



OFFICIAL REPORT
AITHISG OIFIGEIL

Culture, Tourism, Europe and External Relations Committee

Thursday 1 February 2018

Session 5



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CULTURE, TOURISM, EUROPE AND EXTERNAL RELATIONS COMMITTEE
2nd Meeting 2018, Session 5

CONVENER

*Joan McAlpine (South Scotland) (SNP)

DEPUTY CONVENER

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

COMMITTEE MEMBERS

Jackson Carlaw (Eastwood) (Con)

Mairi Gougeon (Angus North and Mearns) (SNP)

*Ross Greer (West Scotland) (Green)

*Rachael Hamilton (Ettrick, Roxburgh and Berwickshire) (Con)

*Richard Lochhead (Moray) (SNP)

*Stuart McMillan (Greenock and Inverclyde) (SNP)

Tavish Scott (Shetland Islands) (LD)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Dean Lockhart (Mid Scotland and Fife) (Con) (Committee Substitute)

Ian Mitchell (Scottish Government)

Steven Morton (Scottish Government)

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

CLERK TO THE COMMITTEE

Katy Orr

LOCATION

The Adam Smith Room (CR5)

Scottish Parliament

Culture, Tourism, Europe and External Relations Committee

Thursday 1 February 2018

[The Convener opened the meeting at 09:00]

Scotland's Place in Europe

The Convener (Joan McAlpine): Good morning and welcome to the second meeting in 2018 of the Culture, Tourism, Europe and External Relations Committee. I remind members and the public to turn off mobile phones, and I remind members who are using electronic devices to access committee papers that they should ensure that they are switched to silent. Apologies have been received from Mairi Gougeon and Jackson Carlaw, and I welcome Dean Lockhart to the committee as Jackson Carlaw's substitute.

Our first item of business is an evidence session on Brexit and its effect on Scotland, in which we will hear from the Minister for UK Negotiations on Scotland's Place in Europe, Michael Russell. I welcome the minister and, from the Scottish Government, Ian Mitchell, who is deputy director of external affairs, and Steven Morton, who is an economic adviser in the office of the chief economic adviser. I invite the minister to make an opening statement.

The Minister for UK Negotiations on Scotland's Place in Europe (Michael Russell): I was not intending to do so, if that is acceptable. In view of the fact that you hear me quite often, I would be happy to move straight to questions.

The Convener: That is absolutely fine. That gives members more time to ask questions, which is always a good thing.

I will start with something that has been in the news over the past couple of days, which is the leak of the "EU Exit Analysis—Cross Whitehall Briefing". Today, we have had another indication of some of its contents about free movement and the fact that the briefing suggests that the end of free movement will be more damaging—

Michael Russell: Could I stop you for one second and ask you to suspend for a minute or two? I am feeling slightly unwell and would like to take a breath of air.

The Convener: I am happy to suspend the meeting.

Michael Russell: I am sorry about that.

09:02

Meeting suspended.

09:05

On resuming—

The Convener: I reconvene the meeting and I trust that the minister is feeling better now.

As I was saying, the minister will be aware of the leak of the "EU Exit Analysis—Cross Whitehall Briefing". Today, there has been a new development in that story. It has been suggested that the briefing looked at free movement and said that ending free movement of people would wipe out any gains that may be achieved through, for example, a free trade agreement with the United States. Has the minister had any discussions with the United Kingdom Government on those areas and has he been aware of the thinking in Whitehall on the consequences of the end of free movement?

Michael Russell: Yes, we have had discussions about migration on quite a regular basis, because it is a key issue for Scotland in the Brexit debate. Scotland is very dependent on European Union migration, and rural Scotland is even more dependent on it than the rest of Scotland. As we pursued that argument, we felt that it was incumbent upon us to look at the facts. We believe in evidence-led policy making.

"Scotland's Place in Europe: People, Jobs and Investment", which we published on 15 January, has a whole section on migration. The figures are very clear for Scotland. Each additional European Union citizen working in Scotland contributes £34,400 in gross domestic product. The total contribution of EU citizens working in Scotland is about £4.42 billion every year, and on average each additional EU citizen in Scotland contributes £10,400 in Government revenue. EU migration is an economic positive and, therefore, I am not surprised in the slightest that, when civil servants and others in London examined that evidence dispassionately for the Westminster Government, it produced the same results. The figures dwarf any anticipated benefits from new trade treaties. That is evidence of what is taking place, not a projection.

We did not look for validation from the UK Government, but the paper that was leaked to BuzzFeed appears to validate very much what we have published. As far as we know, the figures appear to be very similar to the figures that we have. That should give the UK Government pause for thought, because the conclusion that we draw should be the conclusion that it draws: that leaving the EU is economically and in every other way a bad idea, but if it is still to be pursued, the only acceptable next step is to continue in membership of the single market and the customs union. I hope that the UK Government is looking at the material in that way. The way in which it appears to be

briefing against anybody who says otherwise perhaps means that it has not quite got the message yet.

I would finally observe that when we published our paper, it was roundly condemned by a range of UK Government figures, including the Secretary of State for Scotland, who accused us of scaremongering. If the numbers are as they appear to be in the UK Government publication, I think that those figures, including the Secretary of State for Scotland, have some explaining to do.

The Convener: You will be aware that this committee conducted an extensive inquiry into the benefits of EU migration, which came to broadly the same conclusions.

It is interesting that you say that the BuzzFeed leak should give the UK Government pause for thought. Today in China, the Prime Minister seems to have been playing hard ball. The suggestion is that she does not agree that free movement should continue during a transition period, which is what the UK and the EU agreed to at stage 1. You will be aware that on Monday 29 January, the general affairs council agreed supplementary directives for the negotiation. It said:

“Negotiations in the second phase can only progress as long as all commitments undertaken during the first phase are respected”.

It would seem, judging from the Prime Minister’s comments on free movement today, that she is not respecting what was agreed in the first phase of negotiations and that that might jeopardise the second phase. Could you share your views on that?

Michael Russell: I think that the Prime Minister spends her life playing to whatever gallery she believes she needs to play to. What we saw yesterday was playing to people in the hard Brexit gallery, who believe that transition—or, as she calls it, implementation—will allow them to operate in whatever way they wish. It will not. That has been very clear from the European side for some considerable time. If you remain within the *acquis*, you have to observe all the conditions of the *acquis*, and that includes free movement.

There is an issue of the date on which the right to remain under free movement would expire. Clearly, in the view of the EU, that would be the date on which transition ends, because the right is part of the *acquis*. Of course, that is for negotiation, but the Prime Minister needs to think of the logic and the economic sense of her position, because the more she deters EU citizens who want to work here, the more harm is done to the economy. By making these statements, she may be playing to Jacob Rees-Mogg and others, but she is also doing economic harm to her own country.

The Convener: The exit analysis that was leaked suggests that every region of the UK would be adversely affected, and you have reflected on the similarities with your own paper. However, the Secretary of State for Scotland, David Mundell, came before the committee and suggested to us that there was absolutely no regional breakdown of any of the Government’s analysis—he was quite specific about that. Do you share my concerns that there seems to be a discrepancy now that we know that there was some kind of regional analysis of Scotland conducted in Whitehall?

Michael Russell: That assumes that Mr Mundell knew that that existed, but perhaps he is not always in the loop. However, if he did know, clearly there is a question to be asked. I should point out that I will be writing to the UK Government today, asking for access to the document, but making it clear that we will not take it on conditions of confidentiality or secrecy. The document needs to be published. I have asked for a copy of it, and if I receive it I will make it available.

Claire Baker (Mid Scotland and Fife) (Lab): I would like to ask a few questions about the recent document “Scotland’s Place in Europe: People, Jobs and Investment”, which was published in January. Can you say a bit about what you hope to achieve through the document? You said that the initial response from the UK Government questioned the document and was to a degree dismissive. I understand that the UK minister is meeting today with the Deputy First Minister, John Swinney. Is there an expectation or a hope that, away from the headlines of the media, there might be productive discussions about the Scottish Government’s document?

Michael Russell: Well, I am always hopeful. The document and the issues in it will be part of the issues that David Lidington and David Mundell will discuss with John Swinney and myself later today. I think that the intention of the document is clear. In December 2016, we published a document that laid out the reasons why we believe that the UK should stay in the single market and the customs union and said that, failing that, an arrangement should be made to allow Scotland to remain in the single market. We believe that, since then, that argument has moved in our direction. At that stage, the Prime Minister was arguing for no transition. Then, in the Florence speech, she moved to transition. Your own party has moved in a certain direction in these matters.

We believe that the arguments are unanswerable in this regard, but we wanted to present a case that not only reinforced our position on the economic difficulties but also looked at the advantages that would be forgone, which is a key

issue. We are talking not simply about the damage that will be done—which is laid out clearly in our document and, we believe, in the documents that the UK Government now has—but the advantages that we are not going to have. For example, the benefits of the continued expansion of the digital single market, which is exceptionally important for Scotland, will not come in part or in full to Scotland if we leave the single market and the customs union. It was important to lay that information out as well.

09:15

The paper does a number of other things. As I have indicated, it talks about migration and it tries to change the narrative on migration. There is a negative narrative on migration coming from the UK Government and sections of the media that needs to be challenged and changed. Migration is good; it is good for Scotland. We depend on EU migration. Without it we have a very severe problem. That needed to be put in context. We also wanted to look at some of the flanking issues, such as issues to do with regulatory alignment and issues to do with some of the social policies that the EU has, and show how important they are. It is an attempt to reinforce the argument that we made in December 2016, which attracted substantial support, to deepen and broaden that argument and—I think this is a key point—to continue to show that it is possible to approach this issue in a rational, evidence-based way. That is important because we do not see much of that. That is why we put those issues on the table. We work closely with economists, academics and others to show that there needs to be an evidence-led process rather than the process that we have seen from the UK Government.

Claire Baker: I campaigned for remain, as did you, minister, and I do not think that any of us really want to be in this situation. Do you foresee any difficulties with the favoured proposal of the Government to remain in the single market? You mentioned alignment and regulation. There has been talk of a democratic deficit within that model, with the UK having to abide by the rules but having no say in the rules. One of the reasons why I did not agree with us leaving the EU is that we would end up in that situation. Do you see any difficulties for Scotland in particular if we reach that situation?

Michael Russell: It is not as good as being a member of the EU—there is no doubt about that, and there is no point in pretending otherwise—but it is better than being right out on the fringes. The information in the document is clear. The least bad step is to stay in the single market and the customs union. You can see how that works for Norway and for the members of the European

Economic Area and the European Free Trade Association. There is a clear route for the UK to do so. It would also make the process of negotiation much simpler because the parameters of negotiation are entirely clear. It is not as good as being in the thing but it is the next least bad option. The further you go away from it the worse the options become.

On page 7 of “Scotland’s Place in Europe”—I know that many of you have that document—the chart from the Commission itself about the future relationship shows the steps that are being taken and shows that it is the UK red lines that are creating the economic difficulties. As you go through the steps you move from EFTA/EEA membership, through the Swiss treaty-based relationship and the Ukrainian and Turkish relationship, and you end up with a free-trade model. The free-trade model is not nearly as good as that which exists now, but we have analysed that, too. Beyond that, you go into a situation in which only the World Trade Organization rules apply. I went to the WTO in Geneva last October and clearly the WTO-only situation is very problematic and challenging.

If the UK document shows—as we believe it shows and as we have demonstrated—that the advantage to be gained by these mythical trade treaties is substantially less than the benefit of migration and the benefit of staying in the EEA, there is a logical inference to be drawn. That logical inference is for us to stay as high up that hierarchy as we possibly can, and that involves EEA/EFTA membership, which is perfectly open to the UK. If it proves not to be possible for the UK to become an EEA/EFTA member, there are means by which it would be possible for Scotland. We set out the arguments for that in the first document, and they are worth looking at.

However, it is important to say that we are offering a compromise in this. We are not being didactic about this and saying, “We are off to do this”; we are saying that a compromise is possible, and that the compromise is for the whole of the UK to stay in. I do not want to add more elements of complexity to this, but there is the implication of whatever the arrangement is with Ireland. If that is based on regulatory alignment, issues arise particularly for Scotland in that and also in relation to the common frameworks issue that we have been discussing with the UK Government, which also dictates that we should remain within the single market and the customs union.

Claire Baker: We had interesting discussions in Ireland last week, and I am sure that other members will pick up on that.

The document focuses on investment, jobs and the economy. The Scottish Trades Union Congress has produced a number of measures in

relation to which it thinks that the Scottish Government could make progress. A lot of that is about trying to influence and encourage the UK Government. However, it talks about calling for immediate action to establish investment plans for sectors that are most likely to be affected by Brexit. Has work been taken forward on the basis of that suggestion from the STUC? Are we at the stage yet of trying to work out which sectors in Scotland are likely to be most significantly impacted on and how we respond to that?

Michael Russell: You could call “Scotland’s Place in Europe” a summary of sectoral analysis because we do a lot of work around talking to sectors—and I meet sectors on a regular, almost daily, basis. I met the National Farmers Union Scotland yesterday. I tend to meet people very often—I met representatives from the pharmaceuticals and healthcare sectors the week before last. Our view is that we need to provide as much help as we can to each of those sectors. At the moment, it is difficult to say that one sector will be affected more badly than another because almost every sector will have the three sets of problems that arise out of Brexit: problems with workforce and availability of labour; problems with finance; and problems with regulation.

We are discussing such issues with sectors in detail, but the confusion from the UK Government is the biggest single problem now, and that applies to money as well. Let me give you an example from the agriculture sector. When Michael Gove spoke to the Oxford Farming Conference—rather memorably, I heard somebody say the other day that he mentioned “The Archers” more often than he mentioned the devolved Administrations—he promised, allegedly, that farming payments would continue unchanged until 2024. We have not had that confirmed with us financially. The money that we would require to make an equivalent pledge has not been confirmed, nor do we think that there is Treasury cover for what he promised south of the border. There is huge confusion in this, and the confusion about fiscal flows is substantial, too.

Last night, I was in the room down below this, where there was a reception for people undertaking the rural leadership course, which Mr Lochhead will remember and which has now been expanded to take in the Highlands and Islands and my constituency. The issues that arose in the discussions that I had with my constituents last night were precisely about that security of finance in terms of rural support in relation to pillar 1 and pillar 2. Although there is some assurance on pillar 1 for a limited period of time, there is none at all on pillar 2 at the moment, which means that we just do not know what is going to happen with the very substantial sums that are going into rural Scotland to support rural development.

Of course, we will do everything that we can to support sectors. We talk to the STUC often—we talk to a range of people, and we will go on doing so—but the reality is that until we have assurances ourselves it is difficult to do that. Assurance on free movement of people would help enormously. That would be even better than having investment plans, but we have nothing like it.

The Convener: Going back to your comments on WTO rules, in our inquiry last year, the committee took a great deal of evidence from trade experts on future free trade deals and Scotland’s involvement in future free trade deals, or rather the dangers of Scotland not being involved in the negotiation of future free trade deals. We looked at examples such as the Canadian provinces being at the table when Canada was negotiating with the EU. As a result of that, the committee recommended in its report that means be found to involve the Scottish Government in bilateral and quadrilateral discussions on future trade deals. We are told that Liam Fox is already discussing future trade deals that would be signed at the end of the transition period. Has the Scottish Government been included in any way at an early stage in discussions of those issues?

Michael Russell: It would be an incredible surprise if I said yes. No, of course that has not happened. It is part of the context of trying to get a clear statement from the UK Government about what the involvement of the devolved Administrations is in phase 2 of the negotiations with Europe, and what flows from them. That is meant to be covered by the terms of reference of the joint ministerial committee (European Union negotiations), which are clear on this matter and which I read into the record yesterday at the Finance and Constitution Committee—I am happy to do so again, if it would be helpful to you. Within those is the oversight of the article 50 negotiations.

Ian Mitchell has very helpfully provided me with a note of the four terms of reference for the JMC(EN). First, the UK and devolved Governments will discuss each Government’s requirements for the future relationship with the EU. That has not happened. Secondly, they will seek to agree a UK approach to and objectives for article 50 negotiations. We never saw the article 50 letter; it was never discussed with us; and the meetings stopped in February when it became an issue. Thirdly, they will provide oversight of negotiations with the EU to ensure as far as possible that outcomes that are agreed by all four Governments are secured from the negotiations. That is crucial with regard to where we go with phase 2, but there is no proposal on the table—at the previous JMC(EN), Mark Drakeford and I

asked for that proposal, but we have not received it, and I will discuss that issue today with David Lidington. Fourthly, they will discuss issues stemming from the negotiation process that might impact on or have consequences for the UK Government, the Scottish Government, the Welsh Government and the Northern Ireland Executive. That also covers the trade issue.

There is a commitment to us being involved in issues around international treaties that impact upon us—the Scotland Act 1998 deals with that, as does the memorandum of understanding. However, we have no such proposals on the table. I stress for the record that those terms of reference were agreed between the four Governments at the JMC plenary in Downing Street in October 2016, but they have not been honoured by the UK Government. That is a very serious concern. In fact, the JMC plenary last met a year ago on Tuesday in Cardiff and it has not met since, and the JMC(EN), which was meant to meet monthly, has met only three times in the past 12 months—in February, October and December.

Stuart McMillan (Greenock and Inverclyde) (SNP): That takes me on to some JMC questions. After what you have just said, minister, can you give us an honest appraisal of how useful the JMC process is? Is it worth the paper that the agreement was written on?

Michael Russell: We believe that it could be useful. The JMC process has been in existence since the start of devolution. It has broadly been regarded by parliamentary committees in all the Parliaments and by academic study as not fit for purpose. It is not robust, it does not have a statutory footing, there is no decision-making and it is always held in London—it is always convened by the UK Government. It has been held twice outside London, once under Labour and a year ago in Cardiff, but that is all. I was a member of various JMC committees when I was Minister for Culture, External Affairs and the Constitution in 2009 and even then it was pretty problematic. I went to one JMC Europe at which there were, I think, 21 UK ministers along with myself and Rhodri Morgan. It was not really an equity of arms in terms of the discussion.

That being said, when we came to discuss how we would liaise and negotiate on the issues of European withdrawal, it was clear it was the only thing that we had and that is why we established this new part of it, but it had clear written terms of reference that were agreed by all of us. If those clear written terms of reference had been observed, things might have worked but so far they have not been. It is important that Mark Drakeford and I, as the Welsh and Scottish members, go and take part and argue and make sure we are heard. I pay tribute to Damian Green

who got it into shape, reduced the membership, focused it and was listening. I personally regret that he is not doing that any longer. We will have to see what David Lidington does, but David Lidington is starting from a standing start on this and there is not a lot of time in it. We want to see a step change in the operation of the JMC but I am not hopeful that that will take place.

Stuart McMillan: You mentioned the JMC(EN)'s terms of reference and said that there have been no proposals on the table, particularly regarding the future trading relationships. I would argue—I am quite sure others would argue, too—that clearly there has been an absolute breakdown in the JMC process.

Michael Russell: I am not sure that there has been a breakdown; I am not sure that it worked to start with. I do not want to split hairs, but the JMC could be used for that purpose—it could convene on a monthly basis with a substantive agenda, and there could be contact between ministers on trade issues in the time between meetings. Officials have continued to meet one other but I think that it is fair to say that the quality of that engagement has deteriorated since the Brexit vote and it has been difficult to get substance out of it, so the system is not working. We are doing our very best to make it work. I have put a lot of time and travel into this. We do our very best.

I accept that it has not been helped by the Northern Ireland Executive not being in existence. It has not been the fatal flaw but, when it started out, JMC(EN) membership included Martin McGuinness and Arlene Foster, the First Minister and Deputy First Minister of the Northern Ireland Executive, who had chosen to be members of it. A substantive discussion was taking place there. Martin McGuinness is very much missed in that regard, and it has simply got more and more difficult. However, I am committed to it. I cannot speak for my Welsh colleague but I believe that he is also committed to it, and we would like it to work. However, if I may use the chancellor's phrase, it takes two to tango.

09:30

Stuart McMillan: My question is on another area of discussions with ministers from the UK Parliament. It was reported that there was an agreement on amendments to be tabled to the European Union (Withdrawal) Bill. Those discussions clearly have not taken place through the Commons process, and we are now relying on amendments being tabled in the House of Lords. Do you think that that has been a positive or a retrograde way forward?

Michael Russell: There is an agreement that the UK Government will discuss and agree with

the devolved Administrations any amendments to the European Union (Withdrawal) Bill. This has been a long saga. The bill was published on 13 July 2017. We saw it two weeks beforehand, and we made it absolutely clear that it was unacceptable. The convention was that we would work together on the bill over a period of time, but we were not given access to it. I asked the Prime Minister directly at the JMC(P) to see it and we never got it.

When we said that that was unacceptable, we were not treated with much seriousness. However, that changed over a period of time, when it became clear that the Welsh and Scottish Governments were united on the matter and were not willing to give legislative consent to the areas that required legislative consent. I am grateful that the Conservatives in the Scottish Parliament have taken a clear position on the matter and have said that the bill is not acceptable to anybody at the present time. The Finance and Constitution Committee has taken that view, too. The Welsh Parliament took it unanimously, as a result of which our position was agreed in early December, although the joint amendments that we tabled were voted down by the Conservatives. With those amendments, the bill would have been acceptable.

A Labour amendment that was acceptable to us was then tabled at the report stage but was also voted down by the Conservatives, although a commitment was given that a Government amendment would be tabled at the report stage. That did not happen. We are now told that an amendment will be tabled in the House of Lords. However, we have not seen that amendment, therefore it is not agreed. Until we see that amendment, there is no amendment and there will be no legislative consent—it simply will not happen.

We must be prepared for withdrawal. Even though we do not want it and even though it might be avoided, we must be prepared for withdrawal. In the circumstances, we have worked on and have taken to the Presiding Officer a continuity bill, as the Welsh have done, and we will introduce that bill in Parliament at an appropriate time as a belt-and-braces approach, because we cannot just be left with nothing.

It is not simply us who believe that the position that we are in is a bad one. In the debate on the second reading of the withdrawal bill in the House of Lords on Tuesday and Wednesday, a succession of peers—none of whom are mad nats, I have to say—said clearly that they thought the Scottish Government had been badly treated. David Steel said it. Lord Hope, the leader of the crossbenches, was strong and clear in saying that he believes the matter has been very badly handled by the UK Government, and Ian Lang

commended Lord Hope's speech. The view was spread right across the chamber.

We now wait to see what takes place. We have been absolutely consistent and clear about the matter, and we are very transparent: we cannot accept the bill, there will not be a legislative consent motion and we will introduce a continuity bill as the belt and braces. We would like to get an amendment agreed but, if there is no amendment, we cannot agree.

Stuart McMillan: You mentioned Lord Hope. I was going to come on to his speech, part of which was extremely damning. He said:

“As far as I know, Henry VIII never got to Scotland. Oliver Cromwell did and he and the forces under his command did quite a lot of damage while he was there. I think that these clauses have a touch of Oliver Cromwell about them.”

I suggest that that is a pretty damning indictment of the UK Government's approach. Lord Bridges's speech was also very useful. He stated:

“My fear is that we will get to meaningless waffle in a political declaration in October. The implementation period will not be a bridge to a clear destination. It will be a gang plank into thin air.”—[*Official Report, House of Lords*, 30 January 2018; Vol 788, c 1385, 1423.]

I wanted to put those quotes on the record and get further commentary from you, minister, on what you think about their speeches and those of any other lords that you or members of the Scottish Government have spoken to in order to encourage them to have further discourse and to table positive amendments.

Michael Russell: Along with Mark Drakeford, I held a briefing in the House of Lords on Monday night. There was standing room only, I am glad to say. It was a very encouraging discussion in which there was only one strongly discordant voice—that of Michael Forsyth. The others who were present were very positive and wanted to see the bill changed. I have spoken to Lord Hope on a couple of occasions, and I saw him on Monday night and was very impressed with his speech. I will swap one quotation for another:

“I am astonished by this Bill's failure to respect that settlement”—

the devolution settlement—

“in its formulation of the regulation-making powers given to Ministers.”

He went on to say:

“The Scottish Ministers have declared that they will not put a legislative consent Motion before the Scottish Parliament unless their objections to this are met. ... As a mere lawyer, I am in full sympathy with their objection.”—[*Official Report, House of Lords*, 20 January 2018; Vol 788 c 1385.]

That is profound, and it was a very strong speech. I commend it to people to read. However, as you indicate, there were many other good speeches. David Steel's speech was very strong, as was Jim Wallace's.

It is quite clear where we are. The UK Government is a Government. It needs to come to this Parliament with a proposal for an amendment, so that we can discuss that sensibly and come to an agreement if we can. We must stop having meetings about meetings and we must stop dragging this out endlessly. That is the message that John Swinney and I will send very clearly and politely, I hope, in welcoming David Lidington to Scotland today. We are very clear about what the situation is and we do not want to leave him in any doubt. The time for talking about this is well over. We need a proposal, we need to look at that proposal and debate it as adults, and we need to come to a conclusion on it. If the UK Government does not want to do that, we understand that, and a set of consequences will flow from that. However, this constant sitting on the fence—which is happening in its negotiations with Europe—is bedevilling its relationship with the devolved Administrations, too.

Rachael Hamilton (Ettrick, Roxburgh and Berwickshire) (Con): I will go on to a new subject about transition if that is okay, convener.

The Convener: You can ask whatever questions you like.

Rachael Hamilton: Mr Russell, I wonder what your thoughts are on the requirements for the transition period or the implementation period, as the UK Government is calling it. I was at the rural leadership group last night, talking to young people who work in agriculture and run businesses. What is the NFUS saying that it requires from the transition agreement? Is it sufficient that the transition period will run until 31 December 2020?

Michael Russell: What business wants and what agriculture, as business, wants is to know that there is some certainty. The uncertainty in this has been created by the UK Government.

There are issues to do with the creation of common frameworks. We have indicated that common frameworks will be required—there is no difficulty with that—but those common frameworks must be based on agreement between the nations of the UK rather than imposed. David Mundell himself has accepted that point. That is why clause 11 of the withdrawal bill is so important. If we can get some certainty about the frameworks, that will be helpful.

Transition is about continuing the *acquis* until it comes to an end—there is no other type of transition. We started off with the UK Government

saying there was to be no transition, because it was not necessary. The Prime Minister then moved to a position where she saw transition as being necessary, whether or not it is called implementation, and the period that has been set for that is presently bounded by the conclusion of the EU's multi-annual financial framework, the present phase of which will come to an end at the end of December 2020. Many commentators believe that that period will not be enough, and some EU Governments believe that, too. For example, the Irish Government has indicated that it thinks a longer period will be required.

It all depends on what transition is used for. If transition is used to create circumstances in which there is no cliff edge and there is a smooth set of changes, that implies to me that transition will lead to continuing single market membership, which is not quite the same. Transition is not that; transition is a continuation of the *acquis*. It is a continuation of full membership but without the rights, which seems to be the worst of all possible worlds. I do not know how any Government could get itself into that position, but that is what it means. At the end of December, we could transition into EFTA/EEA membership, and that would give us some certainty. If transition is simply postponing the cliff edge, it is not going to be helpful to people at all.

We have discussed the report that the UK Government now has. I hope that, on the basis of the well-sourced information that we have produced, transition might be used to move into single market membership, which will become the destination. That would be sensible, and it would give some security from the very beginning, because we would know what we were aiming at. If transition is not used in that way, we will still not know what we are aiming at, because the so-called deep and special partnership has no meaning within the established relationships.

Rachael Hamilton: Do you think that the article 50 negotiations could be extended?

Michael Russell: That is a curiously awkward question for anybody to answer, because there is a procedure to extend the article 50 process but it is not the procedure that is presently being used. Indeed, the difficulty in extending the article 50 process is that that means extending EU membership. There are members of your own party who would regard extending our membership of the EU as tantamount to treason, and in those circumstances they would be very unhappy about extending that membership. There are also some technical difficulties with extending EU membership. European elections are confirmed for June 2019, and there would not seem much point in electing people who were not going to be there for very long.

What is being attempted is the creation of a special set of circumstances that will bridge to something else, but it would be helpful to know what it will bridge to. There is a clear possibility—which I think almost everybody has indicated would be achievable—of bridging to single market membership. That would be a sensible thing to do. Leaving is not sensible, but if we are going to do that, the sensible thing to do is to bridge to single market membership.

Rachael Hamilton: Is the Scottish Government putting any provision into the transition period to allow businesses to prepare for it? I am sure that you are having many conversations with different sectors, but what is the Scottish Government doing to prepare people?

Michael Russell: We are trying to get the UK Government to tell us what is going on. If you could assist in that, that would be very helpful, because we just do not know.

We are doing everything in our power—for example, in discussion of the frameworks—to create certainty in the devolved competences, where we will continue to have a clear policy in place. We have been very constructive, and our officials have been very constructive in negotiating the frameworks and what will be required. The heart of the matter is a decision by the UK Government to take an action without being clear about how it is going to take it, how it will be resourced and what the outcomes will be. My position is to work closely with business across Scotland to find any ways that I can to mitigate the problems that they have.

If we look at the pharmaceutical sector, two things leap to mind immediately. First, there are a number of companies in Scotland that do drug testing. If they are to do drug testing in the EU, under EU regulations, we have to be in the EU. If we are not in the EU, those companies will have to relocate—no ifs, no buts. They will have to relocate, and we cannot assist with the relocation of companies outside Scotland. That is a crucial issue that the UK Government cannot resolve, because I am sure it will not assist companies to relocate outside the country.

09:45

Secondly, there needs to be absolute clarity about the licensing of medicines and medical devices. During the leave campaign, we heard complete nonsense from Michael Gove and Boris Johnson about how companies would leap to have a special UK post-Brexit licensing regime. That was complete nonsense. The drug companies will tell you graphically what nonsense it was. Drug companies, which invest substantial amounts of money, will go for regulation in the biggest

markets first, because that is obviously where the biggest return is. If they are developing a new drug, they will want to get approval from Europe and America, which are the two biggest markets—and, incidentally, those two regimes will come together in an agreement later this year.

The drug companies will not go for regulation by the UK, which will account for less than 3 per cent of the market; they will go for UK licensing when they have done everything else. Rather than earlier and better regulation, there will be later and worse regulation. Those companies are now having to make arrangements for regulatory activity outside the UK because that is the only way in which they can guarantee to continue to sell drugs. Did the Parkinson's Society give evidence to the committee? It gave written evidence to one of the parliamentary committees on its fears about what that would mean for the supply of drugs. I have heard the argument from pharmaceutical companies, too.

I cannot solve the problem; I can only articulate it. I can articulate it to the UK Government and to you, but the UK Government needs to say, very clearly, "This is going to happen with the European Medicines Agency." It has already lost the jobs. It needs to say, "This is how we are going to operate, and this is going to solve the problem." So far, it has not.

Rachael Hamilton: Can I just—

The Convener: I am afraid that we must move on, because three other members need to ask questions.

Rachael Hamilton: Okay. I will speak to you another time, minister.

Richard Lochhead (Moray) (SNP): The Scottish White Fish Producers Association, which is the biggest constituent member of the Scottish Fishermen's Federation in the catching sector, has this week tweeted all the Scottish Conservative politicians and all the UK ministers, expressing concern that the fishing industry should not be drawn into any implementation period and using the hashtag #nogoingback. Is it your view that the UK Government is preparing to sell out the fishing industry, that the fishing industry will be part of the implementation period—I suspect that it is quite clear that the other EU member states will not allow the UK to cherry pick—and that, therefore, we are facing the UK Government once again breaking a big promise to the Scottish fishing industry?

Michael Russell: I was included in those tweets. The white-fish producers are very concerned about that.

Clearly, the EU understands the special issues of agriculture and fisheries with regard to the

continuing *acquis* and particularly with regard to the annual negotiations that take place. I do not think that there is a lack of realisation in the EU that this is an issue, but it is determined that *acquis* should be continued and indeed other countries will not wish to give up their rights during this period. I think that it is inevitable that fishing will have to be included within the transition period and, in those circumstances, the UK Government will have no option. It might have been helpful, in the discussion of implementation, if the Prime Minister had indicated that but in her Florence speech she seemed to be quite unaware of it. What is even worse—in fact, it is pretty unforgivable—is that we then have Michael Gove, the responsible cabinet minister, indicating immediately that of course that will not apply. We had that from Ian Duncan, too. In fact, we had it on an NFU platform that I was on with Ian Duncan in Dunkeld in November. He blithely asserted that the common agricultural policy would not apply, even during the transition period, which is simply untrue.

The UK Government has given a lot of mixed messages. It would have been much better for it to be honest, but I see little possibility of anything happening, except that there will be an understanding of the need to ensure some sort of consultation—I am sure that there will be that—but the *acquis* will continue, as far as we all know, unchanged for that period of time. That means that those policies will continue in place.

Richard Lochhead: If fishing is part of the implementation period, that would suggest that there is potential for having the worst of all worlds from the perspective of the Scottish fishing industry and the fishing communities. Negotiations will take place, and no doubt some arrangement will be made to allow the UK to have a discussion with other member states over the allocation of quota and fishing rights, but clearly the UK will have less status than a full member state because we will not be a member state. Therefore, Scotland's position will be even more distant from the actual negotiations and decisions, despite the fact that we have two thirds of the UK's fishing industry. Do you agree that that would be the worst of all worlds for the fishing communities?

Michael Russell: Nobody knows the situation better than you do. I have worked with you for a long time. You have gone through the difficulties of annual fisheries rounds, and come back looking haggard. I even represented you once at the fisheries council. The situation is exactly as you have described it. This situation is worse for Scotland—it is more difficult and more fraught with problems, and it has been created by people who made false promises. That is what we should be looking at. When we have Michael Gove stravaiging around the fish markets of the north-

east of Scotland making people promises that he knows he cannot keep, I think that that devalues the whole business of politics. That is exactly what has happened, and it needs to be explained and understood. Nobody is defending the common fisheries policy. I am not. As you know, I have substantial fishing interests in my constituency. Nobody is defending that, but we need honesty from the people who said one thing and will now deliver quite another thing.

Richard Lochhead: Of course, my point was that we could have the worst of all worlds because we will not be in the EU, we will not be out of the EU, but we will be in a no-man's land that will leave Scotland in a very bad place in negotiations over our fishing communities.

You made a comment earlier about the importance of the Irish position in terms of any potential special deal that may be created for the Irish. We all recognise the importance of the issues around the hard border and the impact on Northern Ireland. However, do you agree that there is a danger that if there is a special deal for the Irish, who largely depend on exporting to the UK and, of course, via the UK to Europe, but there is no special deal for Scotland, our businesses, particularly in the agri-food sector, will be at a major competitive disadvantage and that that could inflict even more economic damage on Scotland?

Michael Russell: There is potential for that. I should absolutely stress that we have always supported a sensible solution in Ireland, recognising the very special issues that arise in Ireland and particularly the issues of the Good Friday agreement. We do not in any way try to make comparisons in that regard. However, it is obvious that there are difficulties inherent in the Irish arrangement for Scotland. If that arrangement created an advantage for Northern Ireland in trading terms, we would have to look at that very carefully in terms of our own activities.

There are other complications. For example, I indicated that if there was full and dynamic regulatory alignment between Northern Ireland and Ireland, which tied into the EU regulatory structures, it is very difficult to see how we would then be able to establish a common framework on agriculture, for example, within these islands because if that common framework included Northern Ireland, it would automatically be in full regulatory alignment with the EU. The UK Government refuses to address that with us, but it is a very serious set of concerns. We have close relationships in Northern Ireland and in Ireland—the next committee that I will give evidence to is the joint Seanad-Dáil committee, which meets next Wednesday. There is a very clear understanding that those issues need to be teased out and

discussed. I will also visit an agri-food business in Ireland next Wednesday morning in order to understand those issues fully.

The Convener: We do not have very much time left and we have two members who still want to ask questions. Please keep your questions and answers as succinct as possible.

Dean Lockhart (Mid Scotland and Fife) (Con): Good morning, minister. I would like to move on to trade and specifically the plans to open the Paris and Berlin hubs. Can you provide a brief update on the specific dates when the hubs might be open?

Michael Russell: An appointment has been made to Berlin; she is ready to start work and that will be happening within months—in the early spring, I think. The Paris appointment is imminent, so I would expect Paris to be operating during the first half of the year. That is the responsibility of my colleague, Fiona Hyslop, so it is undoubtedly subject to the information that she would give you, but that is what I understand to be the case.

Dean Lockhart: Thank you. Last week, trade figures that were published for 2016 showed a decline in Scotland's exports to the single market. Can you briefly give us your views on what might have caused that decline?

Michael Russell: Again, that would be a matter for Keith Brown but I think that the figures indicate strong growth in Scottish trade. There will be fluctuations from year to year about how that takes place. There is no doubt that continuing to trade both with the rest of the EU and within the UK, and more widely, are all objectives that we should continue to operate. We should not put anything in their way. You would no doubt say that having any difference in the constitutional arrangements north and south of these islands would put something in their way. However, I would indicate that the policy of Brexit will put something substantial in their way. We would want to continue to trade in the best way possible, which is likely to be guaranteed better by continued membership of the customs union and the single market than by any other arrangement.

Dean Lockhart: I wonder whether we can look briefly at the assumptions used in the Scottish Government's paper on the impact of Brexit on trade. I believe that, under the WTO option, it is assumed that there will be a 50 per cent decline in trade with the single market. What assumptions were applied in that conclusion?

Michael Russell: With the greatest respect, I think that the best person to answer that is Steven Morton, who understands the model even better than I do.

Steven Morton (Scottish Government): The assumptions with regard to the trade shock under the WTO scenario are drawn from the economic literature on the subject, particularly a paper by Ebell and Warren, who are researchers at the National Institute of Economic and Social Research. The assumptions were also used by the Fraser of Allander institute, which put together the report for the committee. It, too, drew on that paper for what it thought would be the shock under the WTO scenario.

Dean Lockhart: I have another very brief supplementary. Over the six years from 2011, Scottish exports to the single market have been declining. Mr Morton, do you have a view on what has caused that decline?

Steven Morton: I do not have the figures with me, but I believe that they have been broadly similar over the past year. Of course, 2016 was a difficult year for the whole economy, and that might have had something to do with the latest figures.

Ross Greer (West Scotland) (Green): I have two brief questions, the first of which is about the customs union and the Government's scenario planning in that respect. The UK Government's current policy seems to be that we will leave the customs union instead of what was thought to have been agreed at stage 1, which was not quite that. I am aware that the Government has done broader macroeconomic projections on this, but what scenario planning has been done on the infrastructure that might be required at, for example, Cairnryan?

Michael Russell: From meeting the Chamber of Shipping and various others, we know that the industry has done a fair degree of scenario planning on this, and it is pretty alarmed by the outcomes. There are some interesting straws in the wind. For example, I know that Richard Lochhead has looked at what is happening in Rotterdam and the port's planned increase in customs officers. The implication is that there will be further checks and greater infrastructure will be required at the east coast ports in England to deal with that but, at present, the view is "Wait and see". Nobody knows, as yet, what the situation is going to be like, but it is one of the many things that will be affected. In any case, infrastructure changes will be slow and difficult to achieve.

Of course, an additional issue for the west coast, particularly of Scotland, is the resolution of the Northern Ireland situation. The question is: if the resolution led to a seamless north-south border, would that increase east-west activity? As you will understand, that would be resisted very much by certain sections in Northern Ireland; indeed, we would not welcome it ourselves. However, the reality is that such a resolution might

create circumstances in which there would require to be more infrastructure.

I know a little about this issue from discussing it with people. It is difficult to see how Cairnryan can be expanded quickly—or at all—and it is difficult to see how Ardrossan can change substantially, although that might be a possibility. There are issues to deal with but the fact is that, until you know what is happening, you cannot decide what you are going to do. Any contingency plans in that respect will, I have to say, not be cheap, and then people will say, “Where are we going to get the resource to do this?”

It is one of those issues on which a decision is required. The longer there is no clarity or decision, the harder it will be.

Ross Greer: One would therefore have to conclude that any transition period would have to be substantial because, as you have said, it takes time to develop infrastructure.

Michael Russell: Absolutely. In my last discussion with the Chamber of Shipping, which was probably more than six months ago, people were talking about needing five to 10 years to make infrastructure changes. That is probably not unreasonable.

Ross Greer: I have a brief final question. In 2016-17, the Scottish Government engaged quite extensively on a one-to-one basis with member states to explain Scotland’s position. Indeed, the committee has heard from you and the cabinet secretary on that. Has that engagement continued in recent months?

Michael Russell: Yes, and we continue to have a very useful and productive dialogue. In fact, it is very much our duty to do so. Obviously, Fiona Hyslop takes responsibility for that work—I am responsible for the intra-UK activity—but I am involved in it. Of course, through the Brussels hub, which has been upgraded and works very closely on talking to a wide range of people, we do this sort of thing all the time, and we will continue to do it. It is very important that people know our position. An additional advantage has been “Scotland’s Place in Europe”, which we have made sure has been widely read and distributed. Indeed, we have had some very positive feedback on it from EU27 countries.

The Convener: I thank the minister and his officials for giving evidence today. Well done, minister, on recovering from your earlier bout of illness.

Michael Russell: I am grateful to you, convener. Thank you very much.

The Convener: That concludes the public part of the meeting. We now move into private session.

10:00

Meeting continued in private until 10:30.

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