OFFICIAL REPORT
AITHISG OIFIGEIL

Meeting of the Parliament

Tuesday 23 January 2018

Session 5

The Scottish Parliament
Pàrlamaid na h-Alba

Tuesday 23 January 2018

CONTENTS

Scottish Parliament

Tuesday 23 January 2018

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

Time for Reflection

The Presiding Officer (Ken Macintosh): Good afternoon. The first item of business is time for reflection. Our time for reflection leaders are Ben Petrie and Catherine Bough from the Royal high school in Edinburgh.

Catherine Bough (Royal High School, Edinburgh): Good afternoon. Thank you for welcoming us today. We are Catherine and Ben from the Royal high school.

Last year we took part in the Holocaust Educational Trust's lessons from Auschwitz project with 200 students from across Scotland. As part of the project we visited Auschwitz-Birkenau, where 1.1 million Jews were murdered.

I still struggle to put into words my feelings from that visit. We saw children's shoes and a jumble of prosthetic limbs, taken from the most vulnerable upon their arrival at the camp, and the small concrete path alongside the tracks, marking the spot where families were torn apart.

At the end of the day, we gathered at the end of those tracks. Rabbi Garson, who had been with us all day, led a commemorative service, at which he sang a Jewish prayer for the dead. Here was a Jewish Rabbi singing in Hebrew in a place where more than 1 million of his people had been murdered. I felt so empowered by the beauty of his ultimate act of defiance. It felt like a statement to say that there are still Jewish communities in Europe and that we should remember them. Our final action that day was each to light a candle to commemorate those whose lives were lost. It was beautiful.

Ben Petrie (Royal High School, Edinburgh): One of the main things that I took from the visit was the importance of not viewing the perpetrators simply as monsters. What the Nazis did was incomprehensible in many ways, but we must remember that the Holocaust was committed by ordinary people. Failing to acknowledge their humanity is too easy. The perpetrators had the power to choose.

This year's theme for Holocaust memorial day is the power of words. Today I ask everyone to consider what happens when we stand by, not using our words, and when we do not call out anti-Semitism, racism and hatred. I have learned about the Holocaust and what happened when people failed to use their voice. When people stay silent, hate can flourish.

We have had a unique opportunity through the lessons from Auschwitz project and, in turn, we have had our perspective changed forever. As Holocaust survivors become less able to share their testimony, it is the duty of the trust's ambassadors around Scotland to ensure that the Holocaust is remembered and to spread the invaluable lessons that we have learned. If we can encourage people to speak out, perhaps we will see a future where anti-Semitism and prejudice will never again lead to such atrocities.

Point of Order

14:03

Neil Bibby (West Scotland) (Lab): Presiding Officer, I wish to raise a point of order in relation to chapter 13 of the standing orders, including rule 13.2.

Last week the Scottish Government announced that it had approved proposals to close the children's ward at the Royal Alexandra hospital. Many local families are devastated by that decision and it is only right that it receives the fullest possible parliamentary scrutiny.

There will shortly be a ministerial statement on the closure, but the Scottish Government should have given families, parents and national health service staff the courtesy of a statement as soon as the cabinet secretary was in a position to make an announcement. Instead, the closure was announced in an answer to a Government-inspired written question, lodged on Thursday when Parliament was sitting, with an answer that was snuck out at 2.03 pm on a Friday afternoon when Parliament was not sitting, and when the Government was advising people to leave work early due to adverse weather conditions.

Instead of trying to bury bad news, the Government could and should have given prior notice to families and staff that a decision of such importance was imminent and would be announced directly to Parliament.

Presiding Officer, I ask that you consider whether the use of a Government-inspired question was appropriate in this case, and whether its use by the Government to make such announcements should be reviewed. Can you also confirm that no request by the minister for a statement was made to you on Thursday under rule 13.2?

That decision should have been announced to this Parliament in this Parliament. Surely the way that the Scottish Government has chosen to announce the closure is discourteous to members and, more importantly, is deeply disrespectful to those who depend on the children's ward at the RAH.

The Presiding Officer (Ken Macintosh): I thank the member for the advance notice of the point of order. As the member will be aware, the guidance on announcements sets out good practice that should be followed by the Scottish Government when informing the Parliament; it is intended to help the Scottish Government to decide which method is the appropriate one by which to make an announcement. I raised the member's concerns about the particular issue at today's Parliamentary Bureau meeting. We had a useful discussion about decisions more generally on which method to use to make an announcement. The Bureau has made its views known, and that will help to inform future decisions by the Government. In this case, the Bureau has agreed to schedule a ministerial statement on the issue this afternoon, following topical question time. That will allow members to question the cabinet secretary on the decisions.

Business Motion

14:05

The Presiding Officer (Ken Macintosh): The next item of business is consideration of business motion S5M-010053, in the name of Joe FitzPatrick, on behalf of the Parliamentary Bureau, setting out a revised business programme for today.

Motion moved,

That the Parliament agrees to the following revision to the programme of business for Tuesday 23 January 2018—

after

followed by	Topical Questions

insert

followed by	Ministerial Statement: Decisions on Major Service Change Proposals in Glasgow and Clyde

delete

5.00 pm	Decision Time

and insert

5.20 pm	Decision Time—[*Joe FitzPatrick*]

Motion agreed to.

Topical Question Time

14:06

Police Custody (Right to Legal Advice)

1. **Liam McArthur (Orkney Islands) (LD):** To ask the Scottish Government what action it will take to ensure that everyone in police custody can exercise their right to legal advice from 25 January 2018. (S5T-00881)

The Minister for Community Safety and Legal Affairs (Annabelle Ewing): I refer members to my entry in the register of interests, wherein they will find that I am a member of the Law Society of Scotland and that I hold a practising certificate, albeit that I am not currently practising.

Part 1 of the Criminal Justice (Scotland) Act 2016 introduced increased rights of access to legal advice for people being held in police custody. Those provisions followed recommendations in Lord Carloway's review of Scottish criminal law and practice and wide public consultation. The Criminal Justice (Scotland) Bill was passed unanimously by Parliament in December 2015. Since then, there has been extensive engagement with legal professionals through the Law Society of Scotland and local representative groups.

Regulations to ensure that a significantly enhanced package of legal aid funding is available for private solicitors providing police station advice under the new arrangements were approved by the Scottish Parliament last month. The regulations introduce a new block-fee system: a simplified process for claiming for police station advice whose rates are an increase on existing rates. Police station advice is provided through a combination of solicitors in private practice who opt to be part of the police station duty scheme and solicitors employed directly by the Scottish Legal Aid Board.

Where private solicitors have chosen to not participate in the current or new scheme, the Scottish Legal Aid Board has confirmed that it will handle requests for police station advice through the 599 private solicitors who remain on the duty scheme and its own employed solicitors on the solicitor contact line and in the Public Defence Solicitors Office. That will ensure that appropriate access to legal advice is available for those in police custody from 25 January.

Liam McArthur: I thank the minister for that detailed response. The changes that are involved are indeed big ones for the police and those tasked with ensuring that everyone has the legal advice that they need at every stage of the justice

process. Given recent developments and the serious concerns that have been expressed from the Borders to Moray and beyond, what assessment has the Scottish Government undertaken of the situation and how many people are expected to be working on the provision of legal advice for those in police custody on day 1 of the new scheme, which is the day after tomorrow? How does the minister respond to the suggestion that was made by Deputy Chief Constable Livingstone at the Justice Committee this morning that some people might have to be moved between police stations to facilitate access to a solicitor?

Annabelle Ewing: Contingency planning has of course been in place for some considerable time, as informed by the Scottish Legal Aid Board, in terms of the range of arrangements that had to be put in place to implement part 1 of the 2016 act. In addition to the 599 private solicitors who are available for the on-call duty scheme, to which I referred in my first answer, there are currently 13 solicitor contact line solicitors working a shift pattern and 24 PDSO solicitors. As would be expected, all matters are currently, and will continue to be, under close monitoring to ensure that we have all necessary arrangements in place.

In response to the question that the member raised about what DCC designate Iain Livingstone said in evidence at this morning's Justice Committee meeting, we are confident in general that access to legal advice will be available in whatever location someone is held in police custody without there being any need for them to be moved. As part of sensible continuity planning, however, if there were particular circumstances in which it was absolutely necessary to move someone who was being held in custody to ensure that they had access to legal advice, it would be possible to do so, as is the case under the current arrangements. However, as I said, we do not expect that to be required as part of the normal duty arrangements.

Liam McArthur: I thank the minister for that answer. This week, Ian Moir of the Law Society of Scotland said that falling pay rates and difficulty in balancing on-call work with family life were leading to a significant fall in the number of solicitors who are willing to take on legal aid work. The review of legal aid that was announced in February 2017 was expected to take a year, and was established to engage with the legal profession and come up with

"specific measures to reform Scotland's system of legal aid, maintaining access to public funding for legal advice and representation".

Will the minister tell Parliament when she expects that review to report?

Annabelle Ewing: I clarify that the police station duty scheme is entirely voluntary; no solicitor needs to participate in it, and even those who sign up for it are not required to make themselves available 100 per cent of the time. We have also extended the definition of the antisocial hours premium so that it applies not simply to telephone calls but to travel, which was not requested by the Law Society of Scotland in my negotiations with it. Finally, we expect the report on the review of legal aid next month.

Rona Mackay (Strathkelvin and Bearsden) (SNP): Will the minister confirm whether discussions have been held with SLAB and whether it feels comfortable with the changes that are being made to the provision of legal aid?

Annabelle Ewing: Officials have been closely engaged with SLAB about the delivery of the 2016 act's provisions, and SLAB has engaged directly with the profession on the implications of the new rights and the capacity of the profession to deliver. The operational capacity to deliver is continuously assessed, as is normal practice for the current arrangements, and SLAB is comfortable with the changes that are being made and with the ability to deliver on the new rights.

Gordon Lindhurst (Lothian) (Con): I follow the minister's comments about the intricacies of the matter, but I think that the Law Society of Scotland has said that, in order for it to work in practice, the extension of the right to have a solicitor present will require legal aid rates to increase significantly in order to reflect the additional work. In the light of that, does the minister agree that that adds to the case for legal aid reform and, indeed, that the timing of the arrangements' implementation—before the report that Liam McArthur referred to—is unfortunate, at the very least?

Annabelle Ewing: I will respond to the points that have been raised. First, part 1 of the Criminal Justice (Scotland) Act 2016, to which I have referred, is due to come into force this Thursday. Therefore, it would have been irresponsible of us not to have had in place legal aid arrangements that reflect the new position. As I said in my response to Liam McArthur, the legal aid review is expected to report next month, and it might be important, for the record, to state that we listened to the Law Society of Scotland's negotiating team and increased the block-fee rate. We also extended the definition of the antisocial hours premium to include not just telephone calls but travel, which was not even requested in the discussions with the Law Society. Therefore we increased our offer, and we believe that it was a good one. We see that many private solicitors have decided to remain in the police station duty scheme.

Inequality

2. **Gillian Martin (Aberdeenshire East) (SNP):** To ask the Scottish Government what its response is to the Oxfam report, "Reward Work, Not Wealth", and what action it is taking to tackle inequality. (S5T-00890)

The Cabinet Secretary for Communities, Social Security and Equalities (Angela Constance): I welcome the Oxfam report, "Reward Work, Not Wealth", which makes a range of recommendations to Governments and international institutions.

We are committed to working to reduce inequality and protecting human rights within the limit and range of our powers. We have already set concrete, time-bound targets to reduce inequality through the Child Poverty (Scotland) Act 2017, and we will publish our first delivery plan by April 2018. In this year's draft budget, we set out proposals for a progressive income tax policy, allocated £179 million in 2018-19 through the attainment Scotland fund and increased funding for the national health service.

Beyond that, we are taking a wide range of actions to tackle poverty and inequality, including almost doubling the provision of free childcare by 2020, delivering at least 50,000 affordable homes over this parliamentary session and enacting the fairer Scotland duty from April 2018 to ensure that public bodies take due account of poverty and disadvantage whenever key decisions are made.

Gillian Martin: The report highlights growing global disparity between the richest and poorest in society, with 82 per cent of all the world's wealth created in the past year going to the top 1 per cent and nothing going to the bottom 50 per cent. Oxfam calls on Governments to create more equal societies, aiding ordinary workers and smaller businesses. Can the Scottish Government set out how, with the limited powers that it has, it is moving Scotland towards a more egalitarian and a fairer society? Does the cabinet secretary agree that Scotland could be seen as an example for other countries around the world to follow?

Angela Constance: The important point about leading by example was reflected in the comments made by Dr Katherine Trebeck, Oxfam's senior researcher, who is based in Glasgow, when she said that

"our ideas can be big and they can resonate ... beyond our borders".

For this Government, tackling inequality is not some optional extra; it is part and parcel of everything that we do. In addition to the actions that I outlined in my original response on how we are implementing and taking forward our duties under the new Child Poverty (Scotland) Act 2017, we are taking clear action to close the wealth gap that is associated with gender-segregated roles and we are working hard to support carers. We are also investing in affordable housing through our labour market strategy and in the work that we do across Government to support inclusive growth in our economy.

Gillian Martin: Will the cabinet secretary expand on the key finding of the Oxfam report, that women are in the worst work and that almost all the super-rich are men? In a year that saw billionaires' fortunes grow by $762 billion, women provided $10 trillion to the economy in unpaid care throughout the world. Although we might not be able to solve that global problem ourselves, will the Scottish Government set out how it is leading the way in closing the wealth gap that is associated with gender-segregated roles and in ensuring that caring is valued?

Angela Constance: The Government is taking a number of actions. We are big supporters of family friendly working Scotland, a partnership between Working Families, which is a leading United Kingdom work-life balance organisation, Parenting Across Scotland and the Fathers Network Scotland. The raison d'être of that work is to support and promote the development of family-friendly workplaces, which will have a big impact on women—although not exclusively on women, as it is important for fathers and parents, too.

Fair pay is also at the heart of our planned expansion of early years and childcare provision, and we will enable payment of the living wage to all childcare staff delivering the funded entitlement by 2020. We are enabling carers and unpaid carers to be better supported to look after their own health and wellbeing, and the carer positive scheme is about supporting employers to support their employees who have caring responsibilities.

Elaine Smith (Central Scotland) (Lab): As Oxfam highlighted this week, the wealth gap is widening, including in Scotland. Meanwhile, the Government has cut funding to lifeline public services. Is the cabinet secretary aware that Dr Katherine Trebeck of Oxfam said yesterday that

"the strain of yawning inequality is also being felt in Scotland",

and that she was quoted as saying:

"This isn't a faraway crisis ... It's grimly apparent that the inequality crisis is out of control"?

When will the cabinet secretary take the necessary steps to address the crisis here in Scotland, including by asking the richest in our society to pay their fair share in order to shift the balance of economic wealth to the many rather than the few?

Angela Constance: It is important to recognise that the report focuses on worldwide inequality and makes a number of recommendations to Governments and international institutions. The report itself, in my reading, did not make any specific mention of Scotland, but we welcome it nonetheless.

It is fair to reflect that the recommendations would cut across both devolved and reserved powers. It is also important to recognise that 60 per cent of Scotland's spending power is still dependent on Westminster decisions. Nevertheless, we are absolutely determined to utilise all the powers and opportunities that are available to the Scottish Government to address poverty and inequality in this country.

That is not just the right thing to do; it is the smart thing to do, and it is reflected in our inclusive growth aspirations, our labour market strategy, our fair work commitments and the work that we will take forward to end child poverty. Children are poor because of the lack of income in their family or their household, which means that we will have to use all the powers at our disposal to tackle the structural inequality that exists in Scotland. We also look forward to receiving advice from the new, independent Poverty and Inequality Commission.

Housing Waiting Lists (Disabled People)

3. **Pauline McNeill (Glasgow) (Lab):** To ask the Scottish Government what action it is taking to reduce the number of disabled people on housing waiting lists. (S5T-00892)

The Minister for Local Government and Housing (Kevin Stewart): The Scottish Government wants disabled people in Scotland to have access to homes that enable them to participate as full and equal citizens. Our disability delivery plan sets out a number of housing-related commitments that support that ambition, which include the requirement for each local authority to include a realistic target for the delivery of wheelchair-accessible housing in its local housing strategy and to report annually on its progress. We are also working with health and social care partnerships, disability organisations and the housing sector to ensure that those in need of adaptations to their home can access those services.

Pauline McNeill: An investigation by *The Independent* has revealed figures that were obtained from councils that indicate that almost 10,000 disabled people are on housing waiting lists in Scotland. Many of those people are stuck in unsuitable council houses, some of them five years—or longer—after requesting a move. Does the minister agree that it is intolerable for any person to be trapped in a home that does not suit their needs and that it is time to take more dramatic action to serve people who need a move to more suitable accommodation?

Kevin Stewart: As I said in my first answer, local authorities have a key role in planning for the housing needs of everyone in their community, including those who require wheelchair-accessible housing. People should have homes that suit their needs.

Work is under way to develop guidance for local authorities and other stakeholders on the need to set a realistic delivery target for wheelchair-accessible housing across all tenures, not just social housing. That will be incorporated into the revised local housing strategy guidance, which will be reviewed later on this year.

The latest available statistics show that 91 per cent of the housing that we are delivering in our housing programme is for varying needs. That is welcome, and I expect that standard to continue.

I met housing conveners at the Convention of Scottish Local Authorities this morning and reiterated what I have said previously about subsidy levels for wheelchair-accessible housing. We will be flexible. Beyond that, I have asked them to take account of their waiting lists to see exactly what housing is required to reach the realistic targets that we all want to see delivered.

Pauline McNeill: I welcome that answer, but does the minister acknowledge that people with disabilities who struggle to find suitable housing are not just people in wheelchairs? A whole range of people struggle to find suitable housing. We need to recognise that people with walking difficulties and people with breathing difficulties need ground-floor properties. Is it now time for a more specific strategy? Glasgow, for example, has adopted a model whereby if more than 20 units are being built, 10 per cent of them should be readily adaptable. The minister has made commitments to me in the past about thinking seriously about concrete proposals to ensure that we are not in the position that we are in now at the end of the parliamentary session, so does he think that that might be a way forward?

Kevin Stewart: I do not want to be dictatorial to local authorities, because each local authority has to assess its own needs. During the Christmas and new year holiday period, I spent a long time looking at councils' strategic housing investment plans. Angus Council, for example, has worked out that its specialist housing requirement is for 16 per cent of the houses that it is building, but I do not want to be prescriptive.

As I have said, I reiterated to housing conveners today that it is for them to assess exactly what is required. In some cases, that is easier for councils who have their own housing, because they can look at their waiting lists to assess what is

required, but I also expect councils that do not have their own housing to co-operate with housing associations to see exactly what is required in their area.

As I have said before, the Government will be flexible on the question of subsidy because, like Ms McNeill, I want to see more housing for people with special needs, whether wheelchair-accessible housing or housing suitable for varying needs.

I say to members and to people outwith the chamber that we have a really good service in Scotland, Housing Options Scotland, which helps disabled people and older people and provides advice and advocacy on their housing needs. I urge all members to use that service if they deem it appropriate to do so.

The Presiding Officer: I thank members and ministers for their contributions. I apologise to those members who did not get to ask a question.

Health Service Changes (NHS Greater Glasgow and Clyde)

The Presiding Officer (Ken Macintosh): The next item of business is a statement by Shona Robison on the decisions on major service change proposals in Glasgow and Clyde. The cabinet secretary will take questions at the end of her statement, so there should be no interventions or interruptions.

14:26

The Cabinet Secretary for Health and Sport (Shona Robison): I welcome the opportunity to inform members of the decisions that I announced on Friday 19 January on service change proposals submitted to me by the chairman of NHS Greater Glasgow and Clyde.

On 14 March 2017, NHS Greater Glasgow and Clyde submitted major service change proposals for Clyde in-patient and day-case paediatric services. That was followed on 16 August by the board's submission of major service change proposals for rehabilitation services in the north-east of Glasgow, including Lightburn hospital.

Before I turn to the detail of each proposal, I will explain my decision-making process. Given the significance of the proposals, I took appropriate time to consider them. I asked for, and received, advice, including expert clinical views. I also visited the paediatric ward at the Royal Alexandra hospital, the new Royal hospital for children on the Queen Elizabeth university hospital campus and Lightburn hospital.

Alongside those visits, I met local stakeholders, including campaigners seeking the retention of paediatric services in ward 15, as well as patients and carers. In considering the proposals for Lightburn hospital, I met the local Parkinson's group. I also received reports from the Scottish health council confirming that NHS Greater Glasgow and Clyde had complied with and met established guidance on involving, engaging and consulting with local people, thereby providing them with the opportunity to make their views known.

I will now address my decision in relation to the Lightburn hospital service change proposals. I make it clear that I have carefully considered all the available information and all the representations made to me. In doing so, I have had to consider whether the board had made a compelling case in the best interests of patients and whether the board had credible and viable plans for the provision of high-quality local services.

I have been consistently clear during the board's review process that the final proposals had to effectively address the concerns that resulted in our rejection of the previous Lightburn closure proposals in 2011. Local people have raised concerns that those concerns had not been addressed in the current proposals.

In considering the proposals, my paramount concern was that, if they were implemented, they would result in the removal of a significant and highly valued healthcare facility in one of the most deprived communities in Scotland. I accept local clinicians' views and have given very careful consideration to them and to their support for the closure of Lightburn hospital. However, I had to balance those views against my concerns that the proposals for the replacement of local community and support services are not yet sufficiently developed to support the closure.

I make it clear that it was not an easy decision. I fully agree that healthcare services cannot be static and that reform will sometimes be necessary. In my letter to the board setting out my decision, I have acknowledged and welcomed its commitment to work with other planning partners to develop, as a priority, a health and social care hub in east Glasgow.

I have reiterated to the board that engagement with and involvement of the local community is of paramount importance in future planning. Of course, that applies to all NHS boards that are considering service redesign; I will take the opportunity to reinforce that at my next meeting with NHS chairs.

I turn to my decision to approve the board's proposals to transfer in-patient and day-case paediatric services from ward 15 at the Royal Alexandra hospital in Paisley to the Royal hospital for children in Glasgow.

I gave long and hard consideration to the proposal. It has been one of the most difficult decisions that I have been required to make in my time as health secretary.

As with my consideration of the Lightburn proposal, I have carefully considered all the information that is available to me and all the representations that have been made to me, including the board submissions, advice and evidence that officials provided, and expert clinical advice.

My judgment had to be on whether the board had made a compelling case in the best interests of patient care, whether it had credible and viable plans for the provision of high-quality local services and whether the proposals were consistent with national guidance.

Having taken time to come to a decision, I have approved the board's proposals. In coming to that decision, I recognised that only in-patient and day-case services will transfer and the majority of patient cases will continue to be seen and treated locally. I stress that the accident and emergency departments at both RAH and Inverclyde royal hospital will continue to receive paediatric patients who self-present and that the out-patient clinics and specialist community paediatric services will also continue.

The board made a compelling case for the proposals, which attracted overwhelming clinical support. Only today, I received a letter from the lead paediatric clinicians and the chief nurse for paediatrics and neonatology at RAH and the Royal hospital for children, in which they reiterated their clinical support for the proposals. They told me that the change will help to implement the standards that the Royal College of Paediatrics and Child Health set to ensure that high-quality healthcare is delivered to children and young people, and that

"the implementation of these standards will contribute to better outcomes for children and young people".

They also highlight the benefit to patient care of access to dedicated on-site, sub-specialty medical teams such as cardiology, neurology, nephrology and respiratory medicine teams—to name but a few.

There is further support in the submission of Action for Sick Children Scotland—now Children's Health Scotland—to the board's consultation, in which the charity concluded:

"the most compelling argument is that clinical standards are there to support the best quality healthcare for all the children of Scotland and we feel that this would be best achieved by moving Ward 15 to the Royal Hospital for children."

The local clinicians also offer the reassurance on emergency care that they do not

"see any risk to future patients affected by the change in an emergency pathway that directs General Practitioners and Scottish Ambulance Service to RHC instead of either RAH or RHC. The change is clear for all concerned."

From the representations that have been received and the meetings that I have attended, I recognise that many local people, particularly in the Paisley area, will be deeply disappointed by the decision. I recognise that the services that families have received from ward 15 have been highly valued and that there are understandable concerns about access to the specialised services that are to be transferred to the Royal hospital for children and about how such services will be integrated into the out-patient and community services that will continue to be provided locally. There are also issues to do with transport and

financial support, and family support and information services.

That is why I approved the proposals on two conditions. Condition 1 is that the health board must maintain and continue to improve community-based paediatric services, and must maintain local provision. Condition 2 is that the board must work directly with families from the Paisley area to complete specific, individual treatment/service access plans before service changes are made, and ensure that there is a full understanding of what services and support will be available to people, and from where.

The letter from the Glasgow clinicians gives an assurance that the open-access families who currently attend ward 15 will be fully involved in planning how the changes will affect their children and that specific concerns will be addressed on an individual basis. I have spoken to the board chair and reiterated the conditions that I set out in my letter of approval, and I have received a letter from him that gives me assurance on them.

I hope that local families, members of the campaign group and members of the Scottish Parliament will understand that I have made this decision in good faith, informed by all the available evidence and representations. With the underpinning conditions that I have put in place, I believe that the decision is in the best interests of children across the Clyde area.

The Presiding Officer: Thank you, cabinet secretary. We turn now to questions.

Miles Briggs (Lothian) (Con): I thank the cabinet secretary for the advance copy of her statement.

On 1 May 2016, Nicola Sturgeon promised the public, in relation to ward 15 at the RAH:

"There's no proposals to close that particular ward. I believe in local services for local people."

Here we are today, two years on.

Yet, at that time, NHS Greater Glasgow and Clyde had begun looking into moving in-patient paediatric services from RAH, initially in 2011, when Nicola Sturgeon was the Cabinet Secretary for Health and Sport. The closure of the ward to in-patients had been on the board's list of preferred options since 2012, also when she was the health secretary. The board stepped up efforts to centralise services after the opening of Glasgow's new Royal hospital for children in 2015, when she was the First Minister.

Did the First Minister forget all of that when she promised, at a public event in 2016, that she would not close the ward, or did she intend to attempt to mislead the public before an election? I believe that today will go down as Nicola Sturgeon's and the health secretary's Nick Clegg moment in this Parliament. Now, we see the health secretary and the SNP back benchers hanging their heads in shame in order to justify the decision to Parliament, breaking a key election pledge that was made to families across the west of Scotland.

Does this ward closure, coming on top of the SNP's failure over children's hospital services and the on-going incidents that we have seen as well as the closure of the kids' in-patient ward at St John's hospital in Livingston, not demonstrate that the public cannot trust a word that the First Minister or the SNP Government says when it comes to our local health services?

Shona Robison: First, I will address the issue that Miles Briggs raised about the First Minister's comments on 1 May 2016. Let me say two things very clearly about that. NHS Greater Glasgow and Clyde approved its proposals on 18 October 2016, well after the comments that were referred to had been made. More importantly, the Scottish Government received the submission on 14 March 2017, almost a year later. That was the first time that I saw the clinical advice on which I have based my decision—and it is that clinical advice that is absolutely critical.

I have based my decision on the clear clinical view—including that of the very clinicians who work with the kids on ward 15—that this decision, as I said in my statement, is about delivering better outcomes for children and young people. Therefore, when Miles Briggs or anyone else says that I am wrong in my decision, they must also be saying that those clinicians are wrong in their decision.

I am not sure on what basis Miles Briggs is able to say that or what experience or evidence he can put forward to say that those local clinicians are wrong. As a politician, I cannot say that those local clinicians are wrong. That is why I accepted their evidence and this decision, despite how difficult that was.

Let me reiterate that, for all those families, plans will be put in place before the closure goes ahead. I hope that that is some reassurance to the families concerned.

Anas Sarwar (Glasgow) (Lab): I thank the cabinet secretary for advance sight of her statement, and I pay tribute to the save Lightburn campaign and the kids need our ward campaign. They are local residents and service users who are fighting tirelessly to protect their local services—services that, during the election, they were promised would stay open. Sadly, while one group is celebrating for now, the other is rightly distraught and dismayed.

The reality is that we should never have been here in the first place. When it was faced with a leaked cuts paper, the Government denied that any proposals to close Lightburn hospital or the RAH paediatric ward even existed. Neil Bibby was called a liar. Paul Martin was called a liar. Kezia Dugdale was called a liar. The campaigners were accused of scaremongering. Yet, the closure is now confirmed and 8,000 patient cases will be transferred to the already overstretched Queen Elizabeth university hospital as a result of cuts that were imposed by the Government and a workforce crisis that is being overseen by the cabinet secretary.

Not a single Scottish National Party MSP has the backbone to call out the cabinet secretary's decision for what it is. Where were the local MSPs, George Adam, Tom Arthur and Derek Mackay? Nowhere. Where was the local MP, Mhairi Black? Nowhere. When Nicola Sturgeon was confronted by a local resident live on national television, she said:

"There are no plans to close this ward. I pledge to keep hospital services local."

The cabinet secretary's decision is a betrayal of local people. How can we trust a word that she or her Government says ever again?

Shona Robison: As I said to Miles Briggs, the submission from the board came to me on 14 March 2017. That was the first time that I saw the clinical advice on which I have based my decision. If Anas Sarwar is saying that that is the wrong decision, he must also be saying that the local clinicians who have treated the children in question for many years are wrong in their clinical judgment, because that is what I, as a politician, have based my decision on. If Anas Sarwar thinks that he knows better than those local clinicians, he had better say what evidence he has that makes his position stack up.

Anas Sarwar mentioned the cuts paper. I will say two things about that. The issue of finance is quite important here. In relation to ward 15 at the RAH, it is estimated that about £840,000 will be reinvested in local paediatric services at the RAH and the Royal hospital for children. Every penny of that money will be reinvested in paediatric services at those hospitals. If I had wanted to save money, I would have given the Lightburn proposal the go-ahead, because it would have saved £4 million.

My decision is nothing to do with money; it is to do with the clinicians' view of what will provide better outcomes for children and young people. As a politician, I cannot ignore the clinicians who tell me that the decision that I have taken will provide better outcomes for children and young people. I challenge any politician in this place to ignore that clinical advice.

Ivan McKee (Glasgow Provan) (SNP): Does the cabinet secretary agree that the decisions that have been announced on NHS Greater Glasgow and Clyde's major service change proposals show that the review process is robust and evidence based and that, when there are good reasons—ones that are in line with the Scottish Government's national clinical strategy and other policies—to overturn health board proposals, as in the case of Lightburn hospital, the process reaches the correct decisions?

Shona Robison: Yes. The Lightburn proposals were not sufficiently developed to be viable or credible. In essence, the east end hub is a good idea but it must be developed. We want the Lightburn site to be considered as one of the sites for that hub, but there is far more work for NHS Greater Glasgow and Clyde to do in developing the hub proposal. I think we would all agree that the proposal has some merit, but it was at such an early stage that I could not possibly have approved it in the form in which it came to me.

Maurice Golden (West Scotland) (Con): When does the cabinet secretary expect the agreement process for families whose children currently receive treatment in ward 15 of the RAH to conclude? What will happen if agreements cannot be reached?

Shona Robison: I have made it clear to the board and its chairman, John Brown, that plans for those families who have complex health needs—of whom there are around 200, many of whom are on the open-access agreement—must be in place before the changes go ahead. John Brown has written back to me to agree that, and, in their letter, the clinicians also say that that is important.

The plans need to make clear how the families will access the new hospital and what local services will still be provided to them. When I approved the proposal, I made it clear that it was a condition of my doing so that all those plans needed to be in place, and I will certainly hold the board to that.

Neil Bibby (West Scotland) (Lab): Over 17,000 people supported the campaign to stop the closure of the kids ward, including NHS staff and patients with direct first-hand experience of the excellent care that it provides—parents such as Karen Meikle, who told the *Paisley Daily Express* today about what it means for her eight-year-old son, who has a life-limiting condition.

The way in which SNP politicians nationally and locally have behaved has left local families feeling totally betrayed and without any trust left in the Government. Throughout the process, the cabinet secretary assured families that she would listen.

Families could not have been clearer. Why have they been ignored?

The cabinet secretary has snubbed parents with this announcement. Will the cabinet secretary agree to come to Paisley and explain her decision directly to the parents affected, or will she snub them again?

Shona Robison: I did not snub the parents. I met the parents and listened to their concerns. I also listened to the local doctors who have been involved in treating those same children. I had to make a decision, and the decision I made was based on the very clear local clinical advice from those doctors who know the children well: that this was in the best interests of those children, and that they would get better, not worse, outcomes from being treated at the new children's hospital. No politician would ignore that clinical advice.

It is important that the board now gets on and develops those plans, so that the families have assurance on the access arrangements that they will have at the state-of-the-art new hospital, less than 7 miles away.

Alison Johnstone (Lothian) (Green): Last year, I visited the hospital. I learned about the work that the family support and information service does to support patients and their wider families. I met parents who had taken their child to hospital, their child was admitted immediately and they found themselves practically living in the hospital for weeks.

I was surprised that much of that important work was largely funded by and reliant on charitable donations. Given that this major service change will generate increased demand in the hospital, will the cabinet secretary take steps to ensure that the service is fully funded and sustainable, so that those families who are travelling further, leaving home for longer and leaving caring responsibilities behind will be properly supported?

Shona Robison: I thank Alison Johnstone for her question and reassure her that part of the commitment that the board has given on the reinvestment of the £840,000 is to make sure that there is a build-up of local services, not just at the RHC but also at the RAH. Part of that is about ensuring that there are plans in place for those families, for travel or subsistence or for any other matter. It is important that they know about the plans.

I reiterate that, where emergency care is required, the clinicians are clear that the change in the emergency pathway that directs general practitioners and the Scottish Ambulance Service to the RHC is a better and safer model. There is then clarity about where children are to go in an emergency.

A lot of the care, particularly out-patient facilities and local community paediatric services, will continue to be delivered locally. For children accessing A and E services in the Paisley area, 86 per cent will continue to be seen at the front door of the RAH. The vast majority of children in that area going through A and E will continue in the same way as they do at the moment.

Alex Cole-Hamilton (Edinburgh Western) (LD): In her statement, the cabinet secretary said of her decision to close the children's ward at the RAH:

> "it has been one of the most difficult that I have been required to make in my time as Health Secretary".

That reflection should give us the measure of how significant a decision the closure is, not just for the cabinet secretary but for the families who rely on the ward and those members in this chamber who have fought to save it.

Will the Government now commit to honouring those motions already agreed to in this chamber to bring such decisions to Parliament before they are taken, to allow members to debate and scrutinise the proposals so that, in particular, we might give better voice to the people whom such closures will affect?

Shona Robison: These are difficult decisions. I met the parents and families and I understand the strength of their feeling. However, as the cabinet secretary who is required to make those difficult decisions, I have to take a step back from that. As a politician, I rely on the expertise of those who know the children well and who can give me the best advice about the most effective and safest care. In this case, or in any other, the clinical advice is critical.

That has to be the decision-making process, otherwise proposals for service change that could raise patient safety issues could be brought for debate on the floor of the Parliament. Are decisions about patient safety going to be made on the basis of a vote in this place? I do not think that that is a credible or safe way to make changes to our health service. The decision rests with me and I have made the decision on the basis of what the clinicians have told me is in the best interests of, and will bring about the best outcomes for, those children and young people. I have made no other considerations. I hope that every politician in this place will understand that we cannot ignore that.

I do not think that there is a paediatric specialist in the Parliament—I am not one—so I rely on the expertise of those who have advised me. That is the basis of my decision and that is why it is the right decision.

Fulton MacGregor (Coatbridge and Chryston) (SNP): I remind members that I am the parliamentary liaison officer to the Cabinet Secretary for Health and Sport.

The cabinet secretary has mentioned several times the clinical advice that she received. Can she explain to the Parliament what weight she gave that advice from clinicians as opposed to the other advice that she heard?

Shona Robison: I had a meeting with the clinicians at the hospital and what I heard directly from them was compelling. It was about the fact that they would be able to provide better outcomes for the children and young people because of the range of back-up services that are at the state-of-the-art new children's hospital that is less than 7 miles away. That evidence and guidance was very clear to me and, as a politician, I rely on that.

Subsequent to that meeting, clinicians sent me a letter—I received it this morning—reiterating what they had said and the importance of working with the families on the plans, particularly those families who have been on what we have called the open access arrangements.

The clinical advice has been compelling and, as a politician, I cannot ignore it. That advice—nothing else—was the basis of my decision and it is why I had to make the decision that I made.

Jamie Greene (West Scotland) (Con): The cabinet secretary said in her statement that both accident and emergency departments at the RAH and Inverclyde would continue to receive paediatric patients who self-present, but she did not explicitly state that those hospitals would continue to accept all forms of emergency cases, including those presented by ambulance. Will the cabinet secretary confirm that there are no plans to divert any emergency care from Inverclyde to the RHC? Can she outline any scenarios under which a decision might be taken to take a patient to the RHC instead of the nearest accident and emergency department?

Shona Robison: That happens already. The Scottish Ambulance Service already takes those children who will require the services of the RHC directly to the RHC. Those decisions will be made on the basis of clinical decision making, which depends on what the child's illness is.

When children are concerned, the risk is managed very carefully indeed and the service always errs on the side of caution. That has always been the case for all our local hospitals. When we have a state-of-the-art hospital with all those back-up services, such as the one we have in Glasgow, if the service is not absolutely sure what is wrong with a child, it will always err on the side of caution and go straight to the children's hospital. I would have thought that people would understand that that is the right thing to do.

However, I reiterate that in the case of self-referrers—parents who turn up with their child through the door of the RAH or indeed any other local hospital—the process will continue as it is and 86 per cent of those children will be seen and treated within the RAH. I hope that that reassures the member.

George Adam (Paisley) (SNP): As it is one of the main concerns raised by my constituents, can the cabinet secretary assure them and reiterate that plans will be put in place for the open-door families, including on transport links, before any service changes are made to ward 15 at the RAH?

Shona Robison: The issue that George Adam raises is very important, because the families that he refers to who are on open-access, or open-door, arrangements are families who have children with complex health needs. Therefore, it is important that plans to ensure continuity of care and treatment are put in place. The board has given me that assurance, as have the clinicians who work with the children every day, in the here and now. I confirm to George Adam that I expect the arrangements to be in place before the change goes ahead.

Jackie Baillie (Dumbarton) (Lab): There is no getting away from the fact that when the First Minister was asked in a television debate whether the children's ward at the RAH would close she was clear that she would not close the ward.

The cabinet secretary knows that there were proposals to close the ward before May 2016. The First Minister has given similar commitments to my local community about the Vale of Leven hospital and the vision for the Vale.

Did the cabinet secretary consult the First Minister about her decision? Was the First Minister copied in to the minute of the decision? Was the minute ever circulated? This is, fundamentally, a matter of trust. The key question for me is whether we can now trust anything that the First Minister tells us.

Shona Robison: As I have said now on three occasions, no proposal to close a particular ward had come to us. The proposals came to the Scottish Government only on 14 March 2017. That was the point at which we saw the clinical evidence in favour of the decision. The decision is based on clinical evidence alone and that is the first time I saw that clinical evidence—

Jackie Baillie: Really?

Shona Robison: Yes. Really. The first time I saw the clinical evidence was after 14 March, and speaking to the local clinicians has been a fundamental part of my decision making. The

decision is my decision; it is required to be my decision. Of course, the First Minister has been made aware of my decision and she accepts it fully.

Clare Haughey (Rutherglen) (SNP): I refer members to my entry in the register of members' interests. I am a mental health nurse with an honorary contract with NHS Greater Glasgow and Clyde.

Given the welcome decision to reject the closure of Lightburn hospital, how does the cabinet secretary expect the board and planning partners to take forward provision of health and social care in partnership with the local community?

Shona Robison: A lot of work has to be done around Lightburn. The hub was at a very early stage and not in a viable form to approve. Within it is the concept of something quite good and quite exciting—the idea that people have a range of services that are not currently available locally in the east end of Glasgow under one roof, under the hub model. However, far more work on the detail is required.

I have said to the chair that I expect the board to develop the proposal with its partners—in particular, the local authority, but also the local community and organisations including the local Parkinson's group. I expect all such organisations and the local community to be fully involved in the development of a viable proposal for the future hub in the east end of Glasgow.

Neil Findlay (Lothian) (Lab): In 2016, Nicola Sturgeon said live on TV during an election debate that there were no plans to close the children's ward at the RAH in Paisley.

or six years, there have been staffing problems on top of staffing problems at the children's ward of St John's hospital in Livingston, with assurances being given that it would not be closed. How can parents, children, grandparents and local people who joined me on Friday at a protest at St John's believe a word that the cabinet secretary or the First Minister say about the future of children's services in Livingston, given their blatant betrayal of the people of Paisley?

Shona Robison: The only person who is talking about the closure of the paediatric ward at St John's is Neil Findlay, which is rather surprising. As he knows, in October last year, NHS Lothian received a report from the Royal College of Paediatrics and Child Health that concluded that the preferred option for it and for NHS Lothian continued to be the 24-hour consultant and tier 2 cover model at St John's. The college recognised that development of that model is a long-term solution that requires a successful recruitment campaign, which NHS Lothian has been working hard to carry out, and with which it has had quite a lot of success—as Neil Findlay well knows. I had hoped that he would get behind NHS Lothian. The clinical advice to me is that the service should continue: no proposal has come to me with clinical advice that the ward in St John's should close.

Neil Findlay would be better focusing on supporting his local hospital in its recruitment campaign than on scaremongering, which could put people off. [*Interruption*.] It is a serious point: are doctors who are considering whether to apply for a post that covers St John's likely to be encouraged by what Neil Findlay is saying? I suggest that he should be very careful and should encourage people to apply for the posts rather than doing the opposite. I am sure that the clinicians at St John's would want him to do that, too.

John Mason (Glasgow Shettleston) (SNP): Does the cabinet secretary agree that the key people for health provision in the east end of Glasgow are the people of the east end of Glasgow? Does she also agree that, given the better transport links at the Parkhead hospital site, it is the best place for a new hub and other health facilities?

Shona Robison: I have said to the chair and the board that, in taking forward the proposal and developing it into a viable proposition, they should continue to explore the Parkhead and Lightburn sites. The important thing is that, as well as developing something that meets the needs that are met by the existing local services in the east end of Glasgow, the board looks at what further services can be developed in what is one of the poorest communities in the city. The board has a really exciting opportunity to do that, but it has to engage the local community properly. That is the challenge that I have put back to the chair and the board.

European Union (Withdrawal) Bill

The Presiding Officer (Ken Macintosh): The next item of business is a debate on motion S5M-09954, in the name of Bruce Crawford, on the Finance and Constitution Committee's "European Union (Withdrawal) Bill LCM—Interim Report". I call on Bruce Crawford to speak to and move the motion on behalf of the Finance and Constitution Committee.

15:03

Bruce Crawford (Stirling) (SNP): As the convener of the Finance and Constitution Committee, I am pleased to open this debate on the committee's interim report on the European Union (Withdrawal) Bill. The interim report is the culmination of the committee's scrutiny of the bill from the summer recess through to the bill completing its passage through the House of Commons. The committee will produce a final report prior to the final amending stage in the House of Lords.

I put on record my sincere appreciation and thanks for my fellow committee members and the constructive and productive manner in which they approached their work on the bill. Their commitment to the Scottish Parliament and to the principles underpinning the devolution settlement have enabled us to reach unanimous recommendations. I record particular thanks for the support that I received during the committee's deliberations from my deputy convener, Adam Tomkins. I also thank our expert advisers, Christine O'Neill and Nicola McEwen, for their input to the committee's deliberations. Our clerking team, led by Jim Johnston, deserve particular recognition for the outstanding support that they provided.

There has been much commentary and discussion about what the contents of the European Union (Withdrawal) Bill mean for the devolution settlement in Scotland—indeed, for the territorial politics of the United Kingdom more generally. Without doubt, the bill is complex and frequently obscure in its meaning and purpose. Mark Elliot, the constitutional lawyer, from the University of Cambridge, said:

> "to say that it is byzantine in nature would be to do a disservice to the Byzantine Empire. The Bill is ... unnecessarily complex, ambiguous and tortuous in both structure and drafting".

In scrutinising the bill, the committee sought to bring clarity to the implications of the withdrawal bill's provisions for devolution. In doing so, we have engaged with stakeholders from sectors that will be impacted by Brexit—organisations from the agriculture, environmental, fishing and education sectors as well as academics and constitutional lawyers. We have taken evidence from UK and Welsh Government ministers and, of course, from the Minister for UK Negotiations on Scotland's Place in Europe, Mike Russell.

While the bill may be complex, there is no doubt that it represents a fundamental challenge to the devolution settlement and that, as currently drafted, it undermines the principles upon which this Parliament was established. There are various aspects of the bill that undermine this institution, but I want to confine my comments to two issues in particular: clause 11; and common frameworks.

Clause 11 has been a significant focus of the committee's scrutiny, given the direct impact of the clause on the devolution settlement. In essence, the clause performs a very simple function: it removes the restriction on the legislative competence of the Scottish Parliament legislating in a manner that is incompatible with EU law and replaces that with a new restriction on the Scottish Parliament legislating in areas of retained EU law that were outwith devolved competence prior to the UK exiting the EU. The bill places no similar such restriction on Westminster. In effect, it returns EU powers to Westminster, including EU competences that fall within devolved competences. While there is a process in the bill for releasing powers to Holyrood, where the UK and Scottish Governments agree to do so, there is no timescale in the bill governing that process. Therefore, there is no guarantee that powers will be returned to Holyrood.

The UK Government has produced a list of 111 areas in which EU competences intersect with the devolution settlement. Those powers cover a wide spectrum of devolved competences from agriculture to environment, justice matters to onshore fracking and rail franchising to state-aid rules. The evidence that the committee took was remarkably consistent in emphasising that clause 11 not only undermines the devolution settlement, but would result in a fundamental shift in the structure of devolution from a reserved-powers model to a conferred-powers model. Such a shift would inevitably create an increasingly complex boundary between devolved and reserved powers.

Critically, witnesses stressed that, despite assurances from UK ministers that clause 11 is intended to be a temporary measure, there are no provisions in the bill to that effect. The deputy convener of the Finance and Constitution Committee may disagree, but constitutional lawyers are not necessarily known for the stridency of their positions—although he may, of course, be the exception to the rule. However, that was not the case in respect of the views that the committee heard on clause 11. I will pick out just one quote, from Professor Richard Rawlings of

University College London, to give a sense of the strength of view that the committee heard in evidence. He said:

"The sooner clause 11 of the Withdrawal Bill is cast aside, the better. .... An unthinking form of 'Greater England' unionism, which assumes only limited territorial difference, would be another way of characterising this."

The committee has been very clear in its view of clause 11: we consider that it represents a fundamental shift in the structure of devolution. Regardless of whether the Scottish Parliament obtains new powers as a result of Brexit, clause 11 will adversely impact on the intelligibility and integrity of the devolution settlement. Clause 11 as currently drafted is, therefore, incompatible with the devolution settlement, and it is not a necessary precursor to the agreement of common frameworks. In short, the committee cannot recommend legislative consent to the bill unless clause 11 is replaced or removed.

In the report, the committee noted the statement by the Secretary of State for Scotland on 6 December that the UK Government intended to table amendments to clause 11. I place my personal view on record in stating my dismay and grave concern that the UK Government did not, as expected, table amendments to clause 11 at report stage in the House of Commons.

The seriousness of the situation cannot be overstated. It is imperative that the UK Government brings forward amendments in the House of Lords to replace or remove clause 11 at the earliest opportunity. In other words, if a constitutional crisis is to be averted, it is vital that the UK Government brings forward changes to the bill that properly respect the devolution settlement.

I wish to comment briefly on the committee's recommendations in relation to common frameworks. The term "common frameworks" can mean many things, but broadly it refers to EU policy frameworks that may require to be replicated at a UK level post-Brexit. Such frameworks could take a variety of forms, such as legislative frameworks, looser forms of co-operation via concordats or memorandums of understanding, or even a simple exchange of letters. In the view of the UK Government, those frameworks are necessary to enable the effective functioning of the UK market.

The Scottish and Welsh Governments agree that there will be a requirement for some common UK frameworks to replace EU frameworks post-Brexit. However, they fundamentally disagree with the UK Government on what the starting point should be for agreeing common frameworks. The UK Government believes that EU powers should be repatriated to Westminster to provide certainty and stability to the UK Government, particularly as regards negotiations with the EU. Then, in the view of the UK Government, consideration should be given to which powers should be included in common frameworks and which powers should be devolved. For the Scottish and Welsh Governments, the starting point is which devolved powers should be included in common frameworks with the consent of devolved Governments and legislatures. It is important to stress that the bill contains no provisions on common frameworks; instead, they have been the subject of intergovernmental discussions.

The committee welcomes the progress that has been made between the Scottish and UK Governments on developing an approach to agreeing common frameworks. We also welcome the commitment from the UK Government that common frameworks will not be imposed. However, the committee strongly believes that not only the process but the content of common frameworks must not be imposed. In addition, the committee strongly believes that the process is not solely a matter for Governments but must be transparent and inclusive to enable this Parliament and wider stakeholders to scrutinise any agreement that is reached intergovernmentally.

I want to mention the interparliamentary forum on Brexit, which brings together committee conveners and deputy conveners from legislatures across the UK that are engaged in scrutiny of the Brexit process. Adam Tomkins and I, and colleagues from the Culture, Tourism, Europe and External Relations Committee and Delegated Powers and Law Reform Committee, attended a meeting of the forum last week. We took the opportunity to stress to colleagues in other legislatures—particularly the House of Lords, given that the bill has now moved there—not just the messages in the Finance and Constitution Committee's interim report but the seriousness of the situation as a whole. It is fair to say—I hope that others who attended the meeting agree—that our message was well received. Presiding Officer, I am sure that you will agree that that form of interparliamentary dialogue is a useful means of ensuring that the views of committees in this Parliament are clearly heard during the Brexit process.

In the view of the Finance and Constitution Committee, the European Union (Withdrawal) Bill represents a fundamental challenge to this institution and the devolution settlement. It is imperative that the UK Government takes urgent action to ensure that the bill respects the devolution settlement. Only then would the Finance and Constitution Committee be able to recommend legislative consent.

I look forward to hearing the views of colleagues on the committee's unanimous report. I move,

That the Parliament notes the recommendations of the Finance and Constitution Committee's 1st Report 2018 (Session 5), *European Union (Withdrawal) Bill LCM - Interim Report* (SP Paper 255).

15:15

The Minister for UK Negotiations on Scotland's Place in Europe (Michael Russell): I start by welcoming the committee's strong report and expressing my gratitude to the committee, the convener and the deputy convener for working so hard to produce such a solid and well-sourced report.

I hope that the discussion today will be consensual, because I think that all of us in this Parliament agree that elements of the European Union (Withdrawal) Bill cannot be accepted and must be changed before legislative consent is given. I look forward to that consensual debate—which I am sure will be enhanced as, I understand, Rachael Hamilton will not speak today, so I look forward to hearing from the Conservative front bench.

The committee makes many valuable recommendations and the Government will respond in more detail to those recommendations in writing. I am appearing before the committee next week and will try to ensure that I add my comments before then.

Although there are definitely different views in the chamber on aspects of Brexit, there is great value in Parliament speaking with one voice on matters concerning defending its powers and the principles of devolution. That is even more the case when Parliament is doing so based on near-unanimous evidence that has been gathered from a wide range of knowledgeable and impeccable sources. It is that evidence that has led the committee to unanimously indicate—as the convener has just done—that Parliament could not pass a legislative consent motion unless and until clause 11 is, in the words of the convener today, "replaced or removed".

The Scottish Government still aims to agree amendments to the bill with the UK Government that would allow a legislative consent motion to be brought to the chamber and passed. However, the Government also has to prepare responsibly for the possibility of consent being withheld. It cannot be the case that consent is simply withheld and then nothing else happens. That is why we have indicated that we will develop a continuity bill, on which work is well advanced. That remains the next option if agreement cannot be found with the UK Government.

The Welsh Government is in exactly the same position. In addition, the Welsh Government and the Scottish Government are starting the process of briefing members of the House of Lords on the devolution aspects of the withdrawal bill, because the UK Government has indicated that it is likely to table an amendment. However, it cannot just be any amendment; it must be an amendment that has been agreed with the Welsh Government and the Scottish Government. That is something that the UK Government agreed some time ago. We will brief members of the House of Lords and we look forward to hearing what happens at first reading next week, at the lengthy committee stage, and then at report stage.

However, let me be clear: if there is no amendment, there will be no legislative consent motion, and a continuity bill will be brought to Parliament.

Patrick Harvie (Glasgow) (Green): Mr Russell says that he wants clause 11 to be amended or removed. Is there an amendment that he can imagine that would make that clause tolerable or is his position that clause 11 should be stripped from the bill altogether?

Michael Russell: I will come to that point in a moment.

We remain clear that frameworks can be delivered by agreement rather than by imposition, according to published principles already agreed between the Governments. The Scottish Government is committed to involving the Scottish Parliament, including publishing information on the progress that is made on narrowing the areas where frameworks will be required.

We support the report's emphasis on the Scottish Parliament's scrutiny of the Scottish Government's preparations for EU withdrawal. We emphasise the importance of the required approach to scrutiny being developed and agreed in this Parliament.

The Scottish Government supports the committee's conclusion on clause 11, partly because that has been our position from the start, but also because there is a unanimous view based on evidence in this Parliament, and now a unanimous view in the Welsh Assembly, which was shown last week through a motion that was brought by Steffan Lewis of Plaid Cymru on a continuity bill, which had unanimous support even from the United Kingdom Independence Party.

In addition, clause 11 is not necessary for establishing frameworks. There is no reason to hold back or reserve any matters that are subject to a framework. That is why we are working so hard to develop proposals that would lead to an agreed amendment.

On Mr Harvie's question, it is absolutely clear what must be in an amendment: equality of treatment of the Parliaments and Governments of

these islands. In other words, there must be agreement on the subject of frameworks and what is in those frameworks; there cannot be imposition by any one of those Governments or Parliaments on the others, and all must be consulted. As this chamber knows, with the Welsh Government, we proposed amendments to clause 11 that would have removed most of the clause. We still think that that is the best approach, but if an approach can be found to bring agreement between us on the basis of equality, that would be something that we could consider.

If frameworks are required—we have always said that they might be—they need to have appropriate governance and underpinning structures. We laid out and agreed with the UK Government the five areas that needed to be addressed before a solution could be found: the principles; the proof of concept; the governance and dispute resolution; the content of the list; and the legislative approach. I stress that we made good progress on the first three of those areas—the principles were published; proof of concept work has been completed; and the list of 111 areas has been substantially reduced—and work continues to finalise the list. We are well aware of the need for scrutiny by this Parliament of progress on the further steps and we note the strong recommendations of the Finance and Constitution Committee in that regard. Of course, we need space to negotiate and information needs to be held between Governments sometimes, but intergovernmental confidentiality cannot always triumph over transparency—I agree with the committee's recommendations in that regard.

Adam Tomkins (Glasgow) (Con): In the spirit of parliamentary transparency, will the minister share with us the Scottish Government's preferred view as to how common frameworks should be enforced? Should they be enforced as a matter of law through the courts or should they be enforced as a matter of politics through some kind of joint ministerial committee or enhanced JMC machinery?

Michael Russell: If an agreement can be found on an amendment, I think that such an amendment will contain the means by which enforcement can take place. It is likely, but not inevitable, that that would involve an enhanced JMC process, and the Welsh Government has published some very interesting recommendations in that regard. However, that will happen only if we can get an agreement through that is agreed by all of us.

I will say a word or two about some other things in the report while I still have the opportunity. We note the committee's views on powers for UK and Scottish ministers. We are strongly of the view that it is inappropriate for only UK ministers to have powers to act in devolved areas, which, alas, remains the case in some areas of directly applicable EU law. There were amendments by the UK Government at report stage in the Commons, which, although they leant heavily on clause 11—which was unfortunate—did concede the point, and we hope that there are further amendments that will make that workable in the Lords. We accept the Finance and Constitution Committee's comments on the powers for Scottish ministers. My officials have been working with the Scottish Parliament to devise suitable processes to ensure scrutiny by the Parliament. The work is making progress and the Scottish Government remains committed to securing scrutiny of statutory instruments that are made under the legislation, and we will do our best to bring that forward.

On the issue of intergovernmental relations, I repeat what I said to Mr Tomkins, which is that the Welsh Government has come up with interesting proposals. The implication of all this is a readjustment of the relationships. The joint ministerial committee has never worked as a structure. I have been a member of it on occasion over the past 10 years, most memorably in 2009, and I have to say that it is a system whose time never came and has certainly past. We need to have a system that is rooted in statute, and that can be done.

I will listen with interest to this debate and I will look for further discussion next week with the committee and with the UK Government. I hope that we can reach an agreement, but if we cannot, there is a way forward and the Scottish Government will take it.

15:24

Murdo Fraser (Mid Scotland and Fife) (Con): I start by echoing the thanks of the committee convener to all those who contributed to the preparation of the report. In particular, thanks should be given to everyone who gave evidence, to the committee clerks, to the Scottish Parliament information centre and of course to our two advisers, who were very helpful in guiding us through the technical legal process.

I should also express my thanks to the convener for the balanced and measured way in which he approached the issue. He was ably assisted by the deputy convener. Sometimes, when dealing with complicated constitutional matters, there is no harm in having a professor of constitutional law on the team.

Parliament is often a confrontational environment. However, the report is an excellent example of co-operative working across all members of the committee. The issues that we

were dealing with were serious, controversial and potentially subject to severe party political differences, yet we were able to approach them in a consensual manner and come to unanimous agreement on a set of conclusions. That is to the credit of committee members with regard to the way in which we approached the issues. So far, this afternoon's debate has reflected that consensual tone, which is a positive development. I listened closely to Michael Russell's speech and would struggle to disagree with almost anything that he said. Members will reflect that, looking back over a long period of time, that is an extremely unusual set of circumstances—

Michael Russell: Unique.

Murdo Fraser: Indeed, it is unique.

The committee's report cuts through some of the hyperbole that we have heard about power grabs, and instead gives a dispassionate analysis of the issues at stake around the European Union (Withdrawal) Bill and its impact on the devolution settlement. It also charts a way forward, to which I believe all parties should sign up

As the convener has set out, the background to the issue is the bill, which has now completed its passage through the Commons and is in the House of Lords. It includes clause 11, which removes the restriction on the Scottish Parliament's competence that currently prevents us from passing law that is incompatible with EU law. However, it would replace it with a new restriction on passing laws that are incompatible with retained EU law, which would be under the control of, and subject to change by, the UK Parliament.

It has been the position of the UK Government that clause 11 does not affect the current devolution settlements in Scotland, Wales and Northern Ireland. That point is contested by the Scottish Government, whose view is that it introduces a new legal constraint on the competence of devolved institutions, cutting across the reserved-powers model of devolution that was provided for in the Scotland Act 1998. It is fair to point out that the Welsh Government has similar concerns. It was the committee's view that clause 11, as drafted, represents a fundamental shift in the structure of devolution in Scotland and is incompatible with the devolution settlement. Without that clause being replaced or removed, the committee was not in a position to recommend legislative consent for the bill.

Having identified the issue, the question is, what needs to be done about it? The committee heard evidence that a number of alternative approaches could be adopted. For example, Professor Jim Gallagher suggested that a sunset clause could be placed on clause 11. However, most of the evidence that we heard pointed to common frameworks as being the solution. Those would be agreements between the UK Government and the devolved Governments on areas in which there is a legitimate requirement for UK-wide alignment. For example, although in areas such as agriculture, the environment or fisheries, policy making is, to a large extent, devolved, there is clearly a requirement that certain aspects be uniform across the UK. Scottish farmers wish to sell their produce on an unrestricted basis in other parts of the UK, and therefore it makes sense that food standards are uniform across the whole country. For common frameworks to work, they need to be negotiated between the different parties, and not simply imposed by the UK Government. There also needs to be a requirement for parliamentary input and consent to them, so that they are not determined purely by Governments in isolation, and there are issues to be considered around dispute resolution in the event that there are disagreements around the interpretation of such common frameworks.

Patrick Harvie: Murdo Fraser makes an important point about the need for parliamentary scrutiny of decisions on frameworks that would be shared between the two Governments. Given that pretty much every committee of this Parliament, including our own, has found it impossible to get UK ministers to come and give evidence and to answer our questions, does Mr Fraser have any reason to have confidence that such parliamentary scrutiny will have purchase unless we have the direct legislative competence to say no where we wish to?

Murdo Fraser: What I have tried to make clear to Mr Harvie is that our party accepts the general principle that common frameworks have to be agreed between the two Governments, and we would like to see those common frameworks subject also to parliamentary consent, both in Westminster and here in the Scottish Parliament. The detail of that still has to be worked out, but as a matter of principle I do not think that there is a large difference between what Mr Harvie is contending and what we are contending.

The principle that common frameworks are the way forward seems to have been agreed by the Scottish Government and the UK Government. When the Secretary of State for Scotland came to our committee, he accepted that clause 11 as it stands requires to be amended before legislative consent can be given, and he undertook to do what was necessary to ensure that the bill was put into a condition whereby it would receive Scottish Parliament consent.

Neil Findlay (Lothian) (Lab): If the secretary of state accepted that there had to be amendments

in the UK Parliament, why did he instruct his Tory MPs to vote against them?

Murdo Fraser: There is clearly a lot of work still to be done to agree the common frameworks that we have discussed. The secretary of state has made it clear that the bill requires to be amended in the House of Lords, and that will happen. He was very clear about that when he came to the committee—I know that Mr Findlay was not there—and he accepts that the bill as it stands, with clause 11 unamended, will not get legislative consent and is therefore unlikely to proceed through the process in both houses at Westminster. He accepts the principle that the bill needs to be changed, and I would rather proceed with the debate in the same tone in which it has been conducted thus far, so that we can solve those issues with co-operation rather than confrontation, despite what Mr Findlay is tempting me to do.

As my colleague Adam Tomkins has made clear previously, the Scottish Conservatives are disappointed that the necessary amendments to clause 11 could not be made in the Commons, and we are determined to see that rectified in the Lords. The political will is certainly there to see it happen.

The committee has produced a detailed and important piece of work with a great deal of constitutional significance. It is encouraging that the committee could arrive at its conclusions in a unanimous fashion. It is now over to the UK Government to work with the Scottish Government, and indeed with the Government of Wales, to ensure that the necessary amendments are made to the European Union (Withdrawal) Bill to allow legislative consent to be granted. We on this side of the chamber will be working closely with our Westminster colleagues to ensure that that happens.

15:32

Neil Findlay (Lothian) (Lab): I thank the convener, the committee and all the clerks for their important work and their detailed and painstaking scrutiny.

The effective and democratic workings of this Parliament are extremely important. Respect for the parliamentary process, the accountability of the Executive, respect for the will of Parliament, freedom of information and transparency are all vital for the good working of our democracy. In many of those areas, I have severe criticisms of the failings of the Scottish Government, but this unanimously agreed report aims its criticisms rightly at the abject failure of the UK Government to deliver on the commitments that it previously gave to draft an amendment to clause 11 of the European Union (Withdrawal) Bill that would address the concerns that had been raised by this Parliament and by the committee and to make the clause fit for purpose.

We remember all the commitments that David Mundell and his Tory colleagues at Westminster made. Indeed, when they came before the committee, he gave the impression that it would all be resolved in the House of Commons, not the House of Lords. Those commitments appear to have been nothing more than the secretary of state's bluster. As we found out, the Scottish Tories could not deliver a Friday night takeaway, never mind this important piece of legislation, and they have no one to blame but themselves because they, along with their chums in the Democratic Unionist Party, control the parliamentary timetable. They have the extensive resources of the civil service and Government lawyers at their disposal, yet they failed miserably, and their on-going handling of the Brexit process lurches from one mess to the next.

We cannot accept the current situation. In June, my party stood on a manifesto of returning EU powers that would ordinarily be held in devolved legislatures to this Parliament as part of the Brexit process, and we stand 100 per cent by that commitment. The evidence from the committee's sessions involving constitutional experts and academics was clear: clause 11, as it stands, is not fit for purpose.

Whether we like it or loathe it, Brexit came about because of a democratic process and the UK Government must respect that democratic process in taking the European Union (Withdrawal) Bill through. We wanted it to go through the House of Commons while the nations of the UK were worked with and their role was respected. The reality now is that unelected peers in the House of Lords will have a greater say on remedying clause 11 than the MPs who were elected by the people to represent their interests in Parliament. We cannot tolerate that situation.

Rather than vote to support the position of their Scottish leader, Scottish Tory MPs voted to humiliate her. They voted to hand the power over that important clause to an unelected and undemocratic body rather than support Labour's amendment, which would have introduced a presumption of devolution so that the restriction against legislating in contradiction of retained EU law would fall at the end of the transitional period.

Michael Russell: I agree with Neil Findlay's point. The Labour amendment was not our preferred amendment—the one that we produced jointly with the Welsh Government was—but it was still acceptable to us, and we indicated that. It is a pity that the Tory Government did not note that

indication and accept it as our willingness to proceed on that basis.

Neil Findlay: That is absolutely right. The approach, with Labour and the Scottish National Party working together, was very welcome. We would have welcomed Scottish Conservative MPs' support on that, but they folded like a hand of cards when a little pressure was applied. Rather than work to protect the integrity of the devolution settlement, they voted to actively undermine it—some of them undermining their previously stated position. All the while, they caused bad blood, further undermined trust and good will and played into the hands of those who want to use Brexit as an excuse to open up other debates. What explanation did Mr Fraser get from the Secretary of State for Scotland about why Tory MPs refused to support Labour's amendment to the clause, which would have guaranteed that presumption? Can he explain why they refused to do that?

Adam Tomkins: The answer to Mr Findlay's question is that there has been no change of direction or policy on the part of the UK Government, but there has been a change of timing. We had hoped to have the amendment considered in the House of Commons. We will still have the amendment, but it will be considered in the House of Lords. If there had been a change of policy, Mr Findlay might have a point, but there has not been and he does not.

Neil Findlay: Mr Russell, Mr Harvie, Mr Rennie and I are not professors of constitutional law, but we can smell a chancer a mile away. Maybe Mr Tomkins needs to get some training on how to suss people out, because he obviously did not suss out the Secretary of State for Scotland when he told him a pack of lies.

The amendment sought to put the public interest above narrow party-political games, but the Scottish Tories rejected that position. I am glad that there is committee unity on the matter. Where we can work together with other parties in the national interest, we will do so.

Labour has six key tests for the Brexit deal, and we intend to push the UK Government all the way to meeting them. The deal must lead to a strong future relationship with the EU; maintain the benefits of the single market and the customs union; include a fair migration system that is in the interests of the economy and communities across the UK; retain hard-won rights and protections; protect our national security; and—crucially—deliver for all the nations and regions of the UK. That means that it must deliver for Scotland through the UK Government working with the Scottish Parliament. We will work collaboratively, both here and in the UK Parliament, to achieve that.

The episode has shown that Ruth Davidson, despite all her tank-driving and buffalo-riding photo opportunities that are so loved by her diminishing band of Tory loyalists, and despite her chummy chats with the Prime Minister at election time, has no influence over and no say on what happens during the Brexit process.

I support the committee's report and the recommendations.

15:39

Graham Simpson (Central Scotland) (Con): I am speaking in my capacity as the convener of the Delegated Powers and Law Reform Committee. We published our report on the LCM on the bill on 17 November 2017. It is an interim report, and we are continuing to consider issues arising from the bill.

The bill confers wide and significant powers on Scottish and UK ministers. The committee took the view that, although it is unpalatable to have such wide powers, it is difficult to conceive of a different way to make the changes that are necessary to provide for a working statute book. If this was any other bill, the committee would have said that conferring such wide powers on ministers would be unacceptable, but the unique nature of the circumstances that gave rise to the bill and the short timescale in which regulations must be made make the conferral of wide powers unavoidable.

At the same time, the committee took the view that the powers as drafted are too wide. They provide too much scope for ministers to use them to make changes that they consider appropriate rather than changes that are necessary, and they open up the possibility that they could be used to make policy changes. The committee has also suggested that the powers should be limited to protect constitutional statutes.

The Northern Ireland Act 1998 is protected under the bill, but the protection is not extended to other constitutional statutes, including the Scotland Act 1998. The committee understands that the Scotland Act 1998 is subject to amendment by secondary legislation. Critically, however, that secondary legislation would be subject to scrutiny in the Scottish Parliament. The committee has recommended that amendments to the Scotland Act 1998 using powers under the bill should similarly be subject to scrutiny in the Scottish Parliament.

The committee also considered the different legislative routes that instruments in devolved areas under the bill might follow. I will focus on the process for UK ministers to make regulations in devolved areas. We were particularly concerned about the absence of a process whereby UK ministers would have to obtain the consent of the

Scottish ministers before legislating in devolved areas, which has been a key area of concern for everyone. The committee considers that the bill would be strengthened by such a process, and it is disappointing that amendments to provide for that have not yet been agreed. Further to that, the committee considers that there should also be a process for the Scottish ministers to be held to account for their decision to consent.

I welcome today's debate. I look forward to continuing to consider the bill and to developing our thinking on it.

The Deputy Presiding Officer (Linda Fabiani): We move to the open debate. Up to 6 minutes will be allowed for speeches. Time is extremely tight, so, unless the early speakers are disciplined with themselves, the later speakers will lose time or may even be dropped.

15:43

Ash Denham (Edinburgh Eastern) (SNP): The EU (Withdrawal) Bill was introduced in the House of Commons by the UK Government in July last year. Recognising that the bill engages devolved competences in a range of areas, the UK Government is seeking the Scottish Parliament's legislative consent for the bill.

The bill is, as other speakers have noted, complex—but unnecessarily so. It does a number of things, including altering the legislative competence of this Parliament. This alteration, which is set out in clause 11, is, understandably, of most interest to committee members and has the most relevance to a wider audience.

The objection to the approach that has been taken in clause 11 and its impact on the devolution settlement is of sufficient importance for the Scottish Government to be unable on that ground alone to recommend consent to the bill. The committee is of the same view. The new prohibition on modifying retained EU law would result in the legislative competence of this Parliament becoming more complex to assess. In particular, as retained EU law is amended over time, the boundary of devolved competence would change. In essence, the issue is not just about where the bill and clause 11 would leave this Parliament on exit day, but the on-going cumulative effect of reducing clarity day by day.

The effect of clause 11 would be to give the Westminster Parliament and UK Government the unilateral power to make decisions in devolved areas that were previously affected by EU law. Clause 11 introduces a new legal constraint on the competence of devolved institutions that cuts across the reserved-powers model of devolution that is provided for in the Scotland Act 1998.

Many witnesses to the committee agreed with that analysis. Professor Rick Rawlings summarised his position on clause 11 as follows:

"The sooner clause 11 of the Withdrawal Bill is cast aside, the better. Constitutionally maladroit, it warps the dialogue about the role and place of the domestic market concept post-Brexit. As such, the occupation of legislative and executive space in the Withdrawal Bill appears not only a risky venture but also a lazy one. An unthinking form of 'Greater England' unionism, which assumes only limited territorial difference, would be another way of characterising this."

Professor Aileen McHarg highlighted the impact of the constraint on devolved competence by commenting that it

"messes up what is already a complicated boundary between devolved and reserved powers."—[*Official Report*, *Finance and Constitution Committee*, 1 November 2017; c 15.]

The UK Government says that it needs clause 11, but the committee heard no evidence during its inquiry—including from UK ministers—that convinced me that that is the case. The existing intergovernmental mechanisms could be better, but in this case I think that, with some political will, they could cope.

The committee is of the view that clause 11 as currently drafted is incompatible with the devolution settlement in Scotland. The committee felt that even if clause 11 is designed to be a transitional measure, it fails to respect the devolution settlement. The committee therefore will not be in a position to recommend legislative consent to the bill unless clause 11 is replaced or removed. The Conservative members of the committee are to be commended for sharing that view.

David Mundell and the UK Government repeatedly tell Scotland that they have Scotland's interests at heart, but in drafting the EU bill as it has done, the UK Government has made clear, for all to see, its neglect of Scottish interests and its sheer disregard for devolution.

The bill has made its way through the House of Commons and, despite David Mundell's assurances that clause 11 would be amended during report stage, clause 11 is still there, untouched. There is only one rational conclusion to be drawn from that, which is that clause 11 is precisely what Whitehall wants. The UK Government wants to cut across the devolution settlement—that is not some accidental, unintended consequence but a quite deliberate approach.

Through the JMC on European Union negotiations process, the UK Government made commitments to "respect the devolution settlement". It is regrettable that it has not done so.

There is a phrase in politics: never let a good crisis go to waste. That seems to have been taken to heart by the UK Government in the context of Brexit. However, this is not an opportunity to change the model of devolution from a reserved-powers model to a conferred-powers model. Such a model is not just unworkable but would represent a fundamental shift in relations between Governments that are already characterised by asymmetry of power.

For evidence in that regard, we need only look to the Welsh devolution settlement, which uses the conferred-powers model; in 2014, the Silk commission characterised the settlement as having "chronic uncertainties". I do not wish that for Scotland, and I am sure that members of this Parliament do not wish that for Scotland.

15:49

Alexander Burnett (Aberdeenshire West) (Con): I thank my fellow members of the Finance and Constitution Committee for welcoming me in September when I moved to it from the Environment, Climate Change and Land Reform Committee. In addition, I echo the thanks that have been extended to our clerks, witnesses and those who have submitted evidence to the Finance and Constitution Committee on the European Union (Withdrawal) Bill's legislative consent motion, resulting in the interim report that we are debating today.

As shown in the report, committee members from across the political divide here today are in agreement that we are unable to recommend legislative consent on the European Union (Withdrawal) Bill as it is currently drafted. As a committee, we are agreed in our wish to see some changes to the bill, ranging from alterations to clauses 7 and 11 to further progress on developing and agreeing common frameworks.

During the committee meetings, I had opportunities to pose questions to witnesses on common frameworks. For those who have not been following all our evidence sessions, here is a brief explanation of common frameworks. Currently, devolved administrations are legally required to comply with EU laws. However, following Brexit, those laws will fall back to the devolved administrations. Although it poses an opportunity for us to take control of policy decisions, that return of laws means that there is a potential for differentiation on issues for which all devolved administrations and the UK Government currently have common goals and values. Establishing common frameworks is important in ensuring that those goals and values continue to be applied across the UK as a whole.

Patrick Harvie: Will the member take an intervention?

Alexander Burnett: I am afraid that I will not; I am pushed for time.

In committee we heard people's views on the number of common frameworks; the areas that they would cover, such as agriculture, energy and the environment; and the substance of what they would look like.

Although we welcome the developments that are being made between the UK Government and the devolved Administrations, significant progress is still needed in order to properly scrutinise the development and agreement of common frameworks. Following evidence sessions, we agreed that common frameworks should be agreed upon and not imposed by the UK Government, in order to allow for proper due process in which the Scottish Parliament has the opportunity to consider the approach that is being negotiated at Government level, prior to giving consent to the bill.

Much consideration is still needed on the bill as it stands, particularly in relation to common frameworks, but I believe that we are making progress on many of the points that I and my colleagues make today.

I know that all members in the chamber will be keen to ensure that with Brexit we embrace the potential for new opportunities. As the report shows, 111 powers that intersect with the devolution settlement in Scotland will return from the European Union. I was pleased to hear that many of the 111 powers and the issues that surround them will be resolved through common frameworks, and that the UK Secretary of State for Scotland feels that the discussion on identifying those issues will be relatively straightforward. Examples of them include agriculture issues, environmental law and state aid.

Herbert Smith Freehills, a leading global law firm, published a report that outlines the potential benefits that the energy market could enjoy by being outside the EU. One example was that the UK might be able to

"negotiate greater flexibility on State aid rules to carry out a swifter and lower cost decarbonisation. This may facilitate the development of new technologies such as carbon capture and storage."

I must now refer members to my entry in the register of interests, particularly in relation to my involvement with renewable energy projects and businesses.

I bring attention to the point on state aid that Herbert Smith Freehills made when it stressed the importance of noting that

"The UK would also want to be able to match the funding areas that are currently administered by the EU at a centralised level ... As a result, the UK could enjoy greater discretion to provide state support to energy projects on their social and strategic merits. This could give the UK greater flexibility to carry out a swifter decarbonisation agenda at lower cost to consumers".

I have no doubt that constituents across Scotland would be keen to see their costs reduced, particularly to the benefit of our environment.

In conclusion, the Scottish Conservatives are keen to see changes to the European Union (Withdrawal) Bill, and I hope that members across the chamber will see that we are working with the SNP Government and our colleagues in Westminster to get the best possible outcome for Scotland and the UK in this process.

I look forward to continuing to work with my fellow Finance and Constitution Committee members so that we come to a stage at which we are able to recommend legislative consent to the bill, in order to ensure a bright and prosperous future for Scotland.

15:54

Ivan McKee (Glasgow Provan) (SNP): This afternoon's debate goes to the heart of the two central constitutional issues that face us today: the future relationship of the United Kingdom with the European Union and the future relationship of Scotland with the United Kingdom. We see something that is rare in this chamber—consensus on matters relating to our constitutional future—because the Finance and Constitution Committee's report, which was agreed unanimously by its cross-party members, makes it clear where we as a committee, and, I hope, we as a Parliament, stand on the European Union (Withdrawal) Bill. I take the opportunity to commend the work of my fellow committee members in reaching that consensus.

Unfortunately, that consensus extends only so far. As on many key matters relating to the future of Scotland, we wait with trepidation for the outcomes of debates and votes in other places. In an environment that can encourage exaggeration, we often run the risk of overstating the importance of the matters that we are considering, but I think that in this case many will agree that we do indeed find ourselves in danger of facing a constitutional crisis.

As the report before us makes clear, to avoid that outcome, it is essential that the UK Government makes good on its promises to amend the withdrawal bill, to protect the integrity of the devolution settlement and to resolve the unacceptable situation whereby clause 11 of the bill redefines that settlement in ways that have been found wanting by all members of the committee.

Let us remind ourselves of the latest episode in how we got here. A secretary of state promised something that he could not deliver, and a UK Government failed to deliver something that it had promised. Those who could deliver it, in the interests of those who elected them, indicated that they would but failed to follow through on that. Meanwhile, their elected colleagues back at home were led up the Brexit path and then left in the lurch. We are told that all that happened because time was short on a proposal that had been 18 months in the making, but that now all is well because the future of our democracy rests in the hands of those who have never been elected. Let us hope that the best laid schemes of mice and men do not lead to grief and pain.

Where does that leave us? The committee, with cross-party support, will not recommend that the Scottish Parliament gives its consent to the European Union (Withdrawal) Bill unless clause 11 is replaced or removed. To do otherwise would be to fly in the face of the devolution settlement.

The core principle of devolution—that everything that is not reserved is devolved—risks being undermined in a most fundamental way by those who fail to understand, or fail to recognise, the implications of their ill-considered course of action. The now infamous list of 111 areas in which powers on devolved matters that are currently exercised at an EU level might not be transferred to the control of the Scottish Parliament is a matter of concern to us all.

The need for UK common frameworks is clear. The form that those frameworks might take could vary depending on the policy area involved, but the committee strongly believes that the process for agreeing them and their content must be arrived at through agreement and not imposed.

Some progress has been made. The UK Government, through the JMC(EN), has agreed the principle that

"Frameworks will respect the devolution settlements and the democratic accountability of the devolved legislatures".

However, the threat to devolution remains. There is no cast-iron guarantee that significant changes will be made to the withdrawal bill, and there is a lack of clarity on the impact that last month's phase 1 agreement between the UK and the EU will have on UK-wide frameworks.

The Scottish Government considers the problems with the withdrawal bill as its stands to be "so fundamental" that it cannot, as things stand, agree to a legislative consent motion, and although the Scottish Government is opposed to leaving the EU, it must plan for that eventuality. To

that end, it has indicated its intention to develop a continuity bill, which could be introduced in this Parliament in the next month.

Although the committee's report focuses on the critical constitutional issues, we must not lose sight of the economic impact, the damage that leaving the single market and the customs union will do to Scotland's economy and the wealth of our citizens, the threat of 80,000 job losses and the damage to the living standards of families up and down the country that a hard Brexit will bring. The work that the Scottish Government has done and continues to do, along with well-respected organisations such as the Fraser of Allander institute, spells that out in worrying detail.

The committee is clear in its view that the effect of the withdrawal bill—clause 11, in particular—will be to adversely impact on the integrity of the devolution settlement in Scotland. The committee recognises that there are no provisions in the bill that guarantee that clause 11 is a temporary measure, and that even if clause 11 is designed to be a transitional measure, it fails to fully respect the devolution settlement. As a consequence, the committee is not in a position to recommend that legislative consent be given to the bill as it is currently drafted.

The ball is now in the court of the UK Government, and the clock is ticking. If a constitutional crisis is to be averted, progress needs to be made on the changes to the bill that are required—changes that have been agreed by the Welsh and Scottish Governments and our committee. We can but hope that sense will prevail and the UK Government will heed those calls to respect the devolution settlement.

15:59

Neil Bibby (West Scotland) (Lab): The referendum decision to withdraw from the EU has created significant argument and division. Passions run high on both sides. In some senses, it is remarkable that the Finance and Constitution Committee has managed to produce a unanimously agreed report on the LCM for the European Union (Withdrawal) Bill. It is a testimony to the seriousness and objectivity with which committee members approached the report, and I echo the comments that have been made about the support given by clerks, advisers and witnesses.

Like the majority of the Parliament, I voted for the UK to remain part of the EU. However, the purpose of the committee's report is not to comment on arguments for or against leaving the EU. Rather, we were tasked with commenting on whether the legislative process for withdrawal is robust and whether it recognises and respects the distinct responsibilities of the Scottish Parliament.

Unfortunately, the committee has concluded that the bill as it stands is not fit for purpose. We are not in a position to recommend legislative consent on the bill as currently drafted—a position that was also reached by both the Scottish and Welsh Governments. If we were to give approval to this LCM, we would be approving the granting of extra unfettered powers to UK ministers, undermining the Scottish Parliament and accepting a transfer of powers—previously regarded as devolved—to the UK Parliament. Despite assurances from the UK Government that it would address the problems with the bill identified by Scottish ministers and others, so far no solutions have been agreed in the House of Commons.

Clause 11 has been at the centre of our deliberations. When the UK leaves the EU, there will be a significant transfer of power back to the UK. That includes power over matters that would otherwise be devolved. Assurances that the issue will be resolved at some point in the future are not good enough. We need to find solutions now. Powers that relate to the competence of the Scottish Parliament and the Scottish Government should be devolved immediately.

It is then our responsibility to reach an acceptable agreement with the UK Government and the UK Parliament on implementation. I do not underestimate the complexities involved, nor do I doubt the sincerity of the Parliamentary Under Secretary of State at the Department for Exiting the European Union, who described clause 11 as

"a temporary measure while decisions are taken on where common approaches are or are not needed."—[*Official Report*, *Finance and Constitution Committee*, 8 November 2017; c 10-11.]

The problem, as our report identified, is that there are no provisions in the bill to that effect.

In the words of Professor Mark Drakeford, the Cabinet Secretary for Finance and Local Government in the Welsh Government, what is proposed "rolls back devolution". That is just not acceptable.

I welcome the commitment from the UK Government that common frameworks will not be imposed. There should be agreement. However, it is not just a question of Government ministers reaching agreement. I agree whole-heartedly with the report's recommendation that:

"The Scottish Parliament must have the opportunity to consider the approach to common frameworks currently being negotiated at governmental level prior to being asked to give consent to the Bill."

Withdrawal from the EU is a very modern problem, but it has brought to public attention the so-called Henry VIII provisions, which relate to a

process that could result in UK ministers gathering more powers without proper accountability. The House of Lords Delegated Powers and Regulatory Reform Committee stated that clause 7

"is notable for its width, novelty and uncertainty".

It is unacceptable that the withdrawal bill should allow an apparent transfer of extensive law-making powers to Government. The report is right to say that the power in clause 7:

"should only be available where Ministers can show that it is necessary to make a change to the statute book, even if they cannot show that the particular alternative chosen is itself unnecessary".

Nor can this Parliament contemplate a situation in which, with clauses 7 to 9, UK ministers could make statutory instruments in devolved areas without having to seek the consent of Scottish ministers or the Scottish Parliament. The committee's view is that the Parliament should have the opportunity to scrutinise Scottish ministers' proposals before they grant consent to the UK Government to make subordinate legislation in devolved areas. We cannot condemn the centralisation of powers in the hands of UK ministers without holding Scottish ministers to the same standards. The primacy of the Scottish Parliament must be respected and protected.

This debate has shone a strong light on the working relationships between the UK Government and the devolved Administrations. It is clear, as has been said this afternoon, that those relationships are not sufficient. I hope that this experience could lead to a new process for joint decision making and a new model for intergovernmental relations.

The committee suggests that the new arrangements be placed on a statutory footing. Scottish Labour has long advocated a constitutional convention to look at how power is exercised across the United Kingdom. That position was echoed by the Welsh Labour Government in its evidence to the committee. I urge all parties in the Parliament to consider the case for a UK council of ministers in the months ahead.

In January 2017, the Parliament restated its support for the European charter of fundamental rights and called for an undertaking from the UK Government that nothing in the withdrawal process would weaken or undermine human rights. We should not ignore the impact that withdrawal could have on the charter.

All parties represented on the committee agreed the report. I look forward to working with other parties to address the issues that have been raised.

16:05

Patrick Harvie (Glasgow) (Green): I join other members in thanking my fellow committee members, our clerks and advisers and those who gave evidence. The only people I do not thank are those in the UK Government who created this whole damn mess in the first place. During the inquiry, week after week, we saw unfolding the chaotic and destructive consequences of a referendum that was ostensibly called to resolve internal Tory tribalism on Europe.

Members know that I despise everything about this situation. More than anything, I despise the loss of freedom of movement. Generation after generation and for century after century, kids were sent by their Governments in Europe into fields and ditches to kill one another, then the generation that came after the second world war built institutions that allowed us to achieve the principle of freedom of movement within this continent and created the idea that young people could grow up safe in the knowledge that that would never be their fate. They could see their future as working, learning, loving, playing and living their lives in any European country that they chose. That is being destroyed.

Whatever lies, whatever manipulation and whatever racist propaganda were used to achieve the vote to withdraw from the European Union, a UK Government could still have responded to that wafer-thin decision with a balanced and careful withdrawal bill. It could have taken the responsible way forward and done what even many leave campaigners promised by preparing for single market membership as a non-EU member. As Neil Findlay said, his position seeks to secure all the benefits of the single market. Colleagues in the Labour Party have the power to transform this debate and build a majority at the UK level for retaining full membership of the single market with all its benefits, including freedom of movement.

The United Kingdom Government could certainly have presented a withdrawal bill that respected the way in which people in Scotland voted. Let us remember that those are the people who we represent here as members of the Scottish Parliament. Those people voted by a majority in every single council area to maintain their place in Europe. It could also have presented a withdrawal bill that respected the way in which those people voted in the 1997 referendum on the devolution settlement that was endorsed overwhelmingly by voters in Scotland.

What would that mean? Respecting the fact that people in Scotland voted to remain would mean offering the flexibility within a withdrawal process to allow a closer relationship with Europe if that is what the people of Scotland want. As for respecting devolution, that would mean no new

reservations or restrictions under another name. Instead, as other members have pointed out, a coach and horses has been driven through the devolution settlement. As Bruce Crawford put it, a reserved-powers model is being turned into a conferred-powers model. The Scottish Government has described it as a power grab by the UK Government, and it is happening just months after the most recent Scotland Act came into force, intending to put letters of consent, or the Sewell process, on to a statutory footing. That is now completely thrown into doubt.

There might be a possibility of later devolution, but only where, when and how the UK Government decides. There is absolutely no justification for the approach that is set out in the withdrawal bill as the UK Government has introduced it.

During the inquiry, the committee heard a clear example of an alternative way forward in which there would be no need to achieve new restrictions, reservations or constraints on devolved legislative competence. The example of marine planning, an area in which overwhelmingly devolved activities but some reserved activities need to be regulated or legislated for, was given by some of the environmental organisations that gave us evidence. Fully devolved legislation needs to be introduced and consulted on separately in the two separate legislatures, with collaboration and co-operation where possible between the two Governments on the basis of genuine consent about legislation passed in the two Parliaments. A common framework is what emerges from those separate legislative processes. That approach is entirely possible and it does not matter what happens when we have—as Mr Burnett said—shared values and goals; what matters is what happens when we do not have that shared approach.

This situation is down to two factors—the aggressive power grab by hard-right Brexit ultras in the UK Government and a Prime Minister without the authority to face them down, as well as the fundamental misunderstanding that some of them have about what the UK even is. We are constantly told that the UK voted as a whole to leave so that is what we are going to do. They think that the UK is a unitary state; it is not today and it never was.

That diversity of political sovereignty within these islands needs to be respected. This bill does not do it; I have very little expectation that it can be salvaged in any way that is acceptable or should be acceptable to this Parliament. It should not be dealt with in the House of Lords; it should not be dealt with in the House of Commons; and we should reject it here in this Parliament.

16:11

Willie Rennie (North East Fife) (LD): I am intrigued by the approach of Conservative MSPs, who I think have decided to move towards a co-operative approach rather than a confrontational one. I welcome that—I was quite pleasantly surprised when Adam Tomkins took such an approach some months ago in the chamber.

I suspect that what is at the heart of that is to do with what Michael Keating said in his evidence to the committee, which was that the clause 11 circumstance seems to be based more on reasons of convenience than reasons of principle. I suspect, too, that Conservative MSPs have worked out that the gap is probably not that big and that the problem can be resolved by working on it because it is based not on a position of principle, but more on a position of convenience. At least, I am hoping that Michael Keating is right because then we can come to some kind of resolution.

However, now that Conservative MSPs have adopted a co-operative approach, they need to follow through. My big concern is that time is running out. Indeed, time is really running out: we are 19 months on from the decision to leave the European Union, which is something that I deeply regret and on which I would love to turn back the clock, but it is something that the British people decided. We have been through the second reading, the committee stage, the report stage and the third reading in the House of Commons. Throughout that time, we have not seen anything of substance about how clause 11 could be amended to the satisfaction of all the players.

Now that the bill has been passed on to the House of Lords, we should take some comfort, because some former members of the Scottish Parliament now sit in the House of Lords—people such as Nicol Stephen, Jim Wallace and Jack McConnell, and of course George Foulkes, who I am sure will be as keen to work with Mike Russell on all these matters as he was when he was in this chamber. We also have Michael Forsyth, who I am sure will add quite a lot of consensus to the debate and try to hunt out those solutions that we are all desperately seeking.

Michael Russell: Willie Rennie will be very pleased to hear that all the members of the House of Lords whom he named have been invited to a briefing that Mark Drakeford and I are holding in the House of Lords next Monday. As Willie Rennie said, that will be a reunion of old friends. [*Laughter*.]

Willie Rennie: I am more than intrigued to find out whether George Foulkes has agreed to attend, because it will be a much more colourful meeting if he does.

It is disappointing not just that we are now relying on unelected peers to see whether the amendments are good enough but that we are running out of time. My concern is that we may end up being bounced, by design or by error, into agreeing to a set of amendments that we have not fully considered or fully consulted and cogitated on in order to be able to decide whether they are good enough.

We might have to agree to those amendments or be faced with a situation of potential chaos or threats of chaos. I urge the UK Government—I am sure that Adam Tomkins and his colleagues will be working hard to achieve this—to publish the amendments quickly so that we can have some debate outside rather than just inside the House of Lords, and so that we are not bounced into agreeing to the amendments, by design or by error. That would be an important compromise and a contrast with what has happened up until now.

We have not left the European Union before, so we are into virgin territory and we are trying out new things for the first time. Michael Keating, who gave some very good evidence to the committee, also said, in relation to UK frameworks and the creation of a single market, that we have never had the mechanisms in the United Kingdom to consider and set such frameworks.

For all those reasons, we need to act early. We do not know what our continuing relationship with the European Union will be, what co-operation across the European continent we will require and what impact that will have on our relationships in the United Kingdom and with Ireland. All those factors are new and complicated and difficult to get our heads round, which adds more weight to my argument that, within at least the next week or so, we should see the amendments that the Conservative Government proposes to make to clause 11 so that we can have some comfort that we will be able to consult and cogitate on the issues and debate them in time.

The report is a good one. I commend the convener and all the members of the committee, and I thank the committee clerks for all their hard work. I agree with the points that we should have change or withdrawal and that the frameworks should be set by agreement and not by imposition. There is concern that Westminster might become a resting place for the powers, that there is no timescale for bringing that to an end and about the move from a reserved powers approach to a conferred powers approach, which is regrettable.

I am just as uncomfortable with the Scottish ministers having the Henry VIII powers in clause 7 as I am with UK ministers having such powers. I accept the arguments on that, because we are in emergency circumstances, but that does not make me any more comfortable with the approach. I hope that the Scottish Government acts with caution when it uses those powers. It has given some commitments that it will ensure that we have common agreement in the Parliament and time to consider the issues.

This process could lead to a new way of working in the United Kingdom. Neil Bibby referred to a council of ministers, but I prefer to talk about moving towards a federal structure, and perhaps we are taking the embryonic steps towards that point.

16:17

Willie Coffey (Kilmarnock and Irvine Valley) (SNP): I will try to cover a few of the areas in the committee's report: I will say something on the significance of clause 11 and the implications for Scotland if it is not amended; I will talk a little about the European charter of fundamental rights, which will be left behind when the UK leaves the European Union; and, if I have time, I will make a few comments on the single market and the digital single market.

A good place to start might be clause 11, which is the main feature, although there are other significant areas of concern with the bill. The committee unanimously agreed that we cannot support a request to approve the bill unless the clause is replaced or removed altogether. Clause 11 is not compatible with the devolution of powers to the Scottish Parliament and puts devolved powers at risk. Even if the proposed arrangements turned out to be transitional, they would still fail to grasp the devolution settlement. In simple terms, the bill can be described as a power grab. Despite some attempts to reassure, there is no provision specifying which powers are to be restored to Scotland under any new arrangements and when or how that would happen.

I think that it was Professor Rawlings who said in evidence that the issue is basically about trust, or the lack of it—that, somehow, the Scottish and Welsh Administrations cannot be trusted not to embark on some kind of irresponsible legislative frenzy. Professor Rawlings likened that to a form of "'Greater England' unionism", which several colleagues have mentioned.

Credit for reaching a consensus has to go to all the parties that supported the position on clause 11 and to our convener, Bruce Crawford, whose determination to find common ground has given the Parliament a much stronger voice in speaking up for Scotland's interests. It cannot have been easy for members of the Conservative group to agree to the approach, but they did so, recognising the dangers that an unamended clause 11 brings. I will leave it to those colleagues to perhaps explain whether that was done in

anticipation of the clause being amended at report stage at Westminster, as promised by the secretary of state. The focus must now be on the removal of or amendment to clause 11 in the House of Lords.

One of the other important proposals in the bill concerns the intention to leave behind the Charter of Fundamental Rights of the European Union and its 54 articles. The Law Society of Scotland and others are concerned at the potential erosion of human rights if that happens, and with the subsequent difficulty for UK courts in interpreting retained EU law in the charter's absence. That will mean that UK citizens will have no right of action in cases where they consider that their fundamental rights have been breached.

Professor Aileen McHarg told the committee that a person would no longer be able to challenge a decision made by a Government minister or a public body after Brexit. Dr Tobias Lock told us that the charter provides stronger protection for people than the European convention on human rights in some cases, in relation to things such as the rights of children, the right to a fair trial and the protection of personal data. There are some pretty strong concerns that the fundamental rights of the individual will be diminished if the charter is left behind after Brexit day.

The committee heard concerns from a number of witnesses on the so-called internal market, new trading arrangements and international treaties. Professor Keating questioned why the UK Government's starting point in talking about a UK single market was to set out which devolved competencies should be included in any common frameworks. He explained that the EU single market does not work like that; it operates across broader principles that are based on proportionality and subsidiarity. It does only what needs to be done and at the most local level possible, interpreted and enforced within the EU's single market process. There is nothing like that in the withdrawal bill—I think that that is what Willie Rennie was referring to earlier—and there is no indication as to how the devolved Governments will participate in the internal market or what their powers will be in relation to international trade and their own devolved competencies.

A key issue must surely concern where we stand in relation to the digital single market when we pull out of the European single market. The digital single market, which is worth around €400 billion a year, offers all EU citizens fair and equal access to digital services, including the abolition of mobile roaming charges, access to data and content without being blocked when people move around, and other consumer and data protections. Having signed the Tallinn declaration, the UK has signed up to those principles, including the general data protection regulation, which comes into force in May. It is surely ridiculous to suggest that we can leave the single market but stay in the digital single market, or develop some kind of mirror arrangement for digital services.

The Finance and Constitution Committee has done an incredibly important piece of work for the people of Scotland, which must shape the complexion of the withdrawal bill over the coming weeks and months. The negotiations must focus on achieving the best and strongest trading arrangements possible. We should not promote a deal that worsens people's lives or our economy, or one that calls itself an internal UK market but bears no resemblance to one. We must protect individuals' rights and freedoms, and clause 11 has to go or an acceptable amendment has to emerge—that must happen, or the constitutional issue will arise. No doubt we will divide on that, but, at least for now, this Parliament stands united in its determination to protect the powers that belong to the people of Scotland.

16:23

Maurice Golden (West Scotland) (Con): As we have heard today, the European Union (Withdrawal) Bill throws up a multitude of issues. They must be debated fully, but we must not lose sight of the reason for the debate. The UK, including a million Scots, voted to leave the EU. Each of us has a duty to respect that decision.

We should also accept that we are no longer debating whether we should leave the EU—it is happening—but how we can get the best deal for Scotland and the entire United Kingdom. That is the premise that underlies the debate, and it speaks to a wider point, which is that most Scots simply want us to get on with getting a good deal that causes as little disruption and as much opportunity as possible. Most Scots do not define themselves with such narrow labels as "leave" or "remain", or "yes" or "no".

Parliament should help to deliver the best deal for Scotland. We should all share that objective. The European Union (Withdrawal) Bill is needed to ensure that the UK can leave the EU with certainty, continuity and control. We should all agree on a smooth and orderly transition.

The Conservatives are proud to have made the Scottish Parliament the most powerful it has ever been, as a result of the Scotland Act 2016. The withdrawal bill means that it will become even more powerful—that, too, should be supported throughout the chamber.

That demonstrates that there is a common purpose, and the Scottish Conservatives, the UK Government and the SNP all agree that the withdrawal bill must be properly amended so that

this Parliament can grant legislative consent. Given that common purpose, it is disappointing but understandable that the bill could not be amended in the House of Commons. That is why we, along with other parties, support the findings of the Finance and Constitution Committee. Our Scottish MPs, particularly the 13 who delivered the best budget for Scotland in a generation, have let their frustration be known at the failure to amend the bill in the Commons. The Secretary of State for Scotland has also said that he regrets that the amendments could not go forward. Common frameworks need to be agreed that work for the benefit of all. A process must be also be agreed for scrutiny of the statutory instruments that will flow from the withdrawal bill.

The current structure of intergovernmental relations has been shown to be simply not fit for purpose, and requires to be replaced with something better. Intergovernmental relations should be placed on a statutory basis, supported by an independent secretariat, and a proper mechanism should be established for independent dispute resolution. As well as better relations between Governments, we also require better interparliamentary co-operation. I hope that we will see progress on that.

The Prime Minister has been very clear that clause 11 will be amended and improved, and she wants to work with the Scottish Government to do so. I stress "with" because, as the Finance and Constitution Committee's report recommends, the various Parliaments and Assemblies across the United Kingdom must co-operate more effectively. We have a duty to the people whom we represent to do so.

However, we also have a duty to oppose attempts to undermine co-operation, for example Labour's amendment to the bill at Westminster, which would have resulted in powers being devolved without proper consideration and which would have made constructive discussions between the UK and Scottish Governments pointless. There is already an assurance on the table from the UK Government that the withdrawal bill will be amended. The SNP's proposal for a separate continuity bill is not part of that constructive way forward, but despite that, the SNP is still contributing to negotiations. We welcome that.

Neil Findlay: Now, after an hour and a half, or whatever, Maurice Golden has actually managed to come up with an excuse for what happened. Were Conservative members of the Finance and Constitution Committee wrong to agree with the rest of the committee on the conclusions in the report?

Maurice Golden: It was five minutes, not one and a half hours, so there is a point of fact for Neil FIndlay.

We have made it clear that the process has not changed—the outcome will be the same. Labour MPs in the UK Parliament and here seem to be unable to understand the basic premise, which is that we want clause 11 to be amended and the vast majority of EU powers to come back to this Parliament. The House of Lords will be able to deliver that, which, ultimately, is good for the people of Scotland and good for this Parliament.

Constructive engagement must be a priority in order for this Parliament to be able to give consent to the bill in time for the UK to leave the EU. Clearly, Mr Findlay did not get that memo. Nevertheless, that can and will happen if all parties approach the process in a responsible manner.

16:29

Christina McKelvie (Hamilton, Larkhall and Stonehouse) (SNP): Today's debate could have had a different title: "For what we are about to lose, may we be deeply worried". As the Brexit debate muddles along without any clear direction, we stand on the sidelines, looking on as spectators, wondering whether the UK Government can see that the debate is a total mess. That view was evidenced by the many people who gave evidence to the Finance and Constitution Committee for its interim report.

There is a manufactured notion that runs along the lines of, "Well—we're stuck with it now. There's no point trying to do anything at this stage, so let's just leave it all for now and get on with the result." Whether it will be soft, hard, agonisingly awful or just painful, the outcome of the Brexit negotiations remains unclear.

Within the whole ultimate package of negotiations, which are at least as important as any future trade deal, lie our fundamental human rights. The big idea of universal human rights was not somehow imposed on an unwilling United Kingdom. The reality is that the UK was one of the architects of the imperative human rights agenda that grew out of the devastation of the second world war. The European convention on human rights has its roots in the philosophical tradition of universal rights, which stretches back to the enlightenment of the 18th century and the French revolution, with Scotland very much at the centre.

The first international step towards codifying those rights came when the general assembly of the then fledgling United Nations adopted the Universal Declaration of Human Rights on 10 December 1948. It was seen as a major success for the international body, with some people

describing the declaration as a Magna Carta for humanity, rather than for nobles. On 4 November 1950, the members of the Council of Europe signed the European convention on human rights. The UK was one of the first members to ratify the convention when it passed through Parliament in 1951. Now, not only is the current Westminster Government happy to deny us the very rights that it embraced in 1950, Brexit could also cut off the ultimate option for anyone to take an issue to the European Court of Justice. The UK Government plans not to retain the EU charter of fundamental rights, which is of great concern.

For us in Scotland, the fundamental problem is with clause 11 of the withdrawal bill. We know why: it completely contradicts the very essence of the Scottish Parliament and the Scottish devolution settlement. It would take powers—some 111 of them—away from the Scottish Parliament and hand them back to Westminster.

By agreeing to the bill—which I fiercely oppose, in case anyone was in any doubt—we would leave Westminster to make all the decisions without any consideration of the 5.29 million Scots who are represented in this Parliament. In effect, it would be a total negation of everything that we have achieved to date through devolution.

The Finance and Constitution Committee has discussed the evidence—we have heard that. It listened to the views—we have heard that as well. It concluded unanimously that legislative consent must be rejected.

We want to make our own decisions in this Parliament. Is it too much to ask to keep the—I accept—limited rights that have been granted to Scotland? That is what will happen unless we act. We need to act with one voice in this Parliament. Do we want to welcome the UK Government's commitment to respect the devolution settlement? Of course we do. Surely no one is in any doubt about that, but trust has been damaged by the lack of the promised amendments to clause 11 of the withdrawal bill.

Let us look a little more closely at what we stand to lose if we become party to abandoning the European charter of fundamental rights, the European convention on human rights and the European Court of Justice. Since I was born—which was not that long ago—I have had the right not only to take a case to the European Court of Justice, but to have maternity leave, to not be a victim of torture or discrimination, to be educated and to enjoy fair employment practices including being able to challenge wrongful dismissal and to have proper entitlement to holidays. There is much more in the charter that I could go into, but I do not have enough time.

The UK Government is not going to threaten all those rights—I hope—but there is already evidence that those basic rights could vanish post-Brexit. At the weekend there was talk of abandoning the working time directive: the UK Government wants to work everybody into the ground.

As with everything to do with Brexit, we have minimum information and a constant challenge to find out more. However, it would be a very naive person indeed who would assume that it will all be fine after March 2019. From farmers' incomes to our rights to justice, we should not underestimate the potential threat. We need to advance those essential rights, not abandon them. Imagine a dystopian world where people become victims of a range of attacks on their liberty, gender, sexuality, religion or colour. We should think carefully about whether that is unthinkable, because given the mood music and the rhetoric from some hard Brexiters, I fear that it is not.

I welcome the unanimous report and its conclusion and the work that all committee members did on the interim report. We must speak with one voice in the Scottish Parliament for Scotland, and we must act by rejecting legislative consent.

16:35

Pauline McNeill (Glasgow) (Lab): That what is not reserved is devolved is a key principle of the Scotland Act 1998, which shaped the basis of one of the world's most powerful devolved Parliaments. When that principle was included in the 1998 act, it was never envisaged that Britain would leave the European Union. However, Britain is now leaving the EU and those who fought for that principle will rightly be angered at what has happened in the past week, because clause 11 rides roughshod over it. Maurice Golden calls for an orderly exit from the European Union; however, if clause 11 represents the manner in which we are moving forward, there is a danger that there will be a breakdown in trust in the process.

Every committee of the Scottish Parliament is aware of how much the competence of the European Union has impacted on its work. All the conveners in the chamber will nod and tell us that that is one of the first things that a convener learns and that it is always a surprise. However, would those committees and the Parliament expect those 111 areas of competence that we have been talking about to return to the Scottish Parliament first before going anywhere else?

Labour welcomes the Finance and Constitution Committee's unanimous decision not to recommend a legislative consent motion at this

stage. The committee's report sets out the other important aspects that affect Scotland.

The tone of the debate is testament to the Scottish Parliament's maturity, and the debate has made a serious contribution to the issue. In that regard, I commend the speech by the committee's convener, Bruce Crawford. As the committee's report states, clause 11 impacts on the integrity of the devolution settlement. The report does not mince its words and devotes several paragraphs to its approach to the clause 11 issue. For me, any simple reading of clause 11 would set alarm bells ringing for anyone who cared about the devolution settlement. For example, clause 11 states that the Scottish Parliament

"cannot modify, or confer power by subordinate legislation to modify, retained EU law".

Anyone who cared about the devolution settlement would not have drafted those words in the first place.

Professor Alan Page has said that clause 11 would reduce the intelligibility of the settlement as well as make it more difficult for the Scottish Government to carry out its responsibilities. Dr Kirsty Hughes has said that clause 11 represents a centralising approach, which is more worrying. Professor Rawlings, who has been widely quoted, went as far as to say that clause 11 warps the dialogue about the role and place of the domestic market concept post-Brexit and that that is a very risky venture.

In accepting the will of the people in a referendum to leave Europe, we must also accept that the relationship within the UK must be a strong and balanced one, so we must respect the competences of all the devolved nations every step of the way. As far back as the Calman report, the JMC arrangements were seen to be weak. Work has needed to be done on them for a long time, but it must be done in good faith. Why the UK Government failed to act in good faith last week and reconcile clause 11 with the devolution principles is still unclear to me, but that is not all that is wrong with the withdrawal bill. For example, the importance of the common frameworks is not mentioned in the bill, as Bruce Crawford and others have said, although common frameworks are an important aspect in enabling the functioning of the UK internal market.

The Parliamentary Under-Secretary of State for Exiting the European Union, Robin Walker MP, said that we have common frameworks in Europe and that there needs to be certainty and stability. However, as things stand, it is the devolved nations who will be left without that certainty and stability for the time being.

Neil Bibby talked about clause 7 being equally worrying. In fact, the House of Lords noted the "width, novelty and uncertainty" of clause 7 and went on to ask:

"By what standards is the failure to operate effectively to be judged?"

I note the welcome comments of the convener of the Delegated Powers and Law Reform Committee, Graham Simpson, that more work clearly needs to be done on scrutinising clause 7 and that, as it stands, it is unsatisfactory.

I personally welcome the work of the Scottish Tory members of the Scottish Parliament who have tried to provide a solution to the problem of clause 11. Murdo Fraser said today that he spoke dispassionately, and his contribution was a good analysis that recognised where we are. Perhaps Maurice Golden did not get the memo about being dispassionate.

The Tories owe us an explanation as to why the UK Government did not fix the problem on the floor of the House of Commons. In my opinion, that let down the Scottish Tory members of Parliament who worked so hard. In fact, Stephen Kerr MP said on the record that he was deeply disappointed and frustrated that clause 11 could not be amended in the Commons and that that will be attempted in the unelected House of Lords. A Scottish Tory MP was rightly embarrassed by the actions of the UK Government. I am sure that David Mundell is, too, because he is the one who promised that the matter would be resolved.

What will happen to clause 11? I tend to agree with Mike Russell that it is probably not needed. However, what is needed, as we move forward, is the principle that we must work together within the framework of the UK, recognising and respecting the competences of the devolved nations. That is a red line for the Labour Party and for this Parliament. It is not just the Scottish Government that demands that, but—

The Deputy Presiding Officer (Christine Grahame): I am afraid that that is my red line. You have to stop, Ms McNeill.

16:42

Kate Forbes (Skye, Lochaber and Badenoch) (SNP): I remind the chamber—because one can never be too sure, and I hate being subjected to points of order—that I am the parliamentary liaison officer to the Cabinet Secretary for Finance and the Constitution.

Although I am not a member of the Finance and Constitution Committee, I was keen to take part in the debate because it goes right to the heart of the raison d'être of this Parliament. Because members have largely said what I was going to say, I ask them to treat my contribution as a handy wee summary with all the important quotable quotes.

I thank the committee members for their report, which I have found enormously beneficial in casting light on the murky complexities and ambiguities of current rhetoric and the European Union (Withdrawal) Bill. I agree with other members that the report offers clearer analysis of the current situation than many other pieces of analysis that I have seen and proposes tangible next steps as opposed to the complexities that seem to be emerging at Westminster.

The committee's report states that, even if alternative approaches were proposed, clause 11 is incompatible with the devolution settlement in Scotland; therefore, the committee cannot recommend legislative consent to the bill. As other members have said, the irony of that is that it comes after a series of promises—made before the EU referendum, in its aftermath and regularly ever since—from Ruth Davidson, David Mundell and others that Brexit would lead to more powers for Scotland and further promises that amendments to protect the devolution settlement would be accepted.

The committee's report is comprehensive in its analysis and subject matter. Of particular interest to someone like me, who is not a member of the committee, is the evidence—particularly the external evidence, not least that which came from the Welsh Government. I thought that the Welsh Cabinet Secretary for Finance and Local Government summarised the entire predicament by saying that clause 11

"rolls back devolution. It says that, for an indefinite period of time and to an extent that the UK Government cannot explain to us, powers that we have had since the start of devolution will be taken back to Westminster and, at some future date, eked back out to us."—[*Official Report, Finance and Constitution Committee*, 4 October 2017; c 8.]

That is a lot of uncertainty, and I do not think it is right for any member of this Parliament to stand back and let that uncertainty roll on. With those risks and that uncertainty, it is democratically incredible that unelected lords will have more of a say on devolved powers than the Scottish Parliament or the Welsh Assembly. Therefore, it is even more to the credit of the Finance and Constitution Committee—every member of that committee, whatever party they belong to—that it has produced such an excellent report, which protects the devolved competence of this Parliament, tries to safeguard the 111 areas in which current European competence intersects with Scottish Parliament competence and pushes for a cast-iron guarantee that significant changes will be made to the European Union (Withdrawal) Bill.

In my view, the debate is not explicitly about the rights and wrongs of Brexit, although many members have eloquently laid out their views on the entire shambles, but it has everything to do with the vital importance of devolution and of decisions being taken by the people who will bear the biggest impact of those decisions. I see that in rural Scotland—particularly in the Highlands and Islands, which have benefited disproportionately from our membership of the European Union—as the powers will have a disproportionate impact on those areas. I also see it in agriculture, for example, and in environmental legislation, both of those which areas are heavily represented in the 111 powers that are at risk.

Although there have been many debates about the rights and wrongs of Brexit, this is about basic respect for the devolution settlement. To push it further, I do not think that the issue is just about clause 11 and its adverse impact on the integrity of the devolution settlement in Scotland; it goes right to the heart of the way in which the Scottish Parliament and the Welsh Assembly should have their say on devolved powers in the process. Like Willie Rennie, I read Professor Michael Keating's evidence, in which he says that the UK Government is taking

"back powers for what appears merely to be reasons of convenience rather than of principle."—[*Official Report, Finance and Constitution Committee*, 1 November 2017; c 13.]

Indeed, convenience rather than principle has characterised much of the process.

I do not envy the UK Government the mountain that it is trying to climb one little bit, and I do not fancy the volume of work that will come up the road to us off the back of Brexit. Only this morning, the Environment, Climate Change and Land Reform Committee took evidence on the impact of Brexit on common frameworks pertaining to the environment. A number of different guesses were made as to the number of pieces of secondary legislation that the committee might have to look at, and none of those figures filled me with any joy whatsoever. That said, there is a principle at stake here, and it is about the democratic accountability of this Parliament and the devolution settlement.

I believe that the debate goes further than clause 11, and I believe that the UK Government must work more closely with devolved Governments, particularly as the second phase of negotiations with the EU commences, as Michael Russell requested last week. That means honouring the commitment to accept amendments and honouring the commitment to the devolution settlement.

The Deputy Presiding Officer: Before I call Mr Greene, I welcome back Mr Golden, who is a little errant. You left the chamber straight after your speech, Mr Golden, but the convention is that you should wait in the chamber for two speeches. That is a courtesy to other members, which I am sure they extend to your speeches.

16:48

Jamie Greene (West Scotland) (Con): I welcome the opportunity to speak in today's debate, which has focused largely on the motion in hand, with the exception of one or two hyperbole-filled political rants from a couple of members. There is absolutely no doubt that the European Union (Withdrawal) Bill has thrown up a number of previously unforeseen constitutional issues, as we navigate our way through what are really uncharted waters, as the first country to leave the EU.

I commend the work done by each individual member of the Finance and Constitution Committee to come to a consensus on their report—something that is often difficult to achieve given the somewhat partisan nature of the subject. I also thank those who gave evidence to the committee in producing the report. It made for light reading, of course. While I share not the scholarly expertise of some of those witnesses or, indeed, of my constitutionally enlightened colleague, Mr Tomkins, I would like to share some of my own thoughts.

Like many members, I was disappointed to see clause 11 pass through the House of Commons in its current form—some of my colleagues have alluded to their disappointment, in their speeches, too. However, I have every confidence that due scrutiny will be given to clause 11 in the House of Lords, and I have very little doubt about Mr Russell's ability to make his views known to the House of Lords in the process. It is important that clause 11 is amended in a way that satisfies all parties and addresses the legitimate concerns about it. All parties in the chamber should continue to work in the general spirit that has been demonstrated so far in the process and in today's debate.

The Finance and Constitution Committee has recommended that interparliamentary scrutiny should form a central part of the Brexit process. Any efforts to improve both the JMC and the intergovernmental relationship would be welcome.

The committee sought a wide range of views and called upon the great minds of a wide range of experts. Professor Jim Gallagher from the University of Oxford made an interesting point about a potential sunset period in clause 11, after which appropriate powers would revert to devolved Administrations—in other words, a blanket repatriation would and should have a defined and finite time period and could be seen by all Governments as a temporary measure and not a permanent one.

The committee noted and agreed that, although clause 11 is designed to be a transitional measure, that status is not currently explicitly reflected and there should be a more prescribed plan for how appropriate powers that have been repatriated from the EU will be passed on within the competences of devolution.

Clause 11 has filled many column inches in the debate, but I want to speak also about what are known as "common frameworks". The focus should move on to how the issues are interlinked.

It is inevitable that, given the nature of the subject and the need for regulatory convergence or policy harmonisation across the UK, there will be a level of political debate and, unsurprisingly, disagreement. On issues such as the common agricultural policy, the common fisheries policy, environmental strategy and energy regulation, and less obvious issues such as the digital single market, which Willie Coffey referred to, there are bound to be differences of opinion on which aspects require a UK-wide policy and which could or should be subject to regional differences. Kate Forbes discussed that eloquently in her speech. However, there are areas in which regulatory convergence and policy harmonisation are absolutely required in order to preserve the UK internal market and help the UK to prepare for future trade deals. I emphasise the potential impact on our internal market because Scotland exports up to £50 billion to the rest of the UK each year—that equates to 63 per cent of our trade.

A common framework needs common consensus. Last year, David Mundell told the Finance and Constitution Committee that a common framework

"is not a framework that is imposed by the UK Government on devolved Administrations ... it is a framework that is agreed. We have to have mechanisms by which we reach that agreement".—[*Official Report, Finance and Constitution Committee*, 8 November 2017; c 7.]

The Minister for the Cabinet Office, David Lidington, has confirmed that the UK Government will shortly publish its analysis of where frameworks are or are not needed. More important, it should detail the reasons why, because therein lies the crux of the matter. Where there is a need for commonality, it is vital that a positive case for that is put forward at the same time.

I hope that the conversation will shift to how we will benefit from any new competences at our disposal. That should include an honest discussion about where current European frameworks do not work for Scotland or the UK. It could be argued that, regardless of how we voted in the EU referendum, there is an expectation that we, as legislators, will find those opportunities in the mountains of legislation that will migrate to the UK.

It would be remiss of me to speak about the subject without speaking about finance and funding. A recommendation in the report makes the valuable point that

"The UK's net contribution to the EU will revert to the UK Government",

and funding that is currently derived from the EU, especially for devolved competences, will require a new funding path. Nothing is agreed until everything is agreed, as they say, but the committee has pointed out that important discussions must take place on the transfer of those funding obligations and commitments.

I look forward to the committee's final report as the bill progresses to the final amendment stage.

16:54

James Kelly (Glasgow) (Lab): I thank the Finance and Constitution Committee, the clerks and other officials, the witnesses and my fellow committee members, whose substantial body of work has led to our report, which has been comprehensively discussed in the Parliament this afternoon.

In assessing EU withdrawal and the transfer of powers linked to the Scottish Parliament, the legal challenge facing the UK Government is, as Pauline McNeill outlined, to ensure that anything that, logically, is in the domain of the Scottish Parliament remains in the domain of the Scottish Parliament; that any new powers that come down from the EU are devolved; and that there is a process to ensure that that devolution takes place. There has been a failure to come up with a proper legal solution, however. As Neil Findlay said, the presumption should be that the powers that are currently devolved remain devolved but, as Bruce Crawford said, clause 11 has undermined the devolution principle, because the presumption is that as powers move from the EU to the UK, they will stay at the UK level for an unlimited amount of time, as there is no timescale to say otherwise in the legislation. That has caused the anxiety.

Mike Russell is correct to point out the strength and the quality of the evidence of those who spoke to the committee, who reinforced the view that there has been a legal failure. That failure has created political problems for the Conservative Government and the Conservative Party here in Scotland. Willie Rennie encapsulated the situation well when he spoke about clause 11 being a matter of convenience rather than one of principle. How the situation has been handled has allowed members such as Ash Denham and Ivan McKee to talk about the potential constitutional crisis that clause 11 might create. Serious questions must be asked about the political handling of that aspect of the bill.

We have heard a lot from Adam Tomkins throughout the process—but not this afternoon—about the need to find a solution. When David Mundell came to the Finance and Constitution Committee, he gave the impression that he was open to a solution, which we would get when amendments were tabled in the House of Commons. However—lo and behold—no Conservative amendments were tabled and when the Labour amendment was tabled, the Government voted it down. That is a regrettable situation to be in.

The logical and most democratic place for the matter to be resolved would have been in the House of Commons during the bill's committee stage. The UK Government has made a serious error in allowing the matter to be passed to the House of Lords. The timescale is now an issue, and time is marching on. Clearly, the matter will have to be resolved in the House of Lords, but we need to see the amendments and the solution.

Linked to clause 11 and where the powers sit are the common frameworks. Again, the situation is unusual because, although people talk about their importance, they are not defined in the EU (Withdrawal) Bill. Neil Bibby made important points about common frameworks.

Another linked issue is the importance of having more robust and transparent intergovernmental relations as we move through the process of trying to resolve not only the issues around clause 11, but the overall issue around powers.

There is a serious issue to be dealt with here. The Finance and Constitution Committee has made clear its view that a resolution is needed or a legislative consent motion will not be acceptable, and I am sure that the Parliament will back that view at decision time. We have ended up in a serious situation because of the failure of the Tory Government at Westminster to resolve the issue. I urge all parties to ensure that we get a resolution, so that we can avoid a situation in which this Parliament rejects an LCM.

17:00

Donald Cameron (Highlands and Islands) (Con): I am delighted to close for the Conservatives in what has been generally a consensual debate.

The debate follows the constructive debate that we had only a few weeks ago when we discussed the Culture, Tourism, Europe and External Relations Committee's evidence on the issue. I want to continue in the same vein by reiterating Conservative members' bitter disappointment that UK Government amendments could not be tabled in the House of Commons. As I said a fortnight ago, clause 11 requires urgent and substantive

change and does not respect the devolution settlement. However, as I also said a fortnight ago, I think that both Governments will reach consensus and I am firmly of the view that the requisite amendments will be tabled in the House of Lords.

Many members commented on the House of Lords. Although the House of Lords might be the originator of further amendments, it is worth noting that such amendments must, by procedural necessity, return to the House of Commons for full debate and agreement in order for the bill to pass. It is wrong to suggest, as some members have done, that there is some kind of democratic deficit if amendments are initiated in the House of Lords; it will be open to MPs to make amendments in response.

My Scottish Conservative colleagues, here and in Westminster, are united in our view that we can make the European Union (Withdrawal) Bill, and clause 11 in particular—when it is amended, as we hope that it will be—work for both the UK Government and the devolved Administrations.

Willie Rennie: I kind of accept the member's point about the House of Lords and MPs' ability to make further amendments, but does he accept my point about time? Does he accept that time is running out and that the shorter the time that we have, the more difficult it is to scrutinise provisions effectively?

Donald Cameron: I accept that time is running out, but I remain confident that a solution will be reached.

In that regard, I want to respond to something that the minister said. A separate continuity bill could be unhelpful and would have the potential to cause fractures in the process of transferring powers to the devolved Administrations. It would also be, without doubt, a legal minefield. As was reported in the press today, there are significant questions about whether such a bill would even be within the competence of this Parliament. Let me be clear; no Conservative MSP wants to go there. Anyway, I am convinced that a continuity bill will be rendered redundant because the UK Government's desire to find a solution to the clause 11 problem will be realised.

The third reading of the European Union (Withdrawal) Bill and the noise around it should not be allowed to detract from the efforts that all sides are making, in the process of discussion and dialogue between both Governments, to reach a solution. As the Finance and Constitution Committee said:

"The Committee strongly believes that both the process for agreeing common frameworks and the actual content must be arrived at through agreement and not imposed."

Conservative members support that view, as does the Government, I am sure. Ultimately, devolution is about dialogue. To that end, we want clause 11 to be amended so that it respects this Parliament and the Scotland Act 1998. I believe that that will happen only if all the parties that are represented in this Parliament respect the process that is currently taking place.

With all that said, let me turn briefly to the committee's report. The committee has produced a formidable, significant and impressive piece of work. The report makes a number of interesting points, some of which have been covered by other members. An aspect that has been only touched on is the ability to form new trade agreements when we leave the EU. I am encouraged by the committee's examination of the role of the devolved Administrations in developing trade links with other countries.

The report notes the concordat between the UK Government and the Scottish Government, which states at length that

"The UK Government recognises that the devolved administrations will have an interest in international policy making in relation to devolved matters and also in obligations touching on devolved matters that the UK may agree as a result of concluding international agreements".

I welcome that recognition, because although the concordat is not legally binding, it provides a basis on which the Scottish Government and other devolved Administrations can play a key role in our new trade process.

Some members—Willie Rennie in particular—noted rightly that clause 7 should not get left behind when considering the general scrutiny that the committee has undertaken in its report. The committee report—rightly, in my view—notes concern about the breadth of powers that clause 7 confers on ministers.

I also welcome the report's view that more robust parliamentary scrutiny must be exercised in relation to powers over devolved competences that are given to Scottish ministers. It is important to note that, although we recognise the need to ensure that the ministers of the devolved Administrations are properly able to exercise powers, this Parliament must remain in a strong position to hold the Government of the day to account.

It is clear that much work is still to be done to ensure that legislative consent to the bill can be given by this Parliament, and we on the Scottish Conservative benches want to play a constructive role in that process.

I thank the committee for its efforts in bringing about the report and for the unified manner in which it has conducted its proceedings. As Murdo

Fraser has said, it shows this Parliament at its very best.

We all know that it is for us to get on with the job of securing a good Brexit deal for Scotland and for the UK, and we have to begin to move beyond legal technicality—important as it is in terms of devolution—and start delivering Brexit as a practical reality for the people of Scotland.

The Deputy Presiding Officer: I call Michael Russell to close for the Government.

17:06

Michael Russell: I thank the chamber for what has been a largely constructive debate.

I want to start with what is perhaps an area of disagreement. If I could offer some advice to Mr Golden, it would be that it is important in a debate, if you are trying to be consensual, to stress the things that we can agree on rather than the things that we cannot. The legislative consent motion would be, in these circumstances, a compromise on Brexit and not an endorsement of Brexit, because I am against leaving.

I entirely dispute Mr Golden's view that

"most Scots ... want us to get on with"

Brexit. There is no such thing as a good Brexit. Scotland voted against Brexit. Polls indicate that that is an even stronger view now. No good can come of it. Although I might disagree with Patrick Harvie's language, I certainly agree with his sentiment about Brexit. It is a black hole for the UK Government. It is absorbing all the time, resource and energy that could be used elsewhere.

What we are debating here is compromise—the way of reaching a compromise. That is the spirit in which most of us have entered into this debate, and I think that that has been useful. However, we should recall that we do not have to be here. The bill did not have to have clause 11 in it. We advised that it should not have it in it. We saw the bill two weeks before publication, on 6 July. I remember that it was a sweltering hot day in London, and I sat in David Davis's office in Downing Street and told him that clause 11 was absolutely unacceptable. That was two weeks before publication, but six months on, we still have no change to the bill.

I have to say—these are words that I have rarely if ever offered, but I will say them now—that Neil Findlay was right about this.

Adam Tomkins: Oh, no.

Michael Russell: Indeed. I am myself walking into a black hole here, I fear, but he was absolutely right. This is not a failure of chronology, as Adam Tomkins indicated; it is a political failure that we are still here six months on.

It is also a political failure that politicians could remedy, and they are looking for that remedy to happen. I do not doubt the bona fides of those members on the Tory side who have indicated—and I think that they have all indicated this, even grudgingly—that the reality is that clause 11 cannot stand. Yet it is still in the bill. It is also not time limited—there is no indication of that. It has not changed a jot or a tipple.

We really need that change, and that change has to take place with full democratic scrutiny. I say this with the greatest respect: that cannot happen in the House of Lords. For a start, the Scottish National Party quite rightly does not nominate for the House of Lords. This is a deeply unsatisfactory set of circumstances, but we are still seeking compromise.

We have tried to get compromise in a number of ways—for example, we have tried to offer a compromise on the issue of the single market and the customs union, and we are endeavouring to offer compromise on the withdrawal bill. We are still hoping for the best, but it is right to prepare for the worst. I noticed that Mr Cameron said that our proposed continuity bill is not helpful. I am sorry about that, but we cannot possibly get into the situation in which a legislative consent motion is refused and we have nothing—a cliff edge. There must be something to follow on, and that is the continuity bill. I have every confidence that it is within the purview and the competence of the Scottish Parliament to introduce such a bill, but we have stressed that we wish to get compromise, and that is what we are trying to get.

It is interesting to note that this Parliament has agreed to 166 legislative consent motions, which is more than any other devolved Administration has done. We have refused to give legislative consent to only one bill—the Welfare Reform Bill, in 2011. On that occasion, our refusal was opposed by the Tories and the Liberals; I say to Mr Rennie that it is all right, because I will have something nice to say about him in a moment. A majority in the Parliament, consisting of SNP, Labour and Green members, voted against giving legislative consent to the Welfare Reform Bill.

However, refusal to give legislative consent to the European Union (Withdrawal) Bill would be unique—I presume from the nature of the debate so far and from the committee's report that the entire chamber would refuse to give legislative consent to clause 11 if it was not amended. It is quite clear how it should be amended. I commend the speech of Pauline McNeill—who was, as I was, one of the original members of the Parliament—in which she talked eloquently about the Parliament's founding. I might disagree with

her on the destination of this Parliament, but there is no doubt about how important the 1980s and 1990s were. They were too valuable to be thrown aside carelessly or deliberately by Brexit zealots.

There are red lines. The main red line is that there has to be agreement on an amendment, which must respect the devolved settlement and make sure that the parties to it are treated with equity and are treated equally. If the powers are to come back, they must come back to the devolved Administrations. At that point, a decision can be made about where they should go.

We have entered into discussion about how the frameworks should be put together and about their range. I want gently to correct Jamie Greene: it is not a Cabinet Office analysis of where frameworks are and are not necessary that may be published; it is the joint work of the three Administrations, which have worked on that issue for many months and have tried to make progress on it. When we are ready to put the final outcomes of that work into the public domain—we are not there yet—they will be put into the public domain jointly or not at all. Mr Greene's mistake is symptomatic of an approach to this matter, whereby it is believed that somehow all such decisions will be and have to be made by the UK Government. They do not.

There is still ground for compromise and there is still work to be done. Many good speeches have been made, but Willie Rennie put it most accurately when he said that the clock is ticking. We need to have a debate about the words that will be suggested, and to do that, we need to see them, but we are not in that position, six months on from when we first discussed the withdrawal bill. That is a failure of politics and it is a failure of the UK Government. I hope that that failure will end soon, because if it does not, the Scottish Government will not bring a legislative consent motion on the bill to the chamber.

The Presiding Officer (Ken Macintosh): I call Adam Tomkins to wind up on behalf of the Finance and Constitution Committee.

17:13

Adam Tomkins (Glasgow) (Con): I would like to start with some thank yous. It is customary to do so, but in this case they are sincere. First, I thank the witnesses who gave evidence to our committee. I thank our clerks, who keep us right and who work incredibly hard on our behalf. I thank our expert adviser, Christine O'Neill, who had the unenviable task of explaining an arcane but critically important bill to us. I would also like to say a personal thank you to Bruce Crawford. He is a terrific convener to work with, and the whole Parliament owes him a debt of gratitude. [*Applause*.] Well, most of the thank yous were sincere.

I want to start by talking about fundamental principles, so that we can be absolutely clear about where we stand. The fundamental principle on which devolution is based—and on which devolution in Scotland has always been based—is that all legislative powers that are not expressedly reserved to Westminster are devolved to us here in the Scottish Parliament. It seems to me that that is the constitutional principle on which any successful amendment to clause 11 will have to be based.

It is also core to our system of devolution that Westminster will not normally legislate on or in relation to devolved matters without our consent. Often referred to as the Sewel convention, this is a rule of our constitutional order that is acknowledged in statute—albeit that, as the Supreme Court ruled in the Miller case last year, it cannot be enforced by the courts. It cannot be enforced by the courts, but it is nonetheless a binding rule of constitutional behaviour: breach it, and there will be a high political price to pay, as the minister just said.

That is why the committee unanimously welcomes the fact that both the Scottish Government and the UK Government want the European Union (Withdrawal) Bill to be passed by Westminster with our consent. However, the committee is unanimously of the view that in order for that consent to be given, the bill will have to be amended—in particular, clause 11 will have to be removed or replaced.

It is important to recognise that both the Scottish Government and the UK Government acknowledge all that. In the autumn, David Mundell, the Secretary of State for Scotland, said in the House of Commons that the 111 powers that we have heard so much about that fall within devolved competence, but are currently held at EU level and which will be repatriated on exit day, will be exercised either by us here in the Scottish Parliament or will be subject to a common framework to which the Scottish Government will be a party. That is entirely to be welcomed but—this is the point at the heart of the Finance and Constitution Committee's report—it is manifestly not what clause 11 says.

It does, however, offer a model, in the committee's view, of the way forward. It is important to recognise that negotiations towards that solution between the Scottish and UK Governments are ongoing, and that there is a strong desire on both sides, at official and ministerial levels, to find a solution. Progress, we are told, is good, and that is to be welcomed. I completely agree, however, with the minister and other members that it is imperative that the

necessary amendments be tabled as a matter of urgency. It is time for action now, instead of mere words.

I will say something about common frameworks. Despite the concerns that have been raised regarding clause 11, it is important to recognise that there is widespread agreement between the Scottish and UK Governments and also in this Parliament that common frameworks will be necessary in some areas.

As I have said, I welcome, and the committee's report welcomes, the progress that has been made between the UK Government and the devolved Administrations in developing an approach to agreeing common UK frameworks. In particular, we all welcome the commitment from the UK Government that common frameworks will not be imposed on the devolved Administrations, but will be agreed with them. The committee is clear that any common frameworks that are agreed, if they are binding, must apply equally to the UK and devolved Governments. That is not a detail, but an important point of principle. The minister made it in both his opening and his closing remarks, and it is there in the committee's report.

In addition, the committee makes two further points about common frameworks. First, they must be subject to parliamentary consent, and stakeholders more generally should be consulted. It is no good, in the committee's view, for frameworks to be negotiated and agreed behind closed doors. Of course, Governments must have privacy to negotiate, but there must be a role for us, as parliamentarians, to offer input.

Michael Russell: I confirm that that remains the view of the Government. As common frameworks come forward, they should be subject to parliamentary consent and the whole Parliament should be involved.

Adam Tomkins: I thank the minister for that very helpful clarification. I am glad to hear it.

Processes will also have to be put in place for governance of the frameworks in respect of monitoring, implementation and enforcement in the event that one party thinks that they are being inadvertently, or perhaps even deliberately, breached. It was interesting to hear what the minister had to say about that earlier, when he suggested that it might look like an enhanced JMC process rather than any court procedure. Whatever unfolds, the committee will continue with its close scrutiny of that and other related matters.

Finally, I want to say something about intergovernmental relations. The Brexit process, including the withdrawal bill, places an even greater reliance on intergovernmental processes than has hitherto been the case in the United Kingdom. The frankly dysfunctional nature of intergovernmental relations in the United Kingdom has been the subject of many reports by parliamentary committees in all the Parliaments on these islands, and of academic commentary, including a few almost entirely unread pieces by me. The situation must now be addressed as a matter of urgency—I do not mean that people not reading my work, but that we need to sort out intergovernmental relations.

A new structure of intergovernmental relations is required. Consideration must be given to placing such a new structure on a statutory basis, as the Finance and Constitution Committee has called for, and on establishing processes for joint decision-making. The structure should also be supported by an independent secretariat and should provide a mechanism for independent dispute resolution—perhaps along the lines that the minister sketched earlier.

Related to the issue of intergovernmental relations is that of interparliamentary relations to enhance scrutiny of intergovernmental decisions and actions. I know that that is an issue in which the Presiding Officer takes a personal interest, as do the Parliament's senior staff. The interparliamentary forum on Brexit, which Bruce Crawford and I attended in London last week, is an important development and one that is to be welcomed. I am pleased to say that, last week, the forum agreed that its next meeting would take place in the Scottish Parliament later in what I will ambitiously call the spring.

It is good to end this largely consensual debate on a positive note. The UK constitution needs a rebooted set of intergovernmental relations and it also needs to take seriously interparliamentary relations. If Brexit can act as the trigger to deliver that, it might not turn us all into born-again Brexiteers, but it might nonetheless be something that we can all welcome, whatever our views on the future of the European Union.

It is my pleasure to close the debate on behalf of the Finance and Constitution Committee. I support the motion in Bruce Crawford's name.

Decision Time

17:22

The Presiding Officer (Ken Macintosh): There is one question to be put as a result of today's business. The question is, that motion S5M-09954, in the name of Bruce Crawford, on the European Union (Withdrawal) Bill legislative consent memorandum interim report, be agreed.

Motion agreed to,

That the Parliament notes the recommendations of the Finance and Constitution Committee's 1st Report 2018 (Session 5), European Union (Withdrawal) Bill LCM - Interim Report (SP Paper 255).

Unpaid Trial Shifts

The Deputy Presiding Officer (Linda Fabiani): The final item of business is a members' business debate on motion S5M-08211, in the name of Rona Mackay, on unpaid trial shifts. The debate will be concluded without any question being put.

Motion debated,

That the Parliament welcomes the Private Members Bill introduced by Stewart McDonald MP in the House of Commons to ban unpaid trial shifts; considers that this practice infringes workers' rights and notes calls for it to be stopped; understands that young people are the group most likely to face exploitation; notes the view that, whether permanent work is offered or not, they should be paid for their work during a trial period; commends this bill, and considers that it will make a real difference for people throughout Scotland, including in Strathkelvin and Bearsden, seeking employment.

17:24

Rona Mackay (Strathkelvin and Bearsden) (SNP): I am pleased to bring this debate on unpaid work trials to the chamber and I thank everyone from across the chamber who signed the motion.

As most members know, my colleague at Westminster, Stewart McDonald MP, has introduced a private member's bill on this issue, but because it affects people from across the United Kingdom, he particularly wanted a debate in the Scottish Parliament to reflect cross-party and cross-border support for this serious issue. Those supporting the bill include the Scottish Trades Union Congress, the National Union of Students, the better than zero campaign, and the *Daily Record*, to name but a few.

The Unpaid Trial Work Periods (Prohibition) Bill had its first reading in July last year. Since then, it has gathered cross-party support at Westminster and the second reading is due to take place on 16 March this year. It has gathered nearly 100 responses and 56 per cent of people had either done a trial period or knew someone who had been offered one. Many respondents referred to the trials as demeaning, soul destroying, humiliating and desperate.

An independent report shows that unpaid work trials amount to £1.2 billion in missing wages. Let me say at the outset of the debate that unpaid work trials are not the same as work experience for students or pupils, which I think we would all agree is invaluable in helping young people to learn about the working environment and in helping them in their choice of employment.

The bill is about the complete and total exploitation of people—predominantly young

people—who are doing a job that they should be paid for. This is about employers giving false hope to many people who are desperate for a job—to people who are desperate to feed their families—in a country where bankers get bonuses and directors of failing firms such as Carillion get massive pay-offs, but unemployed young people get cheated of a fair day's pay.

This is about the shameless exploitation of people for free labour and, as we know, the shifts are often used to cover staff shortages and save money. However, we should recognise that many responsible employers already pay their trial shift workers and that should be applauded.

Neil Findlay (Lothian) (Lab): I ask that we be careful about the language that we use, because I do not think that employers should be applauded for paying; it should be absolutely normal that people get paid for the work that they do.

Rona Mackay: I accept that point. The member is clearly right about that.

This is Scotland 2018, not Victorian Britain. I will give a few examples of what we are talking about here. There was the headline case of a young man with Asperger's syndrome being dumped by B&M after 15 hours of free work. He was on the work rota for the following weeks when, out of the blue, he was told to go. He said:

"If it was really because I couldn't do that work, then fine, but they should have told me that during the work trial. I was led to believe I had the job."

I find his treatment disgusting and cruel.

A chef proprietor of an upmarket restaurant in Edinburgh's new town failed to pay hospitality staff for working interviews that lasted between two and four hours. Past and present staff members confirmed that the chef was using dozens of unpaid trial shifts per week to cover busy periods and was using desperate young workers as a free cleaning service. Here is my tip for him—pay your workers and stop exploiting young people.

Then there was the mother of a young man, who said:

"My son worked in a well-known bakery for six weeks trial, for no wages and no job. He eventually left."

The size of the business does not matter when it comes to such exploitation. A leading discount supermarket is one of worst offenders; it admits to having 150 youngsters per store coming in for unpaid work trials across the UK. One girl said:

"I went to one of these and it is actually slave labour—they use you to get the shop ready for opening time and get annoyed if you make any mistakes, even though you haven't been trained to do the job."

Rachael, from my constituency in Bearsden, told me:

"I did two unpaid trials of five to six hours each for a local restaurant, who then strung me along for weeks with the promise of shifts before ending contact."

It has to be said that the hospitality industry is a terrible offender. I am grateful to my friend at Unite Scotland, Bryan Simpson, who worked in the trade, for supplying me with some shocking statistics of some of the work practices in that industry and for informing me of the excellent campaigns being run by Unite, such as I'm not on the menu, which particularly addresses sexual harassment, which is rife within the industry.

Unite Scotland has launched the fair hospitality campaign with a charter that codifies the reforms required to transform the hospitality sector for the benefit of the workers within it. As well as getting rid of unpaid trial shifts, the reforms include the implementation of the real living wage and rest breaks, giving 100 per cent of tips to staff, providing paid transport after 12 am, an end to discriminatory youth rates and, crucially, trade union recognition.

Unpaid work trials are an outrage and can never be justified, but what can we as MSPs do about it? We can make sure that the MP in our constituency prevents Stewart McDonald's bill from being talked out in Parliament and turns up to vote for it. Members of the public who are watching or listening to the debate can write to their MP and ask them to support the bill and can contact Stewart McDonald at Westminster to lend him their support. Above all, we must get the message out that, in 2018, working for nothing is simply not acceptable. I ask those employers who think nothing of asking young people to do that to stop and ask themselves whether they would want their sons or daughters to be treated like that. If it is not good enough for their sons or daughters, it is not good enough for anyone else.

Although there is much more to be said, I will finish now, because I am keen to hear members' speeches.

17:31

Dean Lockhart (Mid Scotland and Fife) (Con): I thank Rona Mackay for bringing this important debate to the chamber.

In Scotland and across the UK, we rightly pride ourselves on the ease with which people can set up and run a business. It is easier to do that in the UK than is the case anywhere else in Europe. Partly as a result of that, employment across the UK is at a record high and unemployment is at a record low. High levels of employment are obviously good news for workers. However, the debate is about something that is not so good and that we need to address, which is the practice of having someone work for a prolonged period

without receiving any pay on the basis of a so-called unpaid trial shift. That is simply not fair. Rona Mackay gave a number of good examples of the practice. The problems that are associated with unpaid trial shifts are highlighted in the Middlesex University London and Trust for London report "Unpaid Britain: wage default in the British labour market".

Clare Haughey (Rutherglen) (SNP): The member mentioned "prolonged" unpaid trial shifts. Does he agree that people should be paid for working for any length of time?

Dean Lockhart: If someone works in an employment situation for any period, they should absolutely be paid. However, as I will come on to later, there might be circumstances in which it is appropriate to have a brief trial period—however long it might be—to assess a candidate's skills and suitability for a job, but that is not in any respect the same as the unacceptable examples that Rona Mackay highlighted.

The report highlighted the unacceptable features of the practice. As we have heard, as a result of the practice, a total of £2.1 billion is lost each year in wages, along with £1.5 billion in holiday pay. The practice of not paying a salary impacts on workers' cash flow and has resulted in 23,000 people not being able to buy food when they need it.

The practice is clearly unacceptable. Employers should adequately pay their staff. Unpaid trial shifts should not be used to cover for inadequate workforce planning or as a way to secure labour on the cheap. One of the main challenges that we face in addressing the issue is that the law in the area is unclear. Work trials per se are technically not illegal in the UK. The Advisory, Conciliation and Arbitration Service has pointed out that the law is not clear on how long a trial has to be before it becomes work and therefore has to be paid.

I hope that, when we see the detail of the bill, we will find that one of its objectives is to provide clarity on when a limited trial shift may or may not be appropriate. Further clarity on the law would be helpful, not just for employees but for legitimate employers who might want to assess, for a very brief period, the skills of a candidate who is applying for a job.

Rona Mackay: Does the member agree that, regardless of the law, employers have a moral obligation to pay their workers, no matter how long they work for?

Dean Lockhart: I agree that if someone is in a work or employment position they have to be paid—that is the law. What we are talking about are circumstances in which it may be appropriate to have a trial of the candidate's suitability for that job.

Ruth Maguire (Cunninghame South) (SNP): Will the member take an intervention?

The Deputy Presiding Officer: The member is just finishing.

Dean Lockhart: Let me get straight to the point. There may be examples when a brief unpaid trial period could be legitimate, but only in very limited circumstances. One of the key questions that the bill will face is how to deal with how prescriptive or detailed any regulations should be in relation to whether trial shifts are appropriate in some circumstances. Other countries—Australia, for example—have introduced a principles-based approach. They have set out a number of principles that have to be adhered to if a trial period is to be recognised as legal. That is one avenue that the bill may pursue.

Let me conclude. Whatever guidelines or regulations are proposed, there is consensus on the general principle that workers should not be asked to work for any prolonged period without pay. They should be paid for any period beyond what is reasonably required for them to demonstrate their skills for the job. If an employer wants to assess a candidate's suitability further after a trial period, they should employ the person as a casual employee for a probationary period and pay them as required under law.

In conclusion—

The Deputy Presiding Officer: No—you have already concluded, Mr Lockhart.

Dean Lockhart: —I thank Rona Mackay for bringing the motion to the chamber.

17:36

Clare Haughey (Rutherglen) (SNP): I remind colleagues of my entry in the register of members' interests as a member of Unison. I congratulate Rona Mackay on securing this important debate. I, too, pay tribute to my colleague, the MP for Glasgow South, Stewart McDonald, for his terrific work in his campaign to scrap unpaid trial shifts.

As a committed trade unionist, I have fought passionately against discrimination and unfair working practices throughout my professional life. I was proud to be a divisional convener in my workplace for Unison, the trade union that I am still a member of today. As a member of the Scottish Parliament, I have continued to be an advocate for the rights of workers. I used my first speech to criticise the pernicious Tory Trade Union Act 2016 and have the privilege of chairing the SNP Holyrood trade union group.

When we are made aware of issues such as the use of unpaid trial shifts, it is a real source of frustration that we cannot do anything about them, legislatively, in this Parliament, because employment law is still reserved to Westminster. The blocking of the devolution of those powers by Opposition parties during the Smith commission process has proven to be a significant miscalculation. However, that is an argument for another day. Stewart McDonald's private member's bill has the backing of MPs from all parties, and it is absolutely vital that they turn up in numbers and vote for its progression on 16 March.

Most people do not object to employers offering trial periods, as they are a legitimate way to assess a candidate's skills and suitability, but it is at this point that I have to disagree with Dean Lockhart: any work trial should be paid. I would like to know how long Mr Lockhart would continue in a work trial before he expected to be paid. Would he like to advise the chamber? No.

Similarly, work trials give an individual the opportunity to assess whether a workplace suits them. What is objectionable is the fact that work trials are often unpaid. Most of us will be aware of the example of the tea firm Mooboo, which was found to be asking trainees to work for a full 40 hours for free—a full week's work with not a single penny in pay. Rightly, there was widespread condemnation of the company, with a petition signed by more than 40,000 people urging it to drop the policy. Thankfully, it agreed to do that.

Since launching his bill, Stewart McDonald has heard from people who suspect that some businesses are using unpaid trial shifts to plug staffing shortages, with no intention of ever offering the applicant the job. That cannot be right and it should not be legal. If someone is required to work a trial period before securing a position, no matter whether or not they are offered the job at the end of it, they should be paid for that trial period.

Monica Lennon (Central Scotland) (Lab): I fully support Stewart McDonald's bill and wish him every success with it in the House of Commons. I had a constituent in Hamilton who was in Glasgow for an interview and was asked to stay on. She ended up there for another couple of hours until her dad came and dragged her home, saying, "You're not working here." Does Clare Haughey agree that one solution might lie in local authority licensing rules? The practice of unpaid trial shifts seems to be particularly prevalent in hospitality, among young people working in hotels, bars and so on. Is there more that we can do with the powers that we have to address the issue at a local level?

Clare Haughey: I would support any strengthening of employment laws in Scotland to protect young people in particular because they are particularly vulnerable to being exploited in that way.

Stewart McDonald's research showed that more than 55 per cent of people had either been offered an unpaid work trial or knew someone who had. Last year's "Unpaid Britain" study estimated that £1.2 billion in wages remains unpaid in Britain each year. Unpaid work trials contribute to that figure. Unpaid trial shifts are clearly a prevalent practice. They are demeaning and exploitative, and legislation is required to offer people better protection in the workplace.

It is disappointing that no Conservative MSP has yet signed Rona Mackay's motion, which is surprising considering that Theresa May insists that the Conservatives are the party of workers.

Dean Lockhart *rose—*

The Deputy Presiding Officer: Ms Haughey is just closing.

Clare Haughey: Today, I urge Conservative MSPs to lobby their counterparts at Westminster to support Stewart McDonald's bill.

With Brexit on the horizon, many of our workers' rights could soon be eroded, so it is refreshing that a bill has been introduced that would extend protections, not cut them.

During my first speech in this Parliament, I said that

"fairness means access to fair work for fair pay".—[*Official Report*, 2 June 2016; c 41.]

I fully stand by those remarks. No one should be deprived of a fair day's pay for a fair day's work, which is why I fully support the bill to ban unpaid trial shifts.

17:41

Johann Lamont (Glasgow) (Lab): Usually, at this point, I say that I am very pleased to participate in the debate, but in these circumstances I am absolutely furious that we are having to have the debate at all. I congratulate Rona Mackay on securing the debate and on her speech, and I congratulate Stewart McDonald MP for taking forward his bill. His rigour in taking it forward and trying to build cross-party consensus has been admirable. Our own Martin Whitfield MP—a Labour MP in East Lothian—is a co-sponsor of the bill.

I am furious because, although I hear what has been said about its being a complicated area of law, unpaid trial shifts are morally unacceptable. On one level, we do not need legislation to tell us that it is unacceptable to bring people in, give them work to do and then not pay them at the end of it. The fact of the matter, though, is that

something being morally unacceptable is clearly insufficient. All power to Stewart McDonald's elbow for ensuring that the law is clarified in that regard. It is an important issue, and this is an important opportunity to shine a light on something that should be seen as utterly unacceptable. Sadly, for too many young people, it is seen as just the way it is.

Legislation already exists that is routinely ignored, particularly in the hospitality industry, in which there are issues about access to tips, access to proper pay and so on. Legislation is not enough, but it is a good starting point.

Although young people are disproportionately affected by trial shifts, precarious work is endemic. This is yet another element of an increasing number of workplace practices that systematically and unashamedly exploit people who seek work. We need only look at what happens in some companies when people are sent there by the jobcentre. Such companies have what is known as a revolving door—they know that people who are sent to them by the jobcentre will not last more than a fortnight, but their business model is based on securing labour that comes through without expecting to stay.

Unite the Union and the better than zero campaign have spoken about that practice and about the cynicism of companies that offer shifts but have no intention of giving somebody a job. Some companies—even if they do plan to give someone a job—see how many shifts they can get out of the jobseeker first. That should appal us all.

We must respond to the testimony of the young people from whom we have received briefings and to the plight of the many other young people whose voices are not heard but who are routinely treated in that way. The issue demands a response from this Parliament as well as from Westminster.

On the issue of precarious work, we are told that it is about choice but we all know that "Take it or leave it" is no choice at all. Too often, whatever conditions are placed on their work—whether it is trial shifts or no guarantee of work—young people are told that it is a matter of choice. We need to be careful not to elevate some of these work practices to the status of choice. One person in 100,000 might support a zero-hours contract as it is currently deployed as a matter of choice, but all the choice is on one side.

We should reflect that the issue is about the utter imbalance of power in the workplace. Good employers have resisted taking such measures and should be rewarded for good practice. We should denounce exploitation, but it is important to recognise that there are employers who do not behave in that way. We should also understand that the economy of this country cannot be predicated on very poor practices, with untrained staff doing a job in circumstances in which they get no reward or encouragement for working hard, despite their best endeavours. We want an economy that is fairer than that.

I very much support the legislative proposals, but we need to look at what we can do now. Exploitation should not be rewarded. No business that uses exploitative work practices should be given money by the Government or support by Scottish Enterprise or the other enterprise agencies. It should not be allowed access to the small business bonus if it exploits its workers.

The Deputy Presiding Officer: Can you come to a close, please?

Johann Lamont: As I have said before, we should not define any work that exploits young people as a positive destination. We know that we can do both things.

The Deputy Presiding Officer: Can you come to a close, please?

Johann Lamont: We can support the legislation, but I ask the minister, in summing up, to confirm that he will be willing to look at how he can use his power not to reward bad practice but to eradicate it.

The Deputy Presiding Officer: I remind members that there can only be one conclusion to a speech and that I asked for speeches of up to 4 minutes. I have been generous when members have taken interventions but time is running short.

17:46

Ross Greer (West Scotland) (Green): Like colleagues, I am grateful to Rona Mackay for giving us the opportunity to debate the issue in Parliament.

There have been some really exciting developments in Scotland in recent years, such as the living rent campaign against dodgy landlords and the better than zero campaign, which have been led by young people who are being exploited by an economy that is designed to take from them and give to those who already have more than they need. Those campaigns—particularly better than zero—have shown the power that young, exploited workers have when they come together not just in individual workplaces but as a movement to fight for their rights.

The better than zero campaign has had some huge wins, such as over the G1 Group, a notorious employer. That victory was achieved only after a campaign that included direct action, lobbying and negotiation. The campaign secured an end to staff having to pay for their own

uniforms, an end to having spillages or breakages docked from their wages and an end to zero-hours contracts. Of course, the G1 Group tried to roll back from the promises that it had made, but it knows that young workers are ready to shut G1 down again if needed. That is exactly the kind of mass movement of workers that we need in an era of economic exploitation.

Nevertheless, that treats only the symptoms and not the cause. It is the responsibility of parliamentarians to treat the cause. The better than zero campaign should not have to fight so hard for basic justice for workers. The reason that it does is that the UK has the worst and weakest employment laws in western Europe.

Unpaid trial shifts are not clearly addressed in UK law at present. It is not enough to say that the law mandates employers to pay staff once a trial becomes actual work, because, as Dean Lockhart fairly highlighted, there is no black and white separation of the two areas. There is no clear definition of when a trial becomes work. Bad bosses love grey areas of the law where they can exploit often struggling or desperate people to maximise their own profits. That is exactly what Stewart McDonald's proposed bill would, I hope, bring to an end, which is why it is backed by the better than zero campaign and the STUC.

We know about the link between low pay and no pay—the link between low-paid work and poverty. Those who are in low-paid work are often more likely to be in unreliable and temporary work, so they are far more likely to often be out of work entirely, unable to pay rent, put food on the table or cover heating bills. As MSPs, we are all familiar with that situation, as those cases fill our inboxes and appear at our surgeries every week.

In that position, someone is far less able to say no to unpaid trial work that has the potential to lead to paid work at the end of it. As organisations such as the Joseph Rowntree Foundation have repeatedly shown, that makes it near impossible for those people to break out of a cycle of low pay and no pay. The person's energy is all spent looking for work and struggling to get by while they are out of work or in unpaid work. That puts all the power in the hands of exploitative employers and shows the red herring of its being a matter of workers' choice. When someone is struggling to stave off eviction because they cannot cover their rent and is struggling to feed themselves and their family, what choice do they have when the potential for paid work is dangled in front of them?

The UK's welfare system only makes the situation worse. As MSPs, we are well aware of the disaster that is universal credit, given that it takes over a month from making a claim to receive a payment. Furthermore, making the claim requires a lengthy and exhaustive application process for which significant amounts of evidence are required. Many people simply cannot afford to wait so long, so they take the risk of unpaid work in the hope that it will quickly become paid work. However, we have heard of many instances of unpaid work not resulting in paid work. Examples have been given by members, including by Rona Mackay, who spoke of the infamous case of the young man at B&M who was dangled along for a significant amount of time before being told to go home. Such people are left even further away from a pay cheque or any money at all than they otherwise would have been and are closer to, or deeper into, poverty.

We should be clear that it is all about maximising profits for the employer. Work creates wealth, and the expectation that the worker who creates that wealth will share in it should be the norm. However, that does not happen in the cycle of unpaid trial shifts. Surely, whether members rest at my end of the political spectrum or at Dean Lockhart's, we should understand that that is wrong. I hope that MPs across the west of Scotland will support Stewart McDonald's bill and that MSPs across the country will contact the better than zero campaign to see whether they can help to combat bad bosses in their area. Workers are the real wealth creators in our society and, in the UK of the 21st century, they deserve to know that they will receive fair pay for fair work.

The Deputy Presiding Officer: I still have four members wishing to take part in the open debate, so I am minded to accept a motion without notice to extend the debate by up to 30 minutes, although I give due warning that the extension will be nowhere near 30 minutes.

Motion moved,

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

Motion agreed to.

The Deputy Presiding Officer: I call Tom Arthur, to be followed by Jamie Halcro Johnston.

17:51

Tom Arthur (Renfrewshire South) (SNP): Thank you, Presiding Officer, and I promise that I will not take any more than four minutes, which is rare for me.

I thank my colleague Rona Mackay for bringing her very important motion to the chamber and I pay tribute to and thank my SNP colleague Stewart McDonald for his vigorous pursuit of the issue and introducing his private member's bill. All MPs in Scotland and, indeed, across the UK should get behind the bill, regardless of where they are on the political spectrum, as Ross Greer rightly highlighted.

I declare an interest as a member of the Musicians' Union and as a former musician, although I do not know whether a musician can ever be a former musician. Where music leads, the rest of the economy tends to follow. I do not think that any working musician is not familiar with being asked to work for free. Indeed, musicians often view working for no pay as the only path to success. The Musicians' Union surveyed its members in 2015 and found that 60 per cent—30,000 members—reported that they had worked for free. Interestingly, a research survey in 2016 by the Association of Independent Professionals and the Self-Employed and the Freelancer Club suggested that 20 per cent of respondents identified working for free as standard practice in their industry.

I highlight that practice because it has become the cultural norm and culturally acceptable. If young musicians or bands starting off are subject to an unscrupulous promoter or agent who encourages them to perform in certain venues or take on certain gigs for free with the promise of more paid work down the line, they are likely to accept that. However, it is very often the case that the work does not materialise, or the promised rates do not materialise. Our musicians have been familiar with that for quite some time. I pay tribute to the Musicians' Union for its work not play campaign, which has been highlighting the issue for some time.

I will highlight another couple of points from the survey by the Association of Independent Professionals and the Self-Employed and the Freelancer Club, because there is some interesting data on those people who are working unpaid. The majority of the respondents to the survey—44 per cent—fit into the 16-to-29 age bracket. Shockingly, many of those freelancers had up to seven years' experience in their trade. The issue therefore affects not just young, inexperienced people; people who have real skills and experience in their area are still working and not being paid. It is very telling that a significant proportion—67 per cent—were women. When we look at groups who are affected, we know the challenges that we face between having a more equal economy and addressing the gender pay gap. Given that we are celebrating young people this year, there can be no more appropriate year than this in which to seek to end unpaid trial shifts.

Dean Lockhart suggested that such shifts might have merit if they are undertaken for a limited period. To an extent, that is how the problem started in music. A culture develops and then expands, and it becomes the norm to end up with 20 per cent of people working—

Dean Lockhart: Will the member give way?

Tom Arthur: Certainly.

The Deputy Presiding Officer: Quickly please, Mr Lockhart.

Dean Lockhart: I have a very quick question. Does the member suggest that we ban all trial shifts on that basis?

Tom Arthur: There is an option to have a probationary period, which is perfectly legitimate. People can have such a period, in which they are paid a wage as anyone else would be and if, at the end of that period, they do not meet the requisite standards, action can be taken. Such laws already exist. People who work should be paid.

My final point is that the issue speaks to us about the broader fair work agenda. Another term that has been imported from the world of music into the general economy is "gig economy", which is just a fancy way of describing insecure, low-paid and precarious work. With the challenges that we, as an economy, will face in future, with the rise of automation and the hollowing-out of middle-income and middle-skilled jobs, now is the time to strengthen workers' rights. If we do not do so, we will face a future in which more and more people will be in a position that far too many musicians have found themselves in, which is one of insecure work and all the stress that comes with that.

The Deputy Presiding Officer: So much for promises, Mr Arthur.

17:56

Jamie Halcro Johnston (Highlands and Islands) (Con): I am not going to make such a promise, for that reason.

First, I congratulate Rona Mackay on securing the debate and highlighting the cases that she did. I extend my congratulations to Stewart McDonald on introducing a private member's bill in the UK Parliament on this important issue.

We have already seen a level of public debate around unpaid work trials, with some examples having come to light. Many of the instances that we have heard about trial shifts being abused are in the retail and hospitality industries, which are sectors that are represented disproportionately in tourism-focused economies such as the region that I represent. It is often a hidden feature of the economy, too. As Mr McDonald mentioned, we are often dealing with low-paid workers, people coming out of spells of unemployment and industries in which trade union membership is not commonplace. As a consequence, the abuse of work trials is most commonly perpetrated against the very people who are found at the sharp end of sharp practices in employment relations. It seems barely conceivable that it can take a month to assess someone's suitability for a job.

Neil Findlay: Perhaps the member was going too fast for me there, but he seemed to suggest that he supported people organising themselves in trade unions. Why did his party bring in the Trade Union Bill?

Jamie Halcro Johnston: We are changing the subject slightly there. As the former general secretary of a trade union, I recognise the role that trade unions can play, but that does not necessarily mean that, in every case, trade unions are right.

It is true that many employers are moving away from the traditional 45-minute sit-down interview, with a rise in day-long assessment centres, practice tasks and more probing questioning now being seen as giving a better reflection of an applicant's behaviours and abilities. However, in the case of unpaid work trials, the applicant—if we can use that term for someone who has effectively been working in a job for several weeks—is not just experiencing a rigorous interview but undertaking the duties of an employee in a workplace.

The cost can be considerable. Not only is a person deprived of an income for the work that they are undertaking; there is also the potential loss of opportunities that might otherwise have been taken up over that period. Throughout that time, the possibility of a job is continually dangled in front of a person—or perhaps more than one person is competing for the same position. At the end, the prospective employee might find himself or herself still unemployed. It is tempting to say that the applicant is then landed back where he or she started, but that is not the truth. In reality, they have been set back.

The law rightly limits attempts to restrict and bind people's labour when businesses step beyond a level that is seen as legitimate. For example, restrictive covenants must be proportionate in order to be enforceable, as the courts recognise not only an individual's interest but a public interest in not standing in the way of people taking on work.

Through the same lens, we can see the problem of individuals effectively being taken off the job market for a month, with no promise of any work. Some employers have pointed out that employees have resources expended on them during trial shifts—staff time, induction and so on—which they suggest make those shifts not particularly productive in a business sense, but that seems to miss the point. Even when an applicant is successful, the employer has offset the cost of the normal induction training that is a part of any job. That, too, is a clear disadvantage.

Mr McDonald's focus on the area is commendable. There are certainly some details that require to be clarified in his proposed legislation, several of which he himself has highlighted. One is how earnings from a work trial will interact with out-of-work and other income-related benefits and, significantly, whether there will be a need to reapply if an applicant is unsuccessful. Another will be whether some flexibility may be found. We know instinctively that there is a difference between placing an applicant in a workplace for a few hours and placing them for a few weeks. I touched earlier on the fact that there is already a move among recruiters towards the sort of assessment processes that can take the best part of a day.

In any case, I am sure that I will be joining members from across the chamber in keeping a close eye on the progress of the bill, and I look forward to it being debated.

18:00

Ruth Maguire (Cunninghame South) (SNP): I thank my colleague Rona Mackay for bringing this important topic to the chamber. Thanks are also due to Stewart McDonald MP for his work in building cross-party consensus on the issue at Westminster, and I take this opportunity to reiterate my full support for his private member's bill to ban unpaid trial shifts.

It is particularly appropriate that this debate is taking place during the year of young people because, as the motion points out, our young people are most likely to be exploited in this way. At the very beginning of their working life, young people who are ready and willing to work are being treated with contempt and disrespect and left disillusioned and disappointed about the world of employment. Such exploitation is indefensible. It takes advantage of young people's desire and need for employment to manipulate them into working for free. Working for no reward is the very definition of slave labour and should have no place in a modern Scotland.

We will all have heard stories of exploitation happening on unpaid trial shifts, and I thank Unite and the STUC for their briefings in advance of today's debate, which include case studies of young people who have been exploited through unpaid trial shifts. One girl describes doing two unpaid trial shifts, of five to six hours each, in a restaurant, with no job at the end of it and no remuneration. Another case study tells how a young man who did an unpaid trial shift in a local restaurant not only was not paid for his time but was just left behind the bar with no direction. The manager did not even speak to him. My own daughter once undertook a trial shift at a bar, only to be told afterwards that they were looking for someone with bar experience—something that

she had pointed out in her application she did not have.

None of those examples is acceptable and the situation must change. Trialling people before hiring them is completely legitimate—that is what probation periods are for—but it has to be done fairly and respectfully. That means that, at the very least, young people must be paid for their time—whether they are offered a job at the end of the trial or not. More than that, it should mean treating them fairly and with respect throughout their trial. They should be given proper training and induction before being set to work and they should have frequent breaks, in accordance with the law. The employer should ensure that they are properly fed and watered and that, if they are working late hours, they get home safely.

Those things are not radical and do not place a great burden on a healthy business. They are simply about treating young people with common decency and basic fairness—something that I am sure no one in the chamber would disagree with.

The good news is that we can all play our part in changing things. As consumers, we have a lot of power. We can put pressure on businesses by refusing to give our custom to those that exploit young people.

Johann Lamont: I absolutely agree that we need to know where the examples of bad practice are and vote with our feet, but does Ruth Maguire agree that there are also things that the Scottish Government could do and that, as an organisation with money, it could use its authority to insist that such practices do not continue?

Ruth Maguire: Everyone should do everything that they can, but unfortunately money talks, so we need to spend wisely, whether we are individuals or organisations.

As consumers, we can put pressure on businesses by refusing to give our custom to those who exploit young people through unpaid trial shifts and poor working conditions. Those of us in a position to do so can expose such businesses and make sure that as many people as possible know what is going on behind closed doors. We can encourage the young people in our lives to join a trade union and, as MSPs, we can work with local councillors to embed the fair hospitality charter within the required business practices of local licensing authorities.

As is the case when it comes to discussing the living wage or supporting flexible working, treating workers with fairness and respect is not just about being morally right; it is good for business, because workers who feel valued and supported will be more productive and more committed to their workplace.

Banning unpaid trial shifts is absolutely the right thing to do. I fully support the motion.

18:05

Neil Findlay (Lothian) (Lab): I thank Rona Mackay for bringing a very important debate to the chamber and declare my membership of Unite the union.

The reality is that, in Scotland and across the UK, far too many people and their families are struggling because of low pay and job insecurity, and there are repeated attacks on their rights. I recently carried out a survey of hospitality and food sector workers in my area. Poverty pay, the failure to consult on shift changes, zero-hours contracts, companies taking tips, and staff having to find their own way home after working late are just some of the ways in which workers are being exploited or put in danger. I received comments back from people who were employed in a wide variety of workplaces, from Gleneagles hotel to J D Wetherspoon, Sports Direct, Ryman, Starbucks, Tesco and many others. There is a prevalence and normalisation of the use of unpaid trial shifts, which are among the most pernicious ways in which workers are being exploited, often by some of the biggest and most profitable businesses on the high street.

The number of companies that use the shifts is growing massively. Twenty-five per cent of the people who responded to my survey had been asked to do an unpaid trial shift, and 52 per cent were on a zero-hours contract.

People have mentioned the case of Craig Robertson. That young man's auntie, who is one of my constituents, contacted me about his situation. People have said that he had to do three separate five-hour shifts at B&M in Wishaw. B&M refused even to write back to me after I wrote to it to ask what had happened. If it is willing to exploit a young man with Asperger's syndrome, it makes us wonder what else it is willing to do in order to maximise its profit. That is absolutely despicable. One employer potentially has an employment offer for Craig later in the year, but if any employers are listening to this debate and can offer him a job, please get in touch. All that he wants is the chance to work.

I have been working with members of my party, Unite the union and Bryan Simpson and others from the better than zero campaign to target Livingston shopping centre and promote Unite's fair hospitality charter. Livingston is the fast-food capital of Scotland. Hundreds of school pupils and students there work for some of the biggest and most profitable companies in the food and hospitality sector. What type of introduction to the world of work is having to do an unpaid trial shift

for half a week or an unpaid trial week? When many of those young people get a job, they struggle to get by on a minimum wage of £4.20 an hour for a 16-year-old. For some, the bus fare is more than the wage for an hour or two.

Underbelly, which is the company that runs Edinburgh's hogmanay celebration, sought to employ 300 volunteers to work a night shift for free on one of the busiest, coldest and most profitable nights of the year. The work at the new year celebrations was presented as a great "development opportunity" for volunteers. What utter garbage: it was plain and simple exploitation to maximise its profits. Working with the better than zero campaign, Unite the union and the STUC, we embarrassed the company into a U-turn on many of the jobs. That was a publicly funded event—it got public money. That should never happen when we finance such events.

I applaud Stewart McDonald's bill and support him in taking it forward. A fair day's work deserves a fair day's pay. If we allow young people to be exploited, companies will come for the rest of the workforce—indeed, they already have in many sectors.

I say to Mr Lockhart that I can see him saying to a five-year-old boy in the 19th century, "Listen, wee man. Get up that chimney and, if you're any good at it, we'll pay you in a couple of weeks' time."

Dean Lockhart: I clarify for the member that we agree with the general principles of the bill. Stage 1 comprised three lines of text. Does Mr Findlay have more detail on the bill's content?

The Deputy Presiding Officer: I ask that Mr Findlay closes after he responds.

Neil Findlay: It is all right—I am finished.

The Deputy Presiding Officer: Could you stand up and say that, just to keep everything right?

Neil Findlay: I am sorry, Presiding Officer. I do not have any more details on the bill. All that Mr Lockhart has said is that he is willing to allow exploitation to continue.

Dean Lockhart: I did not say that.

Neil Findlay: Mr Lockhart is saying that he would be willing to continue with a situation in which people are not being paid for being employed. To me, that is exploitation; to him, it might not be.

The Deputy Presiding Officer: I think that we will close the open debate now.

Ross Greer: On a point of order, Presiding Officer. I apologise for the interruption, but I am conscious that other members have declared their trade union memberships. I did not do that so, briefly, I declare that I am a member of the National Union of Journalists.

The Deputy Presiding Officer: That is not really a point of order, but I will let you away with it, as it was a point of clarification.

I call Jamie Hepburn to respond to the debate. You have about seven minutes, please, minister.

18:10

The Minister for Employability and Training (Jamie Hepburn): Presiding Officer, I must say that you have been remarkably uncharacteristically generous this evening, so I will make no promises whatsoever about sticking to my time. I am sure that you would not have expected me to do so.

I, too, welcome the debate. It is important that we debate the topic in the chamber, so I thank Rona Mackay for having secured the debate. I fully support Stewart McDonald MP's private member's bill on unpaid trial work periods, which is very much in alignment with the Scottish Government's fair work agenda. He is to be congratulated for introducing it.

Rona Mackay, Ross Greer and others mentioned the better than zero campaign, which is being led by young members of Unite. I understand that that campaign has been crucial in informing Stewart McDonald's bill. I congratulate the union on the activities that it is undertaking. We support the better than zero campaign through the trade union modernisation fund. I wish the union well on all its endeavours.

No one should be put in the position of having to choose to work for free for fear of the risk of not working at all. Unpaid work trials are thought to be most prevalent in the retail and hospitality sectors, with young people and migrants being most affected, so I welcome the fair hospitality campaign and its focus on that sector.

Although it is difficult to quantify the number of cases, it is clear from what we have heard this evening that unpaid work trials are a real practice. Tom Arthur and, indeed, Neil Findlay, were correct to caution against the danger that such practice becomes normalised, so it is important that we focus on the issue.

It is particularly important that the state acts responsibly in this area. On that basis, we should focus on the Department for Work and Pensions's voluntary unpaid trial programme. Jobcentre Plus actively promotes the idea of unpaid trials in the business environment through its website. Aspects of that promotion are of particular concern to me—not least, the language that is utilised. When talking about the benefits of the work trial, they

extol the virtues more to the employer than to the potential employee. That is of particular concern to me because Jobcentre Plus should be about getting people into fulfilling and meaningful work. On the benefits of the programme to employers, it says:

"it's risk free—you can try the person out before making a final decision".

Not only is that somewhat demeaning and disrespectful to that potential employee, but it shows little serious commitment to the long-term employment prospects of individuals who take part in such initiatives.

In November 2017, I wrote to the former Secretary of State for Work and Pensions, David Gauke, not only to set out the Scottish Government's support for Stewart McDonald's private member's bill, but to raise our concerns about the manner in which Jobcentre Plus promotes the programme. In my letter, I made it clear that I understand that employers are expected to run work trials in a positive way and to offer the job unless the participant proves to be unsuitable. I will not get drawn too far into how that can be done in practice; we have heard concerns about it. I said that I would be grateful to receive statistics on the number of work trials that have led to permanent employment and the number that have not led to employment and the reasons for that. It is of considerable concern to me that I have had no response thus far. I look forward to Mr Gauke's successor providing me with the detailed information that I requested.

Johann Lamont: If the minister were able to establish which companies are being exploitative in the way that we are discussing, would he be willing to say that the Scottish Government will not allow those companies to access its support in relation to procurement, apprenticeships or whatever?

Jamie Hepburn: I was going to go on to set out our clear and firm commitment to fair work practices. I first need to secure the information that the member mentioned and then to analyse it and assess what it means in practice. Thus far, I have not been furnished with the information.

My perspective is that ultimately we require a change in employment law—

Johann Lamont: We can do both—

Jamie Hepburn: A change in employment law is the fundamental way in which we can deal with the matter, which is why we are debating—

Neil Findlay: Will the minister give way?

Jamie Hepburn: Give me a second. Of course, I will give way.

That is why we are debating Stewart McDonald's bill. I understand Johann Lamont's point that there is a moral imperative for employers not to act in the way that we are discussing, and I agree with her to some extent. The Scottish Government recognises that moral imperative; we do not act in that way—

Johann Lamont: You award contracts—

Jamie Hepburn: I find it confusing that Ms Lamont—from a sedentary position—is disagreeing that legislation is required. I thought that that was why we were having the debate. [*Interruption*.]

The Deputy Presiding Officer: Excuse me, minister. For all that this is a members' business debate, which is much more informal than business during the day, I remind all members that they should still speak through the Presiding Officer. The Presiding Officer is here for a reason.

You were considering a request for an intervention, Mr Hepburn. Can you decide to which member you will give way?

Jamie Hepburn: I was going to take Mr Findlay's intervention, but just before I do so let me finish my point. I am clear that there is more that we can all do and consider doing, but fundamentally I think that the issue requires a change in the law.

Neil Findlay: Let us put aside change in the law and think about the powers that we have in the Scottish Parliament. Will the minister agree, very much on a point of principle, that where we know that companies are exploiting young people, whether they do so through unpaid trial shifts or other employment practices, the Government should not furnish those companies with public money?

Jamie Hepburn: We have set out our clear expectation that the businesses and employers with which we engage should adhere to our fair work agenda, and we are promoting that agenda through a variety of means. That is why we have the living wage accreditation scheme—nearly a third of the accredited employers in the UK are here in Scotland, and Scotland has the highest proportion of working-age population that is paid at least the living wage. That is why we have a business pledge that contains so much fair work practice. It is why we are promoting the fair work convention's work. It is why we opposed the Trade Union Act 2016. It is why we have the trade union modernisation fund.

Although we can take those actions, the fundamental challenge that is before us is that we require a change in the law. That is why I think that most members who have taken part in the debate support Stewart McDonald MP's bill, which

is before the House of Commons. I wish that this Parliament could change the law, but we cannot do so. That is why we should get behind Stewart McDonald and his bill. Let us ensure that Westminster passes it.

Neil Findlay: On a point of order, Presiding Officer.

The minister might have inadvertently misled Parliament. I think he said that a third of businesses had signed up to the living wage. There are 300,000-odd businesses in Scotland and I think that 1,000 have signed up to be living-wage employers. Maybe the minister will want to correct that at a future date. I am trying to be helpful.

The Deputy Presiding Officer: I am happy to let the minister respond to that in order to have clarification in this members' business debate.

Jamie Hepburn: I urge Mr Findlay to check the *Official Report* because that is not what I said. The point that I made, of course, was that nearly one third of accredited businesses in the UK are here in Scotland.

The Deputy Presiding Officer: Is everyone finished? That concludes the debate.

Meeting closed at 18:20.

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