



OFFICIAL REPORT
AITHISG OIFIGEIL

Finance and Constitution Committee

Thursday 6 September 2018

Session 5



The Scottish Parliament
Pàrlamaid na h-Alba

© Parliamentary copyright. Scottish Parliamentary Corporate Body

Information on the Scottish Parliament's copyright policy can be found on the website - www.parliament.scot or by contacting Public Information on 0131 348 5000

Thursday 6 September 2018

CONTENTS

Col.

EUROPEAN UNION (WITHDRAWAL) ACT 2018	1
---	----------

FINANCE AND CONSTITUTION COMMITTEE

21st Meeting 2018, Session 5

CONVENER

*Bruce Crawford (Stirling) (SNP)

DEPUTY CONVENER

*Adam Tomkins (Glasgow) (Con)

COMMITTEE MEMBERS

*Neil Bibby (West Scotland) (Lab)

*Alexander Burnett (Aberdeenshire West) (Con)

*Willie Coffey (Kilmarnock and Irvine Valley) (SNP)

*Murdo Fraser (Mid Scotland and Fife) (Con)

*Emma Harper (South Scotland) (SNP)

*Patrick Harvie (Glasgow) (Green)

*James Kelly (Glasgow) (Lab)

*attended

THE FOLLOWING ALSO PARTICIPATED:

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

CLERK TO THE COMMITTEE

James Johnston

LOCATION

The David Livingstone Room (CR6)

Scottish Parliament

Finance and Constitution Committee

Thursday 6 September 2018

[The Convener opened the meeting at 09:32]

European Union (Withdrawal) Act 2018

The Convener (Bruce Crawford): Good morning, and welcome to the 21st meeting in 2018 of the Finance and Constitution Committee. I remind everybody to put their mobile phones on silent so that they do not disturb the proceedings.

The only item on our agenda today is to take evidence on the European Union (Withdrawal) Act 2018. I warmly welcome the Secretary of State for Scotland, David Mundell. Before we move to questions from the committee, do you want to make a short opening statement?

Rt Hon David Mundell MP (Secretary of State for Scotland): Thank you, convener. I am pleased to be here this morning. Since my previous appearance before the committee in May there have been a number of developments. One of the most significant is that the European Union (Withdrawal) Bill is now an act. I deeply regret that the Scottish Parliament felt unable to give consent to that important piece of legislation. To the very end, we worked constructively with the Scottish Government and the Welsh Government to reach agreement. It is worth being clear that the significant changes that we made to the legislation were a result of discussions between officials and ministers in all Administrations, and indeed feedback from this committee, members of Parliament and the House of Lords. The Welsh Government and Assembly were able to support the final agreement. Unfortunately, the Scottish Government was unable to do the same.

Throughout, the United Kingdom Government upheld our commitment to the devolution settlements and associated conventions and acted within their parameters. We remain fully committed to devolution and will continue to seek legislative consent, take on board views and work with the devolved Administrations on bills, according to the established practices.

We have worked well with the Scottish Government in the past and we must ensure that we continue to work well together in future. The progress that we have made and are making on UK common frameworks is testament to that and, I hope, is indicative of our future relationship.

I am satisfied with the level of engagement. UK officials are in contact with their counterparts in the devolved Administrations every day, discussing our preparations for exit. For example, since January, more than 30 further deep-dive policy sessions between UK Government and devolved Administration officials have been held as part of the first phase of engagement on future common frameworks. A second phase of deep dives is under way.

Discussions are also progressing on a range of cross-cutting issues, including the approach on trade, the internal market and governance. All of that is being guided by the framework principles agreed by all Administrations at the joint ministerial committee (European Union negotiations), which will now proceed on a scheduled monthly basis.

Since we last met, the UK Government has set out our vision for the United Kingdom outside the EU. The Government has also set out in a white paper its plans for legislating for the withdrawal agreement. We shared information on that paper with the Scottish Government at the JMC(EN) in July, well in advance of its publication.

We are also, alongside the devolved Administrations, taking forward a review of the existing intergovernmental structures, which I know is a matter of great importance to this committee, and the memorandum of understanding that is currently in existence. Officials will report back to the joint ministerial committee plenary in due course.

With the passage of the European Union (Withdrawal) Act 2018, we are now confident that our laws will function after exit. The work over the summer to publish a series of technical notices will help to prepare businesses, individuals and families in the unlikely event that we exit without a deal. As we exit the EU, I remain committed to working collaboratively with the Scottish Government, this committee and this Parliament.

The Convener: Thank you for those opening remarks. When you gave evidence to this committee on 8 November last year, you told us, in relation to agreeing common frameworks:

“I am very clear that it will not be possible to achieve legislative consent and agreement from the Scottish Government unless we have agreed the process by which those frameworks will be agreed.”—[*Official Report, Finance and Constitution Committee*, 8 November 2017; c 7.]

In further evidence on 3 May this year, you reaffirmed:

“we are not in the business of imposing frameworks.”—[*Official Report, Finance and Constitution Committee*, 3 May 2018; c 22.]

Why, then, did your Government proceed without the consent of this Parliament? More importantly perhaps, will you now give a guarantee that no common frameworks will be imposed?

David Mundell: As we have discussed previously at this committee and in other discussions, there is a degree of conflation of issues there. The European Union (Withdrawal) Bill was about the possibility of freezing existing EU arrangements until new agreements had been reached. That is what section 12 of the act is about. It is not about the process for agreeing the frameworks.

My position on agreeing the frameworks is as I have previously stated. I want us to be in the position where we are able to reach agreement on those frameworks—the new arrangements that will apply once we leave the EU. I believe that we are making very good progress on that. A lot of work is under way at the moment, some of which I have outlined today. As I have said before, the big change about leaving the EU is that matters that were previously agreed with the EU by the UK will now have to be agreed within the UK.

The Convener: I drew those two matters together because it is pretty obvious—everyone knows—that the UK Government proceeded to put in place clause 11 of the bill without the consent of this Parliament. Given that that is the history that we are dealing with, I seek a guarantee from you that no common frameworks will be imposed on Scotland.

David Mundell: Obviously, to some extent I do not accept the premise of the question, because no common framework has been imposed on Scotland.

The Convener: Yet.

David Mundell: The provisions of the European Union (Withdrawal) Act 2018—clause 11 as it was and section 12 as it has become—allow for existing arrangements to be frozen while new agreements are negotiated. It is still absolutely my position and that of the UK Government that we want to reach those frameworks by agreement.

The Convener: If no agreement is reached, will a common framework be imposed?

David Mundell: We do not want to be in a position where we do not have agreement. We want to be in a position where we reach agreement, and that is what we have sought to do throughout the process that involved the European Union (Withdrawal) Act 2018. If we focus on the issues that are being covered, and on issues that are very important for people in Scotland, such as agriculture and fisheries, and not on issues of process and whether the constitutional arrangements within the United Kingdom need to

be changed or whether we agree on the interpretation of those arrangements, I am confident that we can reach agreement, because everyone has a common interest in doing so. An issue that I have raised before is the movement of livestock within Great Britain. I do not see a basis on which the Scottish Government, the UK Government and the Welsh Assembly Government would not be able to reach agreement on that.

The Convener: Like you, secretary of state, I am also interested in the content of the common frameworks, not the process, and it is the content that I am concentrating on, because that is where there will either be agreement or not be agreement. I am asking you to provide a guarantee that, if there is no agreement, none of those common frameworks will be imposed.

David Mundell: The process for agreeing the common frameworks was not part of the European Union (Withdrawal) Act 2018, so we are still going through an evolution of what that process will be, but it will be a process about reaching agreement across the United Kingdom. We may differ in relation to the role of the Scottish Parliament in determining what happens in other parts of the United Kingdom, because I am quite clear that the Scottish Parliament does not have a veto over what would happen in other parts of the United Kingdom, but I am determined that what happens in Scotland in relation to devolved matters should proceed on the basis of agreement.

The Convener: I have tried to secure that guarantee, but I have not been able to get to the position that I had hoped we would manage to get to today.

I think that Alexander Burnett is interested in common frameworks as well.

Alexander Burnett (Aberdeenshire West) (Con): Most of that has been covered, but I just wondered whether there is a timetable for the completion of the common frameworks that you are able to share.

David Mundell: There is not a timetable as such. In fact, it was agreed by the JMC(EN) that work would carry on across the whole of those 24 areas pretty much in unison, but clearly there are some areas where there is a need for a degree of priority because of the impact of leaving the EU. The two obvious ones are fishing and agriculture, because when we leave the EU we will leave the common fisheries policy and the common agricultural policy, and there will be practical consequences of doing that. Very shortly, the UK Government will be introducing an agriculture bill, which we have been in discussion with the Scottish Government about and which will relate to some specific aspects, such as the capacity to

continue to pay farmers once we have left the EU. It will not necessarily set out detailed policy frameworks, so some aspects of what might be regarded as a common framework would be dealt with in that bill and some would be dealt with in a forthcoming fisheries bill. However, other aspects might be dealt with in revisions to the existing concordat on fisheries. Although there is not a timetable that lists those 24 areas in order, there are practical circumstances that mean that certain things will happen ahead of other things.

Emma Harper (South Scotland) (SNP): I have a quick question about fishing. Scotland has a difference in its fishing industry compared with the gross domestic product of fishing in the UK. As we are negotiating to look at common frameworks, I am interested in how that is addressed. Words such as “expendable” have been used in the past with regard to fishing. Can you give us a 100 per cent guarantee that fishing will not be expended, or that frameworks will not be imposed on our fishing industry?

09:45

David Mundell: Again, there are a number of issues there. The Government is absolutely clear that, in leaving the EU, we will be leaving the common fisheries policy and becoming an independent coastal state with the capacity to negotiate our own fishing arrangements. That is the position. It is not acceptable to me, and the Prime Minister has made it clear that it is not acceptable to her, to leave the EU on the basis that there would be some pre-negotiated arrangement on EU fishing access to UK waters. That is why we have also left the London agreement.

On matters within the UK, there will be no change to the existing arrangements and responsibilities that are exercised here in the Scottish Parliament and in Scotland. Those arrangements fully recognise the fact that, as you said, fishing is significantly more important to Scotland's economy. This week, I met with the Scottish Fishermen's Federation and with Sir Ian Wood, who takes an extensive interest in fishing, and I recently met with processors. Everybody in the fishing industry is excited by the opportunities that can arise from Scotland leaving the common fisheries policy. We all need to focus on allowing those opportunities to be maximised, and I am absolutely committed to doing that.

The Convener: Patrick Harvie has a question on consent matters.

Patrick Harvie (Glasgow) (Green): Good morning. I want to draw a further connection between the issues that the convener raised and the issue of legislative consent. There are still

really big problems with the desire to reach agreement on any of these matters and the way in which agreement is reached. If one side or party in a discussion holds open the option to impose a decision rather than reach an agreement, that is a barrier to agreement. We will get reasonable compromise and negotiation only if both parties need an agreement, instead of one holding open the option to impose something.

In that context, I am concerned that we will almost inevitably have further conflicts on issues such as legislative consent. We have just had a huge disagreement about legislative consent, and I think that most of us would like to avoid other disagreements. You said that you want to continue to seek legislative consent on devolved issues. Is it not reasonable to say that we need a clear and mutual understanding of what the legislative consent principle is? In particular, when it says that the UK Government shall “not normally” legislate in devolved areas without consent, do we not need a mutually agreed understanding of what “not normally” means? We do not have one at the moment.

David Mundell: I agree with the principles that you have set out. That is why I was pleased that, this week, the Scottish Government moved to bring forward legislative consent in relation to the Offensive Weapons Bill, which is proceeding through the UK Parliament and which, for example, covers acid attacks and other such vile offences. Legislative consent is forthcoming. We have sought legislative consent, and legislative consent motions have been lodged, in a range of areas, such as lasers and changes to the ability to park on the pavement in Scotland, which I know is a matter of great import to people here in Edinburgh.

Patrick Harvie: You are smiling because you know that that is not a hugely divisive issue. It is where the Governments have different positions that we have a problem.

David Mundell: I accept that that example is not a hugely divisive issue, but it supports the fact that the whole process has not broken down. There was some suggestion that the whole process was going to break down because the UK Government had ridden roughshod over it, which is not the case. It is clear to the UK Government, the Scottish Government and most independent observers that we have a difference of opinion on what the Sewel convention means. It has been said to me that the Sewel convention was an absolute provision and that it has been breached simply by the fact that we proceeded with the withdrawal bill, but it has not been breached. It was very clear back in 1998, when the convention emerged, that the Westminster Parliament would always be able to legislate on devolved matters.

Patrick Harvie: The convention might be working all right on relatively low-level, non-contentious and non-divisive issues, but that is the easy stuff. We will need to debate a lot of very contentious and divisive issues over the coming months and perhaps years, so we need a mutually agreeable process that can deal with such issues. The UK Government's position on what the caveat "not normally" means within the consent mechanism is incoherent.

For example, in Northern Ireland there is no normal devolution process at the moment. The Assembly has not met for a year and a half, and it does not look likely to meet. In a recent case, a majority of Supreme Court judges said that the existing law on abortion is incompatible with human rights law. A large majority of public opinion supports reform in precisely the areas that were considered in that Supreme Court case. The United Nations Committee on the Elimination of Discrimination against Women has said that the situation in Northern Ireland constitutes a "grave and systematic" violation of human rights. Although there is no normal functioning devolution system in Northern Ireland, the Secretary of State for Northern Ireland said that the issue is devolved, so

"The Government believe that the question of any future reform in Northern Ireland must be debated and decided by the people of Northern Ireland and their locally elected, and therefore accountable, politicians."—[*Official Report, House of Commons*, 5 June 2018; Vol 642, c 220.]

Let us contrast that with Scotland, where devolution is working normally. The Scottish Parliament is legislating normally. There is a willingness to say that you can legislate on devolved issues, but do we not need to reach a consistent and coherent understanding of what the caveat means? It surely cannot mean that you can overrule a devolved Assembly when it does something that the UK Government does not like.

David Mundell: I will deal with a number of points—from the look on the convener's face, I will not dwell too long on Northern Ireland.

Patrick Harvie: It is about the conflict between the two positions.

David Mundell: We have an asymmetric system of devolution within the United Kingdom. Although I do not agree with it, I respect the view of people who argue for a federal system with greater symmetry. Northern Ireland has unique issues. I think that we would agree on the Government's priority to get the Northern Ireland Executive back up and running, because that is the best way to take forward issues there.

The devolution arrangements for Scotland are different from the arrangements for Northern Ireland and, indeed, Wales, as set out through the

various amendments to the Scotland Act 1998, from which the Sewel convention emerged. I do not agree that over the past 19 years contentious and difficult issues have not been debated and discussed in the Scottish Parliament. The Parliament has taken decisions at various times with which UK Governments of different persuasions have not agreed. However, at no point did those Governments interfere with such decisions.

Patrick Harvie: Until now.

David Mundell: This was a case in which the UK Government made proposals about the management of our departure from the EU and certainty in our legal system after we leave the EU on which we could not reach agreement. We did not overrule any action of the Scottish Parliament.

Patrick Harvie: But you legislated in a devolved area without the consent of the Scottish Parliament. What does "not normally" mean?

David Mundell: It means that for 19 years and continuing, we will seek the consent of the Scottish Parliament to legislate in those areas. We are absolutely committed to doing that.

The Convener: Whether we like it or not, we have a problem and we need to find some way to resolve it. The Scottish Government has said clearly that it will not recommend consent to any Brexit-related legislation until—these are my words and not the Scottish Government's—there is a resetting of the Sewel convention process. That is where we are. What are the UK Government's proposals to break that logjam?

David Mundell: My position is that we made a decision in September 2014 when we had a referendum on whether Scotland became independent or remained part of the United Kingdom. I remember taking part in debates with Professor Tomkins—on the same side, it has to be said—at which there was extensive discussion among audience members about the Sewel convention and Westminster's powers relative to the Scottish Parliament. We have had that debate, and it is all part of the debate about the existing constitutional arrangements.

I respect your position on changing the constitution of the United Kingdom, convener, and it is one that you have argued consistently for many years.

The Convener: I am being very narrow in this—it is nothing to do with independence or 2014; it is about the current devolution arrangements. The Government in Scotland says that it will not recommend that its Parliament should consent to any Brexit legislation because it believes that a bit of the system—the Sewel convention—is not working. Patrick Harvie has rightly pointed to the

phrase “not normally”. We have a problem with the current settlement and we have to find some way of sorting that problem, unless you are prepared to guarantee that the UK Government will not go ahead with other Brexit legislation without the consent of the Scottish Parliament. It is not good.

David Mundell: That is not our intention.

The Convener: So you guarantee that you will not do that.

David Mundell: It is not our intention. The Scottish Government’s statement was not a helpful one but we have yet to see what emerges. From my reading of the evidence that Mr Russell gave yesterday, it was not 100 per cent clear to me that that position is absolute. We are in the middle of detailed discussions on the agriculture and fisheries bills. I remain hopeful that the Scottish Government will recommend legislative consent to them.

The Convener: And if it does not?

David Mundell: We will have to deal with the situations that we find ourselves in. I think we can continue to find agreement if we focus on the issues, but not if we remain in the position of having different views of the constitution of Scotland.

The Convener: All we are doing is parking a problem for the future and it will keep coming back now that it is out in the open. We have to find some way of resolving it, otherwise we will come into conflict time and time again.

That takes us to the area that Adam Tomkins is interested in.

Adam Tomkins (Glasgow) (Con): Before I get into the area that I want to explore with the secretary of state, perhaps I can pick up directly on what has just been discussed.

The view that has been forcefully expressed by the convener and Mr Harvie is that there is a problem with the Sewel convention that needs some kind of fix. Is it the United Kingdom Government’s view that there is a problem with the Sewel convention, or is it the UK Government’s view that Sewel was adhered to in the passing of the withdrawal bill?

10:00

David Mundell: I am absolutely clear that Sewel was adhered to in the passing of the bill. I think that a lot of the complaints in relation to this are about a difference in people’s wishes for our constitution. It is not that people do not like the Sewel convention or that there is a problem with it; it is just that it is not the constitutional arrangement that they want to apply in the United Kingdom at this time.

Adam Tomkins: I do not want to put words in your mouth but, as I understand it, the position of the United Kingdom Government is that the United Kingdom will continue to adhere to the Sewel convention. It will continue to seek the consent of the devolved Parliaments and Assemblies of the United Kingdom where UK legislation relates to devolved matters or the powers of those Parliaments and Assemblies, and the United Kingdom Parliament will not normally be invited to legislate on matters touching on devolution without that consent.

David Mundell: That is absolutely the position.

Adam Tomkins: What is the UK Government’s reaction to not just the convener of this committee and Mr Harvie and others very forcefully expressing a contrary view, but the Scottish Government itself expressing a contrary view that Sewel is broken and needs to be fixed?

David Mundell: As I said in my opening remarks, I am disappointed about how things emerged during the discussions on the European Union (Withdrawal) Bill, as it then was. We had some of those discussions at this committee. Things would have been a lot clearer earlier on if we had understood that the Scottish Government had this absolutist position in relation to the interpretation of consent within the Sewel convention.

I do not think that the Scottish Government’s interpretation of the Sewel convention is correct. However, I do not think that farmers, fishermen and other people affected by the environmental measures that will come to Scotland after we leave the EU are really focused on us being involved in repeated analyses of the Sewel convention; they are interested in what measures will emerge.

If we can lift our horizons from the constant constitutional row, we can move forward on these issues. That is why I am much more confident that we can reach agreement on the frameworks—the substantive policy issues—because that is the track record. Although Mr Harvie might suggest that the Offensive Weapons Bill is a rather easy and minor thing to deal with, it is a significant piece of legislation to protect the public on which we have been able to reach agreement.

Adam Tomkins: Indeed. I share that view. I do not know how much of the evidence that Michael Russell gave yesterday you have been able to look at, but he was asked at the end of that session exactly what he means when he says that the Scottish Government is no longer going to co-operate with the Sewel process. It turns out that he has not ruled out the possibility that there will be a supplementary legislative consent memorandum on the Trade Bill, or that there will

be future LCMs—indeed, I understand from the standing orders that there is a requirement on the Scottish Government to produce LCMs. However, he has suggested that he will not be putting legislative consent motions before the Scottish Parliament.

It seems to me—and I am interested in your view on this—that if it is the case that the Scottish Government will continue to publish legislative consent memorandums but that the Scottish Parliament will somehow be denied the opportunity to vote affirmatively or negatively on legislative consent motions, all that we are left with is that the UK Government will not know whether or not the Scottish Parliament consents to UK legislation that touches on devolved matters. We will know the Scottish Government's view—it will be in the memorandum—but we will not know the Scottish Parliament's view because that can be determined only by a vote on a motion. If the Scottish Government is not going to put those motions before the Parliament, we are left in a situation in which the UK Government can carry on because the Scottish Parliament will be denied the opportunity—should it wish to take such an opportunity—to say that it does not give consent. Is that your understanding of what Mr Russell said yesterday?

David Mundell: That would be a very disappointing outcome. I have always given equal importance to the views of the Parliament and the Scottish Government and, as we have gone through this and other processes, I have sought to ensure that this Parliament is fully engaged. It would be extremely disappointing if we got to a situation in which the Scottish Parliament itself was not able to express a view. After all, from time to time even Mr Russell concedes that the Scottish Government does not have a majority in the Scottish Parliament.

Adam Tomkins: I should say that it is not my view that we should have no further debate on legislative consent motions—it is my interpretation of what Mr Russell, representing the Scottish Government, said yesterday. It seems to be an evolving position.

Can I move away from the detail of Sewel into the broader—

The Convener: Before you do, I want to bring in Patrick Harvie, who has a supplementary on that specific point. I will come back to you.

Patrick Harvie: There is one thing that it is important to add both for the record and for the benefit of members of the public who might be listening to this discussion—although perhaps it shows questionable judgment if they are doing so. The Scottish Parliament is not and will not be in a position where it is unable to put those questions. I

am sure that Mr Mundell can empathise with the position of a minority Government, but the Scottish Government cannot dictate to the Scottish Parliament the issues that it wants to decide on. The Parliamentary Bureau will make those decisions.

I also want to reinforce something else. You are asking us to move beyond these constitutional questions and questions of process, but surely the way for us to do that is to reach an agreed and shared understanding of what the Sewel convention means and the way in which the phrase “not normally” is to be interpreted instead of the UK Government simply satisfying itself that it agrees with itself.

The Convener: I do not know whether you want to comment on that, secretary of state. It was a statement rather than a question.

David Mundell: I note and respect Mr Harvie's views, but I do not agree with them.

The Convener: I am sorry to have interrupted you, Mr Tomkins.

Adam Tomkins: Not at all, convener.

Secretary of state, I want to move away from the detail of Sewel and towards the broader issue of intergovernmental co-operation. I think that you said in your opening remarks that you are now embarking on deep dives—or, since it is round 2, deeper dives. Can you flesh out what is being dived into in those exercises? How is the process of co-operation working? Is it working at official level, at ministerial level or at both levels?

David Mundell: I think that it is working at both levels. As for the deep dives, that exercise has primarily been about identifying which of the 24 areas might require legislation and which might be subject to other forms of agreement and, in fact, moving certain areas from the overall heading of the 24 legislative framework areas into the other 80-odd areas for which a legislative framework is not going to be put in place. Indeed, those powers will come directly to the Scottish Parliament. It is about refining things down to what might be required to be dealt with through primary legislation, secondary legislation or less formal arrangements, such as the fishing concordat that I mentioned in response to Emma Harper.

A lot of the work has been focused on doing that refining but, since I last met the committee, we have established the ministerial forum, which is essentially an offshoot of the JMC(EN) and provides a less formal environment to allow discussion of the issues between ministers. My colleagues Chloe Smith from the Cabinet Office and Robin Walker from the Department for Exiting the European Union represent the UK Government at the forum, and we have had a

number of forum meetings with Scottish Government ministers. That then reports back to the JMC(EN). We have taken on board the legitimate point that Mr Russell raised about ensuring regular meetings of the JMC(EN), so those meetings will now proceed on a scheduled basis.

Adam Tomkins: That is very helpful.

I have a final question on the issue. To what extent, if at all, does the distinction between reserved and devolved powers play into the way in which the process of intergovernmental co-operation works? Yesterday, we took evidence on the Trade Bill from George Hollingbery for the UK Government and from Mike Russell for the Scottish Government. The UK Government is seeking legislative consent from the Scottish Parliament in relation to the Trade Bill, but the core subject of that bill is clearly a reserved competence—it is about international relations, international treaties and international trade, all of which are clearly reserved under the Scotland Act 1998. We heard from the Minister of State for Trade Policy that, notwithstanding the fact that we are talking about what is, in essence, a reserved competence, he wants a co-operative and consultative approach with the Scottish Government and other devolved Administrations in the United Kingdom.

In contrast, we heard from Mike Russell that he wants a whole series of vetoes that he can exercise as the reserved competences are rolled out. Whereas a year ago he was saying that Brexit must be delivered in a manner that is compatible with the devolution settlement, he now says that the devolution settlement cannot bear the weight of Brexit—I think that he said that yesterday—and that bits of the devolution settlement now need to be changed, because he does not like them. In particular, he does not like the fact that international trade is reserved. Is the distinction between that which is devolved and that which is reserved getting in the way of effective intergovernmental co-operation on, for example, the future common frameworks that might relate to trade?

David Mundell: It is not getting in the way on a practical level. Trade matters are an example of where the Governments have worked well together. I have travelled to a number of overseas markets—for example, I was in Tokyo earlier in the year—and I have found that the UK Government and the Scottish Government work very closely. The Department for International Trade and Scottish Development International work very hard together to secure the best outcome for Scotland. That is what we want to see and achieve. If you speak to the people on the ground, you will find that they have no idea of the

constitutional minutiae that we are arguing over; they are looking to bring businesses to Scotland to invest in Scotland or to sell Scottish products around the world. That is our approach, and that is what we want to achieve. We do not delineate in that way.

Ultimately, reaching trade agreements is a reserved matter under the devolution settlement, and the UK will be the entity that negotiates them. However, we have absolutely committed—Mr Hollingbery did so yesterday, and Liam Fox and the Prime Minister have done so—to engagement with the Scottish Government, the Welsh Assembly Government and, we hope, a Northern Ireland Executive in reaching those agreements. That is our approach, and it can be perfectly well accommodated in the devolution settlement.

It comes back to focusing on the issue at hand, which is to get the best possible trade deals for Scotland and the UK and to achieve the maximum amount of inward investment into Scotland internationally. I am afraid that that is not determined by constitutional minutiae; it is determined by the effectiveness of our trade policies.

The Convener: Murdo Fraser has a question about seasonal workers.

Murdo Fraser (Mid Scotland and Fife) (Con): My question is not about constitutional details; it is more about the wider aspects of Brexit. We have heard a lot of concerns about access to migrant labour and seasonal workers post-Brexit. That has been a major issue for farmers in places such as Perthshire and Fife, which I represent. I noticed that the Home Office made an announcement this morning on a seasonal agricultural workers scheme. Can you outline briefly for us how that will work?

10:15

David Mundell: Yes, I can. That scheme is a pilot. I pay tribute to my colleague Kirstene Hair, who is the new MP for Angus. Mr Fraser mentioned Perthshire, but Angus has a central role in the soft fruit industry, and Kirstene Hair, along with others, has sought to highlight that fact to the Government and the need for an ability to bring in non-European Economic Area nationals. When I met members of the industry, I was very struck by their need for non-EEA nationals to be able to come to the UK.

Regardless of the issues around Brexit, the number of EU nationals who have come in to support horticulture and agriculture has been dropping for a range of reasons. The scheme in question will allow for 2,500 visas to support agriculture and horticulture. It is a pilot and therefore a first step in moving forward with the

support that the industry has sought and requires. EU nationals will, of course, still be able to come to the UK on the same basis as they can today until the end of the implementation period in December 2020.

Murdo Fraser: Is it right that the scheme will come in from next spring?

David Mundell: Yes—in spring 2019. I would be happy to write to the committee with exact details of it.

The Convener: Neil Bibby has questions on wider issues.

Neil Bibby (West Scotland) (Lab): Good morning, secretary of state. You said earlier that having no deal is unlikely. However, I think that it is fair to say that, over recent months and since the Chequers proposal, that has become more likely. The Secretary of State for International Trade said that the chance of having no deal was 60:40. That makes it more likely than not, according to those maths. Do you believe that the Secretary of State for International Trade is wrong in that guess? In percentage terms, how unlikely do you think a no-deal Brexit is?

David Mundell: I will not accept your invitation to guess. I want to get a deal. I do not want a no-deal scenario, and I believe that the Prime Minister's Chequers proposal, which was outlined in the white paper that was published in July, is the best opportunity to get a deal that is good for Scotland and the United Kingdom.

We have previously discussed in this forum "Scotland's Place in Europe" parts 1 and 2, and it is worth noting that many aspects of the proposals that the Scottish Government has put forward are covered in the Chequers proposal. I think that the Chequers proposal is the best way to achieve a deal and that it would help us to get a deal if everyone across the United Kingdom felt able to rally behind the Prime Minister in her negotiations for that.

Neil Bibby: I want to see a sensible and serious deal with the European Union, but it appears that there is a difference of opinion between ministers on how likely it is that a deal will be reached. The UK Government has said that it is planning for there being no deal, and I presume that the Scotland Office is planning for that, as well. We know that having no deal would slash GDP by almost 8 per cent, which would be a catastrophe for the UK economy. Can you, as the Secretary of State for Scotland, tell the committee what areas of the Scottish economy are likely to be at greatest risk from a no-deal Brexit, given that you are planning for one?

David Mundell: To be fair, Mr Bibby, I do not think that you are characterising it correctly. We

are not seeking a no-deal Brexit. We understand, as any responsible Government would, that a no-deal Brexit is a possibility, and it would be irresponsible not to make contingency arrangements to deal with that possibility, as the point at which we will leave the EU is only months away. Over the summer, we produced a number of technical notices that relate to areas of the economy and civil society which would require to make contingency arrangements so that people have the ability to prepare for a no-deal Brexit. Further such notices will be issued. However, we are not promoting a no-deal Brexit. As I have said previously, I recognise that a no-deal Brexit would not be good for Scotland, and that is why I do not want to be in a position of having no deal.

If we get to the point—as I have said to you, I remain confident that we will—at which Parliament gets the opportunity to vote for the Chequers deal or having no deal, I will absolutely be in the column of those voting for the Chequers deal, and I would hope that the Labour Party and the Scottish National Party will do likewise if they genuinely do not want there to be no deal.

Neil Bibby: You have said that you are not seeking and are not proposing no deal, but the Prime Minister said yesterday—and you have repeated this today—that you are planning for that. You are making contingency plans for a no-deal Brexit. You have also said that having no deal would not be good for Scotland. If you are planning for having no deal for Scotland and you believe that having no deal would be bad for Scotland, can you, as Secretary of State for Scotland, tell us, in the interests of transparency, which areas of the economy will be hardest hit by having no deal? People and businesses in Scotland need to know and fully understand the impact of having no deal, given that it is becoming more likely.

David Mundell: That is what the technical notices that have been published and will continue to be published are about—allowing people to prepare for a no-deal situation. However, that is a contingency, because it is self-evident that, if you are negotiating a deal, one possible outcome is that there will not be a deal at the end of it, but not because that was your aspiration or what you wanted to achieve.

My view is therefore that, in order to avoid having no deal, we need to put our energies and focus into trying to get a deal and rally round the Prime Minister in her negotiations. If we were united in the United Kingdom, the Scottish Parliament and the Westminster Parliament in our push for a deal, that would strengthen the Prime Minister's hand in getting a deal. For those people who want to avoid a no-deal Brexit, that is the best way to do that, in my view. We can all set out the

worst-case scenarios, but we do not want to be there. We want to be in a position in which we have got a deal.

Willie Coffey (Kilmarnock and Irvine Valley) (SNP): Mr Mundell, are you seriously asking us to believe that the Chequers proposal is not a dead duck?

David Mundell: Yes, I am, and—

Willie Coffey: You cannot get it past your own party. Your colleague Mr Rees-Mogg said that Chequers is “rubbish”. Mr Barnier is reported as saying to the German newspaper *Frankfurter Allgemeine Zeitung* that he is strongly opposed to Prime Minister May’s Chequers proposal, and he even said that the British offer on customs is illegal. Are you expecting us to believe that Chequers is still live and on the table?

David Mundell: Chequers is still live. It is still on the table.

Willie Coffey: Even given all of that?

David Mundell: As you have just set out, various comments are attributed to Mr Barnier, or he makes certain statements, but he does not ultimately decide what the deal between the UK and the 27 other member states should be. That will be an agreement between the UK and those member states.

As Dominic Raab set out yesterday in his evidence in the UK Parliament, negotiations have been proceeding on a constructive basis. I do not suggest that the proposal that we have put forward will not require the EU to make some adjustments to the way in which it has previously operated, but I think that we have put forward a credible proposal that we should argue for.

Willie Coffey: Mr Barnier is the European Union’s chief Brexit negotiator, and that is what he said. He basically said that Chequers was a dead duck.

David Mundell: He is reported to have made certain—

Willie Coffey: Your own party colleagues have said that it is a dead duck.

David Mundell: Mr Barnier is reported to have made certain comments, but he is not the final decision maker on these matters.

As for reaching an agreement, this is a negotiation between the United Kingdom and the EU, and I think that it would be very good if everybody in the United Kingdom was on the side of the United Kingdom in those negotiations so that we can get the best possible deal for the United Kingdom and for Scotland.

Willie Coffey: Mr Mundell, can you tell the committee and the people of Scotland here and now whether you will support a no-deal scenario, or will you say quite clearly that you will not support one under any circumstances?

David Mundell: I am saying very clearly—and I have said this to Mr Bibby—that if there is a vote in the House of Commons on Chequers or no deal, I will be voting for Chequers. Mr Coffey, I would like you to tell me that the SNP will be doing the same.

Willie Coffey: Chequers is not on the table. The European Union has ruled it out.

David Mundell: That is an assertion based on newspaper reports, not on being in the room and having the discussions and not on having followed through the various important events that are coming up, such as the Salzburg meeting of the EU 27 and the October meeting of the European Council. Those are the forums in which the decisions will be made, so it is simply an assertion that Chequers is off the table. It is still very much on the table.

Willie Coffey: Just to be clear, tell us that you will not support a no-deal scenario under any circumstances.

David Mundell: I will not promote a no-deal scenario.

Willie Coffey: But tell us that you will not support it.

David Mundell: I am very clear that I am not promoting a no-deal scenario.

Willie Coffey: I know that you are not promoting it, but will you support it?

David Mundell: I hope that the SNP, Scottish Labour and the Greens are also in the position of not favouring a no-deal scenario in contradiction to the Prime Minister’s position, because that seems to me to be exactly where you are. If there is anyone around this table favouring a no-deal scenario, it is not me.

Willie Coffey: So you will not tell us whether you will support a no-deal scenario.

The Convener: You tried hard, Willie. I call James Kelly.

James Kelly (Glasgow) (Lab): Mr Mundell, you have made it clear that you want a deal, but you have also acknowledged that there being no deal is a live possibility and that the Government is working on scenarios in that respect. With regard to common frameworks and the funding arrangements that would flow from their being agreed, will the clarity of such arrangements not be compromised if there is no deal?

David Mundell: No, I do not think that that would be compromised as such, but there would have to be urgent clarifications if we were moving forward with that scenario. For example, we have made it clear that the level of agricultural payments will continue until 2022 and that all existing EU funding arrangements that have been entered at the point of our leaving the EU will be honoured. Clearly, though, certain arrangements that have been scheduled to be come in on 1 January 2021, at the end of the implementation period, might have to come in post March 2019. There would need to be some adjustment and clarification, but I do not think that there would be a threat to funding, and I do not think that anyone who is receiving EU funding or who is in the process of receiving such funding up to the point of leaving needs to be concerned about the continuation of that funding.

James Kelly: The examples that you have given are effectively transitional arrangements, but if we get into a situation in which there is no clarity on the rules or the basis on which we have left the EU, how can we work out the funding arrangements flowing from the common frameworks?

10:30

David Mundell: The funding arrangements in the medium to long term will be the subject of debate and discussion. To be fair to the Scottish Government, Fergus Ewing, for example, has issued various papers on the future of Scottish agriculture and how support for agriculture could be provided after our departure from the EU. There will be debate and discussion on a range of issues. The UK Government is to launch a consultation on what we term the shared prosperity fund, which is the replacement mechanism for structural funding, so there will be an opportunity to discuss what form that should take. I think that people will welcome those debates because, although most people whom I encounter have welcomed structural funding, they have not necessarily welcomed all the bureaucracy that goes with it.

There will be changes in any event. If there was a shortened time period for those changes, it is most likely that things would be done in a shorter timeframe, but there would be no change to the actual funding, as committed, regardless of whether a deal is reached or there is no deal.

James Kelly: Yes, but if we find ourselves in a no-deal situation—you say that various papers are being issued—there will be debate and discussion, but that process will lack clarity, because we do not have a proper set of rules that sets out what happens if we leave the EU.

David Mundell: We have set out in the technical notices what would happen in general terms. To date, the principal approach in those notices has been to achieve continuity, and I am sure that that will continue to be the case. In general, existing arrangements would remain in place.

We have made commitments in relation to funding that has been committed by the EU—one to whom EU funding has been committed will lose out. On agriculture, we have gone beyond that and have said that we will continue the existing funding level until 2022. If we left the EU with no deal, discussions about new arrangements would take place in shorter order.

The Convener: I think that Murdo Fraser has a question about a no-deal scenario, too.

Murdo Fraser: Yes, I have a brief follow-up.

Secretary of state, you have made it clear that you think that the Chequers proposals are substantially better than no deal. Mr Coffey tried to invite you to say that you ruled out a no-deal scenario and that there were no circumstances in which you would accept that. I am sure that you will have been involved in negotiations in your professional life; you have certainly been involved in many negotiations in your life in politics. What impact would ruling out no deal have on the UK Government's negotiating position in Europe?

David Mundell: The Prime Minister has made it clear from the start that it was not possible simply to accept any proposal that was put forward by the EU, and that remains the position. I have made it clear that I could not accept a proposal that threatened the integrity of the United Kingdom, and some of the proposals that the EU has put forward—such as its suggested arrangements for Northern Ireland—have done that. We cannot accept any proposal that would threaten the integrity of our country. That is why we have made it clear that we will not accept an arrangement on just any terms.

Murdo Fraser: If we accepted that we had to get a deal, that would simply undermine the UK's opportunity to get the best possible deal with the EU. It would undermine our negotiating position.

David Mundell: I agree with that analysis.

The other way in which we could end up with no deal is by opponents of the Prime Minister's position voting for that in Parliament. That is why I say to SNP and Labour MPs and to our Green MP that if they do not want a no-deal Brexit, they should vote in Parliament for the deal that the Prime Minister brings forward.

Emma Harper: I would like some quick clarification about the 2,500 seasonal workers. Is that the number for the whole of the UK?

David Mundell: Yes, it is for the whole of the UK.

Emma Harper: What proportion will Scotland have? Will it be 10 per cent?

David Mundell: It will not be a fixed proportion. It will be based on the industry and, as you are aware, a large proportion of the industry is in Scotland.

Emma Harper: So if we got 10 per cent, or 250 workers, would that cover what we need for our fruit-growing season?

David Mundell: It is not going to be divided up in that way; it will not be a case of 250 workers for Scotland. There will be an opportunity for the industry to come forward to apply for the visas, which will be focused on farms, and will be for non-EEA residents. From my discussions with the horticultural industry in particular, I found that that was what it required. With the implementation period, EU residents will still be able to come until the end of 2020. The strong feedback that I got from the industry in Scotland was that non-EEA workers are the people whom it wants. They will be additional workers.

Emma Harper: There were stories throughout the summer about the planning for a no-deal situation. Is that why we are encouraging people to stockpile medicines? Should we be doing that? I am concerned about the 28,000 type 1 diabetics in Scotland, many of whom are insulin pump users. The supply chain that is associated with the manufacturing distribution is in Puerto Rico, the Netherlands and other countries, and everybody is dependent on that supply chain. A constituent contacted me because his anti-seizure medicine—for which the doses are patient specific—comes from Denmark, and he is worried about maintaining his driver's license if he cannot get his meds. Were those just scaremongering stories, or should we be asking people to stockpile their meds?

David Mundell: Some newspaper reports have amounted to scaremongering. The UK Government, working with the Scottish Government and closely involving NHS Scotland, is committed to making contingency arrangements to ensure that there is a supply of drugs for your constituent and others. At the level of NHS Scotland and the national health service throughout the United Kingdom, we want to make sure that, in the event of no deal, those who provide and prescribe medicines have sufficient available. We do not want to encourage individuals to stockpile. That was the subject of a technical notice.

Emma Harper: I had concerns yesterday about protected geographical indicators for food products from not just Scotland but the rest of the

UK. The First Minister announced £200,000 to promote Scotch lamb, so if we are going to promote and protect the provenance of Scottish produce, will protecting PGI status be part of the negotiations? Can you confirm that we can protect the PGI status for Scottish produce?

David Mundell: Our intention is that the existing arrangements with the EU will remain exactly as they are, that we would have such arrangements in any future trade deals and that we will make arrangements in our laws in Scotland and the United Kingdom to ensure that protection. We are determined to achieve that.

The Convener: Thank you, secretary of state, for providing us with evidence this morning.

I confirm that the Cabinet Secretary for Government Business and Constitutional Relations will give us evidence on the European Union (Withdrawal) Act 2018 next week.

Meeting closed at 10:39.

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

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

All documents are available on
the Scottish Parliament website at:

www.parliament.scot

Information on non-endorsed print suppliers
is available here:

www.parliament.scot/documents

For information on the Scottish Parliament contact
Public Information on:

Telephone: 0131 348 5000

Textphone: 0800 092 7100

Email: sp.info@parliament.scot



The Scottish Parliament
Pàrlamaid na h-Alba