davis on the Monday of that week—the 27th—in Glasgow. When the Prime Minister saw the First Minister, David Davis also

came to Glasgow and I had a meeting with him. I also spoke to him on the phone on the evening of 29 April, I think. I had seen the letter about half an hour before that; during the phone call, I told him that I disagreed with it and that I particularly disagreed with his assertion that we had agreed on lots of things. His response was, "Yes—I thought you would." The discussion was perfectly amicable, and I responded to the letter some time later, but it was during a recess week, so it took a bit of time. You also have that response in front of you.

I have had regular conversations with David Davis; I will not go into detail about them all. I have had private meetings, bilateral meetings and phone conversations. There has been debate and there have been discussions.

I am not averse to letters being published—we are all in the glare of publicity—but the Secretary of State for Scotland should have stuck to the facts.

**Lewis Macdonald:** Thank you. I am grateful for the full outline. I understand the basis on which you made the judgment to breach the memorandum of understanding and to put the letters in the public domain, and it is absolutely right that they should be in the public domain. I am mystified about why the UK Government was reluctant to do that.

Are there any implications arising from your decision to breach the memorandum of understanding?

**Michael Russell:** Nobody has yet told me that I should not have done it. I might receive that information at the next JMC.

I should point out that we do not have a date for a future JMC. We have had four JMC(EN) meetings: in November, December, January and February. The last was on 8 February. I have had two meetings with David Davis since then and a number of phone calls, but the commitment to monthly JMC(EN) meetings was breached when there was not one in March. I think that that was because it would have been difficult in the March meeting to say to the committee that it could not see the draft article 50 letter, which must have existed by then. There was no meeting in March or in April, and there will clearly not be a meeting in May. I suppose that it would be technically possible to squeeze one in by the end of June, but the Queen's speech will be on 19 June. I have made it clear that I am available to attend the JMC by negotiation on any reasonable occasion. I suspect that we might stretch into early July at the earliest. There will have been only four meetings, which also breaches a commitment that was entered into.



**Lewis Macdonald:** The European Commission's consideration of the matters suggests that, once negotiations begin, they will operate on a four-week cycle. You will know the detail of what the EC has said. What proposals will you put to the incoming UK Government about the relationship between that cycle and meetings of the JMC(EN)?

**Michael Russell:** That is a very good question. The terms of reference of the JMC refer to "oversight" of the negotiations, in so far as devolved competencies are concerned, so clearly meetings would have to fit in with that. I suppose that the precedent is the JMC(E), which was always meant to meet in advance of the European Council so that the agenda for the European Council meeting could be discussed among the devolved Administrations and the UK Government departments. It developed a very top-heavy structure, because it was a means by which the ministers and Whitehall departments could find out about the European Council. I once went to a meeting of the JMC(E) at which there were 21 UK ministers, myself and Rhodri Morgan, so it did not really work as it should have worked. That would indicate that the agenda for the negotiations each month should be discussed by the JMC(EN) in the first week of the cycle and then, at its next meeting, the committee would have to review that progress and look forward. That would seem to be ideal.

**Lewis Macdonald:** Thank you very much. That is very helpful. Finally, and because that process is going to be critical in the months ahead, I want to relate that to the relationships between yourself, as the minister, and this committee, and between the Government and the Parliament.

In your reply of 4 May in reference to our report, "Determining Scotland's future relationship with the European Union", you said much that I welcome. However, the thing that I was perhaps most disappointed about was your view that there is no need to expand on the written agreement between the Government and the Parliament on informing Parliament of the process. The example that we have just considered shows the room that there is for things of great importance to be withheld from Parliament—not necessarily by your choice, but nonetheless under the circumstances that currently apply. Therefore, will you perhaps reconsider the bald statement that there is no need for any difference in approach?

**Michael Russell:** I said that only because the existing structure can cope, in terms of how it would work, perfectly well with what I have just talked about. The committee will expect to be informed of what has taken place in each of the cycles. That will be supplemented by publication of information. Just as the EU is committed to

publication of information and to transparency as the process continues, as I said earlier, so are we: we will publish and make available information as we move forward. It is not a matter of our withholding anything; rather, it is just that the structures that we have, supplemented by the transparency to which we are committed, will create a substantial and proper flow of information from the Government to the committee.

I am absolutely committed to transparency in this process. There will clearly be things that we will want to negotiate privately for a while, but we will want people to know what our position is on the vast majority of things. We think that the EU position on that is right. I have had conversations with a range of European parliamentarians who are also of that view and who will, of course, be keen observers. At the end of the process, the role of the European Parliament will be absolutely crucial. The issue is about keeping all the democratic forces informed—this committee is one of the democratic forces.

**Lewis Macdonald:** I accept and support much of that. My sense from the problems of recent months is about how much we have learned after the event—when it is too late for any influence to be brought to bear. You may feel the same.

**Michael Russell:** I feel the same way.

**Lewis Macdonald:** On what the Scottish Government is taking to the table at the JMC(EN), to what extent do you think it would be useful to let us know what you are putting to UK Government colleagues as being the vital interests of Scotland in the negotiations?

**Michael Russell:** It is important to acknowledge that we would, in an ideal world, know more before the JMCs than we have known. Previously, much has been made of the JMC at which we did not even know which room we were to be in, let alone what was on the agenda. We have been seeing agendas perhaps a day before meetings.

**Ian Mitchell (Scottish Government):** Generally, that has been the case.

**Michael Russell:** We have been seeing agendas a maximum of two days before meetings. One of the reasons for my being accompanied by only one other minister at one out of the four meetings—Michael Matheson came with me to the second one—was that we knew that justice and home affairs was to be an issue at that meeting. We had agreed that well in advance—perhaps a week or 10 days. Most of the time, we have not known what was going to happen.

The standing items at the meetings have been updates from the chair. Even David Davis has, I think, attended in full for only two of the meetings. For the other two meetings, he popped in—I think

that he had been involved in House of Commons debates. It has not been a stable process.

I note that Mark Drakeford, my Welsh counterpart, compared the arrangements unfavourably to a community council in his constituency. He was being quite generous in that comparison.

**The Convener:** I will ask a quick supplementary. You mentioned that one of the JMC(EN) meetings was cancelled because—in your view—the UK Government did not want to discuss the article 50 notification letter. Was there any consultation at all on that letter?

**Michael Russell:** No. The letter was a matter of considerable discussion from an early stage. Minutes of the meetings have appeared only recently—the minutes of the two earlier meetings appeared only at the end of March. Indeed, we had difficulty getting minutes.

I would have to check, but I think that there has been reference to the article 50 letter at every meeting. It was certainly mentioned in all my discussions with David Davis, and it was a major topic of discussion at the JMC plenary at the end of January in Cardiff. The request that was put was very simple: that we be consulted on the terms of the letter, in whole or in part.

First, the argument was that there was no letter, then the argument was that no decision had been made on whether the letter would be two sentences or 20 pages. The length of the letter became quite an issue for some time. Following that, there was no response to what was pretty much a formal request for involvement in the process that I made face to face in February. Nothing happened in March. The letter came a day before the great repeal bill white paper was published. There was a commitment—I think that it was made the week before—that we would see the great repeal bill white paper two days in advance of its publication. That did not happen—we saw it a day in advance, although that was a much better outcome than had been the case with the previous white paper. We were promised that we would see that the day before publication, but got it only 40 minutes before it was published.

I have said this publicly before, and I will repeat it here: I saw the article 50 letter about half an hour after the Prime Minister stood up to speak about it in the House of Commons. I did not see a draft or any other text before then.

**Jackson Carlaw (Eastwood) (Con):** Good morning, minister. Lewis Macdonald has covered a lot of the ground that I wanted to cover. Of course, with a general election under way, politics flies freely in discussion and comment. I return to your remark—the popular expression—that

“we are where we are.”

Therefore, this is about what the Government does now. A lot of your energy—rightly—was spent on preparing the Scottish Government's contribution to the discussion that was to take place. Whatever one thinks of the response, we have that response and we must move forward from there.

I am interested to know how, from a structural point of view, you are approaching the next phase. What are the Scottish Government and the civil service doing? What work streams are you preparing? What resource are you bringing to those preparations in advance of whatever the next phase proves to be? Given the scrutiny that we will have to apply as time goes on, it would be interesting to have a better understanding of that. I understand from what you said that you are still not clear what the JMC contributory process will be, but what are you preparing to do? What resource and structure are you putting in place to do it?

**Michael Russell:** That is a very good question, and I am happy to answer it. I will deal with three separate issues. There is the issue of what our position is. You are right to say that this was a substantive piece of work. We intend to continue with substantive work on the issues that will arise during the negotiations and the desired outcome from those issues. Scotland must have a desired outcome from all the issues—that is, what we need to get out of the situation. In some cases, that might be the same outcome as the one that the UK wants to get out of it, although we might go about it in a different way.

We are working on those matters, and my job in that regard will be to co-ordinate across the Government the work of all the directorates and all the cabinet secretaries and to build that into a coherent whole, so that we can say what the Scottish Government's position is on an issue—what we wish to see happen, what is good for us and which position is the right one to hold—and how we can ensure that that is part of the UK negotiating procedure.

The first part of that is much easier to do than the second part. There is a process issue to do with how we influence the UK Government. We have discussed that, and we can discuss it again. We will be clear about what we want. When we know what we want, we will build and develop the structures to deliver that, in the event that we are in a position to be able to do so. In agriculture, for example, we would have to have our preferred position and we would have to have the ability to deliver that preferred position. We would also need to know that that position would work for the stakeholders. It is a complex process in which we are involving many people. This morning, I was

debating the future structure of agriculture with Andrew Prentice, a constituent of mine in Iona, on Twitter. He has views on what system of agricultural support will work for remote islands. That type of thing needs to be folded in, too.

09:30

We must prepare our position on the negotiations in the round, know the detail and when issues will come up, and know what process will be followed. I have indicated what the first issues are on which we need to be clear about our preferred position: the debt and the cost of leaving; the Irish border; EU nationals; the role of the European Court of Justice in the whole process, which will arise in the first round; and all the devolved issues that will be affected—for example, we will need to know our preferred position on the frameworks on agriculture and fisheries.

The terms of the letters and the Prime Minister's message have been slightly different. The Prime Minister talks about EU frameworks returning to the UK, with decisions to be made about where they will then go. David Davis refers to consensus about new frameworks. We need to find out precisely what that means. We oppose EU frameworks returning to the UK in that way—all competencies should be devolved directly. That is the Welsh position, too, and it is substantially what the Northern Irish position would be, were there to be one at this stage. We will work very hard to make sure that that happens.

That is the first issue. The second issue is the great repeal bill, which is tremendously complex. It is the biggest legislative task that any of us will ever take on. We have not seen the draft—it exists, and it was meant to have been published at the time of the Queen's speech, around now, but that has obviously been put off for a month. It would be enormously helpful if UK civil servants were to share that with their counterparts here. That would give us an opportunity to prepare. Whatever happens, unless another Government decides not to leave the EU, we will have to go through the process. We need a good start on it. We have only seen the white paper, which raises huge dubieties and issues that we do not fully understand.

Following that, we need to know about—this cannot be an ex-cathedra pronouncement from London—and work out the legislative consent and other processes. It is inconceivable to me that there would not be a legislative consent process, given that the bill will cover areas in which we legislate. We must have a legislative consent process, but it is not clear that that will be the case, because the UK Government has not said whether it will be.

There will be a big burden of secondary legislation. There will also be other legislation, because the great repeal bill is only the first of several bills—there might be 10 or 12 bills altogether. We are considering how that will work its way in and where to put our resource allocations—you are right to say that a lot of work is being done on resource allocation. I suspect that, when it confronts the great repeal bill, this committee will be concerned about its workload. There are issues for the Parliament in there, too.

The third and wider issue is one of influence and making sure that our position is understood. My colleague Fiona Hyslop is very active in that area. I, too, am involved in certain places, making sure that people understand what our position is. We will have to continue to do that.

There is no shortage of work and preparation being done.

**Jackson Carlaw:** On the first of those points, once the negotiations are under way, all of us have a vested interest in getting the best possible outcome for Scotland. At times, we may disagree about what that might be, but there may be times when the Scottish Parliament and the parties in it agree on what the approach should be. How will you seek to ensure that the positions that are represented enjoy the widest possible support, as and when that proves possible for you to do? You are feeding into a negotiation. Sometimes, that can be quite tricky—it can operate at many different levels. How will you ensure that that influence is maximised in every possible way?

**Michael Russell:** This committee would have a role. If that is an invitation for me to bring more European and EU debates to the Parliament—something that I think that you and your colleagues were complaining about at some stage—I would be very happy to ensure that that happens in the chamber.

There will be issues that we wish to develop support for. The question of agricultural structures is key, and we will need to make sure that people are interested in that and that they put forward their points of view. Fergus Ewing will be key to that—he will want to reach out through relevant committees to ensure that there is support and discussion—and the Parliament has a big role to play in influencing those issues. There is no monopoly of wisdom on the positions that are taken, and people will have strong views that we will want to hear.

I am keen to see it as a parliamentary process. I am always up for debating Brexit issues, provided that members do not become bored of doing so.

**Jackson Carlaw:** There is a distinction between debating highly speculatively and debating the substantive issues as they progress.

You mentioned the great repeal bill, and the Scottish Government will undoubtedly have had conversations with other United Kingdom Governments. We all appreciate the potential workload that could arise for the devolved Administrations as a consequence, which is for the Parliament to consider. From the Government's point of view, how do you anticipate reconciling that workload with what the Government's work programme might have been? How will they operate in tandem?

**Michael Russell:** That will be an issue for the UK Government as well as for ourselves. The workload at Westminster on the bills in question will be enormous. It has greater resources and more members. Our workload will be very large as well. We will have to manage it, so we will find a way. We cannot afford to discover on 29 March 2019 that substantive areas of law are inoperable. The work will have to be done: the question of how, and how rapidly, is taxing all of us.

What are called Henry VIII powers south of the border essentially fast track without parliamentary process—or due parliamentary process—whole swathes of secondary legislation. They will certainly need to do that at Westminster; we do not know whether we will be able to do that or would want to. Some things might be necessary, as our position on resource requirement might be more difficult than they have imagined south of the border. The work covers not just 8.8 per cent of all legislation; we deal with some substantive areas of European legislation, and those changes will be as complex as they are south of the border.

We also have our own legal system. I have had discussions with the Law Society of Scotland and the Faculty of Advocates and have been involved in round-table meetings with Michael Matheson and various stakeholders, and we are very aware of those problems and the problems that will be presented by not having certain types of European legislation available to us. You will know from your justice work that there are complex but effective systems in place for such matters as European arrest warrants and family law issues. If we are no longer part of those systems and we revert to the ones that were in place before they came in, we will not have operability across Europe. In essence, we will have archaic systems to deal with the other systems that are operated across the 27 EU member states. Those are big questions that will need to be resolved before we undertake the legislative process.

**Ross Greer (West Scotland) (Green):** You have substantially covered some of my questions about the Henry VIII powers, and I recognise what you said about being unsure, as yet, whether they are wanted or required in Scotland. What process do you envisage there being for the Scottish

Government to make that decision? A decision about using powers that some say circumvent parliamentary scrutiny would be a substantive one to make.

**Michael Russell:** I have not seen the UK proposals for the powers, because we have not seen the detail of how it intends them to operate. The repeal bill is there in draft form and I wish that I was able to say, with me and our officials having seen it, how it will operate there and whether we can or should duplicate those powers—assuming that the bill will give them to us—or whether we will find another route. My instinct is always against using powers that do not have adequate scrutiny—it is the wrong thing to do. The imperative is to have the work done so that there is no collapse in systems.

I had a very interesting meeting yesterday with Food Standards Scotland—I am sure that it will not mind me saying so. I think that it had identified that less than 3 per cent of its work is not covered by European regulations and legislation. Unless we get the work done in less than two years, there is going to be a huge issue for food safety, food production and food export. Therefore, we will have to do it.

Once we see the powers, we will have to ask ourselves whether it is possible to operate without them. If it is not, we will have to ensure that there is the widest possible support for us to operate with them. That will require discussions right across the Parliament.

**Ross Greer:** There has been considerable speculation about the potential outcomes of the negotiations, and a considerable amount of evidence has been given by substantial figures. Professor Sir David Edward told us that the idea that we could sort all this out in two years is “for the fairies”. I think that Lord Kerr, the former UK ambassador to the EU, said that, in his opinion, there was just under a 50 per cent chance that the negotiations would fail.

What planning is the Scottish Government doing for the worst-case scenarios of failed negotiations or negotiations being resolved for our exit but no transitional arrangements being made for the period prior to the future trading relationship?

**Michael Russell:** Very fortuitously, the First Minister appointed a council of experts that includes John Kerr and David Edward, among others. It is a very distinguished group of people who are being very thoughtful about this.

I think that the chances of the UK not sticking with the negotiations are high. I do not think that they are necessarily 50 or 60 per cent, but they are high. Therefore, it is in our mind that we must be prepared for those circumstances.

All I can say is that we have a range of scenarios that we look at regularly. You start with one scenario and work your way through: there is hard Brexit with detriment to devolution, hard Brexit without detriment to devolution, a moderate Brexit in which devolved powers are increased, and so on through to independence—which, of course, we believe is the offering that should be made. We look at all of those, and we have thought through some of the issues.

However, if the negotiations are going to collapse, it will probably happen sooner rather than later. There are real pressure points, the biggest of which will be the debt. If they can get through till the autumn, I think that the prospects of the negotiations going full term become better. Then, however, any agreement will go to the European Parliament for ratification. It now looks as if that process will involve most of the Parliaments of Europe. It is a complex process. Things could fail. The European Parliament has been known to take an individualistic view, and it has set some red lines early on. It would be foolish for those to be ignored.

We think about it; I spend quite a lot of my time thinking about things that I would rather not think about.

**Ross Greer:** I realise that, as with most of the discussion, an answer to this will be highly speculative, but in the event that any of those scenarios begin to play out, at what point would you believe it to be appropriate for the Government to present its proposals to Parliament?

**Michael Russell:** Proposals on what, specifically?

**Ross Greer:** My point is that, if we were in the situation of it looking likely that the negotiations would fail, it would be preferable for Parliament to be presented with the Scottish Government's plan for that before it happens.

**Michael Russell:** We would want to make sure not only that the Parliament was fully consulted, but that we had a proposal for the Parliament to consider at the earliest possible stage.

One of the hallmarks of the First Minister's approach to the issue—I think that it is very important to say this—has been always to have thought through what the next steps are. The day after the referendum, she was out there saying “We need to do this, this and this.” She is absolutely determined that we should be clear in our thinking about all these matters, and so we will have a plan. I am sure of that.

**The Convener:** I think that Richard Lochhead has a supplementary.

**Richard Lochhead (Moray) (SNP):** Yes, it is on Ross Greer's line of questioning.

There seems to be an increasing number of references by the UK Prime Minister to the idea that no deal is better than a bad deal. Am I imagining that, or is the Prime Minister saying it more and more? What signals do you think that that sends to the Scottish Government?

09:45

**Michael Russell:** I think that she is saying it more and more. Some people would speculate that she is saying it in order to strengthen her hand in the negotiations to make the 27 fearful and therefore determined to give ground. Others think that there is not much system in what she says about the EU and that she is operating on a political basis, rather than thinking rationally through the negotiating process.

There should not be any dubiety about no deal being considerably worse than any other option; it is a really, really bad option. There should also be no dubiety about the naivety with which the UK Government has entered into the process without a full understanding of what the complexities are from the European perspective—many people think that. It is important to read as widely as you can on some of the European views of that, as the view taken is very different and there is some astonishment that things are where they are.

The clerks of this committee produce a publication, the latest one of which includes two articles specifically on the way in which the issue looks from elsewhere. I spend time in Brussels, as do some of my colleagues, and we hear a very different view there now. The UK Government says, “That is just the EU's view,” but the 27 are a bit mystified about where the issue has gone and they are a bit troubled. However, that is not the only thing on their agenda, so they do not feel hectorated and pressured in the way that the Prime Minister perhaps thinks they do. There are sometimes bigger issues for the other 27 and they are addressing them in that way.

I hope that there will be a process that produces a successful outcome. However, I think—not unlike one of the summary pieces in the committee's publication—that, if the UK comes out of the EU, in 20 years' time, the UK will be in the process of trying to get back in and it will have lost 20 years of influence, 20 years of progress and 20 years of prosperity. Coming out of the EU is that foolish.

**The Convener:** I understand that the minister has to be away for 11 o'clock.

**Michael Russell:** Ten o'clock.

**The Convener:** Sorry, 10 o'clock.

**Michael Russell:** I am comfortable. I am at the committee's disposal—although not for the whole day, obviously; you would not want me here all day. I am happy to be flexible.

**Stuart McMillan (Greenock and Inverclyde) (SNP):** Good morning, minister. Has the Scottish Government requested an official role in the negotiations, in order to represent Scottish interests?

**Michael Russell:** Yes. In the discussions that we have had, we have said that we want to have a role. In a sense, that role is already guaranteed. Ian Mitchell has kindly passed the terms of reference for the JMC(EN) to me, as it is important that I quote them. Item 3 in the terms of reference says:

“provide oversight of negotiations with the EU, to ensure, as far as possible, that outcomes agreed by all four governments are secured from these negotiations”.

Item 4 says:

“discuss issues stemming from the negotiation process which may impact upon or have consequences for the UK Government”.

There is already a definition of the role that the JMC would give to the devolved Administrations. In my view and the view of my colleague Mark Drakeford—I have also heard this view expressed by Sinn Féin ministers and, I think, Democratic Unionist Party ministers—there should be an active involvement in the exercising of that role.

It would not be unusual for officials to be involved in complex discussions with Europe as part of the UK team, as that already happens in a variety of areas. There is precedent for ensuring that there is representation. Scottish ministers attend the Council of Ministers—I have been to council meetings in three different roles. On one occasion, as environment minister, I represented no less a person than Richard Lochhead at the agriculture and fisheries council when he was off on paternity leave, if I am correct about that. I was the first person to speak Gaelic at the Council of Ministers, when I attended the culture council as culture minister and gave a speech. I have also been to the education council on the rare occasions that I was involved.

There is precedent for involvement and there is even precedent for speaking, which is also an issue that needs to be discussed. It would be obvious where we should be. The issue for debate might be not whether we are there, but what we are there for. Are we there simply to discuss devolved competencies or should we be there in a wider role? The example I might use for that is freedom of movement. Freedom of movement is fundamental to the health of the Scottish economy and to how we see ourselves, and people are increasingly recognising that. We should be there

when the issues of migration and freedom of movement are discussed, because they are of crucial importance to us.

**Stuart McMillan:** That clarification is certainly helpful. One reason that I posed the question was to follow on from Jackson Carlaw's question on what you would do to highlight and represent the various interests in Scotland—sometimes the parties in the Parliament can agree on particular issues. If the Scottish Government did not have an official role in the negotiations, would it not be difficult for it to put forward particular Scottish interests?

**Michael Russell:** With respect, it will not be difficult for us to put forward those interests, because we intend to be heard. We will not be silent during the process; we will be constructive and positive, but we will not be silent. It would be better if there were an effect to our being heard, which would be that we could take those interests into discussion and then through discussion—perhaps within the JMC or the negotiating structure—to seek positions that are advantageous to Scotland. That is what we would seek to do. However, there is no question of us not doing or saying things.

**Stuart McMillan:** The second area on which I want to question you is the European Commission's proposed framework and the four-week cycle. I will read out a couple of things to clarify what the four-week cycle is. Week 1 is

“dedicated to internal preparation and consultations”,

week 2 is

“for exchange of views between the two sides”,

week 3 is “for negotiation”, and week 4 is

“for reporting back (probably to EP Brexit Group and Council Working Party) as well as publishing information emerging from the talks.”

On transparency, how can the Scottish Government reconcile the four-week cycle with reporting back to the Scottish Parliament and the committee to ensure that we are kept informed?

**Michael Russell:** As I indicated to Lewis Macdonald, at the start of the process we need to be involved in the discussion about the position that is being taken and at the end of the process we would want to represent what the outcomes are in exactly the same way as the EU will represent them. We do not know whether the UK Government will represent those outcomes in exactly the same way. It is not a matter that we can influence; we will fit in with it and ensure that we do so as constructively and democratically as possible.

I do not see any difficulty, but there will be a pressure in that, and we will have to respond to

that pressure. For example, if the committee wanted to see itself as a body to comment on the process, it would have to structure itself in order to allow it to do so.

**Stuart McMillan:** Do you anticipate giving regular updates and briefings to the committee and the Parliament?

**Michael Russell:** Yes. As I suggested to Lewis Macdonald, our structures are good and I am happy to go along with them and supplement that with the publication of information. I am always happy to speak to Parliament, and there are a number of opportunities to do so, such as ministerial statements and debates—I understand now that Jackson Carlaw is keen on those, and I am keen to have more of them, if at all possible. We also have regular questions: every member can submit written and oral questions to which ministers will respond. There are lots of possibilities.

**Mairi Evans (Angus North and Mearns) (SNP):** I was hoping that we would not stick strictly to the 10 o'clock deadline because I still want to touch on a few areas.

You mentioned the potential divorce bill and what that might cost. We have also heard about the House of Lords EU Financial Affairs Sub-Committee report on that and its opinion that if we were to leave with no deal the UK might not be legally obligated to pay anything to the EU. What is your sense of that and what discussions, if any, have been held on that point?

**Michael Russell:** There have been no discussions on that. The issue of the bill has been studiously avoided by the UK Government, particularly in the JMC discussion. To be fair, though, it has not been one of the major issues that we have been pressing so far; those have been the article 50 letter and the negotiating process.

Leaving without paying the bill is a bit like going out for dinner and leaving without paying; in the end, someone will catch up with you. In these circumstances, it is unlikely—to say the least—that we would be able to move towards a constructive trade deal if we had not come to an agreement on the terms of the exit. What would be the incentive for the other countries to do so? There might be some small detriment to them, but they would have to make a point about the refusal to pay the bill. The European budget is set until 2020-21, so there will be a gap in the European budget that needs to be filled, and any reasonable negotiation will have to come up with a sum that is due.

The difficulty is that figures were bandied about early on, whereas the right thing to talk about would have been the methodology and how we might come to a calculation. The meeting between

the Taoiseach and the Danish and Dutch Governments was significant in that regard. As a smaller group, they have been struggling to see whether they can suggest a methodology to drive the approach. It might well be that the effort will go into—and is now going into—finding that methodology.

To be blunt, I think that the problem as seen in Brussels is the influence of the tabloid press and the UK Independence Party. If resentment about a payment develops, that might create a huge political difficulty for the UK Government—whoever is in Government—in the negotiation. UKIP figures have remarked—and, as far as one can see, UKIP thinking is currently mainstream in the Conservative Party—that it is a bit like a golf club and that we can just say that we are not going to pay our subscription. In fact, many golf clubs require people to pay a subscription for a period of time even if they resign and at many golf clubs people forfeit their deposit if they walk out without due process. If it is like a golf club, I have to note that even golf clubs have rules.

**Mairi Evans:** Because the potential figures for the payment vary so wildly, how the sum will be calculated is one of the most important issues.

With regard to free movement and how the whole immigration set-up might work, a few weeks ago Dr Eve Hepburn presented the committee with a report on options for differentiating the UK's immigration system. Have there been any discussions on such an approach? What are the UK Government's feelings about that? Is it a possibility for Scotland going forward?

**Michael Russell:** The issue of differentiated migration systems was dealt with in "Scotland's Place in Europe", in which, in my view, we offered a very positive compromise. Such systems exist in Canada and Australia. I think that at this committee—or at a meeting of another committee—I quoted comments by David Davis on what migration problems are. In these circumstances, migration problems are not about borders. Nobody is proposing at this stage that this island should be in Schengen. The borders issue is about stopping people getting in; the migration issue that is being addressed is whether people have the right to stay. We can deal with that differentially by marking people's passport, papers or identity card to indicate that they only have the right to stay in Scotland, so it is not a difficult thing to do.

However, we should not underestimate the fact that we are dealing with a Prime Minister who used to be Home Secretary and who, frankly, has a particular obsession with migration and is not prepared to countenance any weakening of that situation. At the moment, therefore, the proposal is a dead duck. It is the right thing to do and it would,

in actual fact, solve a problem for us and the rest of the UK, but a rational solution does not appear to be possible.

The issue of EU citizens is also tied up in this. It has been a big issue for the last 11 months and it is increasingly becoming a considerable worry to me. As you will probably know, I was in Angus on Monday; I visited one of the big fruit companies, Angus Soft Fruits, which has previously given evidence to the Parliament on some of the issues involved, and I had conversations with people from Bulgaria and Romania. I am concerned for them, because they are really distressed and what they are saying reflects what we thought would happen. They are saying, "Look—whatever the solution to this is, I am really fed up with it and I am doubtful whether I want to stay." Some people have bought flats and some are here permanently, but they are looking at the situation and saying that there are other places to go.

One person I spoke to, who had worked there for a long time and was quite senior, said, "Look, I have skills that are needed in Germany and elsewhere. I would like to be here, but I don't want to put up with this any longer. When I go back to Romania and get on the plane to come back here, I don't know what will happen to me when I arrive in Scotland. I am nervous and fearful about this." Indeed, the Romanian consul general told me that there has been a big increase in applications for Romanian passports because people want something that proves who they are. Previously, an identity card would have been enough, but in future they might need to prove who they are if they live here. I am very worried about that.

10:00

I also visited Angus College and met staff and students who are very concerned and are not getting answers. They have had 11 months of this. People who are enormously positive contributors to Scotland—who are passionate about Scotland—will decide in the end that this is not where they want to be, and that will damage our reputation across Europe and across the world. It is a really concerning area.

**Mairi Evans:** I agree with that. I recently had a meeting with a rural business that has already closed down part of its business because it was heavily dependent on EU migrant labour and it decided that it was not worth the future uncertainty. This is already having an impact.

**Michael Russell:** Some businesses cannot take that approach. Angus Soft Fruits, for example, has 1,000 workers who come from other parts of the EU, so it is simply not possible for it to do that. The solution might be to move the entire business to somewhere else in Europe. The complexity of it all

is something that a number of us are only just getting to grips with; after all, quite a number of people who work for a soft fruit business in the summer might work in fish plants in the autumn and winter. A number of industries have become dependent upon that labour and therefore there is a widespread effect on businesses, the community and those who run the businesses. Indeed, somebody involved in running one such business said, "I am very worried for the people who work for me but I am very worried for myself too because I may not have a job if I cannot keep the business going."

**Mairi Evans:** The report that Dr Hepburn presented to the committee covered in detail a lot of the other countries and the agreements that they have, which you have already highlighted. A lot of the arrangements are dependent on political will. I was going to ask whether you believe that that political will is there, but you have already answered that question.

**Michael Russell:** The arrangements are also dependent on information. A lot of this—not all of it completely, but a lot of it—could have been dealt with through a flow of information and policy commitments. Nobody knows the policy of any prospective UK Government, let alone the current one, on this matter. There is a lack of information. Where will people get the information that they need to make life decisions? They do not have it.

**Mairi Evans:** I also want to touch on funding. We hear a lot about horizon 2020 and common agricultural policy payments, and with good reason. However, there are other funds that local government in particular and our local communities are heavily dependent on. For example, there is the Interreg fund, which is a transnational fund, and LEADER funding, which is vital for our rural areas. In Angus, it is worth £2.7 million; in Aberdeenshire, it is worth £2.8 million. Such funds provide vital projects in our local communities. I know that a lot is still unknown but are there any discussions about what the transitional arrangements might be in relation to those particular funds?

**Michael Russell:** No, not with us, which is concerning. From your experience with the east of Scotland network, you know how vital those funds and connections are. The access to that money and the connections that it produces are extremely vital. In my area, in the west of Scotland, access to Scottish rural development programme money, agricultural support and infrastructure funding are all really important.

As Richard Lochhead will remember, when we moved from one SRDP to another, there was a hiatus. With the best will in the world, even if we know what the future programme is, there is usually a bit in the middle that does not fit



absolutely perfectly and a period when money is not available.

We know when the programme will finish—the commitment is up until 2020—but we have no idea what will come in instead, and nor do we know the quantum that is being talked about. For example, would a sum of money be available on a UK-wide basis to be allocated for these purposes? Will these purposes be priority purposes or not? Will that money be allocated to the Scottish Government through the Barnett formula or in some other way? We have absolutely no knowledge about that.

Because of that, there will be a hiatus of some sort. How big it is and what it looks like we do not know. The other day, I used an example from my constituency, where people on the island of Luing have been talking about a fixed link—a bridge—for many years, but they are now beginning to wonder how that can be funded. Until now, people would have said that a European contribution would be needed. I do not know whether there will be a contribution of equivalent moneys or where that will come from, but until we know that nobody can plan for it to happen, so there is a hiatus.

The issue is about the flow of information, but we also need to know what the UK Government's objectives would be. It would be good if the UK Government were to say to us, "Look, in the past five years, X amount has been allocated to Scotland through these programmes, so we're going to guarantee that X amount plus inflation will be allocated to you for the same purposes, so you now go ahead and set up those funds and decide how they will be distributed." We would say, "Right, let's go ahead. We don't want to leave Europe and we have plans for other things, but of course we will set up those funds." However, we have no idea when that is going to happen, or if it is going to happen, so we cannot say.

I had a conversation last week with the Scottish Council for Voluntary Organisations, which was talking about the allocation of funds to the third sector and said that it had lots of ideas. I said, "Go away and work those ideas up and come back to me. We'll feed them through to your cabinet secretary and see if we can develop some plan, anticipating that we will need new structures." However, what those structures will be we do not know, and the clock is ticking. It is very concerning.

**Mairi Evans:** I have a final point about trade and a brief question on security, which you touched on in an earlier answer. We have had a briefing about using World Trade Organization rules as a fallback plan if no agreement is reached. However, we heard that, before we could begin trading under World Trade Organization rules, the UK would need to establish its new

status within that organisation, which requires agreement from all WTO members. Is that something that can happen in parallel with the discussions over the next couple of years, or does it have to wait until we are out of the EU? What would happen?

**Michael Russell:** I am not a trade expert. As I understand it, the difficulty would not be in becoming a member of the WTO. We are, in fact, through the European membership, a member anyway. The difficulty would be the application of the interim tariffs. Before we negotiated the detailed tariffs, we would take the standard tariffs as set. Some of those would be fine and some would be pretty disastrous. There are huge agricultural tariffs, which would profoundly affect us. I just do not think that that is an option, but clearly the UK Government thinks that it might be an option.

The other issue is the process of trade. I have had conversations with a number of bodies, such as the UK Chamber of Shipping, one of whose concerns is that the continuation of tariff-free access to the European market with the minimum regulation means that we can flow as we are now, but that the moment that flow is interrupted it will have consequences. For example, Scottish shellfish are delivered promptly, and if they are not delivered promptly they do not get delivered. Another issue is simply capacity. No channel port of any sort has huge capacity to stack up lorries to be inspected. That is why we get queues on motorways when there is a dispute. That would become commonplace, because there simply would not be the capacity, let alone the workforce, to deal with it, so those issues need to be resolved.

I cannot imagine that, on 30 March 2019, that barrier will come down, but we need to know what the policy intention is at the UK Government level, and we need to have some confidence that it can be achieved. That brings us back to the Prime Minister's approach. The confidence that the UK Government can achieve an ambitious policy intention is, to put it bluntly, not enhanced if she is standing in Downing Street denouncing the people who she is about to negotiate with. That makes it harder.

**Richard Lochhead:** In his letter to you of 29 March, the secretary of state, David Davis, says:

"Scotland's accession to EFTA, and then the EEA, would not be deliverable".

Are you aware of how he has come to that conclusion and who he has spoken to? What is your response?

**Michael Russell:** I am not aware of who he has spoken to; no doubt he has spoken to somebody. However, he does not speak on behalf of the

European Free Trade Association or the European Economic Area. Our paper “Scotland’s Place in Europe” makes it clear that what is proposed would be a new departure for EFTA and the EEA but that the negotiation is worth attempting.

We were clear in “Scotland’s Place in Europe” that there are no certainties. However, we said that the right way to proceed was to place a requirement for a differentiated solution into the article 50 letter, which would have been the first step. Secondly, the UK Government, using its good offices, could have assisted us in the discussions that we would have had with EFTA and the EEA. One of the solutions, of course, would be to make use of the UK’s membership of the EU in a way not dissimilar to the Greenland option, which was described some time ago as piggybacking on Denmark’s membership of the EU. We had figures who were involved with and knowledgeable about EFTA and the EEA who said that that discussion could and should take place, but it has not taken place.

We published our paper on 20 December 2016 and the letter referred to is dated 29 March. I made a presentation based on our paper at the January JMC, then officials went away and discussed various parts of it. That process was—using inverted commas—“intensified” after the JMC plenary at the end of January. I am not aware of any inoperable barrier to any aspect of the proposal arising during those official discussions. That is not to say that we came to an agreement, but no deal breaker was dealt with during the discussions. However, I then got the letter that simply says, “No—can’t be done”, and I do not believe that.

**Richard Lochhead:** If the secretary of state ever deems the Scottish Parliament important enough for him to appear before one of its committees, perhaps we will get to ask him those questions. However, we are still struggling to get him to appear before the committee.

I also want to ask about the UK Government’s usual response to the idea of Scotland having a bespoke arrangement within Europe, which is to say no to that and to say that we need a UK internal market. Again, the idea of a UK internal market appears to have come on to the agenda more and more in recent months. What do you think is the UK’s agenda in that regard? Notwithstanding that some of it might be necessary, how can that idea be compatible with devolution, given that the policy and regulation that are decided in the Scottish Parliament could be usurped by, or have to be compatible with, a UK internal market?

**Michael Russell:** The phrase that the UK Government has used is “UK single market”, but I have been very sceptical about the concept.

Before I say what I think the motivation for it is, I draw the committee’s attention to a paper by Noreen Burrows and Maria Fletcher in the *Juridical Review* called “Brexit as Constitutional Shock and its Threat to the Devolution Settlement: Reform or Bust”. It is an interesting paper that I commend to people because it deals with the question of the way in which the devolution settlement is under threat and what that threat is. It is an interesting academic study of what the problems are and how they might be addressed.

I think that the concept of the UK single market has been overinflated by the Prime Minister for purposes of her own. First, it runs contrary to what devolution is about: subsidiarity and the appropriate places for power to be exercised, and sharing those arrangements as required. That is how we operate now and there is a differentiated constitution—of course, there has been one since the Act of Union 1707, which is a differentiated act. So, currently, there are differentiated powers and those powers are appropriately exercised jointly as required.

The concept of the UK single market is a bit of a threat in two ways, one of which is the sovereigntist view of the UK Parliament, very much held by Brexiteers, that the UK Parliament is completely sovereign and must not be dictated to or second-guessed by any other body; that is why those with that view cannot accept sharing power with Europe or accept the rights and influence of the European Court of Justice, and why devolution is not popular with them. Those people regard devolution as sharing power and compromising the UK Parliament.

There is also a practical issue, which is particularly strong in the case of agriculture. One of the few ways in which the UK Government would be able to set up new trade deals elsewhere would be to trade away access to our agricultural and food markets. The UK Government could not do that if those areas were still controlled by devolved Parliaments, because they would say no to it. However, I have heard the Welsh use the example of New Zealand lamb in that regard, and beef farmers might consider the issue of Brazilian beef. The UK Government would not want to be in the position of not being able to secure those market advantages in trade deals, so it would have to control access to those markets.

10:15

As I have seen at close hand, the UK Government is very concerned about what happened in the Flemish Parliament with the comprehensive economic and trade agreement—for a short period, it looked as if the agreement might be scuppered by a devolved assembly. The

UK Government is determined to ensure that that does not happen here.

If the UK Government wants to make trade deals that involve trade-offs in areas such as fishing—mark my, or anybody's, words; that is what it intends to do—it can do so only if it controls those assets. Therefore, a major element of the UK Government retaining devolved powers concerns its ability to do deals in areas that are currently the responsibility of the Scottish Parliament, the Welsh Assembly and the Northern Ireland Assembly. That threatens not only devolution itself, but the health of our agricultural industries and of rural Scotland. We should be realistic: it is not simply about the UK Government being inimical to devolution, although it is about that; it is about the UK Government having the power to trade away assets that we would not, and should not, trade away, given the interests of our farmers and fishermen.

**The Convener:** We have quick supplementaries from Lewis Macdonald and Ross Greer.

**Lewis Macdonald:** To go back to your answer to Mairi Evans on structural funding, one of the challenges that Brexit poses—in a way, this was illustrated by your answer to Richard Lochhead a moment ago—concerns what the relationship will be between schemes that apply across the whole UK and those that apply to particular interests in Scotland. For example, the allocation of structural funds is currently considered on a Europe-wide basis. The system is dynamic—the Highlands and Islands at one time had a different status from that which they have now, which reflects changes in economic and social development.

Is the Scottish Government's proposal, or preferred option, to have a dynamic UK-wide scheme whereby we may be net beneficiaries or net contributors, depending on our state of economic and social development relative to the rest of the UK? Alternatively, does it propose—as was perhaps implicit in one of your answers—to freeze the situation as it stands in 2020 and make that permanent, or to negotiate a Barnettised financial relationship between the UK and Scotland?

**Michael Russell:** Our ambition is to be an independent country that takes part in European funding. I am unashamed to say that, and you would not expect me to say otherwise.

**Lewis Macdonald:** Given that ambition, what is your second preference?

**Michael Russell:** It would not be a second preference, but with regard to how we would operate within the present situation and within Brexit, pending another constitutional settlement, my principle would be no detriment to Scotland and to the Highlands and Islands in particular. I

declare an interest in that respect, as I am a Highlands and Islands MSP and my constituency has benefited disproportionately from European investment. That is right and proper, as the Highlands has required special treatment. In those circumstances, we want to ensure that there is no detriment.

The same principle of assisting areas and communities to develop, and the same priorities, should apply. For example, a key issue in providing agricultural support in Scotland is the need to keep people on the land. The whole crofting system has been developed as a uniquely successful way of ensuring that communities are not completely decimated: that people are still on the land and the land is still in use. It is a very useful system. If there was a UK-wide agricultural policy with virtually no variation, that would not be the principle. The principle—quite rightly, because the majority would win from it—would be about agricultural production in areas such as the east of England or the east of Scotland, and other areas would lose out.

I want a principle of no detriment and a policy that suits Scotland. In my constituency, I hear all the time from people who work in crofting and agriculture that, above everything else, the retention of a less favoured area support scheme will be absolutely crucial. Without an LFASS, those people will not be able to operate, given that they live in less favoured areas.

We must pay attention to what the need is and what the stakeholders are saying, and to the principle of no detriment. I suppose that I am saying to Lewis Macdonald that there is a matrix of issues, which is based on making sure that we follow, and are true to, the interests of the people who elected us.

**Lewis Macdonald:** Does that imply that the principle of no detriment means that you would take a snapshot at the point of Brexit and keep the situation the same for ever more?

**Michael Russell:** No, it does not have to be the existing system. If the existing systems work well, they should be retained; if they do not, they can be changed. I want to say—in what will probably be my last answer—that the preference is that we find a way to continue to be, or to become, a member of the EU that takes part in these schemes, which have been very positive for Scotland.

I was at the Europe day celebrations in Castle Street in Edinburgh, on Tuesday. They were vibrant, interesting and vital, but the people who were there—there were representatives of all 27 EU member states as well as a lot of people from Edinburgh and the surrounding area—said that they wanted to celebrate something that has produced peace and prosperity on our continent

for all of our lives. That is vital to us, and we should not forget that the EU is about peace and prosperity.

**The Convener:** Do you have time for one final supplementary question from Ross Greer?

**Michael Russell:** Yes, of course.

**Ross Greer:** It relates to the final answer that you gave to Mairi Evans. You have mentioned the amount of time that you have spent in the rest of Europe recently, meeting other parliamentarians and other Governments. There are two different perceptions of the relative strength of the UK's negotiating position. Lewis Macdonald might like to feed in on this. We recently met a delegation from another European Parliament who were perplexed by what they had heard when they were at the House of Commons, which reflected a belief in the strength of the UK's position based on the number of cars that we sell to Germany, for example. What have you picked up from the rest of Europe? How strong do they believe the UK's position to be in comparison with the perception that they have of the UK Government's self-belief?

**Michael Russell:** Everybody wants to resolve the situation in as positive a way as possible—I do not think that there is any doubt about that. That would be in everybody's interests. However, the issue is that the situation cannot be as good as what exists now. The language of the article 50 letter from the Prime Minister implies that, in some way, there is another arrangement that is just as good and that it will be arrived at because the UK is owed it. That is not the view in Europe. The view in Europe is that Brexit is a profound mistake that should not be happening but, if it is happening, it should be managed as well, as neatly and as carefully as possible. However, the situation will not be the same, as the advantages of membership are not available to non-members—that is simply axiomatic.

The language that is being used is either the language of saying that we will have a strong, constructive relationship and some wonderful pot of gold, or many pots of gold, will come to us when we are outside the EU—which is nonsense—or the contrasting language of saying, "Stop interfering in our election, because we know best and we know what we're doing." It is all a bit confusing. I heard it said by a very distinguished former European figure some weeks ago that, in the end, the UK is going, and that is it—it is a mistake that should not have happened, but it has happened, and now let us move on.

**The Convener:** Thank you very much for coming to give evidence today, minister. You have been very generous with your time.

10:23

*Meeting continued in private until 11:23.*

This is the final edition of the *Official Report* of this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

---

Published in Edinburgh by the Scottish Parliamentary Corporate Body, the Scottish Parliament, Edinburgh, EH99 1SP

---

All documents are available on  
the Scottish Parliament website at:

[www.parliament.scot](http://www.parliament.scot)

Information on non-endorsed print suppliers  
is available here:

[www.parliament.scot/documents](http://www.parliament.scot/documents)

For information on the Scottish Parliament contact  
Public Information on:

Telephone: 0131 348 5000

Textphone: 0800 092 7100

Email: [sp.info@parliament.scot](mailto:sp.info@parliament.scot)

---



The Scottish Parliament  
Pàrlamaid na h-Alba