OFFICIAL REPORT
AITHISG OIFIGEIL

Meeting of the Parliament

Tuesday 13 March 2018

Session 5

The Scottish Parliament
Pàrlamaid na h-Alba

Tuesday 13 March 2018

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Scottish Parliament

Tuesday 13 March 2018

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

Time for Reflection

The Presiding Officer (Ken Macintosh): Good afternoon. Our first item of business is time for reflection. Our time for reflection leader is the Rev MaryAnn Rennie, parish minister of the abbey church of Dunfermline.

The Rev MaryAnn Rennie (Parish Minister, Abbey Church of Dumfermline): Presiding Officer and members of the Scottish Parliament, thank you for the invitation to offer a reflection today.

These past few weeks have been full of celebrations for the church community of which I am part. On 17 and 18 February, we marked 200 years since the rediscovery of the tomb of Robert the Bruce, and this weekend just past, we have been celebrating 200 years since the laying of the foundation stone of the "new" abbey church.

The first of those two events, the rediscovery of the tomb, led to a hurried redrafting of the plans for the new building by the architect, William Burn. It was not until three years later that the vision of the new design was visible to all, as the tower of the church soared into the sky and the crown around it declared "King Robert the Bruce". At the time, there was criticism; one unnamed commentator was quoted in *The Annals of Dunfermline* as declaring,

> "The great tower is out of architectural proportion, and the words ... round the top of it are in bad taste."

For people who visit Dunfermline today, the tower and those words act as a signpost, bringing those who are looking for royalty to our door. Of course, today they also have to navigate through the one-way system.

The boasting of an earthly king on a building that was created for worship with the heavens frequently prompts the question, "Why this name rather than Christ's name?" As a Christian community, our purpose is to be the church in worship and in action. At times, the history can be overwhelming of our purpose.

Although we celebrate Robert the Bruce's myth, mystique and heroism, we are also aware of his duplicity, subterfuge and bloodshed. Those elements of his life are shared with other historical and even biblical heroes. They are reminders of the flaws of humanity.

The meeting of the gospel story of Jesus Christ with the story of the king of Scots within the building brings richness to Jesus's meeting with the flaws of humanity while still looking for the best. In challenging politician, thief and religious leader, Jesus brought to the fore human qualities of love, compassion and justice that are to be treasured, inspired and nurtured.

We do not need to have faith to know the challenge of being part of a community. Living with other people can mean knowing too well the adage, "Sticks and stones may break my bones," but living with others should be an opportunity to look for and celebrate the best of another, and to be enriched by that encounter.

Business Motions

14:04

The Presiding Officer (Ken Macintosh): The next item of business is consideration of two business motions. Motion S5M-10976 sets out a revised business programme for Thursday, and motion S5M-10975 is on stage 2 of the UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill. I invite Joe FitzPatrick to move the motions on behalf of the Parliamentary Bureau.

Motions moved,

That the Parliament agrees to the following revision to the programme of business for Thursday 15 March—

delete

2.00 pm	Parliamentary Bureau Motions
2.00 pm	Ministerial Statement: Update on South of Scotland Partnership and insert
2.30 pm	Parliamentary Bureau Motions
2.30 pm	Ministerial Statement: Update on South of Scotland Partnership

That the Parliament agrees that consideration of the UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill at stage 2 may continue on Wednesday 14 March.—[*Joe FitzPatrick*]

Motions agreed to.

Graham Simpson (Central Scotland) (Con): On a point of order, Presiding Officer. I did not wish to object to the motions, but I wish to draw your attention to a potential problem. If the amendments are not dealt with tonight, and we continue tomorrow morning, the meeting that we have then could potentially—indeed, will—clash with other committee meetings. Those of us who have lodged amendments take them seriously and would want to move them. However, people such as I have committee responsibilities that are as important.

You will probably tell me that this is not a point of order, but I bring the point to your attention because it is an important one, and I ask for your advice on it.

The Presiding Officer: I can assure you that it is a point of order, Mr Simpson—not only that but quite an important one. I am sure that you are not the only member who will find themselves in the situation that you describe.

Many times in the past, members have been attending one committee meeting but have also wanted to move amendments at another committee meeting. The standing orders allow members a choice in these circumstances—I stress, however, that it is a choice. Rule 12.2A, on committee substitutes, allows another member to attend committees in place of a member, and rule 9.10.14 says that any member present may move an amendment if the member who lodged it does not do so.

I thank Mr Simpson for raising that point of order, and I ask all the members who might find themselves in that situation to think about how they wish to proceed should the situation arise.

Topical Question Time

14:06

Scottish Income Tax Rate (Military Personnel)

1. **Alexander Stewart (Mid Scotland and Fife) (Con):** To ask the Scottish Government what assessment it has made of the effect of the Scottish income tax rate on military personnel. (S5T-00975)

The Cabinet Secretary for Economy, Jobs and Fair Work (Keith Brown): The Scottish Government's income tax policy means that everyone who earns less than £26,000 will pay less tax than they would for the same income elsewhere in the United Kingdom—the lowest rate of tax in the UK. Everyone who earns less than £33,000 will pay less tax in 2018-19 than they did in 2017-18, for a given wage.

Military personnel who are resident in Scotland for income tax purposes pay income tax at the same rate as all other Scottish taxpayers. The definition of a Scottish taxpayer is determined by UK, not Scottish, legislation, and is implemented by HM Revenue and Customs.

We are fully committed to supporting the armed forces community. Service provision differs in various parts of the UK, and Scotland continues to be an attractive place to live, work and do business in, with access to many services that are not available elsewhere in the UK, such as free school meals, free personal care, free prescriptions and eye tests and, in many cases, free university tuition.

Alexander Stewart: The issue here is that military personnel devote their lives to service and will be posted where that takes them. Those who are based in Scotland and earn more than £26,000—70 per cent of men and women in the service in Scotland—will now pay more than those on a similar wage elsewhere in the UK. Before the decision was taken to raise income tax for those service personnel, was there any discussion, consultation or engagement with the Ministry of Defence?

Keith Brown: I notice that Alexander Stewart has completely ignored the fact that those on the lowest wages in the military—the ones who earn up to £26,000—will pay less under our proposals. It would be refreshing to see the Tories expressing concern about lower-paid people for once, rather than those on higher incomes.

Secondly, I wrote to the Secretary of State for Defence nearly five weeks ago on this issue and I have yet to receive a response, apart from a press release by the Secretary of State for Defence having a go at the Scottish Government. That is no way in which to have the dialogue that Alexander Stewart says he is interested in.

If the Conservatives are genuinely concerned about the pay of the armed forces, why have they not lifted the public sector pay cap? That is the easiest way to deal with the issue of pay in the armed forces.

I have listed all the ways in which Scotland is an extremely attractive place for armed forces personnel to be, such as free prescriptions. It is also true to say that council tax in Scotland is, on average, more than £400 less in Scotland than it is in the rest of the UK. Those are reasons why people in the armed forces are attracted to come to Scotland—that is what we want them to be, unlike the Conservatives. Perhaps we would not have the recruitment crisis that we are facing, along with the failure of the UK Government to complete its pledge to have 12,500 armed forces personnel in Scotland by 2020, if the Conservatives looked after the armed forces across the whole of the UK.

Alexander Stewart: I am thankful that the UK Government will now act. The Secretary of State for Defence, Gavin Williamson, has said that he will urgently review the situation after pressure from Scottish Conservative MPs. It is surely good news that the men and women who keep us safe will now face no financial penalty for being based in Scotland. Will the cabinet secretary join me in overwhelmingly welcoming that point?

Keith Brown: The letter that I sent to the Secretary of State for Defence said that the Scottish Government was perfectly willing to discuss the issue. We also made it very clear that we will not countenance any move by the UK Government that disadvantages the lower paid—those earning below £26,000—who should also factor in the concerns of Alexander Stewart. He asks about parity between armed forces personnel and welcomes what he says is action by the UK Government—as I understand it, it is not action but a review—but will the UK Government take action to protect the interests of the 10,000 or so service personnel elsewhere in the UK who will pay a higher rate than they would pay in Scotland? Will the UK Government be even handed? We will wait to see what the review says.

It is very important that we have taken action. We have the fairest and most progressive tax policy in the whole of the UK. We are looking after those on the lowest incomes and doing some of the work that the UK Government should be doing to attract people into the armed forces in the first place, because there is a recruitment crisis, which goes back to the failure of any Conservative MSP in Scotland to talk about the base review and to challenge the UK Government, even when many

of their English counterparts were doing so. Even when the wife of one of the Ministry of Defence ministers is challenging the UK Government on the closure of a base in her constituency, there is not a word from the Conservatives about the base closures in Scotland. It is the Scottish Government, not the Tory party, that is the friend of the armed forces in Scotland.

Christine Grahame (Midlothian South, Tweeddale and Lauderdale) (SNP): Does the cabinet secretary agree that it follows from the logic of the Conservative argument that, if we make a special case not to increase the tax on some higher earners in the armed forces, we should also prohibit their access to things such as free prescriptions and tuition fees, which have already been referred to, or does he agree with me that those serving in our armed forces deserve all the benefits of living in Scotland for which we all collectively pay?

Keith Brown: I agree with Christine Grahame that the Scottish Government has always been clear in its ambition that income tax should be fair and progressive. There is substantial support in the armed forces for that position. We take that position while supporting the delivery of vital public services and enabling investment in the economy. We firmly believe that everyone who lives in Scotland should be treated equally and fairly in the benefits that they receive and in the contributions that they make. The people I speak to in the armed forces in Scotland are very happy in Scotland. They wanted to come here, they are happy to be here and many of them stay here after they have finished their service in the armed forces.

Graeme Dey (Angus South) (SNP): Does the cabinet secretary agree that the Conservatives are displaying utter hypocrisy? Their concern for the financial wellbeing of service personnel is laid bare by their overseeing of a £1,000 real-terms cut in wages since 2010 and their introduction of childcare changes, which will leave servicemen and servicewomen who move within the services, or join the armed forces in the future, £456 a year worse off?

Keith Brown: I agree with Graeme Dey. I think that the UK Government should follow the Scottish Government's lead and match our commitment to provide a progressive approach to public sector pay, which protects those on the lowest incomes and delivers a fair deal for public service workers in Scotland. It is interesting that not a single Conservative MSP or MP in Scotland has called for the UK Government to lift the public sector pay cap for our armed forces personnel.

Scottish Youth Theatre

2. **Claire Baker (Mid Scotland and Fife) (Lab):** To ask the Scottish Government what discussions it has had with the Scottish Youth Theatre regarding its future. (S5T-00972)

The Minister for Childcare and Early Years (Maree Todd): Scottish Government officials met the Scottish Youth Theatre yesterday—Monday 12 March—to begin to look at immediate options for the theatre company to continue operations. The Scottish Youth Theatre is due to meet the Cabinet Secretary for Culture, Tourism and External Affairs later this week to continue the discussions.

Claire Baker: There is clear support for the theatre company, with more than 37,000 people having signed the online petition, and former students preparing to stage a peaceful demonstration in George Square in Glasgow today.

However, the Scottish Youth Theatre has been in this position before. Four years ago, the Scottish Government had to put together a package to secure the theatre company's short-term future. Can the minister provide details of the rescue package four years ago, outline the possibility of such a package being awarded again and say whether consideration is being given to any transitional arrangements to end the current uncertainty?

Maree Todd: I agree that there is a great deal of concern around the country and, indeed, the chamber with regard to the Scottish Youth Theatre: everyone recognises the value of the work that it does. As an education minister, I am absolutely committed to ensuring that our young people have the opportunity to develop their creative side, because it is very important to their emotional and intellectual development.

While recognising that, however, I must point out that Creative Scotland is legally at arm's length from the Scottish Government, so we cannot intervene in its creative decisions. As I have said, Government officials had a meeting with the SYT yesterday, and the cabinet secretary will have a meeting tomorrow. I am sure that everyone will work together to find a solution.

Claire Baker: I appreciate that the minister might be unable this afternoon to provide details about the grant that the Scottish Government gave the Scottish Youth Theatre four years ago, so perhaps she can write to me with them.

Creative Scotland and its regular-funding announcement have come under significant criticism in recent weeks, and the performing arts are in a precarious position, with options for support dwindling, local authorities being under significant pressure and commercial support for

the sector contracting. The five national performing companies are currently directly supported by the Government and receive in the region of £23 million a year, and 184 organisations competed for the £33 million pot of regular funding from Creative Scotland. It is being argued that the Scottish Youth Theatre should be given status that is equal to the national companies. Will the minister commit to exploring that option?

Maree Todd: I am sure that that will be one of the options that the cabinet secretary will explore when she meets the Scottish Youth Theatre tomorrow. The case has been being put for a number of years now that that could be a solution. I am certain that the cabinet secretary is likely to explore the option tomorrow.

Sandra White (Glasgow Kelvin) (SNP): I am pleased to hear that the cabinet secretary will explore the option of making the SYT a national theatre.

Janet Archer, who is the director of Creative Scotland, has stated that awards were made on merit. I cannot think of a better award being made than to the Scottish Youth Theatre for its work. I am concerned that Creative Scotland is only now, under pressure, pursuing other avenues of funding for the SYT, so I would like an explanation as to why that was not offered at the outset, given the SYT's outstanding contribution. Moreover, I would also like to find out why the Scottish Youth Theatre did not receive RFO funding in 2014, and has not received it now.

Maree Todd: As the First Minister indicated at last Thursday's First Minister's question time, the Scottish Government cannot dictate which organisations are offered funding by Creative Scotland; it is for Creative Scotland to explain who has been offered what, and when.

As part of its overall funding announcement in January, Creative Scotland stated that other funding routes are available to organisations whose regular funding applications were unsuccessful. We recognise that the potential closure of the Scottish Youth Theatre is of concern to many people, including members right across the chamber, which is why we are exploring all the available options with the SYT and with Creative Scotland.

Rachael Hamilton (Ettrick, Roxburgh and Berwickshire) (Con): I am sure that the minister is deeply concerned about the recent funding decision on the Scottish Youth Theatre. Such decisions stand to jeopardise this year of young people, the objectives of which include providing

"opportunities for young people to express themselves through culture, sport and other activities."

How will the Scottish Government ensure that the decision on the Scottish Youth Theatre's funding promotes the objectives and ambitions of the year of young people, rather than jeopardising them?

Maree Todd: We are, absolutely, in the year of young people. Arts, culture and theatre are very important to the young people of our nation—to their wellbeing and, as I have said, to their emotional and intellectual development—so we want to ensure that theatre, and youth theatre in particular, can flourish not just in this year of young people, but generally.

The Scottish Youth Theatre does fantastic work, and the desire of all members is that it will be able to continue to do so. There are always difficult decisions to be taken about funding, although I point out that funding for Creative Scotland and for culture and the arts in general increased in the budget that we have just passed. Many organisations that previously did not get regular funding are now getting it, and we have managed to mitigate the impact of cuts in lottery funding.

Difficult decisions cannot be completely escaped, but we are absolutely determined to look at all options to protect, if we can, the work that Scottish Youth Theatre does, and to support, as far as we can, a healthy and vibrant cultural sector right across Scotland in this year of young people and beyond.

Patrick Harvie (Glasgow) (Green): I am pleased that the Scottish Government is actively engaging at official and Cabinet levels on the issue. It is fairly clear that the Scottish Youth Theatre understands some of the issues that it faced in relation to the previous funding round and the scale of change in terms of governance, as well as the need to address issues such as inclusivity and to remove financial barriers to participation in its programmes. Those changes have been under way, but it should also be clear to all of us that the SYT will be unable to complete that process of change and improvement unless it has confidence that a long-term future lies ahead of it.

Does the minister agree that what is required is not just a stopgap or something that lets the SYT stumble on for a few more months, but something that gives it clarity that it can continue with its programme of improvement and transformation and become a better Scottish Youth Theatre, and not just continue as it is?

Maree Todd: I agree with much of what Patrick Harvie has said. Scottish Youth Theatre has confirmed to Creative Scotland that it is not seeking a reversal of the decision on its RFO application, and I understand that it has said publicly that it recognises that the application could have been better.

The Government absolutely values and recognises the importance to Scotland of youth arts provision, which is why we are working with Scottish Youth Theatre and Creative Scotland to look at all the options, so that young people can continue to benefit from what the Scottish Youth Theatre has to offer.

The Presiding Officer (Ken Macintosh): I apologise to Joan McAlpine. I am afraid that we have run out of time for further questions.

UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill

14:21

The Presiding Officer (Ken Macintosh): The next item of business is a pre-stage 2 debate on the UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill.

Johann Lamont (Glasgow) (Lab): On a point of order, Presiding Officer.

The Presiding Officer: There is a point of order from Johann Lamont.

Richard Lyle (Uddingston and Bellshill) (SNP): Microphone.

Johann Lamont: We have more than one Presiding Officer in the chamber, obviously.

Presiding Officer, I seek your clarification on the purpose and conduct of this afternoon's debate. You will know that I have expressed some concern about the level of scrutiny of the UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill, and members will recall that it was confirmed in the stage 1 debate that one session would go in front of the Finance and Constitution Committee. I commend all the staff who have turned round masses of material in such a short time. We all recognise the challenges of that for committees, too.

I understand that the Finance and Constitution Committee will go through the amendments group by group, as is the normal process. However, I want to clarify the purpose of this afternoon's debate. My understanding was that, this afternoon, we would go through the amendments group by group, in the same way, expressing views on them in order to inform the work of the committee.

I am concerned, first of all, that we appear not to have purpose and effect notes—I think there was an indication that we would receive those, although I may have misunderstood that. I also wish you, Presiding Officer, to confirm that the debate will concentrate on the amendments that have been lodged instead of being a rerun of a debate on the general principles of the bill, which we have already debated in some detail.

I seek clarification from you, Presiding Officer, that the intention is that we will focus on the amendments as lodged, that we will clarify their purpose and effect and that we will inform the thinking of the Finance and Constitution Committee, which will go into the full stage 2 scrutiny this evening.

The Presiding Officer: I thank Johann Lamont for the point that she raises. I will make a number of points by way of reply. The issue was discussed at length by business managers, including her business manager, at the Parliamentary Bureau last week, and the very points that she raises were discussed. I would urge members in all these situations to have a long chat with their business managers to find out what the thinking was.

In this case, I will share it with all members. However, before I do that, I thank Johann Lamont for her commendation of the staff. I, too, am aware that our clerking staff have worked long hours to turn this around in time and that they have been working very hard on the bill.

We had a big discussion about whether to have this debate and discuss the amendments group by group, as we would do if we were pursuing amendments in committee, or whether to view the amendments in the round. We decided that, if we were to take them group by group, we would essentially be second guessing the work of the Finance and Constitution Committee or rehearsing its business, and I do not think that that is the purpose of this debate.

The idea is that this debate will be informed by the publication of the amendments. We are having this debate now that all the amendments have been published. All members have had access to the amendments and can therefore contribute to the debate, choosing the subjects and issues that they want to raise, in the light of that.

As the member knows, purpose and effect notes are provided entirely at the discretion of members or the Government. It has become a habit, of late, for the Government to produce purpose and effect notes, but that has not always been the case and the provision of such notes is still entirely at the discretion of the minister or members.

Johann Lamont: Regardless of whether individual members have conversations with their business managers, I am not party to how that plays out in the Parliamentary Bureau.

The fundamental issue is that the purpose of this debate is to inform the thinking of members of the Finance and Constitution Committee and the Parliament as a whole on the amendments. If we have a general discussion, we will not get that information. If we do not have purpose and effect notes, it is quite difficult for us to direct our comments on amendments, which is a challenge for all members. Presiding Officer, I ask you at least to rule out of order a member who simply speaks to the general principles of the bill—again—and does not address their comments to individual amendments.

The Presiding Officer: I am sorry, but I will not rule out of order any member who wishes to speak on the general principles. The point is that all members' contributions will now be informed by the amendments, which have been published. Members may choose which amendments to speak to, and they can speak to general points that are raised by amendments.

We discussed the issue at length, weighing up the very points that Johann Lamont has brought to our attention. It is a difficult balance to strike, and we decided to give members the choice about which points to raise and to have the advantage of enabling more members to speak—which I note that all the parties have gone for. However, I welcome the points that she has raised, as she has enabled other members to be aware of the discussion that we had.

We are very pressed for time. I remind members that we are applying a new debate management approach in this debate—I see that members are looking surprised. Normally, time is allocated absolutely even handedly across the board. In this debate, however, we have given parties more discretion to allocate time to members to the level that they want to do so. We will, therefore, find that some members have four minutes while some have five, some have seven and some have 10.

This is the first time that we have tried such a procedure. It has been agreed—in case members think that other members are getting more time than they have been given. The approach was discussed in advance with the business managers. It is a novel procedure—[*Interruption*.] We hope that that will make for a more discursive, less confrontational debate, Mr Swinney.

On that note, I call our opening speaker, Michael Russell.

14:27

The Minister for UK Negotiations on Scotland's Place in Europe (Michael Russell): As ever, I am in a positive and non-confrontational mode. I hope that that will last throughout the entire debate. If it does, no one will be happier than me, considering the length of the day that we are looking at. [*Interruption*.] I am glad that I am being counted down by Mr Findlay. I now have a challenge to meet: I must remain non-confrontational despite that.

Last week, the Parliament agreed overwhelmingly to the general principles of the UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill, which I will refer to as the continuity bill.

Today, we turn to detailed scrutiny of the bill. This debate is an innovation, and I am glad that the bureau has discussed it at such length. We are having this pre-stage 2 debate to allow all

members a chance to comment on the bill and the amendments that have been lodged—I am sure that members will do so. There are 261 or 262 amendments—depending on how we define them—to be considered.

Mike Rumbles (North East Scotland) (LD): One of those amendments is amendment 34, in the name of my colleague Tavish Scott, which relates to section 13. I want to vote for the bill. However, I consider that the powers that section 13 will give to ministers are extreme and unjustified. On that basis, will the minister consider accepting amendment 34?

Michael Russell: I have considered accepting every amendment. Some amendments have not detained me for very long; some have detained me for longer. It is my intention to accept amendments to section 13.

It is my intention to do everything that I can do to get the member to vote for the bill. I know that the member has serious objections to section 13 and I want him to vote for the bill, so I will endeavour to do everything that I can to ensure that the bill is acceptable to him as well as to the wider Parliament. Part of that will involve serious consideration of views on amendments lodged by Tavish Scott.

Neil Findlay (Lothian) (Lab): I wonder whether the minister will clear things up right away by saying that he will remove that section.

Michael Russell: No. I know that that is what the member wants me to do, but I am not prepared to remove section 13. I am prepared, at this stage, to consider radical changes to the section that will limit what can be done by it. I gave some examples this morning to the Environment, Climate Change and Land Reform Committee of why I feel that the section is important, and I am happy to expand on those reasons at stage 2 this evening, when the amendments will be considered formally in the Finance and Constitution Committee. I will comment in detail on issues raised by the amendments, which means that I shall deal with themes rather than individual amendments, although those themes apply to individual amendments. I shall not rehearse the stage 1 arguments, which Johann Lamont has indicated she does not want to hear—I would not want to be made to sit down as I was doing that.

I will give members an overview of the Government's approach and will highlight a few areas. First, however, I will tell members where we are in the overall context of discussions with the United Kingdom Government on withdrawal from the European Union and the devolution settlement.

The Scottish Government remains of the view that it is necessary to proceed with this legislation. All along, the objective of the Scottish Government and the Welsh Government has been to reach agreement on amendments to the UK Government's European Union (Withdrawal) Bill—amendments that would address the concerns of all parties in the Parliament. Sadly, we have not yet reached such an agreement. Indeed, yesterday in the House of Lords, the Government lodged its amendment to replace clause 11, which unacceptably constrains devolved competence. That amendment has not been agreed to by the Scottish and Welsh Governments for the reason that I set out in my letter to all members yesterday.

Adam Tomkins (Glasgow) (Con): The minister will know well that the Finance and Constitution Committee unanimously recommended that clause 11 needed to be replaced or removed. I note that he has just used the word "replaced". The Government has lodged an amendment to replace clause 11—will the minister not welcome it?

Michael Russell: I have, indeed, welcomed it on previous occasions, and I welcomed it in the letter that the member will have received yesterday, which I sent to all members. Unfortunately, the amendment does not replace clause 11 in the way that we require it to be replaced. However, as I keep saying, progress has been made and we are trying to keep going with that progress.

I welcome the progress that the UK Government has made and welcome Mr Lidington's comments on reaching agreement with the devolved Administrations, which he, too, seeks to do. Obviously, the new clause would require the consent of the Scottish Parliament. It is welcome that Mr Lidington is committed to further discussions. In that spirit, the Welsh and Scottish Governments offered new proposals on Thursday that we believe would take care of the UK Government's concerns, including a commitment not to withhold agreement unreasonably and a commitment to a written agreement on these matters. Those offers remain on the table. Tomorrow, there will be a meeting of the joint ministerial committee plenary, which the First Minister will attend. I remain hopeful that agreement will be reached, but we are not yet at that stage and this Parliament needs to have a backstop. It needs this bill.

Last Friday, the UK Government published a list of 24 areas for potential UK-wide frameworks. I wrote to members on Friday with that list. I emphasise that the list was prepared without consultation and without the agreement of the Welsh and Scottish Governments. Nevertheless, we are prepared to agree to its publication in the interests of transparency. The Scottish

Government is now considering the list in detail for further discussions with the UK Government.

Neil Findlay: Last week, the minister told us that he could not publish the list because he did not have the agreement of the other two parties. The list has now been published by one of those parties, presumably without the agreement of the other two, and we now have a dispute about the list. When will the minister produce his little list so that we can compare the two?

Michael Russell: I am happy to release the December list, which will indicate the changes. However, I stress that I have just said—[*Interruption*.] I am happy to do so and I will do so.

Neil Findlay: Why have you not done it?

Michael Russell: As the member knows, I was waiting—[*Interruption*.] Presiding Officer, I am trying to do this constructively. I was waiting to have the agreement of three parties. What happened on Thursday was that the UK Government produced a different version of the list without consulting either of the other two Governments and without telling either Government that it was going to do so. The two Governments—the Welsh Government and the Scottish Government—agreed that the list should be published, because we believe in transparency.

Nevertheless, it is entirely fair to indicate that this was jumped on the two Governments without any possibility of our saying, for example, that there is a new category in the list of reserved matters that has not been on previous lists. For example, we dispute two of the items on the reserved list. I am happy to publish the December list—I do not think that I am under any constraints now. The Scottish and Welsh Governments have behaved correctly and honourably in this matter and will continue to do so.

I turn to the amendments that have been lodged for stage 2. I recognise that the procedure for the continuity bill has been unusual, including this pre-stage 2 debate, but there is enough time for the bill to be properly scrutinised, and that is what will take place. Indeed, the number and range of amendments give me confidence that that is the case.

A lot of work has been done in preparing, publishing and grouping the amendments to allow us to have today's stage 2 debate. I record my appreciation of the fact that members, parliamentary officials and civil servants have risen to the occasion.

I am confident in the continuity bill. It takes a similar approach to that of the withdrawal bill on many of the issues, but it benefits substantially from the detailed scrutiny of the UK bill by committees of this Parliament and those at Westminster. It will continue to do so through stage 2.

The continuity bill contains a test of necessity before ministers can use the powers in the bill, an enhanced affirmative procedure and a statutory requirement for UK ministers to seek the consent of Scottish ministers before using their powers in devolved areas.

Adam Tomkins: Will the minister take an intervention?

Michael Russell: I want to make progress.

In addition, the European charter of fundamental rights will continue in devolved areas.

We consider that we have responded to the Scottish Parliament's scrutiny of the withdrawal bill and to the recommendations of the parliamentary committees. However, we are keenly aware that the continuity bill is an unusual bill that raises questions for the Parliament. We all feel uneasy about some of the powers that the Government is necessarily seeking in order to implement Brexit. Those powers are necessary because the UK Government is pursuing Brexit, but I stress that we are very open to suggested improvements. With that in mind, we have considered—and we will consider—all the amendments carefully with a view to either accepting members' proposals or identifying issues that we would want to discuss further with a view to lodging amendments at stage 3.

We will accept a number of amendments tonight, which I will detail when we get into the formal proceedings. Even Conservative members might be surprised about some of the amendments that we will accept. We also consider that some of the amendments that have been lodged are not the right ones, but further discussion might lead us to an approach that meets members' concerns.

Neil Bibby (West Scotland) (Lab): Will the minister take an intervention?

Michael Russell: I want to make progress. I am sorry, but I do not have unlimited time available.

I will briefly highlight a few major areas that emerged from the amendments to give members a flavour of the Government's approach.

First, I turn to the scope of the bill and the scrutiny of ministers' powers. At the heart of members' concerns are the scope of ministers' powers to change legislation and the scrutiny of those powers. Members have proposed various constraints and limitations to those powers. There are also proposals to make necessity the test for how ministers not just use the powers but propose to fix deficiencies. Ross Greer has proposed an

additional step to allow Parliament to consider the procedure that is to be adopted.

I am sympathetic to many of the amendments and their intention, if not their detail. However, I must also consider the bill's purpose and the practical challenge that lies ahead of this Parliament and the Government in readying devolved law for Brexit—which, regrettably, we have to do. In those circumstances, as we have always said, a balance needs to be struck in creating a workable and practical system that will allow the proper level of scrutiny of legislation while allowing it to be passed within the time that is available.

Members will be aware that parliamentary and Scottish Government officials are working together to address a number of legislative matters that will arise as a consequence of Brexit. First and foremost, those discussions will help to establish a shared understanding of the programme of Scottish statutory instruments that will be required, their timing and their relative significance. Officials are also drafting a protocol that seeks out the procedure by which the Scottish Parliament would scrutinise the consent of Scottish ministers to legislative deficiencies being corrected in UK statutory instruments. That detailed and technical work is on-going, and it is one part of the Government's commitment to ensuring that the Parliament is able to scrutinise all aspects of the legislative implications.

I remain of the view that having good working arrangements—arrangements that create confidence but that can be used flexibly—is a better approach than having mere statutory procedural requirements. That overall approach to the withdrawal bill was endorsed by the Delegated Powers and Law Reform Committee and its conclusion is valid for the approach to the continuity bill. Nevertheless, the Government recognises that there may be changes to the detail of scrutiny—for example, when affirmative or enhanced affirmative procedures are required, that could be stated in the bill. We will discuss that this evening.

I have mentioned the keeping pace power, and I repeat my commitment that we will look at the areas of concern: the scope of the power, the procedure for the power, the length of time that the power would last and the effect that the use of the power would have on other parts of the UK. As Mr Findlay mentioned, there is also the question of whether the power should be in the continuity bill at all. I will speak to all those amendments at stage 2. The Government has also lodged an amendment to clarify how long the power would last and how it would be extendable.

My general approach is this: I understand the concerns and, although we may not accept all the amendments today, we will seek to address the views that have been expressed, possibly through amendments at stage 3.

Another group of amendments concerns environmental protections. I gave evidence on that issue to the Environment, Climate Change and Land Reform Committee this morning, and I have had discussions with individual members about it. I have considerable sympathy with the purpose of the amendments. Members may have seen my letter of yesterday to Graeme Dey, the convener of the Environment, Climate Change and Land Reform Committee. I do not consider that the approach provides the best way in which to achieve the results that are being sought—which I agree must be sought—but we are trying to find a possible way of doing so.

The final issue that I will mention is exit day. At the Delegated Powers and Law Reform Committee last week, I undertook to consider that issue further. Indeed, I drafted an amendment to make the intention clearer. However, I am pleased to say that we have not had to lodge that amendment, as we will be able to accept another amendment on the issue that has been lodged.

This debate is an opportunity for members to express their views on the amendments that are before us, to inform the stage 2 proceedings that will take place later today. I look forward to hearing those views, and I will take them into account when we come to the formal stage 2 proceedings.

14:40

Adam Tomkins (Glasgow) (Con): We said when the bill was introduced a fortnight ago that it was unnecessary because the European Union (Withdrawal) Bill, and in particular clause 11 of that bill, would be amended. That claim has now been vindicated, because the United Kingdom Government has indeed tabled an amendment in the House of Lords to clause 11 of the withdrawal bill—not merely an amendment, but a provision that flips clause 11 entirely on its head. The Finance and Constitution Committee unanimously recommended that clause 11 of the withdrawal bill needed to be replaced or removed, and we have just heard from the minister's mouth his recognition that that is exactly what the new amendment does; it replaces clause 11, so that all powers that fall within devolved competence will come here rather than rest in Westminster for an undisclosed period.

In addition, we have the transparency from the UK Government—but not, it should be noted, from the Scottish Government—that means that we now know where the areas are in which the United Kingdom Government is of the view that there needs to be a United Kingdom common

framework, whether legislatively or non-legislatively, to protect the legitimate interests of the United Kingdom such that Brexit does not allow the integrity of the United Kingdom to be unpicked, inadvertently or deliberately, by any Government at any layer. That transparency at the UK level should by now have been replicated at the Scottish level, and I absolutely associate myself with the remarks from Labour members about the disappointment, to put it politely, that that has not yet happened.

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): Does that mean that Mr Tomkins will not be pursuing amendments 150 and 151? Amendment 150 means that, in a protected field, we would require the consent of a minister of the Crown—in other words, elsewhere—and amendment 151 would re-reserve to Westminster agriculture, environmental protection, fisheries, public procurement and state aid. That seems at odds with what Mr Tomkins has just said about returning powers to Scotland.

Adam Tomkins: Those are among the most important amendments that have been lodged to the continuity bill, because they sketch what a solution to the clause 11 issue would look like. Mr Russell wrote to all members yesterday in response to the UK Government's amendment, and among a number of points that I disagree with he said something that I agree with:

> "The Scottish Parliament is being asked to agree these amendments with no certainty about the areas in which frameworks will be established".

I am, and always have been, of the view that there is no reason why the withdrawal bill should not specify the areas in which frameworks are needed, whether those frameworks are legislative or non-legislative. If the withdrawal bill were to be amended to do that, the clause 11 issue would be solved; we could dispense with this woeful piece of emergency legislation, which will do nothing but bring this Parliament into disrepute, and carry on with more important matters.

My answer to Mr Stevenson is no: I will not be withdrawing those amendments. I look forward to the debate on those amendments, because I think that they raise issues that go to the crux of the disagreement between the Scottish Government and the UK Government, and to the crux of the issues that were raised by the Finance and Constitution Committee, which will debate those amendments this evening.

The Deputy First Minister and Cabinet Secretary for Education and Skills (John Swinney): Speaking of the crux of the matter, where does Mr Tomkins stand on the question whether the consent of the Scottish Government or the Scottish Parliament should be obtained on questions and frameworks that are already within the devolved competence of this Parliament?

Adam Tomkins: I stand four-square with the Secretary of State for Scotland, who has said on the record, in this Parliament and the House of Commons, that it is his view and the United Kingdom Government's view that common frameworks must be agreed between the Governments of these nations and not imposed by any Government on any other. That is the UK Government's view, and it has been for months, so I am surprised that Mr Swinney did not already know that.

John Swinney: Can Mr Tomkins clarify whether he believes that the bill provides for the statement that he has just made to Parliament?

Adam Tomkins: There is nothing at all in the continuity bill about common frameworks—[*Interruption*.] I am trying to deal with the second intervention that Mr Swinney has made on my speech. Today's debate is on stage 2 of the bill that Mr Swinney has signed his name to—it is a Scottish Government bill in the Scottish Parliament—and there is not a word in it anywhere about common frameworks. The Scottish ministers have said repeatedly that they see the need for common frameworks, and I have welcomed that repeatedly, so why is there nothing whatever on common frameworks in the bill that they introduced less than a fortnight ago and which Mr Swinney put his name to? The Scottish National Party says one thing but, when it comes to producing legislation, it does quite another.

John Swinney: Will the member give way?

Michael Russell: Will the member give way?

Adam Tomkins: I have a choice. I will take Mr Russell.

Michael Russell: It is a very small point, and I am grateful to the member. Does the amendment that the UK Government tabled in the House of Lords yesterday give effect to what Mr Tomkins has said about agreement to those frameworks by the devolved legislatures or Administrations? Does it allow agreement as opposed to consultation?

Adam Tomkins: It certainly does "allow" agreement—absolutely. That was an interestingly worded question, and the answer is yes: the amendment allows agreement.

John Swinney: Will the member give way?

Adam Tomkins: I want to move on. I would like to take as many interventions from the Government front bench as I can, but I am conscious of time. I did not impose the time constraints on this parliamentary business; the SNP did.

The Presiding Officer: I note your point, Mr Tomkins. It is entirely up to you how many interventions you take, but I stress that I will be as flexible as possible in the time that I am allocating to you.

Adam Tomkins: Given the importance of the matter, I am perfectly happy to take one more intervention from Mr Swinney, but then I will have to make progress and conclude my remarks.

John Swinney: I just want to press Mr Tomkins, because this is an absolutely central issue. Does the amendment that the United Kingdom Government has tabled to provide for frameworks require the UK Government to seek the agreement of the Scottish Government?

Adam Tomkins: I have already said that that amendment allows agreement to be pursued, and I have already said that I agree with the point that Mr Russell made in his letter to all MSPs yesterday that it would be useful and beneficial if the amendment could identify the substantive areas in which common frameworks will be required. That has been my position for months and it continues to be my position. I have said that clearly on the record, and I hope that that is a helpful response.

Finally, I want to say something about the vexed issue of legislative competence. When the Lord Advocate came to the chamber to express his view about legislative competence, the debate was almost exclusively focused on the question whether the bill is compatible with the requirement on the Parliament not to legislate in breach of European Union law. A number of us asked him questions about whether the bill raises any other issues of competence. The more detailed examination that we have now been able to give to the bill than we had done when the Lord Advocate was here reveals that there are indeed a number of provisions that are manifestly and straightforwardly incompatible with the requirements that are imposed on us by the Scotland Act 1998.

The 1998 act states unambiguously that this Parliament has no legislative competence to modify that act. There are then a number of provisions that are saved from that provision. Notwithstanding that broad restriction, we are able to modify a number of detailed issues with regard to the act.

However, a provision of the Scotland Act 1998 that we are unambiguously unable to modify is section 29, which imposes constraints on our legislative competence. When we turn to section 33 of the continuity bill, we see that that section is amended, as is section 57(2). Those are provisions that it is manifestly incompetent for us to amend. The continuity bill's provisions are unlawful and, if they are tested in court—I hope that we will never have to do that, and that the SNP will see the wisdom and merit of withdrawing the bill before it goes any further—I find it extremely difficult to see how, if it is enacted, this Parliament's legislation will withstand judicial scrutiny.

Conservative members have been vindicated in our claim that the continuity bill was unnecessary because the withdrawal bill would be amended. Just a few moments ago, we were vindicated in our claim that it would be dangerous to proceed with this bill in haste. We now know that the Finance and Constitution Committee might have to meet tomorrow as well as today in order to consider the amendments that we have lodged. I hope that I will not be vindicated for a third time when I say that the continuity bill brings the Parliament into disrepute and risks failing in the courts. It is not too late for the SNP to withdraw the bill. It is bad law; we should abandon it and not enact it.

14:51

Neil Findlay (Lothian) (Lab): Presiding Officer, I do not like the idea of your being used as a pawn in a game of political brinkmanship. I do not like it when two Governments—for their own narrow, party advantages—seek to exploit a situation for their own ends. That appears to be what is happening here. We have the Scottish Government trying to stoke up this dispute, and the Tories, who marched their troops to the top of the hill only to see them falling over the edge when David Mundell and Ruth Davidson failed to deliver, digging in their heels and prolonging an avoidable situation.

Last week, I called for a list of the 25 disputed areas to be published. The minister told us that he could not do that without the authority of the UK Government and the Welsh Assembly. The UK Government then published the list. The minister told us in his letter yesterday that he does not agree with it, but now that the UK Government has published, surely he can publish—presumably there is nothing to stop him. At 2.22—two minutes after I sat down—I received a reply from the minister to that very question. It said:

"I will reply to the member as soon as possible."

As the minister could have published five minutes after the UK Government had published, will he publish today?

Michael Russell: I am happy to be clear to the member, because he is labouring under a misapprehension, which I will sort for him.

The list of items was agreed in December as a negotiating list. I would have been happy to

publish that list last week, but as there are, of course, three parties to this, I felt that it was right and decent to get the agreement of the Welsh and UK Governments. On Thursday, that list was superseded by another list, which contained many—indeed, all—of the same subjects and made some changes to categorisation. That list therefore contains the information but organises it differently. We disagree—

Adam Tomkins: Och—

Michael Russell: I am sorry that Mr Tomkins does not understand that; perhaps he should concentrate on it a little bit more. The reality is that the list contains all the same items. However, in order to make Mr Findlay happy, I will make the list from December available. He will then see what the UK Government has done and will, I hope, note two things. First, neither the Welsh Government nor the Scottish Government approved the new list: we were not consulted on it. Second, we approved its publication: indeed, I asked at the meeting on Thursday that it be published that day. Therefore we assented to the publication, as did Mark Drakeford, my Welsh colleague—we are as one on that. However, I am happy to let Mr Findlay have the list from December and he will see the changes that have been made.

Neil Findlay: I have to ask why getting that information from the minister is like pulling teeth. He could have published it ages ago. Today, he could publish his interpretation of that information, which would give us a much clearer view and more transparency. The process has not been good, and today's process does not lend itself to the scrutiny of complex issues. We have not had the appropriate time to discuss and reflect on amendments or even to see the cause and effect of Government amendments.

It is ludicrous that we have got to this stage and that Labour amendments that would have developed an open, clear and transparent process of dispute resolution were rejected in the House of Commons by Tory MPs. Now, late in the day, there is an attempt in the House of Lords to make some progress. However, that just does not cut it. Negotiations surely have to continue to find a solution so that the bill can be put to bed and an agreement put in place on devolved powers. The progress of this bill throws up many areas of concern.

We all know that, for Mr Tomkins and his lawyer friends on the Tory benches, all their Christmases have come at once. I am sure that they sat up all night in their pyjamas, giggling uncontrollably, drafting all those ever-so-clever amendments in an attempt to sabotage the bill. I am sure that the parliamentary draftsmen and women were all appreciative of the overtime. The minister may have had a few sleepless nights as a result.

It may indeed get Adam Tomkins and his junior counsel to either side of him all hot and bothered, but not one person out there in the street cares about their games. They care about their jobs, about low pay, about cuts to services, about the national health service, about housing costs and about their kids' education. That is what they care about. I wish that Mr Tomkins and his chums would pay as much attention to those issues as they do to their little parliamentary games.

The minister should get back round the table. The issue can be resolved with some give and take and common sense. The differences between the two sides are clearly not insurmountable. Negotiations over those areas must continue. If agreements can be reached in areas such as forestry, water quality, maritime employment rights, railways, crime and policing, areas of medicine and much more, they can be reached in the rest of the areas of dispute. Given the Government's track record in some areas, such as farm payments, we can hardly be filled with confidence in its ability to administer them effectively.

Neil Bibby and James Kelly have lodged a series of amendments that focus on protecting equality and environmental rights and the rights of workers and consumers. Those are key Labour demands all through the Brexit process.

Section 13 gives Scottish ministers powers that go beyond the continuity of EU law to create new laws. We are not opposed to creating legislation that ensures that Scotland's devolved laws keep pace with developments in the EU after Brexit, or indeed anywhere else across the world. However, such legislation should not be included in this rushed process.

Section 13 also gives Scottish ministers power to create new laws, through regulations and delegated powers, which are subject to a lesser level of parliamentary scrutiny and take powers away from the Parliament into the hands of the executive. That is a power grab too, and it is a ministerial one. If the Government wants such wide-ranging powers, it should bring them back in a separate piece of legislation so that we can consider it fully through a normal bill timetable, not rush it through this process.

We have concerns about ministers having the ability to decide exit day and ministerial control in a number of other areas. I have lodged a series of amendments on those areas. Colin Smyth and Claudia Beamish have lodged amendments to enshrine environmental principles and animal welfare standards in the bill; they will address those in their speeches.

From the outset, Scottish Labour has said that we will defend devolution. We will seek to make the bill better, and we will continue to do that throughout its passage.

Finally, I find it astonishing that, for a bill that is so important to the future of the country, not one of the 232 amendments lodged has come from a Government back bencher. They do not ever see themselves as parliamentarians. They see themselves as party hacks every single time.

14:58

Mark Ruskell (Mid Scotland and Fife) (Green): I declare an interest as a member of the British Veterinary Association.

Our shared European values have shaped the progress that we now enjoy. The UK has worked for decades with other member states to deliver laws that give future generations the chance of inheriting a cleaner, healthier and more compassionate world. The day that we leave the European Union, we must not lose one single piece of progress that was hard won through suffering, through protest, through debate and through action by citizens across Europe.

The bill must hold on to the principles that protect our environment and the welfare of animals. Those principles must guide us; they must be the foundations for our future, to be built on, not dismantled. Although the charter of fundamental rights that is enshrined in the bill establishes the need to protect our environment, it does not incorporate the precautionary or other principles, despite what the minister said in committee this morning.

Many members will be familiar with those principles—they are part of our everyday language—and I am sure that most members in the chamber believe that polluters should pay or that we should look before we leap and apply the precautionary principle when the picture of hazards and risks is far from clear.

However, the principles are under attack—members should make no mistake about that. Recently, salmon farming industrialists have spoken in the Parliament about regulations being overly precautionary while they pollute the seabed with chemicals that we neither measure nor fully understand the impact of. Now is not the time to be weakening protection for the environment; it is the time to be deepening and strengthening it.

The minister talks about the powers in the continuity bill to keep pace with European laws but I am worried that what we will get is a principles pick and mix, with Governments ever happy to apply a precautionary approach to food safety but not to fisheries policy.

I do not want to see a pick-and-mix approach to the principle of animal sentience either. That is not about whether animals can feel pain; it is about why the welfare of animals always needs to be a consideration when we develop future policy on trade, research, agriculture and fisheries. Fergus Ewing's knee-jerk reaction of condemning the UK Government when it announced that it would support a ban on live animal exports is the biggest warning sign yet that the political choices, as the minister put it this morning in committee, on keeping pace with provisions could undermine our guiding principles.

We have good animal welfare laws in Scotland but they are limited in scope. The article 13 provision in the Lisbon treaty on animal sentience is not perfect either, but it is strong enough to save and to build on, keeping pace with our scientific understanding of welfare issues. If the minister believes that there is a better way to enshrine those guiding principles in legislation, let us see an amendment now rather than hope that Westminster might legislate for us, which is the current Scottish Government position on animal welfare.

On the requirements in the bill for EU case law to have tested general principles to destruction, we can see where the precautionary and other principles are being applied already. However, context is important, and vested interests will hunt for reasons why their situation apparently differs. I have lodged an amendment to disapply the legal case law test for those principles because our environment is vast, complex and diverse, while technology and industry are continually evolving. The application of the principles should not be restricted simply to existing case law on day 1.

The bill must also point to the bodies that will take on new duties to watch, measure and protect our environment after withdrawal—bodies that can hold up a mirror to and point a stick at Governments when they put our environment in danger. That is the purpose behind two further amendments that I have lodged to close the governance gap, because without the ultimate threat of action by the European Court of Justice against the record of the UK Government and the Scottish Government on air quality, I doubt that we would have had the new commitments on low-emission zones in the programme for government last year.

The creation of an environment commissioner is needed, alongside an environmental court. The Government must think again on that and commit in the continuity bill to a consultation process, as the Westminster Government has already done. The bill is a necessary response to the chaos of the Brexit process, but it must not replicate the errors of the UK bill; it must switch on Scotland as

a progressive beacon in these isles, guiding progress for generations to come.

15:03

Tavish Scott (Shetland Islands) (LD): Presiding Officer, I have some regard for Johann Lamont's point about this Parliament's processes and I very much take on board the advice that you gave the chamber at the beginning of the debate about the discussion between business managers and the way in which the Parliament has considered it appropriate to take forward the measures in the bill.

However, I was reminded by a Westminster colleague last night that Westminster has dealt with the UK withdrawal bill over many, many weeks—indeed, months. It has also dealt with it across two houses, although that is not the point; the point is that Westminster has taken some considerable time and still has much to do. That is an important point for the Government in Edinburgh to consider.

Given the length of time that we have to deal with the continuity bill, and given the shortness of the period for the committee to deliberate on stage 2 amendments—although it will not feel like that come 10 o'clock tonight—I believe that there is a significant onus on ministers to recognise Opposition amendments when they have merit and to give way on those amendments where, frankly, there is not much of an argument the other way. That is not because the Government does not have an argument, but because we have not had time to reflect on those amendments, consider them in depth and go back and look at them over a period of time.

Johann Lamont hinted that today's debate could be a rerun of last week's debate. However, a number of things have happened since last week. Mr Russell has certainly written many letters. He has no doubt appeared before many committees as well, which in itself is a challenge, and I have not had the chance to catch up on the *Official Report* of this morning's committee evidence, even if it is already available. I entirely take the Presiding Officer's point that the clerks have been doing some job in terms of both handling amendments and keeping members up to date with committee proceedings. That has certainly happened.

There has also been a meeting of the JMC (European Union negotiations) and tomorrow there will be a JMC meeting that involves the Prime Minister and the First Minister. Those are important staging posts.

We could read much into Adam Tomkins' debate from the front bench as to what has happened as regards the deletion of clause 11 of the European Union (Withdrawal) Bill, but it seems to me that the point—I am not sure that he entirely conceded it despite all the interventions—is that the frameworks, which are absolutely fundamental to many of the constituents whom we are all here to represent, have to be agreed between the different Governments in the United Kingdom, rather than laid down by the UK Government at Westminster and subsequently enacted by other Governments. Those frameworks have to be agreed between all the Governments in the United Kingdom in order to work.

I want to give Mr Tomkins two examples—

John Swinney *rose*—

Tavish Scott: Here we go again.

John Swinney: I am grateful to Mr Scott for giving way. He has made exactly the point that I was making in my interventions on Adam Tomkins. I cannot see how, in all honesty, we as a Parliament can agree to the revised terms of clause 11 in the UK bill, because it does not make provision requiring the agreement of this Parliament or this Government. Without that, we will have things done to us, in terms of devolved competence, that the founders of our Parliament would not have approved of.

Tavish Scott: I take that point from the Deputy First Minister and agree with it, although I think that it also makes the case for a dispute resolution mechanism. We have yet to fully come to terms with that. In the previous parliamentary session, I sat on a committee, chaired by Bruce Crawford, that dealt with intergovernmental machinery. We did considerable work on such a mechanism but, as yet, we do not have in place across the United Kingdom a mechanism for solving disputes. We are certainly in a dispute at this time in relation to frameworks. However, I take the Deputy First Minister's point.

The first of the two examples that I want to give is on fisheries, which is an issue has certainly been in the news of late. As far as I understand this, the Chancellor of the Exchequer opined the other day that fisheries could be tradable in the negotiations on trade that the UK Government will have at some stage with the rest of the European Union. The alarm bells certainly went off in Lerwick and, I am sure, in pretty well every other fishing port across Scotland—and probably in quite a lot of ports in Cornwall and elsewhere in England. I saw that he was pulled back into line fairly shortly after that by Michael Gove, although Mr Gove always worries me greatly, because it seems to me that his intent is to become Prime Minister rather than to stay for much longer in the job of environment and fisheries secretary of state in England.

The second example is on agriculture. Fishing and agriculture are the two industries where frameworks really matter. I know that they matter in many areas of public policy, but in those two areas they absolutely matter.

Agriculture matters because we in Scotland take a different view on the structure of agricultural support. The system is very different south of the border, as anyone who attended the National Farmers Union annual general meeting and listened to colleagues from England explaining that system knows. It is important therefore that the frameworks are agreed across the nations and the Governments in the United Kingdom. They must not be imposed; they cannot be imposed. They must be agreed for many reasons, but particularly in the case of those two principal industries.

The Liberal Democrats will scrutinise the bill, and we have lodged a number of amendments. I certainly do not plan to speak for hour upon hour. I think that Fergus Ewing holds the record for speaking to an amendment—in a stage 2 debate in committee, back in the second session of Parliament, I think that he spoke for just over an hour. Although it was a very good speech, I counsel Adam Tomkins against doing that.

Michael Russell: I make it absolutely clear that I am willing to pledge not to do so if Mr Tomkins pledges not to do so too.

Tavish Scott: I was hoping that we could agree on that, although I recognise that the scrutiny role is important.

We want to consider three amendments this evening. The first concerns section 13 and what is now described as keeping pace with the European Union. Section 13 goes too far. It overreaches the measures that are appropriate for any Government of any political persuasion. The principal amendment that we propose to it would ensure that Government ministers bring back a proposal explaining why they need the power, with a proper parliamentary process, plenty of scrutiny and plenty of time to reflect on the proposal. I take the arguments that the minister made about the timetabling today and next week, but that section of the bill is not an emergency provision. Given its import for our way of doing things, the provision could be addressed properly and with careful consideration in due course—arguably, later this year. I hope that the minister will listen to and deal with that argument.

I will briefly mention two other areas. The first concerns using regulations to create new quangos. It cannot be right to use regulations to do that. If the Government has reason to create a new quango—any Government may well have reason to do so—that should be done by primary legislation, as it has been in the past. Similarly, if we allow the bill to be passed unamended, we could have circumstances in which new criminal offences could be created by regulation. I suspect that our learned friends in the legal profession would wish to ensure that any new criminal offences were created under the full scrutiny of Parliament rather than by regulation.

It is in that spirit that we will propose amendments this evening.

15:11

Joan McAlpine (South Scotland) (SNP): I am pleased to be able to speak in this debate on the continuity bill in advance of stage 2, particularly as a number of developments have taken place since we last debated the bill last week.

The minister said that UK ministers met the Scottish and Welsh Governments but failed to reach agreement again. The UK Government has tabled its own amendment in the House of Lords, as we heard. The Scottish Government has offered compromise and the UK Government has published its list of proposed devolved frameworks. Also, quite out of the blue, there is a new list of powers—such as those on state aid and procurement—that the UK Government claims as reserved, which the devolved Governments dispute. That underlines the need for the continuity bill that we are debating. Therefore, my speech will focus on the need for the frameworks—that is, frameworks that are democratically agreed and not imposed on Scotland and Wales.

Some people described taking back control as an attack on elites. Indeed, it became the terrace chant of the Brexiteer ultras. However, in a supreme irony, the UK European Union (Withdrawal) Bill hands control not to the people but to one of the most elite groups within the UK—Tory ministers. The ultras demand an end to all constraints—legal, political or even international—that could limit UK ministers, except for those imposed by a UK Parliament that can never adequately represent the people of Scotland. Scotland has just 59 seats out of 650 in the Westminster Parliament but, in the withdrawal bill, we see Westminster grabbing powers from a Parliament that has 100 per cent representation from Scotland.

Neil Findlay: I am sure that the member wants to be a beacon of consistency and that she would say that the Parliament should not cede powers to ministers.

Joan McAlpine: The minister has made it clear that he is listening to what the Opposition—

Neil Findlay: What does the member think?

Joan McAlpine: The minister has made it clear that he is listening and that the amendments will be debated later in the Finance and Constitution Committee.

Adam Tomkins: Will the member indicate which amendments she thinks that the Finance and Constitution Committee should accept?

Joan McAlpine: I will not pre-empt the Finance and Constitution Committee. I do not sit on it, so that would be highly inappropriate.

In my speech last week, I touched on the contrast between the operation of the EU single market and the as yet undefined system that UK ministers want to impose on us. The rules and regulations of the single market are created under the leadership of commissioners who are appointed by democratically elected member state Governments and agreed by those Governments within the Council and by the members of the European Parliament. They are enforced by a series of agencies and the Court of Justice of the European Union, which are mechanisms that we will leave in 12 months' time.

What will replace legally enforceable checks and balances around the UK once we leave the single market? Professor Michael Keating, who is one of the experts on the area, has already said that that is not at all clear. I contend that it is clear that UK ministers plan further centralisation. The triumph of their will and the amendments that were tabled in the House of Lords yesterday by the UK Government confirm that.

The amendments set out that UK ministers would only be under a duty to consult the devolved Administrations and to provide information to the UK Parliament on the effect of the regulations on the devolved Administrations and the consultation that it had with them. That is not agreement, so it is unacceptable. It reverses the devolution settlement that 74 per cent of Scots voted for in 1997.

The UK Government's actions since 2016 show that its idea of consultation, never mind agreement, is deeply flawed. It cannot be trusted to treat the devolved Administrations with respect. That lack of respect, which has coloured the entire JMC(EN) process on Brexit, was on display again last week, with the publication by the UK Government of the analysis of the devolved frameworks. The minister said that neither he nor his Welsh counterpart were consulted on the list that was published. That is not a respect agenda. Of course we need frameworks, but they must be meaningful and arrived at through mutual consent.

There are serious dangers in the material that was published on Friday, not least the surprise news that the UK Government is insisting that rules around procurement and state aid are reserved. Given the very different political directions that have been taken on those issues in Scotland and the UK for many years, that is of deep concern. Do we really want this or future right-wing Governments interfering in the question of what support Scottish Governments give to Scottish businesses to protect Scottish jobs? Without agreement, there is no guarantee that the UK Government will give us the power to protect standards; we might be forced to lower them to match whatever trade deal Liam Fox agrees to.

The EU's single market has not been without controversy, but the principles of subsidiarity and proportionality were built into the treaties of the EU to protect the powers of Parliaments such as ours. In particular, the principle of subsidiarity is pertinent as it illustrates the difference between what we have now and what we could have if we do not gain the guarantees that we need.

The Law Society briefing on the bill describes it as aiming

"to ensure that decisions are taken as closely as possible to the citizen and that constant checks are made to verify that action at EU level is justified in light of the possibilities available at national, regional or local level."

Nothing like that exists in the devolution settlement. The EU is an organisation that pools sovereignty from independent member states to give them greater influence on their shared values. As shown by the UK Government's actions in the past 24 hours, its ideas are very different. We will only be consulted and, despite being assured of a power bonanza, we found out that the principles on which this Parliament was founded will be undermined.

Whose sovereignty did the Brexiteers mean when they spoke of taking back control? It appears that parliamentary sovereignty applies to Westminster and to the House of Commons, but not to this chamber. As MSPs, we are simply in the way and an annoyance to be ignored or trampled over on the way to Brexit. I am shocked and disappointed but, frankly, I am not surprised.

15:18

Donald Cameron (Highlands and Islands) (Con): Bearing in mind Johann Lamont's strictures and the fact that I have only four minutes to speak, I will go straight to my amendments. The amendments seek to provide greater clarity to sections of the bill, and I hope that members across the chamber will give them due consideration.

With respect to principles of EU law as set out in section 5, I have lodged an amendment that seeks to clarify which principles are to be included in the bill. The Law Society of Scotland identified that issue and suggested that

"it would be helpful if the Government could identify what general principles it considers are retained in Scots law."

Given that there are several legal principles at stake, I agree with the Law Society that it is important that that is duly clarified in the bill.

The Law Society also raised concerns over

"the approach taken in section 6(1)".

It argues that section 6(1) has no obvious intended effect. Therefore, I have lodged an amendment that indicates that the subsection is

"only a declaratory provision".

In relation to the keeping-pace powers in section 13, I, like many others, remain deeply concerned at the ability of Scottish ministers to hold full power, under section 13, to make provision corresponding to EU law after exit day. I have suggested that the bill be amended so that that will be subject to

"the restrictions and limitations of the Scotland Act 1998 on making provision on devolved and reserved matters"

and to

"the Scottish Parliament giving its consent."

I hope that others in this chamber will at least agree that ministers should not have full control without oversight in that regard, or without the overarching protection that is provided by the devolution settlement, as enshrined in the 1998 act.

There are elements of section 14 that require correction and clarity. First, I have suggested an amendment that would mean that, where a draft Scottish statutory instrument to which section 14(5)(b) applies is laid, the Scottish ministers must explain the matter to the Scottish Parliament, as opposed to the Presiding Officer. Similarly, that explanation should be provided within a set timeframe, as opposed to the somewhat ambiguous "as soon as practicable". I have suggested a period of two sitting days. In addition to that, I have suggested an additional subsection to ensure that, where such a statutory instrument is laid on a day on which Parliament is in recess, Scottish ministers are held accountable for that and must explain to the Presiding Officer why that has occurred. In addition, I have sought to provide a definition of what constitutes a sitting day.

Finally, I believe that clarity is required with respect to legislative competence and the meaning of "exit day". First and foremost, I have lodged an amendment to remove section 28 from the bill altogether. Although the Law Society of Scotland suggested that section 28 should be amended to reflect the exit day that is noted in the UK bill, I do not see the necessity for that. We do not feel that the exit day should be determined by Scottish ministers, as that could potentially cause conflict in relation to the UK bill.

I have also lodged additional amendments to various lines in sections 5, 12, and 13 to reassert the importance of the Scotland Act 1998 and, in particular, areas that are either devolved or reserved. Ultimately, no area of the bill should attempt to supersede that act.

I do not believe that we should be having this debate in this manner, and it is clear that more time is required to discuss the bill further. Nonetheless, I hope that members will view my amendments and those submitted by my colleagues as useful, and as seeking to add clarity to the bill.

We will listen to and scrutinise the amendments of members on opposite benches and, where there is common ground, they will have our support. However, fundamentally, we remain opposed to the bill.

15:22

Stuart McMillan (Greenock and Inverclyde) (SNP): It is clear that this debate will quickly be overtaken by stage 2 of the bill, which will be dealt with by the Finance and Constitution Committee later. However, regardless of what amendments are agreed to tonight, we need to try to protect this Parliament and its devolved powers.

Earlier, the minister said that he would not support amendment 35, which seeks to amend section 13. I was pleased to hear him say that.

Murdo Fraser (Mid Scotland and Fife) (Con): Which amendments does Stuart McMillan believe that the Finance and Constitution Committee should accept this evening?

Stuart McMillan: If Mr Fraser wants to listen, he will hear the answer to that as I progress with my speech.

This bill is contingency planning. Any Government that did not plan for the worst in the crisis situation that the UK faces would be undermining its electorate. Regardless of what party—or parties—runs the Scottish Government, it needs to undertake planning to protect the interests of this Parliament and of all of Scotland.

The purpose of the continuity bill is to ensure that Scotland's laws will work properly on the day when the UK leaves the EU. The bill has been introduced because we recognise the need to prepare for the serious legal consequences that are involved in that.

Because of the short timeframe, the Scottish Government has committed to ensuring that the Parliament can play the greatest possible role in scrutinising the bill. As we know, the minister has

appeared in front of a number of committees, and he has a long session ahead of him this evening with the Finance and Constitution Committee, and, no doubt, with other committees as the process continues over the next week.

The fact that we are having this pre-stage 2 debate and the Finance and Constitution Committee is meeting this evening demonstrates that an approach of openness and transparency is being taken, and shows that the minister is prepared to work with the Parliament to get the bill through the parliamentary process.

Amendments 108 and 109, which seek to amend section 7—I draw the attention of Mr Fraser to these ones in particular—have arisen from work that the Delegated Powers and Law Reform Committee did last week.

The situation is similar with regard to Neil Findlay's amendment 55, which seeks to amend section 28. Mr Russell said that the Scottish Government had intended to lodge an amendment to section 28, but because of Mr Findlay's amendment, he did not see the need for it to do so. Mr Cameron's comments on section 28 were rather interesting, because they seemed to conflict with the substance of the Delegated Powers and Law Reform Committee's discussions, so I will be interested to hear what Mr Simpson has to say about that section later in the debate.

There needs to be a legal framework to keep our laws going at the point of the UK's withdrawal from the EU. Without such a framework, many devolved laws in areas of EU law would stop working, such as our system of agricultural support and our rules for ensuring food standards, and it would become uncertain and unclear how many other rules, such as our environmental protection rules, worked.

The withdrawal bill would allow Westminster to take control of devolved policy areas so that—according to the UK Government—UK-wide frameworks could be put in place after Brexit. Whichever way we look at it, the debate about the existing powers of this Parliament in relation to policy areas such as farming, fishing, justice and the environment is crucial.

The continuity bill is about protecting the devolution agreement that people in Scotland voted for in 1997. It is about the best way to run important national and local services, such as our NHS—

Daniel Johnson (Edinburgh Southern) (Lab): Will the member take an intervention?

Stuart McMillan: I am sorry—normally, I would, but I cannot.

It is also about the best way to provide agricultural support, such as the less favoured area payments, which are essential in Scotland but are not used in England; the best way to devise procurement rules that are tailored to Scotland's needs; and the best way to protect and enhance our environment, which consists of large areas of coast and sea. The Scottish Government has acknowledged the need for such legislation since the publication of "Scotland's Place in Europe" in December 2016.

Now that the UK Government has confirmed that the power grab on agriculture, fisheries, procurement, state aid, genetically modified crops and more is a reality, the public in Scotland should be fearful for their future. They should also be afraid for the economy, jobs and opportunities. As well as stealing powers from this Parliament, the Tories' power grab will steal jobs and opportunities from our constituents.

I urge every member to support the Scottish Government in what it is trying to do. More than 200 amendments will be considered this evening, some of which will be agreed to and some of which will be disagreed to. I urge every member to think about not only their constituents, their constituencies and their regions, but this Parliament and its powers.

15:27

Claudia Beamish (South Scotland) (Lab): Today, we meet in the chamber to fight for what we already have: important European legislation that improves all our lives, which is now at risk because of the arrogance of the Conservative Party and its shambolic efforts ever since the Brexit vote.

As my colleague Neil Findlay said at stage 1, we want devolution to work and we have a duty to make the continuity bill as good as it can be, although we hope that, in the end, it will not be needed. That is perhaps a vain hope, in view of the Tory Party's position, but never mind.

The continuity bill is incredibly important with regard to the environment and climate change reduction, which are issues that obviously benefit from international effort. I want to speak about my amendments 1 and 2 and other amendments that relate to environmental issues and animal welfare.

Our international commitments, including EU provisions, have been a key catalyst in Scotland's becoming a leader on environmental protection and climate change reduction efforts. The direct transposition of EU protections is a commonsense approach and, along with many others, I feel very uneasy about handing over the potential freedom to relax environmental standards.

EU environmental legislation has been instrumental in the progress that has been made

in Scotland. Around 80 per cent of Scottish environmental law originated in EU legislation. We must maintain the more specific standards and targets that tend to be in EU legislation, in contrast to the situation prior to the EU, when domestic law rested on broader statements. The Institute for European Environmental Policy said that lowering the standards would result in

"real and uncertain environmental and"—

I stress the word "and"—

"health risks."

Air pollution is one of the biggest environmental health threats that we face. It is a damning example of environmental injustice, in that it disproportionately affects children, the elderly, the ill and people who live in poverty. The EU has been crucial in driving the Scottish Government and the UK Government to do better. For example, it has obliged mandatory compliance with the ambient air quality directive. We must not risk losing such things.

Our seas have been better protected—and enhanced—thanks to the leadership in legislation from the EU. The marine strategic framework directive and the birds and habitats directives were crucial in passing the Marine (Scotland) Act 2010 and the subsequent development of the marine plan and the vital marine protected areas.

On land, the birds and habitats directives raised the bar for biodiversity protection across Europe. Scotland is an iconic home to flora and fauna, but the challenge of protecting them grows every day as our climate worsens.

Domestic legislation enshrines those conservation efforts, but the potential for infraction proceedings depends on the details of Brexit, which are yet to be confirmed. We cannot allow ourselves to participate in a race to the bottom on environmental protections.

Falling back on international agreements would also put the environment at risk. Comparison between the Convention on the Conservation of European Wildlife and Natural Habitats—the Bern convention—and the EU habitats directive shows substantial difference that we cannot afford to sink to.

Today, I will move my amendments to enshrine the principles of environmental law into Scots law, whether they originate in the case law of the European Court of Justice, the EU treaties, direct EU legislation or EU directives. Colin Smyth's amendment 3 does the same for the principle of animal welfare—

Stewart Stevenson: Will the member take an intervention?

Claudia Beamish: No, I do not have time. I am sorry.

The purpose of amendment 3 is particularly important, because Scottish legislation on animal welfare needs to be bolstered. We will also support Mark Ruskell's important amendment on animal sentience.

Those issues must be included in the bill. Across the chamber, we speak of sustainable development and progress with a suffusion of economic, social and development considerations. In the minister's letter to the Environment, Climate Change and Land Reform Committee yesterday, he said that environmental protection is "a core human right." These principles affect us all.

As a community activist fighting against inappropriate opencast mining, I was grateful for the precautionary principle, and I am relieved that that will be retained through the European charter of fundamental rights. However, we must go further, so I will continue to argue in support of amendments 1 and 2. I heard what the minister said to the Environment, Climate Change and Land Reform Committee this morning about general principles being enshrined in law, as opposed to guiding principles, which, it is argued, are not enshrined in law. I also heard his willingness to consider having an equivalent of guiding principles in explanatory notes.

I grasp the minister's outline—I hope correctly—of the possibility of referring to future relevant legislation in the bill. However, I will move and press my amendments later, because I seek assurances that we are robustly protecting our environment and the future of our planet. I am not convinced that we cannot have those protections in the bill.

The Deputy Presiding Officer (Christine Grahame): There is a not a lot of time in hand, but there is room for interventions. I will not ask members to make up the time until we run out of the extra time.

I call Alison Harris to be followed by Sandra White. Alison, please start. I am sorry—I should have called you Ms Harris. I was a bit friendly with you there—I do not know why that came over me.

15:32

Alison Harris (Central Scotland) (Con): Thank you, Presiding Officer. First, I declare that I am a member of the Delegated Powers and Law Reform Committee.

The Scottish Conservatives have been clear that the European Union (Withdrawal) Bill would have to change if it is to reflect the principles of the United Kingdom's devolved settlements. It was regrettable that amendments to the bill could not

be tabled in time before the bill passed through the House of Commons, but amendments to it should reflect discussions between the Scottish and UK Governments.

I have been pleased that there has been progress in those negotiations, which the minister referred to last week in his evidence to the Delegated Powers and Law Reform Committee. However, although the stated intent of the Scottish Government bill is continuity, in reality it represents discontinuity and disruption. It represents discontinuity with this Parliament's tradition of debate, discussion and scrutiny, and possible disruption to the process of negotiations between the UK and Scottish Governments. As my colleague Adam Tomkins said last week, it is a wrecking bill.

I hope that, as Mike Russell has stated, successful negotiations between the UK and Scottish Governments will mean that the European Union (Withdrawal) Bill can be satisfactorily amended and that the continuity bill does not have to come into effect. Nevertheless, as parliamentarians, it is incumbent on us to address deficiencies in legislation, however constricting the circumstances.

I thank Mike Russell for making himself available to the committees of this Parliament to address the numerous problems that the continuity bill creates. Nonetheless, that is no substitute for the full process of parliamentary deliberation that such a significant bill needs.

In the DPLR committee meeting, I was able to share with Mike Russell my concerns about how little time the SNP Government intends to allow for Scotland's Parliament to scrutinise the bill. The fact remains that one of the most significant pieces of legislation in the Scottish Parliament's history will be scrutinised over a period of less than a month.

The Scottish Conservatives have lodged a series of amendments to address obvious deficiencies in the bill. As it stands, the bill creates extraordinary powers for Scottish ministers to repeal the bill itself and to legislate in line with the EU after exit. The bill fails to deal properly with the reality of a clearly defined exit date or the possibility of a withdrawal period. Those and numerous other issues in the bill require significant attention.

The correct means of ensuring that Scotland and the whole UK are prepared to leave the EU is the withdrawal bill. Yes, the withdrawal bill as introduced is unacceptable, but although some devolved powers intersect with returning EU powers, the whole UK is leaving the EU and we need a bill that prepares the entire United Kingdom for exiting and reflects the integrity of our UK internal market—something that the continuity bill appears to have no interest in doing.

The process of negotiations between the UK and Scottish Governments has been longer than anyone would have hoped, but if the will is there, I am sure that an agreement can be reached and powers can return from Brussels to Holyrood by the correct means. I hope that that can happen within a timeframe that will deem the continuity bill irrelevant before it has even reached its final stage, but while the bill is before us it is this Parliament's responsibility to address its obvious and numerous defects. That is why I shall be supporting the Scottish Conservative amendments to the bill.

15:36

Sandra White (Glasgow Kelvin) (SNP): I remind the Conservatives that Scotland did not vote to leave the EU or for Brexit. As we are having a day of reminding, I was reminded at the Health and Sport Committee meeting this morning that it is 381 days from today until Brexit comes into force. That set me thinking about when I first heard about the great repeal bill. I can show members a copy of it, which I picked up at Westminster. It was published on 23 February 2017—that was not long ago, and look where we are now.

I will remind members what the research briefing on the UK bill says about devolution. It says:

"Legislating for Brexit will have significant implications for Scotland, Wales and Northern Ireland."

If the great repeal bill transposes

"all directly applicable EU law",

it could

"effectively implement a range of provisions that are within devolved competence",

but,

"so long as the Sewel Convention is respected",

that should be okay. However, we know full well that the Sewel convention is not being respected.

The briefing goes on to say:

"However, the Sewel Convention, even in its statutory form, includes a rider that the Government will not 'normally' legislate with regard to devolved matters without consent"

and that

"not using the Sewel Convention would bring its own political issues and would raise objections in the devolved institutions."

That is why we need a legal continuity bill. I agree with Tavish Scott, John Swinney, Joan McAlpine and others that it is absolutely essential that we

have frameworks. I will identify a number of those that relate to health, because I am now on the Health and Sport Committee, which took evidence this morning on Brexit and health.

I am not going to read the whole list, but there are

"82 policy areas where non-legislative common frameworks may be required".

Those include blood safety and quality, clinical trials, medical products for human use, medicine prices, the quality and safety of organ transplants, public health, the quality and safety of tissues and cells, and cross-border healthcare, which is a huge issue. The list of 24 policy areas that are

"subject to more detailed discussion"

includes reciprocal healthcare.

Those are really important issues. I am sorry that I am not speaking to the amendments—that is because I am not on the Finance and Constitution Committee. However, I am on the Health and Sport Committee, and we need to keep in mind that all those areas affect the whole lives of the general population—people and their families.

Rachael Hamilton (Ettrick, Roxburgh and Berwickshire) (Con): Which Opposition amendments to improve the continuity bill does the member think that the Finance and Constitution Committee should accept?

Sandra White: Rachael Hamilton should have listened to what I said, which is that I am speaking not to any of the amendments but to the issues for my committee, the Health and Sport Committee. I think that I am being responsible, because I am asking members to look at specific issues in that respect. We can see the number of health issues that are affected by the withdrawal bill—[*Interruption*.] Those who are shouting from the sidelines can be quiet.

I have a couple of other important issues to raise. Professor Tomkins might like to look at one, in particular, that involves research funding and the workers who come from Europe to carry out research. The University of Glasgow has a fantastic department that undertakes heart research, kidney research and arthritis research. The money that goes into that from the horizon 2020 programme amounts to £78 billion, which we will not be able to replace if, under Brexit, we are not in the EU. Also, 18.3 per cent of the research workforce and 13.4 per cent of the academic staff are from the EU, which is the highest proportion among such staff in the UK. What is going to happen to those people?

Further, at committee this morning, we heard evidence from professionals who are appalled at the situation and are worried that people here are not applying for those jobs. If I remember correctly, the number of people applying for research jobs is down by 9 per cent already. Those professionals' big worry is that other countries will, quite rightly, pick up the slack. Where will our reputation for research go if we are no longer able to access horizon 2020 funding or any budgets coming from the EU? I think that such issues should be raised, and I hope that they will be raised during the bill process. I am raising those issues just now because I am on the Health and Sport Committee and I am worried that we will not have the research facilities that we normally have.

15:42

Jamie Greene (West Scotland) (Con): I may be fairly new to the Parliament and the legislative process, but nothing about this bill feels right to me. We have been afforded a far-from-adequate opportunity to scrutinise the bill. It is farcical that, in just a few hours' time, this Parliament will be debating and voting on over 230 amendments. That bothers me, because it means that the bill was either a long time in the making or it was hastily drafted with a questionable legal foundation. If the former is the case, why are we rushing through the bill process? If the latter is the case, why should hastily drafted legislation be scrutinised in an equally hasty manner? That looks and feels like a dangerous combination to me.

There is no doubt that Brexit is an emotive subject, so it is perfectly acceptable to have contradictory views on it. However, what is not acceptable is letting our personal or partisan views on the UK Government or on Brexit get in the way of our collective duty to make good law or undermine the highly respected and valued way in which this Parliament passes legislation.

Last week, Johann Lamont asked SNP members whether the bill should continue, regardless of whether there is a deal. One reply was:

"The bill is in place today in order to ensure that we get a deal."—[*Official Report*, 7 March 2018; c 41.]

The bill is being used as nothing more than a bargaining tool. It is a sleight of hand in a dangerous game of testing this Parliament's well-established methods of passing law. However, we are where we are, so can we please, at the very least, ensure that any bill that is passed today is watertight? That is why Conservative members have lodged 147 amendments to the bill, and it is why I have lodged 23 of them.

Stewart Stevenson: Will the member take an intervention?

Jamie Greene: I shall not.

Mr Findlay might think that such a number of amendments is a nuisance, but I call it scrutiny.

I will address some of the concerns that our amendments will seek to rectify this evening. The bill contains provisions that would give Scottish ministers the power to make subjective decisions as to whether they—not the courts, but Scottish ministers—think that the UK Government is fulfilling its obligations under international treaties. The bill says that Scottish ministers should decide when the exit date is and that they have the power to cherry pick what bits of EU legislation they want to adopt into Scots law even after the exit date. The bill even gives them the power to decide what bits of that EU law they want to transpose. It allows Scottish ministers to produce counterproductive and conflicting regulations that fly in the face of sensible frameworks and that put at risk Scotland's biggest market: our UK internal market. Worst of all, as the bill is drafted, none of that will require Parliament's consent.

There are many questions, yet we have little time in which to debate and discuss them.

Joan McAlpine: Will the member give way?

Jamie Greene: I have only a minute left.

Our pragmatic amendments will address problems arising from a number of issues: the two parallel and potentially conflicting approaches to the adoption of the charter of fundamental rights; variances in the approach to Francovich in the two bills; and even the question whether Scottish public authorities are adequately equipped to deal with existing EU law if it becomes Scots law, never mind any new laws that are transposed after Brexit.

I therefore appeal to MSPs across the chamber to judge the bill on its content, not on its context. Moreover, my appeal to the members of the Finance and Constitution Committee who will vote on the bill this evening is that, if an amendment makes sense, they should please consider it regardless of who has moved it. In the absence of due scrutiny of the bill, we are relying on them to uphold the Parliament's integrity.

The Deputy Presiding Officer: I remind the chamber that there is a small amount of time in hand for interventions, although it is, of course, up to members whether they wish to take them.

15:46

Richard Lochhead (Moray) (SNP): I will first respond to Jamie Greene's appeal, at the end of his speech, by pointing out that we cannot divorce the content of any parliamentary bill from its context, because the context lies at the heart of why the bill was introduced in the first place.

I recall the many pledges that were made by the leave campaign during the EU referendum. For example, we all remember the £350 million a week that was promised to the NHS if people in the UK voted to leave. Of course, it now transpires that that was bare-faced nonsense. Indeed, the *Financial Times* has found that Brexit is actually costing the UK £350 million a week in terms of the damage to our economy. I also understand from social media that the Chancellor of the Exchequer has said today that, post-Brexit, we will be paying money into the EU until 2064. As I have said, we cannot divorce the context from the content of the bill that we are debating today.

One pledge that I do not recall the leave campaign making is that, if the UK voted to leave and we had Brexit, powers would be taken away from the Scottish Parliament. However, here we are, in 2018, discussing the biggest threat to Scottish devolution since the Parliament was set up, in 1999. The issue that has been put in front of us to deal with is of the UK Government's making, and it is why the bill has been introduced and why we are facing this emergency situation.

The irony is that one of the reasons why so many people across the UK and the Conservative Party supported leaving the EU was that they felt that things were overcentralised and that power should be brought back to the people. Post-Brexit, however, they want power to be taken away from Scotland and centralised in London. That is something that many people in this chamber and across Scotland do not want to happen.

The issue of UK frameworks is very interesting. Some people see them as a way in which we can work together on issues of common interest to ensure that there are no unintended consequences through policies that are adopted either north or south of the border causing damage in the other area. I am thinking, for example, of outbreaks of animal diseases. As we share the same island, it makes sense to have a UK framework to deal with such matters. However, I think that this bill is important because, to many other people, particularly the mixture of people in the UK ministerial ranks who are anti-devolution or who grudgingly support it, such frameworks are a smokescreen for getting power and control back from Scotland and into Whitehall.

In my nine years as the cabinet secretary with responsibility for rural affairs, food and the environment, my experience of just about every UK minister whom I dealt with—particularly those in the Conservative Party—was that they were either anti-devolution or grudgingly supportive of devolution while doing everything in their power to push as far as possible the argument that Scotland should be stopped from taking unilateral decisions where they felt that those decisions did

not coincide with the interests of the rest of the UK or where they gave Scotland a competitive advantage. The list of reserved powers that the UK Government wants to hang on to, which lies at the heart of this debate, is there for a reason.

It is for a reason that farming, fishing, animal welfare, environmental standards and many other issues are on the list of areas that UK ministers want to reserve to the UK Government. The reason is that those ministers, looking across the UK, do not want Scotland to take different decisions. However, we have devolution and we must not allow the UK Government to undermine or erode it. That is why this is such an important constitutional issue for the people of Scotland.

Daniel Johnson: Does the member recognise that it is important that devolution is about not just what powers we have but how they are exercised? He is right to be sceptical about the intent of UK ministers, but surely it is not much better to give untrammelled power to the Scottish ministers.

Richard Lochhead: Power is given to the Scottish ministers to protect devolution and the democratic will of the people of Scotland.

I will reflect on a couple of experiences that I had with UK ministers over the years, which I think are relevant to the debate. I had a constant battle with UK fisheries ministers, who did not believe that any barriers should be put in place to prevent Scottish fishermen from selling Scottish fishing quota to Dutch multinationals that were based in England—the English fleet having already sold out to foreign interests.

The UK Government believes in the free market, and its ministers were under pressure from their constituent Dutch companies, which happened to be based south of the border. They said, "You must not allow the Scottish Administration to put in place barriers to prevent Scotland from being allowed to sell its quota to interests south of the border that happen to be foreign owned." Of course, the Scottish Government, with its modest powers, did its best to put barriers in the way of that happening, and we had some success in doing so.

One reason why the UK Government wants fisheries to be re-reserved is that it wants to eliminate those barriers, so that, in the future, the Scottish ministers cannot stop it doing what it wants to do for its interests south of the border. UK fisheries ministers are not accountable to this Parliament; they are accountable to their constituents and the House of Commons.

Next, let us consider agriculture. I had to deal with farming minister after farming minister from the Conservative Government who told me that the upland hills in Scotland, the sheep sector and less favoured areas were very important for tourism. I had to explain that they are important for social and economic reasons and for food production, not just for tourism.

UK ministers do not recognise the need for distinctive policies north of the border, and they do not want to have to face audiences south of the border who think that Scotland has the advantage of the mechanisms that we put in place to support our sectors. UK ministers do not want Scotland to have a competitive advantage in that way.

There is a reason why the UK wants to retain all these powers at Westminster.

The Deputy Presiding Officer: Thank you. You must conclude, Mr Lochhead.

Richard Lochhead: I ask ministers not to budge an inch and to stick to their principles in order to protect Scottish devolution.

15:52

Neil Bibby (West Scotland) (Lab): As we discussed at length in last week's debate, the issues that arise from the bill are as much about the authority of this Parliament and its place in our democracy as they are about the process of leaving the European Union.

Scottish Labour has made it clear that the UK Government's withdrawal bill is not acceptable in its current form. That we are leaving the European Union is not in dispute, but the withdrawal bill itself is very much in dispute. As Neil Findlay said, Labour thinks that that bill must be amended and that a satisfactory conclusion must be reached. Even now, we hope that talks between the UK Government and the devolved Administrations will result in the appropriate amendments being made to the bill. In the meantime, the Parliament must be prepared to legislate for a credible alternative. That is why we voted for the continuity bill at stage 1.

As members know, 231 amendments have been lodged at stage 2. That would be a huge number of amendments to consider in relation to any bill, let alone a bill that is being dealt with under emergency procedure. Like many members, I am not happy about the truncated process—we have had only since Friday to consider 231 amendments.

We must get the legislation right, as members of all parties will agree. I say to members from other parties that, although I might not support some amendments at stage 2, that does not mean that the proposed approach cannot be amended so that we can consider similar amendments at stage 3. Just as we need to be wary of the Government legislating hastily, our parties need to be wary of not doing so.

My Labour colleagues and I have lodged a number of amendments, many of which relate to the need for clarity, legal certainty and enhanced scrutiny. These are exceptional times and this is an exceptional bill. It places significant regulation-making powers in the hands of the Scottish Government, and the scope of those powers and how they are exercised is rightly the subject of amendments that have been lodged not just by Labour members but by members of all the Opposition parties in the Parliament.

There are multiple instances, throughout the bill, of ministers being able to use regulation-making powers to deal with deficiencies arising from the UK's withdrawal from the European Union to ensure that there is compliance with international obligations or, in the case of section 13, which is particularly controversial, to make provision corresponding to EU law after the exit date. The minister will recall that the Law Society of Scotland, in evidence to the Finance and Constitution Committee last week, said that section 13 lacks "clarity". Professor Alan Page warned that it could amount to

"a potentially major surrender by the Parliament of its legislative competence",

and called it

"a thoroughly bad idea."—[*Official Report*, *Finance and Constitution Committee*, 7 March 2018; c 29.]

Labour will, therefore, seek to remove that power. If we are not successful, we want at least to put checks and balances in place. The Liberal Democrats and the Tories have specific amendments for that and other suggestions of how to do it. I am interested to know the Greens' position on section 13 and on the amendments that have been lodged by Labour, the Conservatives and the Liberal Democrats. We will seek to ensure that the powers are proportionate and used only when necessary rather than when Scottish Government ministers alone consider them to be appropriate.

The Tory Government's withdrawal bill marginalises the Scottish Parliament—a criticism of the bill that has been made by Labour, Liberal Democrat and SNP MPs as well as by many members on the UK Government's back benches. Witnesses to the committee have spelled out in their evidence the ways in which the withdrawal bill represents a power grab—grabbing power not just from the devolved Administrations but from the UK Parliament. It would be wrong of the Scottish Government to condemn the UK withdrawal bill for marginalising the UK Parliament while making the same mistakes and voting against proper parliamentary scrutiny in this chamber. Therefore, I urge the minister and other parties not just to give Labour amendments their full consideration this evening but to support them.

I also draw the minister's attention to amendments that cover the general principles of EU law, the charter of fundamental rights and other rights and protections. A number of amendments in my name would prevent ministers from using the powers that are granted by the continuity bill to weaken or remove EU-derived rights and protections, including those relating to employment, equalities, health and safety, consumer standards and environmental protections. The amendments from Claudia Beamish and Colin Smyth are also worthy of support. We propose that EU-derived rights and protections cannot be weakened or removed by any act of the Scottish Parliament.

The European Union has been a driving force behind many of the environmental, consumer and health and safety protections that we take for granted. Labour's amendments safeguard those protections that fall under devolved competence from dilution by the present Scottish Government or any future Scottish Government. I hope that the whole chamber will recognise the importance of Labour's amendments, which seek to enhance scrutiny, protect the environment and safeguard the rights of Scotland's people throughout the Brexit process and beyond, and which seek to get the balance right between the powers that are held by ministers and those that are held by the Scottish Parliament.

15:57

Graham Simpson (Central Scotland) (Con): Last week, I spoke in the chamber in the stage 1 debate in my capacity as convener of the Delegated Powers and Law Reform Committee. I was limited in my remarks, but no such restrictions apply today.

That we are here now, before amendments have been considered during the marathon session tonight, shows what a farce this process is. As a committee convener, I am exasperated that we have been afforded just three weeks to deal with the bill, but, as a parliamentarian, I am furious. This stunt—that is what this is—has put the Parliament in a very dim light. Let us be clear: the public are not in the least bit interested in the bill. The SNP might think that it is stirring up some kind of anger through its pretend grievance, but I can assure the SNP that it is not. No one outside of the Holyrood bubble is following any of this. We are no further forward than we were last week, except that we now know—thanks to the Cabinet Office—that there is really no substantive beef.

We know that claims that there is an emergency are entirely bogus. Mike Russell has a funny idea of what constitutes an emergency. He reminds me of one of those people who crop up in the regular newspaper reports on inappropriate 999 calls—

like the man who said that his 50p coin was stuck in a washing machine in his local launderette and who wanted the police to retrieve it, or the woman who wanted the police to deal with a pair of noisy foxes outside her home. Those are inconveniences, but not emergencies.

The vast majority of powers that will return from Brussels will start off in Edinburgh, Cardiff and Belfast. None of the existing powers of the devolved Governments will be affected in any way. That is hardly a power grab. Before Mr Swinney stands up, I say to him that, if we want to see a power grab, we have only to look at the Planning (Scotland) Bill—that is an SNP power grab. Just 24 out of 153 areas are still open to discussion, and we may even get a deal this week, so what on earth are we doing here?

We should remember that, for all the fuss, most of the SNP members, Alex Neil excepted, do not even want the powers that they are now complaining about. They want them to be held and controlled by Brussels. Let us be clear: this Parliament will get a lot more powers on Brexit day. We would think that the SNP would be pleased about that, but it is desperate to stoke up grudges and grievance.

My colleague Jackson Carlaw, who is not here at the moment, is a reasonable man, and he assures me that John Swinney and Mike Russell really want to do a deal with the UK Government. I am afraid that their recent behaviour does not bear that out, but I hope that Mr Carlaw is right and my perception is wrong.

Those of us who have lodged amendments to this absurd bill will do our jobs of scrutiny tonight and maybe tomorrow, and the DPLR Committee, which I convene, will meet again on Thursday to discuss possible amendments at stage 3.

In response to Stuart McMillan, I say that I welcome Neil Findlay's amendment about exit day, which says that it should be the same day as the UK leaves the EU—that is a statement of fact.

Mr Russell does not have to apologise to me for the extra time that we are spending as parliamentarians, but he should certainly be saying sorry to all the parliamentary staff who have been dealing with this.

Stuart McMillan: Will the member take an intervention?

The Deputy Presiding Officer: The member is just concluding.

Graham Simpson: I hope that a deal is done and that the bill is dropped, so that we can all focus on the real issues.

16:01

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): Through the chair, I say to Graham Simpson that, from my very first speech in June 2001, I have whole-heartedly, unambiguously and continuously opposed the common fisheries policy, and I am immensely glad that we should be leaving that. Nothing in my previous 728 speeches is at odds with that.

I direct something to the convener of the Standards, Procedures and Public Appointments Committee. Why are the groupings of amendments not numbered at stage 2? They are at stage 3.

I will speak to what would be, if it was numbered, group 11, which is called

"Exercise of powers under sections 11 and 13: integration with UK Government policy".

I start by looking at Jamie Greene's amendments 148 and 154. In his speech, he said that we should have watertight law and that we should judge our law by its content. In both his amendments, he uses

"UK Government policy or the negotiating lines of the UK Government"

as the basis upon which they are founded. Neither of those things is available to me. In particular, the "negotiating lines" are not available. Not only that, but they appear to change from week to week and day to day. Whatever merits there might have been in his amendments, they are certainly not watertight law, and they should be judged to be inadequate.

More substantially, I turn to Adam Tomkins's amendments. By the way, I am going to say that there is an amendment from the Tories that I would be prepared to accept. I will come back to that. [*Interruption*.] Members should keep listening. That got the Tories' attention for a brief second.

Neil Findlay: Will Mr Stevenson take an intervention?

Stewart Stevenson: No, he will not. Not from that source.

The key point about Adam Tomkins's amendments 150, 151 et al is to take back powers that we currently exercise over agriculture, environmental protection and in particular fisheries, because amendment 150 states that

"No regulations may be made under subsection (1)"

unless

"the consent of a Minister of the Crown"

is provided.

Adam Tomkins: Does the member accept that there is no such thing as taking any of those

powers away from this Parliament, given that this Parliament cannot currently exercise powers in any of those domains because they are subject to EU law and we may not exercise powers contrary to EU law?

Stewart Stevenson: Mr Tomkins is clearly not much engaged in the fishing debate. In fishing, we make our own regulations, which differ from regulations elsewhere, in requiring landing of species that are not caught on quota, for example. There is a difference between regulations here and those in the rest of the UK and what occurs elsewhere in the EU. The regulations form part of a framework, and we support frameworks—that is without doubt.

The same is true in relation to environmental protection and agriculture. There are clear differences in agriculture. In Scotland, 85 per cent of the area that is under agriculture has less favoured status, whereas south of the border the figure is 15 per cent. Therefore, there are entirely different requirements, which lead to the different legislative solutions that we definitely require.

The amendment that I could accept, were I in the Government, is amendment 122, which says that

"A Minister of the Crown may not withhold consent ... where ... a United Kingdom common framework has been agreed".

That is fine, but it is a simplex amendment where we need a duplex solution. In other words, I would accept that amendment if the UK withdrawal bill had exactly the same provision in relation to UK ministers' inability to act without the consent of the devolved Administrations. Therefore, it is possible to accept an amendment from Adam Tomkins and the Tories, but that would have to be utterly conditional.

We have joint decision making. As a minister, I was involved in joint decision making across the border on canals and on appointments to the Committee on Climate Change, on which all Administrations had to agree. Those are only some examples. We know that the Governments in these islands can work together effectively. Where fishing is concerned, we have to get a solution that moves us away from having 60 per cent of the fish that are caught in our waters being caught by foreign vessels, without legal oversight from the Scottish jurisdiction. We have to get that changed, and nothing that the UK Government could do, will do or has threatened to do that would take powers and the right to catch fish in our waters away from Scottish fishermen has had my support in the past or will have my support—not now and not ever.

16:07

Liam Kerr (North East Scotland) (Con): At the outset, and just for completeness, I declare an interest, first as a lawyer but also as a lawyer with a pathological dislike of and intolerance for excessive legalese, ambiguity and imprecision. Throughout a legal career that began nearly two decades ago, I have often been vexed by how often law firms that I worked for were paid large amounts of money to clear up ambiguity in legislation because the legislature had been insufficiently certain or clear in its drafting. It is perhaps apposite to note in passing that a significant amount of that legislation was generated in the first instance by Europe. In particular, where a directive such as the acquired rights directive, which begat the Transfer of Undertakings (Protection of Employment) Regulations, or perhaps the working time directive, has been left open to interpretation or deals with an area insufficiently, the sheer volume of case law generated in the courts has been a staple source of income for law firms, while leaving some people waiting years for resolution or redress.

In that context, last Wednesday evening, I took the continuity bill, the explanatory notes, the financial memorandum, the delegated powers memorandum, the policy memorandum and the Presiding Officer's statement on legislative competence to the Starbank Inn at Newhaven, with the aim of assisting the Government in ensuring that the bill is as tight as it can be. That is important. Like my colleagues, I may not agree that the bill should be enacted and I do not agree that it should be treated as emergency legislation—actually, I do not even agree that it should have been drafted in the first place, given the likely motivations, which Graham Simpson and others have referred to. However, Parliament disagrees, so it is therefore incumbent on us all to ensure that the bill is the best that it can be—unambiguous, incontestable and unchallengeable.

Three hours later, when I was politely asked to leave the Starbank at closing time, I had more than 50 amendments ready to lodge the next day to improve the bill. I am not a draftsman; I am a litigator. I have never before drafted a bill nor even considered amending one, yet there I was, armed with only an ethos of reducing ambiguity and providing effective scrutiny and proposing more than 50 amendments. They included things as basic as clarifying the meaning of the exit date; as obvious as removing the word "prospective" next to

"withdrawal of the United Kingdom from the EU"

in section 1; and as fundamental as replacing references to laws being "passed or made" with the legally precise term "enacted".

I find that deeply concerning, and Parliament should be concerned, too. This may be uncharted territory, but there is no excuse for a legislature to produce bad law, which is what we risk doing if the Parliament produces an act that may not be competent, is ambiguous and will be easily challenged in the courts. The fact that more than 200 amendments have been lodged, by members of all the parties at Holyrood, serves only to demonstrate how flawed the bill is. Court challenge is inevitable.

Perhaps above all, the standing of this Parliament, and the respect that it is accorded as a mature, competent, legislative body risks being diminished.

Stewart Stevenson: Will the member give way?

Liam Kerr: Not in the final minute of my speech.

As has been clearly demonstrated by the 232 amendments, and by the debate this afternoon, there is a very real prospect that this process will act against the aim of making the bill respected, competent and robust. We need only look at other legislation that the Government introduced with the best of intentions but now admits was rushed and not robust, such as the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012, or the named person legislation.

My response to Mr Findlay is that this is not a game, and I do not giggle in my pyjamas as I deploy nearly two decades of training and experience to try to get this right. I take it very seriously indeed. Mr Findlay's point about the lack of amendments from SNP back benchers is valid, but if he is incapable of providing effective scrutiny he should avoid mocking those of us who are not.

The best thing that could happen would be for the SNP to dump the bill now and get back to the negotiating table to secure a Brexit deal that delivers for us all, but I accept that the Government does not want to lose face. Let us take a step back and do this properly, taking time to get it right.

16:11

Daniel Johnson (Edinburgh Southern) (Lab): I will speak to several specific amendments, but before I do so I want to reflect on the debate that we have had both this afternoon and when the bill was introduced. Much has been said about devolution and many members from across the chamber have spoken about the importance and principles of devolution. People talked in glowing and hallowed terms about Donald Dewar, and they were right to do so. Much of what we value in this place is thanks to him, including the Scotland Act 1998, with its ingenious construction around reserved and devolved matters, but more important than that was something in Donald Dewar's character and in his earnest and thoughtful approach to politics. The Scottish Parliament has much to thank him for—his character as much as his wisdom—in the way that we do things today.

I raise that point because devolution is about more than simply the powers that this Parliament has to exercise. It is about the way in which we exercise those powers. That is clear if we look at the structures that we have in the Parliament, whether we look at our committees, which seek to be consensual, or at our Parliamentary Bureau, which decides parliamentary business in what we hope is a consensual manner, rather than simply doing what the party of Government wants. In all that, we can see those principles and ideals borne out.

Above all else, this Parliament—indeed, all Parliaments—must seek to constrain and challenge the power of the Government. We must scrutinise, we must engage the people who are affected by legislation, and we must come together and make decisions in this place. That is the hallmark of the Scottish Parliament, but I believe that it is also what is at risk from the bill. If there is one deep irony, it is that much of the criticism placed at the feet of the withdrawal bill in the UK Parliament is that it is a ministerial power grab. I say politely to Mr Russell that simply putting sunset clauses into the similar powers that are proposed in the continuity bill is insufficient to deal with those dangers in constraining that power grab.

I support amendment 35, in the name of Neil Findlay, which seeks to remove section 13 in its entirety. That section causes the most worry in terms of the scope of power, because it gives ministers the ability to bring forward statutory instruments to legislate on the vast scope of EU law. That simply needs greater scrutiny and control than is provided for in the bill.

Should amendment 35 fail, I would argue for amendments 28 and 30, which would constrain those powers by limiting the time period for which they can be exercised from five years down to two years. I have no doubt that we will need to amend legislation and make adjustments and, if two years is insufficient, I am sure that parliamentary time can be found. However, it is undemocratic and unnecessary to allow ministers to extend those powers for further five-year periods at their discretion.

I turn to amendments 37 and 39. It is not good enough to use negative SSIs to legislate in areas covered by European law, given the sheer scope of that law. We must use the affirmative procedure

so that any proposals can be properly scrutinised by committees and considered in the chamber. That would allow us all to decide whether we agree with them, instead of doing it by default and waiting for the time to click on, as would happen under the negative procedure.

I commend the Liberal Democrat amendments 11 to 13, 15 to 17 and 23. Amendment 41, which seeks the use of the affirmative procedure and to place limits on the use of the negative procedure in section 13, is also worthy of commendation.

How we do our business, and not just what powers we have, is important. I ask members to consider that when they consider the amendments.

16:16

Christina McKelvie (Hamilton, Larkhall and Stonehouse) (SNP): The need for the continuity bill is pretty much beyond question because, in many EU directives and laws that are incorporated into primary legislation—those dealing with child sexual exploitation, human trafficking, domestic violence, sexual violence, child grooming and pornography—the protections go further in Scots law than they do in their UK equivalents. That bothers me a great deal. The Victims and Witnesses (Scotland) Act 2014 is one example, as it goes further in protecting people than UK law does.

The continuity bill enshrines into Scots law the charter of fundamental rights, which we have heard much about today. Adam Tomkins's amendment 98 seeks to give no strength to the charter in Scots law, which worries me greatly. Stonewall's briefing for the House of Lords on amendments to the UK bill says:

"Clause 5(4) of the Bill makes it clear that on leaving the EU, the Charter of Fundamental Rights will no longer apply. While domestic law and the European Convention on Human Rights provide similar rights, the Charter offers an added layer of protection."

Stonewall goes on to say that it is

"deeply concerned that removal of the Charter will result in the dilution of our rights and strongly urges peers to support amendments to retain it."

That is the opposite of Adam Tomkins's amendment.

Adam Tomkins: For the record, my amendment on the charter of fundamental rights says:

"The Charter of Fundamental Rights continues to have the same legal authority in Scots law on and after exit day as it had on the day before exit day."

The amendment is designed to provide continuity, not change, in the legal status of the charter in Scots law.

Christina McKelvie: On points of law, there is always an interpretation. My interpretation is that amendment 98 gives no force in Scots law to the charter of fundamental rights. It will be up to the Finance and Constitution Committee to decide that later, but I urge the committee to take the lead from the Stonewall briefing, which urges the House of Lords to protect the charter of fundamental rights in the UK's withdrawal bill, and reject amendment 98.

We now know that the power grab that we feared in Scotland is coming true. The power grab is now official. It has been admitted to by the UK Government, which has published a list of 24 devolved policy areas that it wants to keep control of after Brexit. The UK Government has never been good at following its own advice, which is why we need to work things out for ourselves. I understand that a memo that is going around the Cabinet acknowledges that there is no argument against the claims of a power grab on Scotland's devolved powers. The UK Government has no argument whatsoever, which is why Scotland needs the continuity bill.

The bill will come into effect if the Scottish Parliament decides not to consent to the withdrawal bill. We have tried to work with the UK Government on UK-wide legislation, but it will not have it. It keeps letting us down. Promises and vows are made but not delivered. Where should we go after that? We have no trust in the process. The bill is within the competence of our Parliament—as legal experts, including the Lord Advocate of this land, have concluded—and it is the only way in which we can avoid that power grab. It is our protection against our powers being withdrawn.

When Britain leaves the EU, 111 powers and responsibilities in devolved areas are due to be repatriated. In clause 11 of the withdrawal bill, the UK Government calls for all of those powers to go straight to Whitehall and for UK ministers to decide what powers should be given to MSPs and what should be kept in national frameworks—crumbs off the dinner table. That cannot be allowed to happen.

If the intention is to retain those powers only temporarily and to give them back to the Scottish Parliament, why on earth is there not a sunset clause in the withdrawal bill to say that—to bring the powers back to Scotland—even if the UK Government wants to hold on to them on a temporary basis? The UK Government has not provided that sunset clause; therefore, I urge Conservative colleagues here to urge their people at Westminster to make sure that that protection is in place.

Although there is some agreement between the Governments on 86 powers, there is still no

consensus on the remaining 24. Those are important powers, including powers over agriculture—as we have heard—genetically modified crops, fishing, environmental policy, public procurement, state aid, food standards, animal health and welfare, hygiene law, food labelling and chemical regulation. If Graham Simpson thinks that ordinary people out there are not interested in those issues, he should have been in the chamber on Saturday, when we had the women's convention for international women's day, and heard the questions from all the women who asked me about the impact of the withdrawal bill. He should have been there on that day.

The UK Government believes that 24 of those powers should operate on a UK-wide basis, with the Scottish Government being consulted on changes. However, the withdrawal bill provides that it has a duty to "consult", not a duty to get consent. So, where are we getting this agreement? We are not getting this agreement.

The UK Government's proposed amendments to clause 11 do not give consent to the Scottish Parliament. They say "consult"; they do not say "agree". That is the key. If we do not get an agreement, what should this place do? This place has a duty to protect what it has, to protect its powers and to protect the people of Scotland. I ask all the members on the Conservative benches to do that, too.

16:21

Dean Lockhart (Mid Scotland and Fife) (Con): This legislation is complex and far reaching, and a number of genuine concerns have rightly been raised during today's debate. I will address three of those concerns.

First, on the new powers coming to this Parliament after Brexit, it is important to remember the two very different proposals that have been put forward by the SNP and the UK Government. The SNP's differentiated approach to Brexit, which has been mentioned during the debate, would mean that powers over Scottish agriculture, fisheries, and a host of trade laws would remain in Brussels. The power to introduce new laws would also stay with Brussels, without any need to consult or seek the consent of this Parliament. In contrast, the UK Government's withdrawal bill would see substantial new powers being transferred to this Parliament. There would be over 100 new powers, either devolved immediately after Brexit or devolved once a UK-wide framework was agreed.

Richard Lochhead: Will the member take an intervention?

Dean Lockhart: I will not take an intervention. I usually would but, given the time available, I do not have the time.

This is where we see the direct contradiction between the SNP's differentiated approach and this draft legislation and talk of a power grab. On the one hand, the SNP's differentiated approach would see no powers come to this Parliament and no right of consultation or consent required for future laws imposed by Brussels. Now, the SNP is complaining about a power grab on those very same powers.

By virtue of this bill, the SNP is demanding that those very same powers be immediately transferred to this Parliament, even if doing so would damage Scotland's trade with the UK common market. That is yet another example of the SNP prioritising the EU single market at the expense of our domestic UK market, which is worth four times more to Scotland's economy.

Secondly, there is clear consensus that this draft legislation is overreaching and defective and that, if it were passed, it would damage the integrity and certainty of Scots law. A number of those concerns have been expressed by experts including the Law Society of Scotland. They have raised concerns that the bill introduces new categories of law that are not recognised by Scottish courts. Those concerns apply to a number of sections, including sections 5, 6 and 9, to which my colleagues and I have submitted amendments.

The real concern is that the bill and the new categories of law that are being introduced will not just impact directly on the new powers coming to Scotland after Brexit but will result in confusion over the operation of existing laws across Scotland and the UK, resulting in years of uncertainty that will damage trade across the UK common market.

The third concern that I want to raise is shared by members across the chamber. With expert responses to the bill raising more questions than answers, it is now clear that this Parliament will be unable to scrutinise it properly. Later this evening, and possibly tomorrow morning, the Finance and Constitution Committee will meet to consider more than 230 amendments to the bill. Even if the meeting is extended into tomorrow, that timeframe provides less than two minutes for members to propose, consider, debate and vote on each amendment. No one can describe that as proper parliamentary scrutiny.

Time is short, so let me conclude by highlighting that the bill is not fit for purpose. It will damage Scotland's long-standing and well-deserved reputation for legal certainty, and it will damage trade in our UK domestic market.

16:25

Clare Adamson (Motherwell and Wishaw) (SNP): I thank my colleagues from across the chamber for their views both in the chamber and in the various committees that have contributed to the process that brings us here today. In particular, I thank the convener and the members of the Finance and Constitution Committee for its interim report about the Parliament and the principles underlying the devolution settlement. Today, we are all responsible for protecting devolution in this Parliament.

"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."—[*Official Report*, 23 January 2018; c 30.]

That statement from our colleagues on the Finance and Constitution Committee could not be clearer. That is why the bill is needed and why, far from being a stunt, it is absolutely required to ensure the future of this place.

I have a real issue with the position that the Tories have taken regarding the continuity bill, especially when we consider some of the things that they have said in the chamber about powers. Adam Tomkins said:

"Leaving the European Union means, among other things, that this Parliament will get even stronger"

and that it is

"Already one of the most powerful devolved legislatures in the world".—[*Official Report*, 8 March 2018; c 24.]

That seems like pretty hollow rhetoric when he is content that the UK Government has shown such contempt for this place in its handling of the withdrawal bill that we find ourselves having to put through emergency legislation.

Over the years, I have listened to many contributions from Tory members on centralisation. I am sorry to pick on Mr Tomkins again but, on 3 November 2016, he said:

"It is well documented that Scotland is now one of the most centralised countries in Europe. Just yesterday, the Scottish Local Government Partnership criticised the Scottish Government—not the United Kingdom Government—for strangling local democracy and castigated it for bossing local authorities around and controlling everything from the centre."—[*Official Report*, 3 November 2016; c 8.]

If it is not right for local government, how can it possibly be right for the devolved legislatures of this country to be bossed about and controlled by Westminster? The continuity bill has been described as a "wrecking bill" but, far from being that, it has been designed to protect this Parliament and the devolution settlement.

We have heard that this debate should be particularly about the amendments. However, as a member who has not been involved in the committees that have been scrutinising the bill and who will not be involved in the stage 2 process that will take place this evening, I find it difficult to get away from principles, because it is about those. We have heard that said in many speeches this afternoon, such as those from Claudia Beamish and Mark Ruskell, in which members have talked about the principles that are in danger and the things that we are set to lose if we do not have this bill in place should it be necessary.

As Joan McAlpine said, much has also changed since we started discussing the continuity bill. For me, one of the biggest changes was the announcement by the Office for Budget Responsibility this afternoon that we could be paying the Brexit bill until 2064, that it could cost £37.1 billion and that, in every one of those years, we will pay out more than we recoup from Brexit. In such uncertain times, with everything that Brexit threatens, we must progress the bill. It must be scrutinised and passed to protect the Parliament's devolution settlement.

16:30

Ross Greer (West Scotland) (Green): I have only a few minutes, so I apologise if this is a bit rushed.

It is vital that we get the continuity bill right. The task at hand is unprecedented in terms of the scale of changes that are necessary to retained EU law to make it workable and the powers that are being granted to ministers to make those changes. We must get the balance right to provide proper democratic oversight while allowing ministers to make the changes that are necessary in a timely manner.

I sincerely hope that the Government is open to the changes that I propose and those of all other parties. I can see amendments from all other Opposition parties that the Greens are certainly interested in hearing more about and some that we will absolutely support.

Neil Findlay: Will the member take an intervention on that point?

Ross Greer: I am afraid that I do not have enough time, but I will engage with Mr Findlay on the matter this evening.

The UK Government has ignored the Opposition at Westminster, as well as the devolved Governments, Parliament and Assemblies. That has created an entirely avoidable mess. We can do better, but we have little time to do so.

The minister made welcome comments on appropriate parliamentary oversight and scrutiny

when I raised concerns about the UK bill in September last year. He made a commitment that the Scottish Government has

"no desire to exercise powers without proper scrutiny and that"

it would

"work right across the chamber and with the committees to make sure that there is that proper scrutiny."—[*Official Report*, 12 September 2017; c 24.]

I have lodged several amendments to improve parliamentary oversight, two of which are particularly important. The first relates to section 14, which contains its primary scrutiny mechanisms.

The bill sets out a list of what changes should be made by the affirmative procedure and the super-affirmative procedure; everything else is left to the negative procedure. That approach is potentially dangerous. It is extremely difficult to predict what changes will be needed, so providing a definitive list for the affirmative procedures and leaving everything else to the negative procedure risks some major changes being made without proper scrutiny. Equally, making everything subject to the affirmative procedures would risk overwhelming the Parliament and delaying necessary and small-scale changes.

Amendment 187 would address that. It takes inspiration from an amendment at Westminster that creates a sifting committee, which was introduced by the Conservative chair of the Procedure Committee in the House of Commons. Amendment 187 would give the committees of the Scottish Parliament the power to decide on the appropriate scrutiny mechanism—affirmative, negative or super-affirmative. The current list in the bill would continue to act as a guide, but the decision on scrutiny would ultimately lie with the Parliament.

The second of the two amendments relates to section 31—the urgency provisions. I recognise the need to make an urgent change immediately should the situation arise, but the power is open to abuse. It permits ministers simply to decide that a matter is urgent and make a change before Parliament has the chance even to look at it. Amendment 211 would provide Parliament with the power to suspend those urgency provisions if it believed that they had been misused—an emergency brake. It would also have the power to reinstate them if it believed that a problem had been resolved.

Those two changes would fundamentally alter the balance of power in the bill and ensure that the majority in the Parliament, not a minority Government, has control. I should be clear that the amendments are not proposed in the ardent belief that the Scottish Government would otherwise abuse its powers. However, as a Parliament, we would fail our institution, as well as the people whom it represents, if we did not do all that we could to ensure that the primacy of the elected body—the majority—is established.

The Deputy Presiding Officer (Linda Fabiani): We move to the closing speeches. It is a bit disappointing that not everyone who took part is in the chamber.

16:33

James Kelly (Glasgow) (Lab): In some cases, this has been a challenging debate for members. The Finance and Constitution Committee will consider 231 amendments this evening and, potentially, tomorrow morning. It has been a challenge for members to pull out the main themes from those amendments. That emphasises some of the concerns that were raised about process by Tavish Scott, Johann Lamont in a point of order and Graham Simpson.

I note and accept the fact that the Parliament accepted that the bill is emergency legislation, but the reality is that we are proceeding through it at breakneck speed, a lot of the issues are complex and it takes time to grasp the detail. The Finance and Constitution Committee faces a challenge in dealing with the issues tonight. MSPs across the chamber feel an element of frustration that we are not able to do proper justice to such important legislation.

Another issue that has come out of the debate is, as Neil Findlay has highlighted, how we are being used as part of the negotiating game that is going on between the Scottish and UK Governments. That was seen in the exchange between Adam Tomkins, Mr Swinney and Mike Russell. At one point, both Mr Swinney and Mr Russell were trying to intervene on Adam Tomkins about the amendment that was tabled in the House of Lords. I understand that that area is an important part of the negotiations, but the exchange shows how Parliament sits in the middle of that game.

John Swinney: Mr Kelly has just described the exchanges between Mr Tomkins, Mr Russell and me as a "game". This is not a game, because the issue is this Parliament's ability to exercise powers that it was envisaged that we would be able to exercise when it was established. The crucial question is whether the agreement of this Parliament, or this Government, will be sought in any of the frameworks that are envisaged in the United Kingdom arrangements. We have no issue about frameworks, but whether our agreement is sought is a fundamental issue that anyone who respects devolution would be minded to accept. Does Mr Kelly agree with that position?

James Kelly: Even if Parliament proceeds and passes the continuity bill, there is a danger that it will end up in the courts. The key point is how we resolve the issue—and we do that around the negotiating table.

I was about to say that the most important event of the week is probably tomorrow's JMC meeting, which the First Minister will attend and where I understand there will be a conversation with the Prime Minister. We all hope that there will be progress, so that we can get a resolution, because the process that we are going through with this legislation, although it is necessary to protect the devolution settlement, is not Parliament's finest hour.

Important contributions have been made about some of the amendments. Claudia Beamish spoke passionately about the importance of protecting current environmental EU law. She was right to highlight the fact that we do not want a race to the bottom.

There are concerns that, with the provisions in section 13, the Government has gone too far in trying to establish additional powers for ministers. Neil Bibby and Daniel Johnson highlighted those concerns very well.

Mark Ruskell made an excellent speech in support of including the principle of animal sentience. I know that Colin Smyth also has amendments in that area.

I will be intrigued to see later on the Government's defence of its abandonment of the Francovich principle. Tavish Scott's amendment 7 deals with that important principle of EU law, which allows compensation for workers in the event of companies becoming insolvent. I wonder why the Scottish Government has sought to take that out.

Michael Russell: We have not.

James Kelly: Look at Mr Scott's amendment. We will explore that issue later.

I welcome the clarity on exit day, because it is important that, whatever a person's view on the arguments, we are clear when exit day will be.

It is essential that we try to get a resolution to the process. I hope that there continue to be constructive discussions between the Scottish and UK Governments, because the danger is that, if the continuity bill proceeds and is passed, it will be challenged and end up in the courts, and that is not something that any parliamentarian would want.

16:44

Murdo Fraser (Mid Scotland and Fife) (Con): There have been some powerful speeches in this debate from across the chamber. However, for a stage 2 debate, disappointingly few members referred to amendments that were being proposed or tried to argue for them. If I have time, I want to make reference to a number of the key amendments that are before us this evening. However, before I do that, I want to set the context for what we are discussing.

As we heard from Adam Tomkins and other Conservative speakers during the debate, our view is that the bill is unnecessary, poorly drafted and probably illegal. It is simply an exercise in grandstanding by the SNP Government, and it will do nothing to improve the legal framework in Scotland as we prepare for Brexit. That is not the view only of the Scottish Conservatives. In a written submission to the Parliament's Finance and Constitution Committee last week, Professor Alan Page of the University of Dundee said:

> "I have considerable doubts over whether the Bill as introduced does constitute an effective solution to the challenge the Scottish Parliament will face."

We also heard evidence last week from the Law Society of Scotland, which indicated that there is a huge number of issues with the bill as drafted that need to be addressed before it will make good law.

We heard SNP speaker after SNP speaker in the debate saying that the devolution settlement must be respected. There is a rich irony in those demands when we look at the way in which the SNP Government is approaching this legislation. First, we know that the Presiding Officer has ruled that the bill is beyond the Parliament's powers and that it is not competent for the Parliament to pass it, yet that opinion has been ignored by the SNP Scottish Government—the same party that continually demands that others respect the devolution settlement.

Secondly, the bill is being rushed through Parliament as emergency legislation, despite the fact that there is no emergency. There is no requirement to have the bill on the statute book within a matter of weeks when we are not due to leave the EU for another year. Indeed, by rushing through this bill while the withdrawal bill is still subject to change at Westminster, we might find that the provisions that are passed in haste by this Parliament in this bill end up being incompatible with what is in the withdrawal bill, which might be subsequently changed. That will mean that the legislation will have to come back to the Parliament for future amendment.

Johann Lamont, Tavish Scott, Jamie Greene and others made a number of points about the time that has been provided for parliamentary scrutiny. Some 231 amendments have been lodged, all of which have to be considered in a short space of time by members of the Finance

and Constitution Committee. Notwithstanding the great deal of respect that I have for all my colleagues on that committee, that is no way to be treating a serious piece of legislation. Those of us who are used to stage 2 and 3 debates will know that, often, when amendments are published, external bodies will engage with us and constituents will write to us to make cases for or against particular amendments. The opportunity for that to be done in relation to this vitally important piece of legislation has been lost because of the extremely short timescale in which it is being forced through.

Whatever reservations the Scottish Conservatives might have about the bill—there are many—we are not in the business of seeing the Parliament pass bad laws. That is why we have lodged 147 amendments to the bill.

In response to Mr Findlay's tantrum earlier, I say to him that this is not about playing games. We are in the serious business in this Parliament of passing laws. That is why we are sent here by our constituents, and that is what we are paid to do. If Mr Findlay does not want to be in the business of passing laws, perhaps he needs to reconsider his career choices.

Of course, Mr Findlay is Labour's Brexit spokesman and is supposed to be providing front-bench opposition from that position. However, what has Labour done on the bill under his guidance? It has voted with the SNP for this to be treated as emergency legislation; it has voted for a timetabling motion to curtail debate; and it voted for the bill at stage 1. I say to Mr Findlay that, if that is providing opposition, I am a Dutchman.

Neil Findlay: I say to the Dutchman that, if his party had delivered on the promises that it gave to the UK Parliament and this Parliament, we would not be in this position in the first place. It is his party's fault that we are in this position.

Murdo Fraser: As Mr Findlay well knows, an amendment has been lodged to the withdrawal bill at Westminster. However, if Mr Findlay's view of opposition is to keep supporting everything that the SNP front bench does, he needs some lessons in how to deliver opposition.

I will touch briefly on a number of amendments. Amendment 59, in my name, seeks to put a declaration in the bill that any decisions made by the Supreme Court that all or any provisions of the act are outwith the legislative competence of the Parliament must be complied with. That is important given the strong possibility of the Supreme Court ruling on the validity of the act.

I have a number of amendments—as indeed do others, such as Tavish Scott and James Kelly—to section 13, which contains extensive powers for the Scottish ministers to continue to make regulations under the bill for a period of up to 15 years after the date of exiting the EU. That cannot be acceptable and I look forward to hearing in the debate later how that time period can be reduced.

In closing, I want to make one more point that I think is important. It was made in this debate by both Graham Simpson and Dean Lockhart. In relation to all the powers in question—all the powers that are in dispute between the UK Government and the Scottish Government—the SNP wants to see every last one of those powers retained in Brussels and not devolved at all. Indeed, if the SNP had its way, we would be re-entering the EU and every single one of the powers that it is complaining about would be returned in their entirety to the EU—

Clare Adamson: Will the member give way?

The Deputy Presiding Officer: There is no time, Ms Adamson.

Murdo Fraser: —and not exercised any closer to home.

It is a UK Conservative Government that is delivering a powers bonanza to the Scottish Parliament under devolution—powers that every single SNP member of this Parliament, with the honourable exception of Alex Neil, wants to return to Brussels at the first opportunity. In so doing, they are airbrushing from history the 38 per cent of the population who voted for Brexit—over 1 million Scots, including more than a third of current SNP voters.

The Deputy Presiding Officer: Come to a close, please.

Murdo Fraser: The SNP is saying to them, "We will send those powers back to Brussels." That is what the SNP would do.

The Deputy Presiding Officer: You must close, please.

Murdo Fraser: This whole bill is at best a waste of parliamentary time. It should be rejected by this Parliament but, in the meantime, we will do what we can to try to improve it.

16:46

Michael Russell: I will start where I finished last week in the stage 1 debate, by cautioning members in the chamber, particularly in the light of what we have just heard, to try to use language in a way that helps this debate rather than hinders it. The words "force through" cannot be used to describe a parliamentary process that has taken place by debate, with majorities on each occasion. I know that that is not a popular thing for the Conservatives to hear, but it is true.

Let me also welcome just one or two of the things that have been said by a number of people and indicate what I indicated at the beginning of the debate. We are listening very carefully to concerns that exist, such as Ross Greer's concern about the sifting power. I entirely agree with Ross Greer that this is a question of balancing the urgent requirements of the bill, which we did not wish for—we do not wish to be involved in the Brexit process—with the maximum amount of parliamentary scrutiny. That is how I am going to approach all the amendments on the matter this evening and I hope that we can have that debate and either resolve it this evening or create the circumstances in which we will resolve it when we come to stage 3. That is what we will endeavour to do. I say that that is how I am going to approach this evening, and it will be how I approach this evening, no matter the provocations.

Neil Findlay: From what the minister says, I presume that he is moving towards setting up a sifting committee. I wonder whether, like me, he would welcome Mr Greer's bouncing enthusiasm to sit on that sifting committee, should it be set up.

Michael Russell: I always welcome bouncing enthusiasm wherever I see it. I used to have bouncing enthusiasm myself. It seems a long time ago, but that is what I used to have. [*Interruption*.] Mr Findlay does not believe me, but then he has not known me as long as some other people in this chamber have.

The reality is that there may be other ways to do this—there may be ways to do it that expedite it more—but I am in agreement that we should endeavour to have the maximum level of scrutiny. Let us try to find a way to do so.

I want to repeat something that Sandra White said in this debate, which is that there are 381 days until exit day. Even if there is a transition period, it is likely to last for less than two years beyond that, so there is an urgency to getting these issues resolved. We have to balance that urgency with the need for scrutiny, and we and, I am sure, the whole chamber will endeavour to do so. That 381 days deadline should concentrate our minds in the chaos and confusion of Brexit, which is being driven forward by the Conservatives. It is a black hole, absorbing energy and money. We know from the chancellor's statement this afternoon that growth is collapsing. From the figures that the UK Government has produced we know that economic decline beckons us, and the Tories know that to be true.

There are very few original Brexiteers on the Conservative benches. We heard from Mr Simpson, who was one of them and whose views have not changed, but there are others who have been dragged into this position. I ask those members to pause for a second to consider what is in the interests of Scotland and not the interests of the Conservative Party, because Scotland's democratic will was shown in the referendum and it continues to be shown. Scotland does not want to be dragged out of Europe against its will. Therefore, we should question the position of the Conservatives this afternoon, in which they have endeavoured to ensure that the Tory interest comes before Scotland's interest. We should question it this evening when we consider each of the amendments and we should go on questioning it.

At the heart of that is an issue that Mr Tomkins—

Jamie Greene: Will the member give way?

Michael Russell: No, I am sorry. I have to make progress. However, I will mention Mr Greene in a moment—he should not worry that I have forgotten his speech, although I wish that I could.

Mr Tomkins made a key point. He talked about common frameworks being "agreed" and not "imposed", which was why he was subject to the spectacle of Mr Swinney and I showing bouncing enthusiasm to intervene on him. It is a key issue because, if his view had been taken on board by the UK Government, there would be no problem and we would not be having this debate. However, it was not taken on board in the original drafting of the bill and it has not been taken on board in the revised or replaced clause. That is the issue. "Agreed", not "imposed"—Mr Tomkins said it himself. Until the UK Government gets to that position, there can be no agreement.

Mr Findlay chided me about getting round the table and getting an agreement, yet at that table is not just the Scottish Government and the UK Government, but the Welsh Government too. I know that Mr Findlay's colleague, Professor Drakeford—with whom I have worked very closely in the past year—and I will get round that table at any time following any request that comes from the UK Government in order to resolve this. We have been doing that. We have been as one on the issue of frameworks being agreed and not imposed, which is where we remained, with the unity of all the parties in this chamber and the Welsh Assembly, until we got to the stage of no return. There had to be some movement on the issue; otherwise, we would have been steamrollered. However, we are still in a position in which we can move to an agreement, as the bill has in it the capability for that. Even if it is passed, there is the capability for it not to be implemented if we get to the stage of reaching an agreement.

There are one or two issues of detail that I want to address. One was from Professor Tomkins, who asserted—absolutely ex cathedra—that section 33

of the continuity bill amending section 29 of the Scotland Act 1998 is "manifestly" outwith competence. No, it is not. Paragraph 7(1)(b) of schedule 4 to the Scotland Act 1998 expressly allows spent provisions to be amended once Brexit happens. The reference to EU law will be spent.

Alison Harris talked about wanting to see one bill, yet that is what we have been seeking and negotiating for. We want one bill, and we would be happy to have one bill if it was "agreed" and not "imposed", to quote Professor Tomkins.

I move now to Jamie Greene. It was almost impossible to keep up with his misrepresentations of the legislation, so I will deal with just two of them. He said that the bill has been "hastily drafted", yet the bill is closely based on the UK Government's bill. The UK bill has had numerous improvements because of its scrutiny by the Scottish Parliament. We have responded to the scrutiny of the UK bill and many of the provisions in the continuity bill are identical to those in the UK bill, so if he wishes to criticise the drafting, he should start with the UK Government.

On parliamentary consent, Jamie Greene said that all the powers under the bill require parliamentary scrutiny in the normal way and that all require parliamentary approval, but those two points are simply wrong. They are not for interpretation, but are wrong.

In addition, we have to look at the points that Graham Simpson and Dean Lockhart made. They said that none of the existing powers will be affected and that the SNP wants all powers to be held in Brussels. Neither of those points is true. Mr Simpson was a Brexiteer and I know that the Brexit campaign was full of things that have turned out not to be true, and those two points remain untrue. The list is clear: many key powers will be affected, for example pillars 1 and 2 of the common agricultural policy. Mr Simpson might not know that there are changes in the administration of CAP in Scotland, but he should know that.

He said that we want all the powers to be held by Brussels. No, we do not—we want all the powers to be held by the Scottish people. That is what everybody in this chamber should want. It is what we are here for—popular sovereignty, not parliamentary sovereignty.

Murdo Fraser: Will the member give way?

Michael Russell: No, I am sorry; I will not give way. I have very few minutes left and a number of Tories still to contradict.

Let me turn to Liam Kerr's contribution. I am sorry that he spent so much time in the Starbank Inn that his focus began to wobble a little, because he was clearly not looking at the same bill as the one that is in front of me. In fact, as I have said, this bill closely matches, and in places exactly mirrors, the UK withdrawal bill, so if Liam Kerr has a difficulty with draftsmen and the way that things are defined, he should refer it to them.

Also, the two particular things that Liam Kerr raised are untrue. The word "prospective" is accurate. It means that something has not happened yet, and Brexit has not happened yet, so I defend the word "prospective". His second point was that he did not like the inability to define the word "passed". I refer him to section 27(2), which does define it, in the section helpfully called "Interpretation".

Liam Kerr: Will the member give way?

Michael Russell: No, I am sorry. Liam Kerr can go back and tell the regulars of the Starbank Inn about this, but as far as I am concerned he has got it completely wrong. There is a tendency to try and talk down any legislation from this Government, because it has been done in Scotland, and to talk up legislation at Westminster. However, if Liam Kerr has a problem with the continuity bill, he should raise that with the Westminster draftsmen.

My final point is that when we get into the detail and show that the assertions coming from the Tory benches are wrong—they are not interpretations or views, but assertions that are actually wrong—we hear hollow laughter, because the reality is that we have spent a lot of time this afternoon hearing things about this bill from the Tory benches that simply are not true.

There will be, and are, very strong attempts to make the bill better coming from the Labour Party, the Greens and the Liberal Democrats, and just occasionally from the Conservatives—I think that that is probably accidental, but there are little bits here and there from the Conservatives that are going to improve the bill. At stages this evening I will surprise one or two members—their lucky evening will have come when I say that their amendment is a good idea and the Scottish Government will support it.

However, what we will not support—and never support—is a situation in which the interests of Scotland and the legislation in Scotland are subordinated to the interests of the Tory party and keeping a Tory Government at Westminster. That will not underwrite our laws now or ever.

Finally, let me comment on the very significant contribution from Richard Lochhead. He has enormous experience, particularly in the key areas under examination in this bill. He has been the longest-serving cabinet secretary in a single post since devolution, along with Mr Swinney. His nine-year period in office was highly significant and I

greatly enjoyed working with him, particularly as environment minister.

Richard Lochhead's analysis of the reasons for the UK power grab was spot-on, except that it was too generous. It missed out a single item. He said, first, that he had found many people with whom he worked in Westminster to be hostile to devolution, and yes—they are. Secondly, he found many of them to be scared of any possible advantage that Scotland might have, and yes—they are. However, what has really shocked me over the past 18 months is those people's lack of knowledge of devolution. They simply do not know how it works.

We will continue to endeavour to educate them on that matter, and to work with them to seek an agreement. However, I go back to the very beginning, convener—we will do that on the basis of things being agreed, not imposed. If Mr Tomkins meant that in what he said earlier, he will find people on these benches with whom he can work. If he did not, there will be no agreement.

The Presiding Officer (Ken Macintosh): Thank you. That concludes our pre-stage 2 debate on the UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill and, as we have moved members' business to accommodate the Finance and Constitution Committee, which will be meeting in the chamber at 5:45 to go through the stage 2 amendments, that concludes today's business.

Meeting closed at 16:59.

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