



OFFICIAL REPORT
AITHISG OIFIGEIL

Culture, Tourism, Europe and External Relations Committee

Thursday 10 May 2018

Session 5



The Scottish Parliament
Pàrlamaid na h-Alba

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CULTURE, TOURISM, EUROPE AND EXTERNAL RELATIONS COMMITTEE
14th Meeting 2018, Session 5

CONVENER

*Joan McAlpine (South Scotland) (SNP)

COMMITTEE MEMBERS

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

*Jackson Carlaw (Eastwood) (Con)

*Mairi Gougeon (Angus North and Mearns) (SNP)

*Ross Greer (West Scotland) (Green)

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

*Richard Lochhead (Moray) (SNP)

*Stuart McMillan (Greenock and Inverclyde) (SNP)

Tavish Scott (Shetland Islands) (LD)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Rt Hon David Mundell MP (Secretary of State for Scotland)

Robin Walker MP (Parliamentary Under-Secretary of State for Exiting the European Union)

CLERK TO THE COMMITTEE

Peter McGrath

LOCATION

The Adam Smith Room (CR5)

Scottish Parliament

Culture, Tourism, Europe and External Relations Committee

Thursday 10 May 2018

[The Convener opened the meeting at 13:12]

Withdrawal from the European Union (Negotiations)

The Convener (Joan McAlpine): Good afternoon and welcome to the 14th meeting in 2018 of the Culture, Tourism, Europe and External Relations Committee. I remind members of the public to turn off mobile phones. Any members who are using electronic devices to access committee papers should ensure that they are turned to silent. Apologies have been received from Tavish Scott MSP.

Our main item of business is an evidence-taking session on the article 50 negotiations. I welcome our witnesses: the Rt Hon David Mundell MP, the Secretary of State for Scotland, and Robin Walker MP, the Parliamentary Under-Secretary of State at the Department for Exiting the European Union. I invite the secretary of state to make an opening statement.

Rt Hon David Mundell MP (Secretary of State for Scotland): Thank you very much, convener. Thank you for the invitation to be here with my colleague, the Parliamentary Under-Secretary of State at the Department for Exiting the European Union. We are pleased to appear before the committee, as it is an important part of the process of engagement between the United Kingdom Government and Scottish Parliament and an opportunity for me to hear your views directly.

As members of the committee will be aware, last Thursday I appeared before the Scottish Parliament's Finance and Constitution Committee and Delegated Powers and Law Reform Committee to discuss the European Union (Withdrawal) Bill. I hope that my appearance provided a useful opportunity for those committees and MSPs to consider the revised approach to clause 11 of the EU (Withdrawal) Bill. It gave me the opportunity to clarify a number of issues as those committees considered that bill. However, I am aware that this committee has a different remit and, therefore, a different focus.

I look forward to hearing from members of the committee on our preparations for the UK to leave the European Union. It is important that the Scottish Parliament and the Scottish Government are able to share their views on EU exit with the

UK Government. I look forward to discussing the UK Government's thoughts and positions with the committee, albeit that we are still negotiating our exit from the EU.

Through the joint ministerial committee (European Union negotiations), we are making good progress on agreeing a formal process for the Scottish Government to feed into the EU exit negotiations. We propose a two-tier approach in order to increase the involvement of the devolved Administrations in the negotiations. That approach was discussed at the JMC(EN) on 2 May. It includes the creation of a new ministerial forum within the architecture of the JMC(EN) and a formal process to enhance official-level engagement.

We have proposed that the new ministerial forum be co-chaired by my colleague Robin Walker and Chloe Smith, the Minister for the Constitution at the Cabinet Office. We expect the forum to meet regularly and to follow the rhythm of negotiations to ensure that the right discussions can take place in advance of those negotiations.

13:15

On the technical discussions, we have proposed joint UK Government and devolved Administration technical working groups to consider specific issues that relate to the negotiations. The key point of the proposal is to create clear mechanisms through which the devolved Administrations will feed into the negotiations. To ensure that the process is as efficient and effective as possible, the co-chairing ministers will provide a detailed update in advance of the JMC(EN). The minutes of the meetings will also be circulated to UK Cabinet ministers, so that the information can directly inform the Cabinet-level discussions on the UK's negotiating position. We look forward to further progress on these matters and to working closely with the Scottish Government in that forum.

The Convener: Thank you very much. Mr Mundell, last week you appeared, as you said, before the Parliament's Finance and Constitution Committee. The committee's convener, Bruce Crawford MSP, asked whether the UK Government would proceed with the withdrawal bill even if the Scottish Parliament withheld legislative consent to the bill. It is fair to say that you did not give Mr Crawford a definite answer to his questions, but you said that you very much hope that the Parliament will give its consent and that you believe that the Finance and Constitution Committee's report on the legislative consent memorandum will be

"very influential in forming people's views."—[*Official Report, Finance and Constitution Committee*, 3 May 2018; c 5.]

The Finance and Constitution Committee published its report on the supplementary LCM 10 minutes ago, so I realise that there is not much notice. However, the report concludes that the Scottish Parliament should refuse to give legislative consent to the withdrawal bill unless clause 11 is dropped. Can you tell this committee whether the UK Government will go ahead and impose the withdrawal bill on the Scottish Parliament?

David Mundell: Obviously, I have not had the same level of access to the report that you have had, but I look forward to reading it in detail—I am sure that that will be the case for colleagues, too—because I know that the Finance and Constitution Committee takes its work very conscientiously. However, my position remains the same as it was when I appeared before that committee.

The decision on whether legislative consent is given to the bill is a decision for all members of the Scottish Parliament, and I will not pre-empt that decision. I hope that there is still time for us to be able to reach an agreed position with the Scottish Government on the bill. Everybody accepts that that would be the best outcome. When the Scottish Parliament comes to consider the bill and reflects on all the information that is available—including, perhaps, some of the evidence that is delivered to the committee today—I hope that the Scottish Parliament will give that consent.

The Convener: You will be aware that the Parliament will consider whether to give consent to the bill and make a decision on the LCM on Tuesday, so there is not much time.

David Mundell: I know that we do not have much time; we are up against the wire now. However, many such negotiations—including negotiations in the European Union, for example—always seem to go right to the wire. We are open to further discussion. David Lidington, the Chancellor of the Duchy of Lancaster, who oversees the constitutional arrangements in the Cabinet Office, will be in Scotland tomorrow, and he has made it clear—as I and other ministerial colleagues have—that our door is still open. We want to continue to engage with the Scottish Government, because we believe that the best outcome would be to reach agreement, as we were able to do with the Welsh Government.

The Convener: If we have not reached agreement before Tuesday and the Scottish Parliament rejects the withdrawal bill, will you impose the bill on the Scottish Parliament against its will?

David Mundell: In the time that is left, I will try to secure agreement. I will also try, through this appearance and more generally, to make clear why we consider that the proposed arrangements

in the bill, as amended in the House of Lords, are a good deal for Scotland; that they respect the devolution settlement and provide a way to move forward in this situation of leaving the EU, which was unanticipated at the time of devolution; and that, on reflection, a majority of members of this Parliament will give their consent. That is my focus.

The Convener: A majority of the members of the Finance and Constitution Committee—the only dissenters are members of your own party—have said that, unless clause 11 is removed, this Parliament should not give consent.

David Mundell: My experience of this Parliament is that its individual members take their responsibilities very seriously. As I have said, I am sure that the report will have been produced with the committee's usual rigour, but it will be for individual members of the Parliament to decide. As, I think, I have said here before—I have certainly said this in other forums—the Scottish Government has always been very clear that the decision is for the Parliament and not for it, and that view will inform the process.

The Convener: I will ask you the question one more time, secretary of state. It is a decision for this Parliament, and the committee's report indicates that this Parliament will not give its consent to the legislative consent motion. Will you impose the withdrawal bill on this Parliament?

David Mundell: I am not going to pre-empt the Parliament's decision. I respect this Parliament, and I respect the debate that you will have next Tuesday.

The Convener: Richard Walker has a supplementary question. I am sorry—I meant to say Richard Lochhead.

Richard Lochhead (Moray) (SNP): On the decision that this Parliament will shortly have to take, you said that a third way may be required to get through the dispute. Given that the clock is ticking, will you elaborate on what you consider that third way to be?

David Mundell: I also said that it is not obvious to me what a third way would be, because there are a number of aspects to the agreement, including the wording of the clause, the intergovernmental agreement and the memorandum of understanding. The position as set out by the First Minister appears to be that the Scottish Government does not agree with that approach at all. Therefore, it is not, for example, about having a discussion about how long the period in the sunset clause should be, because my understanding is that the Scottish Government considers the very approach of having a sunset clause as not being the right one. If I am wrong about that, I am happy to be corrected.

Claire Baker (Mid Scotland and Fife) (Lab): It has been raised with us previously that there are two cultures at play, as the UK Government perhaps does not have a clear understanding of how devolution works and our understanding of how it works is different. Do the Governments have an agreed understanding of what the issues are? Is there an understanding of where the Scottish Parliament is coming from and why it is having difficulty with the LCM? Will you outline what you understand that difficulty to be?

David Mundell: We have sought to set out our position on the matter, and I am disappointed that we are in this position, because it is about an angels-dancing-on-a-pinhead constitutional argument. The Scottish and UK Governments have agreed 24 areas that should, after we leave the EU, stay regulated exactly as they are at the moment, and we are now having an argument about what the formal process for agreeing that should be. We have agreed the substance and we are having a debate about the formal process.

Lord Jim Wallace—who is one of the founding fathers of this Parliament—articulated it extremely well in the House of Lords when he said that, when devolution came about in the late 1990s, this situation was not envisaged. We have a requirement to address a unique situation, and we have made a proposal that I consider to be a reasonable way of addressing that situation and which your colleagues in the Welsh Government have identified does not, in any way, undermine the devolution settlement.

That is what we have sought to do. We do not seek to interfere in any way with the existing devolution settlement. Be very clear that no powers or responsibilities that are currently exercised in this Parliament will change. In response to this committee, other committees, MPs, lords and others who have commented, we have brought forward a fundamental change to the clause in order to give it, in essence, a presumption of devolution. We have inserted into the clause a basis for what should happen if there is no agreement, as that appears to be at the core of the contention.

Claire Baker: Let us go back to your opening comments on the JMC(EN). You outlined a number of areas for which new ministerial groups and working parties have been established. It has been raised with us that, over the years, the working relationship between the Scottish Parliament, the Westminster Parliament and the two Governments has frayed, not through intention but, perhaps, through a change of personnel, as the architects of devolution are no longer in government and civil servants have moved on. How important is that? You have outlined the new bodies that have been established, which are

welcome but are still quite limited. How do you see the relationship moving forward in future years, and what needs to be done to build it?

David Mundell: What was positive about what happened at the previous meeting of the JMC(EN), at which Robin Walker was also present, was that, although we had an area of disagreement with the Scottish Government, we were able to conduct a very cordial and businesslike meeting. There was disagreement but no friction, which is a sign of a mature relationship. At the same meeting, when, self-evidently, we did not reach agreement on clause 11, we still reached agreement on the setting up of the new forum and on how we would take forward the work on the 24 areas that, in the future, will have frameworks.

I feel that there has been a maturing of the process, and I stand by the remarks that I made at the Finance and Constitution Committee. I have been around the block a few times, and I think that relationships between the two Governments were more difficult in the early and middle parts of 2014 than they are at the moment.

Mairi Gougeon (Angus North and Mearns) (SNP): I understand what you said in response to Claire Baker's question, but we heard evidence from Professor Michael Keating last week about what he seemed to think was a lack of understanding about devolution. He said:

"there is a high turnover of officials in Whitehall. Officials establish relationships with the devolved Administrations and get to know people. The relationships tend to be good at the ground level, but then somebody else moves in. That needs to be built more clearly into the system. Similarly, ministers in Whitehall are often insensitive in the sense that they are unaware of the devolved implications of things. They have got to learn more about that."—[*Official Report, Culture, Tourism, Europe and External Relations Committee*, 3 May 2018; c 13.]

Given that the JMC(EN) did not meet for nine months last year and that position papers relating to devolved responsibilities were put forward without the Scottish Government or Parliament being consulted, do you understand where that belief comes from? How do you react to that statement?

David Mundell: I certainly do not dispute that there is a need to continue to improve devolution capability and understanding in Whitehall and more generally, because it is an evolving situation. As we have seen, significantly more devolution has taken place following the Scotland Act 2016. If you had had a briefing on devolution two years ago, it would have been different from one today. It is important that people are kept up to date and are on top of the arrangements. It is also important that Leslie Evans, the permanent secretary to the Scottish Government, is part of the regular meeting of permanent secretaries to all the

Whitehall departments, so there is a connection at the top level.

People change, but there is a good level of interaction with the Scottish Government. Some people have just come from the Scottish Government to work for the Scotland Office, and people from the Scotland Office have gone into the Scottish Government. Yes, we can do better, but I do not recognise the bleakness of the situation as suggested.

13:30

Robin Walker MP (Parliamentary Under-Secretary of State for Exiting the European Union): Mairi Gougeon pointed to a period in which the JMC(EN) discussions were not happening, which everyone obviously regrets. We want to make sure that we have more regular engagement, and we have seen an improvement. However, what we have seen in both the JMC(EN) discussions and the work that underpins those at an official level has been of extraordinarily high quality. The frameworks discussions between officials at every level, which are being led by the Cabinet Office from our perspective, have resulted in a huge amount of agreement between the different Governments as to how we can work together. It is important to pay tribute to that work.

In my department, which was spun out of the original Cabinet Office Brexit unit, there is a real understanding of the importance of devolution. It is in our DNA. Our permanent secretary, Philip Rycroft, came from the Cabinet Office. It is fair to say that one of the things that we have to do is to challenge other Whitehall departments, which are perhaps not as used to engagement with the devolved Administrations, to ensure that they are engaging through this process. We have seen a step up in that, both in the approach to the future partnership, in which the new committee that I will be chairing with Chloe Smith will obviously play an important role, and in the work that has been going on in the policy and delivery co-ordination directorate's contingency planning, making sure that we are challenging all our colleagues across Whitehall to work with the devolved Administrations wherever possible. I absolutely recognise what the secretary of state says—there is always more to do in that space, but it is very much a core part of our brief.

Jackson Carlaw (Eastwood) (Con): Good afternoon, gentlemen. The convener made reference to the Finance and Constitution Committee's report. The earlier report was supported unanimously, and this report makes reference to the very considerable progress that has been achieved during the course of discussions, and it welcomes many of the amendments to the bill that have been accepted

by the UK Government, but the situation rests on clause 11, as we know. What would you say to this committee and this Parliament in support of their having confidence in the arrangements under amended clause 11, now that the bill has progressed through the Lords, which ought to underpin support for the bill in this Parliament next week?

David Mundell: I would have thought that, rather than listening to me, who might not necessarily be perceived as objective, people should reflect on what was said by a number of people in the debate that took place in the House of Lords, from Labour members to Jim Wallace, whom I cited just now. He said that the present situation was not envisaged at the time of devolution and that it requires a bespoke solution.

The UK Government has moved very significantly to try to find a solution, and has found one that has been agreed by the Welsh Government, which is not a threat to devolution and which does not change anything about the existing devolution settlement. People such as Lord Mackay of Clashfern, who is regularly cited by Mr Russell, were very clear that the Government has done all that it reasonably can within the devolved arrangements to find a way forward. I would look at what those people, who are not principal protagonists but respected figures within Scottish and UK politics, are saying about the matter.

Jackson Carlaw: You referred to the atmosphere—as you characterised it—that exists between the Governments in discussion as being such that, when there is a difference of opinion, there has been a lack of friction. Given the important business that lies ahead, are you confident that a businesslike approach will be taken to the issues that will require to be discussed and that the framework—if I can borrow that word in the narrower context—for a constructive and productive representation of interests exists?

David Mundell: Yes.

Jackson Carlaw: Thank you.

The Convener: I have a supplementary comment on Jackson Carlaw's point. Recommendation 51 of today's report by the Finance and Constitution Committee says:

"The Committee's view is that this commitment that common frameworks will not be imposed is contradicted by the 'consent decision' mechanism created by the UK Government's amendments to Clause 11 which would allow the UK Government to proceed with regulations without the consent of the Scottish Parliament."

That is not really a matter of what I think you referred to as dancing on the head of a constitutional pin; it is quite fundamental.

David Mundell: If I may say so, in some quarters there is a slight misunderstanding as to what the legislation says. Obviously, I have not yet had the opportunity of reading recommendation 51. However, what I can say is that, when I was talking about the imposing of frameworks, I was referring to what the new arrangements will be when we have negotiated them across the UK. I have been quite clear that new frameworks to apply once we have left the EU will not be imposed, and I absolutely stand by that statement. Clause 11 provides a basis in relation to the 24 areas in which the existing arrangements are to be frozen as they are right now. It does not deal with new frameworks or how those are to be arrived at on those 24 areas.

Richard Lochhead: I would like to clarify that point. Surely, if, say, agriculture and fishing regulations are frozen in time, which is your desire, they cannot stay that way for ever and will have to change at some point. The Scottish Government argues that they cannot be changed without the consent of the Scottish Parliament. Do you agree with that? Would you change those regulations without the consent of the Scottish Parliament?

David Mundell: I do not think that that is what the Scottish Government is currently arguing in the context of clause 11. It is arguing in that context that, if we cannot agree that things should stay the same, the UK Parliament cannot take the decision that they do stay the same. That is it in simple terms. That may be a separate argument that the Government has but, in this context, clause 11 is about whether existing arrangements—what the situation is right now—stay the same the day after we leave the EU or within the two-year period.

Robin Walker: I will add to that. Obviously, the agreement on sunset of clause 11 powers means that there will need to be a replacement for those, which will need to be achieved through new legislation if a power is within a legislative framework. That will then require the Sewel principles to be respected and consent to be sought if the power is in an area of devolved competence. Here, we are talking not about the creation of new frameworks but about the maintenance of existing ones on a temporary basis. One of the areas that both the devolved Governments pressed in negotiations was that there should be a clear indication of the finite nature of any clause 11 regulations. We have recognised that through the new sunsets that have been introduced in the revised version of the clause.

Richard Lochhead: I have a final supplementary on that point. I will use the examples of fishing and agriculture, which are devolved issues. The Scotland Act 1998 does not

refer to a pile of regulations that are frozen in time in 2018. It devolves the subjects of fisheries and agriculture. You seem to want partial devolution in which the Parliament does not have free rein over the issues that are devolved under the Scotland Act 1998.

Robin Walker: All the powers that are devolved remain devolved; there is no effect on those.

Richard Lochhead: That is what I am saying.

Robin Walker: However, the areas that currently sit at a European level—

Richard Lochhead: But the areas that I referred to—agriculture, fisheries and so on—are devolved.

David Mundell: In the intergovernmental agreement, the agricultural areas are documented as different types. Although 24 areas are cited and, for example, agriculture makes up a significant part of those, it is not just about that, as environment makes up a significant part as well. It does not just say “agriculture” or “environment”; it sets out what those things actually are.

All the Governments have been very clear in these deep dives that we have been doing, even though we have not reached agreement. I cite the example of “Agriculture - Zootech”, which is about preserving the DNA of animals. Even within a sector such as that, we might find that some of the things would not actually need to be done on a UK basis. Even if something is on the list of 24 areas, that does not mean that every single aspect of it would form part of a framework.

It would perhaps be helpful for me to say again something that I said at the other committee. In the regrettable situation that we were not able to reach agreement, we would abide by the agreement that we have reached with the Welsh Government vis-à-vis the Scottish Government.

The Convener: So you would impose the agreement on the Scottish Parliament, then.

David Mundell: No.

The Convener: Because you would not have reached an agreement.

David Mundell: I know that you are very keen for me to say that, but I am not going to say it, because I am going to wait for this Parliament's deliberations on whether it will give legislative consent.

The Convener: Perhaps I have misunderstood you, but you seem to be saying that you would impose the agreement that you have reached with the Welsh Government on the Scottish Parliament.

David Mundell: No, I did not say that.

Robin Walker: What we have said is that the terms of the intergovernmental agreement that we have reached with the Welsh Government and the respect for the devolved Administrations in that agreement are open to the Scottish Government, as they are to a restored Northern Ireland Executive. It is very important that there is that parity of treatment across the whole of the constitutional settlement when it comes to these issues, and that that is open, whatever the outcome of other debates and disputes. That is the UK Government acting in a reasonable manner, setting out that we will respect the role of the devolved Administrations. That is notwithstanding the whole conversation about legislative consent which, as you say, is for this Parliament to decide.

The Convener: But the amendments to clause 11 would remain.

David Mundell: The situation is that this Parliament will have a debate on the European Union (Withdrawal) Bill and on whether to grant legislative consent to its various provisions. We will await those deliberations while, in the meantime, and as I have set out, still seeking to get a positive outcome to any vote in this Parliament and to get an agreement with the Scottish Government.

Ross Greer (West Scotland) (Green): Theresa May has proposed a customs partnership option for the UK's future relationship with the European Union. Boris Johnson has described that as "crazy". Do you agree with the Prime Minister or with the Foreign Secretary?

Robin Walker: Perhaps I can answer this one. We have presented two options for the future customs relationship between the UK and the EU. We recognise the enormous benefits of having frictionless access for goods, so this is something where I think we are in agreement with much of the evidence provided in "Scotland's Place in Europe" about the importance of frictionless access for goods. What we are talking about is the mechanism for delivering that and for meeting our commitment to have no infrastructure on the Irish border, as well as our commitment to have an independent UK trade policy. Both of the options are designed to deliver that, and the new customs partnership is one way of doing that, in agreement with the EU. It has raised some concerns about it, as you will be aware. The highly streamlined version, the maximum facilitation—max fac—option, represents another way of doing things, with both sides taking steps to do that.

Both options are still under consideration. They are both serious options. We are looking forward to the detailed conversation on the future economic partnership getting under way so that

we can discuss the issues in more detail with our counterparts.

Ross Greer: What made the Foreign Secretary describe the partnership option as "crazy"?

Robin Walker: I think that we will see political arguments and noises off throughout this process from all sorts of parties.

Ross Greer: Does collective Cabinet responsibility not still exist?

Robin Walker: I think that there will be a collective Cabinet decision on this issue.

Ross Greer: When will there be a collective Cabinet decision on this issue? It keeps being pushed back.

Robin Walker: I am keen to see that reached as soon as possible. It is very important that we get the decision right, and that we ensure that it is one on which we can make progress with the other side in the negotiations. Now that we have reached agreement on large chunks of the withdrawal agreement and have reached agreement in principle on the implementation period, the next stage is to get into the detail of the talks on the future economic partnership, which will give us the opportunity to explore some of the options in more detail.

Ross Greer: Mr Mundell, you are a member of the Cabinet. When will it make the decision?

13:45

David Mundell: The Cabinet is considering the options at the moment. As we have discussed, the Cabinet works on a committee system, but the full Cabinet will make the decision on this important matter.

Ross Greer: When will the decision be made? The Cabinet's considerations have been very well publicised by Cabinet members who are enthusiastic to make their views known. Is there a deadline? If there is not, it would be worth putting it on the record that the Cabinet has not set a deadline for making the decision.

David Mundell: The Cabinet realises the need to make a decision in early course. Because of the timetabling of the EU negotiations, the issue was not able to be discussed with the EU ahead of the March European Council meeting. Indeed, it was important to understand the nature of the implementation period going into the next phase. I recognise the need to make a decision but I also recognise the need for that decision to be right. Therefore, it is right to get further detail on the options before a final decision is made.

Ross Greer: Will the final decision be made before the June European Council meeting?

David Mundell: I hope that that will be the case, but I am not stating it as de facto.

Ross Greer: We got an indicative deadline, so we got somewhere.

Mr Walker, you mentioned that two options have been proposed. You also mentioned that the European Union has raised concerns. It has, in essence, said that both of the options that the Cabinet is currently debating are “unworkable”—some people have used that term. It is a matter of debate how unworkable they are. However, the fundamental point of concern is the impact on the peace process in the island of Ireland. I assume that the UK Government is in complete agreement that any customs border between Northern Ireland and the Republic of Ireland would be incompatible with the peace settlement.

Robin Walker: The UK Government has been very clear that it is absolutely committed to all of its commitments under the Good Friday agreement. We have made a strong case for the continuation of the common travel area, which is an example of the exceptional arrangements that exist between the UK and the Republic of Ireland. I am glad that the Republic of Ireland has also made that strong case and that the EU side of the negotiations now accepts it.

As you will be aware, there are already technical orders between Northern Ireland and the Republic on excise. Both parties are able to deal with those in a way that does not put any physical infrastructure—any hard stop—at the border. We need to ensure that the agreement that we reach with the EU allows for the continuation of the unique circumstances in the island of Ireland and recognises the importance of the peace process and the commitments that both international parties have made in that regard.

Right from the start of the process, we have recognised the importance of maintaining our commitments on the Irish border. As a former parliamentary private secretary in the Northern Ireland Office, I have seen that for myself. The Government’s position is absolutely clear that there will be no new physical infrastructure at the border.

Ross Greer: To round off my questions on the topic, I will quote from a speech that Michel Barnier made in Ireland last month. He said:

“So, since we all agree that we do not want a border, and since the UK agreed to respect Ireland’s place”—

that is, the Republic’s place—

“in the Single Market, then that means goods entering Northern Ireland must comply with the rules of the Single Market and the Union Customs Code.

“That is our logic. Simple as that.”

Do you agree with his logic?

Robin Walker: Positions will be taken throughout the negotiations. I agree with Michel Barnier that we need to ensure that both sides come up with creative and imaginative solutions to address the circumstances on the island of Ireland. That means that some of the approaches that we have set out on potential outcome equivalence with regard to goods and on maintaining existing north-south co-operation where there is already sign-off from a devolved, power-sharing Executive—for instance, in phytosanitary arrangements—could be an important part of the solution.

Ross Greer: The European Union’s proposed backstop if no other agreement is made is that Northern Ireland, at least, would stay within the customs union. Would the UK Government agree to any situation in which there was a customs frontier between Northern Ireland and the rest of the UK—between Northern Irish ports and ports on the west coast of Scotland?

Robin Walker: The simple answer is no. The Prime Minister has made clear that she does not believe that any UK Government could commit to a situation in which an internal barrier was created between different parts of the United Kingdom. It is very important that we look at the principles of the Good Friday agreement, which include the principle of consent. There would not be consent to separate Northern Ireland from the rest of the UK. We need to reach an arrangement that recognises that and recognises the joint report agreement on respect for each other’s legal and constitutional systems. We have to respect the single market of the European Union and it has to respect the internal market of the UK.

Ross Greer: The alternative backstop is that the whole of the UK stays in the customs union in the event that no other agreement is reached.

Robin Walker: As I have said, we will not stay in the customs union because we need an independent trade policy, but we have been very clear—and it is set out in our customs paper—that we are open to exploring customs arrangements between the UK and the EU that allow for frictionless movement of goods.

Ross Greer: Thank you.

Stuart McMillan (Greenock and Inverclyde) (SNP): Good afternoon, gentlemen. I thank Mr Walker for his acknowledgement of the poor handling of intergovernmental relations with regard to devolution—of course, devolution has been here for 19 years—and for pushing the UK departments that do not fully understand that.

I return to the issue that Ross Greer touched on. At the weekend, Greg Clark spoke about the

importance of a close customs arrangement with the EU. He cited the 3,500 jobs that could go at Toyota. Carolyn Fairbairn from the Confederation of British Industry welcomed Mr Clark's comments and said that hundreds of thousands of jobs in the UK depend on frictionless trade with the EU. That issue is crucial for the economy and time is running out fast. The uncertainty that has been generated by the UK's negotiating position is quite frankly appalling. When will the UK Government and the EU come to an arrangement and some sort of fixed deal that will help the economy and provide certainty for business and trading?

Robin Walker: You are absolutely right to talk about the importance of certainty in that regard. We have reached political agreement on an implementation period, which is very important to providing that certainty, and made very clear that there will be only one set of changes. One of the things that the CBI and many other business groups have raised with us as a concern is that they do not want two sets of changes—one on the UK's exit from the EU and another when we end an implementation period or when a new arrangement is established. The implementation period takes away that risk and means that we can agree that the same arrangements will remain in place—including effective participation in the customs union, although we will not be a member once we have left the European Union—and provide some certainty to businesses.

The next part is the importance of frictionless movement of goods. We recognise that it should be in the interests of both the UK and the EU to ensure that we can continue to support the complex supply chains that exist between us. There is a range of ways in which to do that, but we should start from the perspective of zero tariffs, which the EU guidelines recognise and seek to achieve—that is very welcome.

We also need to look at areas of equivalence with regard to standards of goods and mutual recognition of those. Some of the options that are set out in our customs paper on mutual recognition of authorised economic operators and other such things could be very important to the end solution. In the modern world that we live in, international companies—automotive is an excellent example, and aerospace is another—move goods regularly from one jurisdiction to another and they hold an enormous amount of data and information on those goods and how they need to move. We need to ensure that our Governments are able to work together between the EU and the UK to support those supply chains and maintain that investment. The economic benefits and risks of that issue cut in both directions. When we meet European business groups in individual member states, we hear the same desire to maintain

frictionless movement of goods that we have in the UK.

I am not saying that it will necessarily be easy or quick to reach a solution, but, fundamentally, it is in the interests of both parties to do so. Having the implementation period means that we have time to reach a solution. The best approach will be to ensure that we have as much detail as possible agreed by the time that the implementation period starts, so that we have the maximum amount of time to put in place the new arrangements.

Stuart McMillan: In the Prime Minister's speech on 2 March, she highlighted five key points, one of which was that the deal with the EU

"must protect people's jobs and security."

Robin Walker: Absolutely.

Stuart McMillan: Given the comments that Greg Clark made at the weekend, and the comments that the CBI has made about having a deal, I do not see how the delay, and the intransigent position that the UK Government is taking, will provide any certainty or protect people's jobs.

Robin Walker: I do not believe that the UK Government is taking an intransigent position. In recent months, some of the issues that people thought would be most difficult to resolve, such as the financial settlement and the position of citizens, have been agreed. We have made progress on those issues.

We have agreed to move now to the future economic partnership, which we were very keen to talk about from the start. We want to focus on where there is real mutual interest in reaching a deal. The member's example of goods in the automotive sector is an excellent example of the existence of that real mutual interest. Big international companies that report their profits in France, Germany and other EU member states will benefit from getting a deal in that space, and that is what we are driving towards.

Stuart McMillan: The CBI also suggested that the customs union

"should remain in place unless and until an alternative is ready and workable."

Do you agree with the CBI?

Robin Walker: We have to reflect on the fact that the UK's trade policy and membership of the customs union was an important part of the referendum debate. When we had that democratic exercise across the whole of the United Kingdom, people considered and debated those issues. One of the opportunities of the process of leaving the EU is that we will have an independent trade policy, and we will be able to go out into the world

and make deals across goods and services that could be beneficial to the UK.

Therefore, we will not be part of the customs union. We need to explore the best options for how we then manage the customs relationship between the UK and the EU, which involves slightly less than half of our trading goods at the moment, and ensure that that relationship continues to thrive. That is a very important objective for the UK Government to get right, which was why that area was the subject of one of the first detailed papers that we submitted, last summer.

Stuart McMillan: It was reported at the weekend that America wants a confident, free-trading Britain that is able to do its own deals. Surely any trade deal should be done for the benefit of all citizens in the UK and not for the benefit of an America first President Donald Trump.

Robin Walker: Absolutely. We need to ensure that all trade negotiations are focused on the interests of people in the UK. However, there is a real risk here. I sat on the Business, Innovation and Skills Committee in the House of Commons when we looked at the transatlantic trade and investment partnership negotiations that were taking place. We concluded that there were potentially huge benefits if we secured the right deal, but there were real concerns about the accountability of the EU trade negotiation process and the fact that the UK Parliament and Government did not have enough of a say.

I am afraid that the idea that is currently being put forward by the Leader of the Opposition, by which we would stay in a customs union and the EU would give us a special say on trade policy, is fiction. If we were in the customs union, the EU would have the right to do trade negotiations on our behalf, with the UK having no say whatsoever—not even the amount of say that we had in the TTIP negotiations. That is one of the reasons why, once a decision has been taken to leave the EU, we need to come out of the customs union. We now need to forge a new relationship with it.

Mairi Gougeon: I have a number of questions about the settled status of EU citizens. Recently, a number of serious issues have emerged from the Home Office: Amber Rudd has resigned over immigration targets; there is a continuing fallout from the Windrush scandal; families in Scotland have been threatened with deportation mistakenly by the Home Office; and the Prime Minister has allegedly blocked requests from other Government departments to allow doctors from overseas to enter the UK. Does the Home Office have the capacity currently to deal with the settled status applications of the more than 3 million EU citizens

who live here? On average, the Home Office would need to deal with about 6,000 applications a day.

14:00

Robin Walker: It is incredibly important that we get the settled status scheme right and ensure that it is as friendly as possible to those communities, which are part of our communities. I have been working closely with my Home Office colleagues. We have held a number of events with diaspora communities in the UK from a whole range of EU member states to make sure that we get their feedback on board before the scheme is launched. That is important, because in the past—you gave examples of problems that have arisen—some immigration control schemes have perhaps been designed to catch people out and to find a reason why people should not be allowed to stay. The settled status scheme is being designed the other way round; it will help people to prove that they have the right to stay, and it will work with those people who are in the UK as EU citizens to ensure that they can be documented.

It is right that mistakes that were made over the Windrush generation have been acknowledged. Amber Rudd is a personal friend—I have known her for a very long time and I respect her greatly—but, in the circumstances, she was right to resign over how that situation had been handled.

We must ensure that we do not create similar problems. Therefore, having a scheme that is designed to help people to get the documentation that they need to prove their long-term residence is the right approach. It is also right that we have looked at how to improve the approach beyond the requirements of the current EU permanent residency scheme, which is its equivalent. People have talked about the problems that they have had with the 82-page forms; they have also talked about the problem of having to prove that they have health insurance even though they have access to the national health service, which is a particularly ludicrous aspect of the policy. We have removed those elements from the settled status scheme and we are trying to work with the widest possible range of groups across the UK to make sure that they have a say in informing how it all works.

I am confident that we are taking the right approach, and I will continue to work very closely with Home Office colleagues, so that we have a joined-up approach to how we make sure that people have and can prove that legal right to residency.

Mairi Gougeon: Has any extra capacity been built into the Home Office to deal with all the applications? Will there be two tiers of migrants in

the country? You will have a hostile environment for people from outwith the EU, but a non-hostile environment for people who have come from the EU. Will there be separate systems?

Robin Walker: No. It is very important to draw the distinction between the whole debate about a hostile environment, which happened under successive Governments, which is about illegal immigration, and legal immigration, whether that is EU or non-EU migration. The focus needs to be on how we make sure that those EU citizens who have made their homes here after coming here legally under the EU freedom of movement rules—the rules will remain in place in this country until the end of the implementation period—are able to continue their lives legally. The Government should be doing everything in its power to help them with that, and that is what we will continue to focus on doing.

The immigration debate that we have had in this country over recent years has been about the concern that many people have, in communities up and down the country, that there is simply no control when it comes to the freedom of movement rules and that side of things. We have to show in our future system that there is a degree of control in that respect. That could improve the attitude of the Home Office and, indeed, government in general, towards people who are coming legally from the EU and beyond and remove some of the stigma around and the pressure on the immigration debate.

I made a positive case for immigration during the referendum debate on whether the UK should leave the EU. One of the great problems that I had—constituents constantly confronted me with this issue—was the argument that we have no control over immigration. We need to address that issue in order to improve the atmosphere and to get across the positive benefits that immigration can bring to the country in general.

Mairi Gougeon: That is already recognised in Scotland; what you have intimated is an attitude that is more reflective of elsewhere in the UK.

The Scottish Government published a report about the benefits of immigration, which said that we would prefer to see the free movement of people continue because we rely on their inward movement for our own population growth. That brings me to the impact on Scotland in particular. An interim report that was published recently by the Migration Advisory Committee said very little about Scotland, and I wonder why that is. Are we waiting for that element of the report to come out, or is the work still going on?

Robin Walker: That work is on-going. The interim report is exactly what it says it is: it is an interim report. The MAC has consistently taken the

view that immigration, which is a reserved matter, needs to be looked at on a UK-wide basis. However, it is very important that evidence from Scottish stakeholders, businesses and communities is taken into account in that respect.

For example, I have been to meet growers in Fife to talk to them about their reliance on seasonal workers and how we can ensure that that is understood by the MAC and will be taken into account in its work. The same issues that affect those growers also affect businesses that are very involved in fruit picking in another part of the UK, in the Vale of Evesham near my constituency in Worcestershire. There is a perfectly rational argument for having a consistent approach across the UK, but it is very important that it should take into account areas all over the UK that have different demographic pressures, such as remote and rural areas and those in which the population is ageing.

David Mundell: I confirm that the MAC's report was very much an interim one; most of it just set out the parameters of what the MAC is doing. We expect to have its full report later in the year, after which we can move forward with an immigration policy that is evidence based, which is what that committee is about. This committee is probably aware—but I will confirm it—that the Scottish Government submitted a very significant document, as did a lot of other Scottish stakeholders.

Mairi Gougeon: I have a concern because the impacts of Brexit are already starting to hit areas. I represent Angus North and Mearns, which is a rural constituency. In the coming season, farms across Angus expect to see shortages of 15 to 20 per cent in the number of seasonal staff that they will have working. What work is the UK Government undertaking to mitigate the impact that Brexit is already having on people in Scotland?

Robin Walker: Part of the answer to that will be the completion of the MAC work. It needs to take into account the sectors of the economy that rely on different workforces. Until relatively recently, we had specific seasonal agricultural workers schemes. They were removed because the rules on free movement meant that they were not necessary. The area is one that the MAC needs to look at.

I observe that where I have had conversations with stakeholders about seasonal workers, in many cases, they are already coming from beyond the EU. That is because changes in currency and in the domestic economies of some of the EU member states from which people have traditionally come have meant that it is now less attractive for them to come here and send money home. In meeting the growers' organisations, I

was quite struck by the number of Ukrainians who were taking part in such activities and who, of course, are not covered under European rules on free movement.

Mairi Gougeon: Concern has been expressed by organisations such as the 3million—of which I am sure you are aware—about an immigration exemption in the Data Protection Bill that would deny people access to their data. That would affect everyone who is currently involved in immigration cases or who may apply for settled status in the future and who therefore may become involved in such cases. Can you update the committee on the status of that exemption and whether it has been removed?

Robin Walker: I will have to write back to the committee on that, I am afraid, because I am not sighted on that particular issue for today's appearance. I will be very happy to do so. Yesterday, we had a debate in Parliament on the Data Protection Bill, and there will be further progress on the issue as we go through the bill's stages. Perhaps I could check with my colleagues at the Department for Digital, Culture, Media and Sport, who are leading on that, and write back to the committee.

The Convener: That would be of great interest. The committee has done a lot of work and has commissioned quite a lot of research on immigration, so that would be much appreciated. Thank you.

Ross Greer: I want to pick up on a point that was not covered in our exchange about the customs union. Mr Mundell, as you highlighted, membership of that is ultimately a decision for the Cabinet. As you are Scotland's representative in the Cabinet, it would be useful to have on the record your views on the customs partnership and the max fac option.

David Mundell: As you would expect, I want to consider the options. As I have said, it is very important to get it right and to have an arrangement. When we have an arrangement agreed within the Cabinet, I will abide by the usual rules of Cabinet collective responsibility and support the decision that the Cabinet makes.

Ross Greer: The Brexit vote was two years ago and the decision to activate article 50 was made just over a year ago. What information do you not yet have that means that you are still considering what your position is? Some of your colleagues have rehearsed their positions in public to a significant extent.

David Mundell: First, I do not feel that it is appropriate for cabinet ministers to rehearse their positions in public. Cabinet ministers should debate and discuss matters around the table and respect collective responsibility when a decision

has been made. The timetable that we worked against for the different parts of the arrangements for leaving the EU was the wish of the EU.

As Robin Walker set out, we concluded the withdrawal agreement—the basis of it, at least—at the December meeting of the Council of Ministers, and we have obviously put a huge effort into securing the implementation period. I support some of the points raised by Stuart McMillan about the importance of that certainty, and it is only since that period that the focus has been on the issue of the customs union in the sense of direct dialogue with the EU. As I say, a lot of work is currently being done to build on the work that was set out in the initial paper. I want to see that work and then take part in the discussion that will ultimately determine the outcome.

The Convener: We have a supplementary from Richard Lochhead on this topic.

Richard Lochhead: You have had two years to make representations on what is the best customs arrangement for Scotland. What are your views on the best customs arrangements for Scotland?

David Mundell: My view is that it would be best for Scotland to have as frictionless an arrangement as possible, with the minimum of tariff and intervention. That is the outcome that we want to get to in those discussions.

Richard Lochhead: What will your position be if that is not the outcome agreed at Cabinet, due to certain individuals taking an alternative view from yours?

David Mundell: I think that we will be able to reach agreement, as we have demonstrated in other key areas. Only a few months ago, people were saying that we would never be able to get collective or parliamentary agreement on what would be an effective divorce bill or agreement on an implementation period and its operation. Those things have been achieved, because when it comes down to it they are really serious issues. As you indicate, the interests of Scotland and the United Kingdom, not individual political positions, have to come first.

The Convener: Mr Mundell talked about the progress that he says has been made on the withdrawal agreement and Mr Walker spoke about how in June you will move on to talking about the future economic partnership, but when Mr Barnier spoke in Ireland last month he was very clear that, without an agreement on the Northern Irish border, which will require that you settle your customs issues, there will be no withdrawal agreement. Without a withdrawal agreement, you will not be able to talk about the future economic partnership. If there is no deal on customs, there is no deal on Ireland, which means that there is no deal. That is crazy.

14:15

Robin Walker: We all want to make sure that we reach a comprehensive agreement on the legal text of the withdrawal agreement, and that includes the element of the joint report referring to Northern Ireland. Of course, different positions are being taken as to the exact drafting of that, and they need to be reconciled so that we can reach agreement.

I disagree that we have to reach full agreement on customs in order to do that. The European Commission made sure that we were not able to talk about the detail of customs until this stage. We were very keen to open that conversation earlier, and we are very keen to progress with both the timetable for reaching a full line-by-line agreement on the legal text of the withdrawal agreement for October and, alongside that and fitting the words of article 50 itself, ensuring that we have as much detail as possible on the future framework for the economic partnership between the UK and the EU.

Officials have been meeting regularly in Brussels to take forward the discussion on the withdrawal agreement text, and we are absolutely committed to all elements of the joint report to date. The wording to which the Prime Minister objected, which would, in effect, create a border in the Irish Sea, went beyond the joint report and was one interpretation of it. We made it very clear that it was not acceptable to us, and we need to reach agreement on an alternative to that. That is where the talks are, right now, and we are pressing ahead in order to ensure that we make the maximum progress ahead of the June meeting of the Council and, crucially, ahead of reaching the full final withdrawal agreement in October.

The Convener: Reports from the official discussions that you are talking about say that the EU has systematically annihilated both your customs options.

Robin Walker: I do not think that we should pay too much attention to media reports. We have to focus on getting the detail in these arrangements right. We have put forward two detailed proposals on customs, and we have not yet had the broad conversation about that with the EU that we would like to have. We want to get on with that as quickly as possible.

The Convener: Those reports are pretty credible; they are in papers such as the *Financial Times*, for example. They are perhaps more reliable than some of the briefings that come out of the UK Government. If it is the case that your customs options have been systematically annihilated by the EU, where do you go other than remaining within the customs union?

Robin Walker: The key thing is to negotiate—to get the negotiations right in the room—and not to speculate on media reporting.

The Convener: Okay. Thank you for coming to give evidence today.

14:17

Meeting continued in private until 14:30.

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