



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# **Culture, Tourism, Europe and External Relations Committee**

**Thursday 6 September 2018**

**Session 5**



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Pàrlamaid na h-Alba

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**Thursday 6 September 2018**

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**CULTURE, TOURISM, EUROPE AND EXTERNAL RELATIONS COMMITTEE**  
**21<sup>st</sup> Meeting 2018, Session 5**

**CONVENER**

\*The Convener (Joan McAlpine)

**DEPUTY CONVENER**

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

**COMMITTEE MEMBERS**

\*Jamie Greene (West Scotland) (Con)

\*Ross Greer (West Scotland) (Green)

\*Stuart McMillan (Greenock and Inverclyde) (SNP)

\*Tavish Scott (Shetland Islands) (LD)

\*Alexander Stewart (Mid Scotland and Fife) (Con)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Ian Mitchell (Scottish Government)

Michael Russell (Cabinet Secretary for Government Business and Constitutional Relations)

**CLERK TO THE COMMITTEE**

Stephen Herbert

**LOCATION**

The Mary Fairfax Somerville Room (CR2)



## Scottish Parliament

### Culture, Tourism, Europe and External Relations Committee

*Thursday 6 September 2018*

*[The Convener opened the meeting at 09:30]*

### Decision on Taking Business in Private

**The Convener (Joan McAlpine):** Good morning and welcome to the 21st meeting of the committee in 2018. I welcome members back after the summer recess. I also take the opportunity to congratulate our former members Mairi Gougeon and Richard Lochhead on their ministerial appointments, and I thank them for their contribution to the work of the committee.

Item 1 is a decision on taking item 4 in private. Do members agree to do so?

**Members indicated agreement.**

## Article 50 Negotiations

09:30

**The Convener:** Item 2 is an evidence session with the Cabinet Secretary for Government Business and Constitutional Relations, Michael Russell MSP, and Ian Mitchell, deputy director, European Union strategy and migration, Scottish Government. I congratulate the cabinet secretary on his new role.

Cabinet secretary, I understand that you wish to make an opening statement.

**The Cabinet Secretary for Government Business and Constitutional Relations (Michael Russell):** Thank you, convener. I will be brief.

Since I last gave evidence to the committee, which was in March on the UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill, the Scottish Government has presented evidence in support of our long-standing position on these negotiations, such as on security and justice, and on the economic impact of Brexit on the seafood trade. That evidence has been provided to the committee, and I am glad to be back here to discuss the negotiations and the Scottish Government's engagement.

First, I will comment briefly on the no-deal issue, which will detain us for some time this morning. In recent weeks, the United Kingdom Government's technical notices have laid bare the risks facing Scottish business, the economy and public services, and they add to the uncertainty and, indeed, chaos surrounding Brexit. The Scottish Government will continue to make responsible preparations for withdrawal from the EU, however regrettable that is, including drafting and presenting necessary legislative measures. However, the UK Government should rule out a disastrous no-deal scenario and focus instead on securing the best outcome for us all, which, short of staying in the EU, would be to remain part of the single market and the customs union.

It is no secret that we have been frustrated by the quality of the UK Government's engagement with regard to negotiations. The UK Government needs to engage meaningfully with the devolved Administrations to agree the detail of the negotiating positions and to ensure that Scotland's interests are protected by workable proposals.

Brexit continues to present significant implications for the UK's constitutional arrangements, as we predicted almost two years ago in "Scotland's Place in Europe". The UK Government sought the Scottish Parliament's consent and it was refused. If the UK Government believes that it can proceed, the Sewel convention

has very little value in protecting the Scottish Parliament and Scotland's wider interests, and it is time to look again at how we can embed the requirement for the Scottish Government's consent in law and how to strengthen intergovernmental processes.

I said yesterday at the Finance and Constitution Committee—and I repeat it today—that Brexit has turned out to be too heavy for devolution to bear. We now require substantial changes, and we are bringing ideas to the table along with others, including the Welsh Government.

I am happy to discuss those and many other issues with the committee today.

**The Convener:** Thank you, cabinet secretary.

What discussions took place between the Scottish and UK Governments ahead of the publication in July of the UK's white paper on the future relationship with the EU—the so-called Chequers agreement?

**Michael Russell:** I am happy to talk you through that. At the first meeting of the ministerial forum, which was held in Edinburgh in May, we had a discussion on the white paper's contents. That discussion was useful and we were pleased with that engagement. We were shown a list of contents—although, in the end, it did not turn out to be the final list of contents—and we discussed those contents in outline.

The level of engagement then went downhill considerably. We were eventually shown two, possibly three, groups of chapters, or five chapters in all. The procedure that enabled us to see them was tortuous: they were required to be sent to the permanent secretary and then ministers were allowed to look at them. Indeed, I did not see one of them until the day that the white paper was published. Two were mentioned at a ministerial forum meeting the week before the white paper was published, but we were not allowed to see any paper.

I will tell you what happened at that meeting, although it sounds scarcely credible: the minister, Robin Walker, read a précis of the chapters to us. It was like eating in a medieval monastery—somebody read something to us while we were sat at a table. We and the Welsh objected strongly, although to be fair, I do not think that the ministers present at that meeting had seen the chapters themselves.

There was no other engagement. We did not see a final draft until the following week, just before it was published—I think that we saw the final paper just the day before it was published. That was the process.

In relation to the five chapters that we were shown, there was the possibility of saying, "That,

factually, does not work." However, with regard to engagement in the process and any influence on the matter, the opportunities were virtually non-existent. There was a sort of nod towards the existence of the devolved Administrations, but there was no real engagement with them.

**The Convener:** You have said that in your view, the UK ministers who read out the chapters had not seen them themselves.

**Michael Russell:** I did not ask and they did not tell, but my view—and, from what I have seen over the past two years, my expectation—is that they would not have seen a full version. I knew before the Chequers meeting that the papers to be presented would include a draft of the white paper as well as, apparently, a very scary paper about a no-deal scenario. However, we never saw those papers before they were presented.

I pointed out to David Lidington and the Secretary of State for Scotland that it was important for us to be involved in those discussions, and I made the point to David Lidington again last week on the issue of the no-deal preparations. To be fair, I have had private conversations with David Lidington about those preparations as well as one conversation with Dominic Raab. Again, however, we are not seeing the material in anything like the way that would enable us to make a meaningful contribution. We get asked whether the material is legally and factually correct, but we are not engaged in the process of drafting it.

Let me give two examples from the past 24 hours that might illustrate that. Yesterday, at 1.37 pm, officials were sent 30 slides on a subject that is to be discussed with the EU this morning. Our officials were meant to comment factually on them, but that is not consultation—that is fact checking.

Today, we have had the announcement on the seasonal workers scheme. We read about it on the BBC website; we had not seen it before, even though we have been deeply engaged on that issue, and it is an issue on which I have made repeated representations. It seems to presage a sectoral approach, which we find unsatisfactory.

**The Convener:** Have there been any areas at all where you feel that you have been able to feed your views into the UK Government and affect the outcome of the paper that has eventually been written?

**Michael Russell:** By definition, if we do not see the papers, that does not happen. The role that Mark Drakeford and I have performed—and will now perform in the ministerial forum—is to stake out the areas where we believe we have an interest, to say what that interest is, and to ask for that to be considered and included.

The UK Government will say that we have influenced a range of decisions—things that I have said on a variety of issues get quoted to me—but I do not feel that that is the case. We certainly do not believe that what we call upstream engagement, which is what we think we need to have and which is what is in the joint ministerial committee's written terms of reference, has been observed. I described it yesterday as a tick-box exercise—that is the feeling about it.

At the ministerial forum meeting in Cardiff, I raised strong objections to an item in a deck of slides for the negotiations; I will not give you any detail about the item, but, in my view, it misrepresented the situation in Scotland. I received an apology and an assurance that it had been corrected—and that it had been corrected with the task force, too—so there are occasions when we are able to say, "Sorry, but that is not correct." However, as far as active participation and putting across our point of view are concerned, I think that those things are very hard to do.

**The Convener:** At a previous committee meeting that you attended, we talked extensively about the terms of reference of the JMC (European Union negotiations) and how they were not being adhered to. It does not sound to me as though there has been any improvement in terms of engagement in the new ministerial forum on EU negotiations.

**Michael Russell:** We always hope that there can be improvement. The first meeting at which we discussed the contents of the white paper was positive, but the two meetings since then have been more difficult. One was spent with documents being read to us, which was a complete farce. At the last meeting, which was held in Cardiff, we engaged on a number of issues, and at the next meeting, which will be held in 10 days' time, we will look at agriculture, agri-food, and one or two environmental issues.

We have agreed that the ministerial forum should involve ministers from the Scottish Government as well as from the Welsh and UK Governments. Other Scottish ministers will attend—I think that Fergus Ewing will be there. The forum is being held on the same day as the Department for Environment, Food and Rural Affairs ministers meeting, which is helpful. We hope that it will influence the discussion at that stage on the negotiations on agriculture issues.

We should remember that we are in a double process. At the moment, we are in the exit process, and then there is the future relationship process. We hope that the influence will build so that, in the future relationship process, we represent what the devolved Administrations are responsible for in the widest sense and the way in

which those things are dealt with. However, we have no guarantees.

**The Convener:** Obviously, in relation to access to the single market, the Chequers deal does not cover services. I assume that you have raised that, given the importance of services to the Scottish economy and our exporting to Europe. Did it come as a surprise to you that services were not included in the Chequers agreement?

**Michael Russell:** can understand what the Chequers agreement is trying to achieve. According to reports yesterday and today, it is not going to achieve that, and M Barnier's view appears to be that it is, in essence, dead in its present form.

We have always felt that the distinction between services and goods is inaccurate and difficult to police and justify. I will give one example from my constituency that illustrates the issue particularly well. This spring, I opened a small hydro scheme in the village of Dalavich, which is a forestry village next to Loch Awe where people have been working for years to have their own hydro scheme. The turbine is made and supplied by a company in the Czech Republic and is supplied by a company there, but the turbine is not just supplied and then forgotten about; it is supplied with maintenance and 24-hour monitoring from the Czech Republic. That involves goods and services, and they are indivisible. The same would apply to a contract to install a magnetic resonance imaging scanner. Siemens makes the bulk of those. They are not put in and then maintained by somebody else; that is a goods and services contract.

It is difficult to distinguish between goods and services, and I do not think that that approach is likely to succeed. We tend to think of services as being financial or legal services but they are much more complex than that.

**The Convener:** You will have fed that in in your meetings with UK ministers, but it has not been taken on board.

**Michael Russell:** To be entirely fair, our position is sometimes known, because we publicise it, write about it and publish it, so we do not have to spend all our time staking it out. We say what our position is and that we have written on it. UK ministers will be aware that we are very sceptical about the Chequers proposals. At the most recent ministerial forum, I made the point, which I think was agreed, that if the agreement is to be successful in any way it must be an evolutionary position, not a final position. The Prime Minister is presenting it as a final position, but in fact the language that is being used to sell it is to say that it will evolve and change. It cannot be both.

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

The cabinet secretary has called on the UK Government to rule out a no-deal scenario but, over the summer, the UK Government published technical papers in certain areas to look at what might happen in those circumstances, and the EU has published a number of preparedness notes on the scenario of a no-deal exit. Has the Scottish Government contributed to any of those notes, and has it considered whether we need Scotland-specific preparations for the event of a no-deal Brexit?

**Michael Russell:** Yes, we have done both those things. We have contributed in the sense that we have fact checked and legally checked the notes, sometimes in a short time. I think that we have done that with all the notes that have been published so far, but perhaps there were some that we did not see.

**Ian Mitchell (Scottish Government):** It varied, but there was fact checking.

**Michael Russell:** Those that we have seen, we have fact checked and made suggestions on.

We must recognise that we are between a rock and a hard place. We do not want a no-deal scenario—we think that it is ridiculous and disastrous and an indictment of the UK Government that we are in this position. Equally, we have a duty to protect Scotland from the consequences that might arise, so we have gone along with the publication and made our views known. We will take the legislative steps that we need to take. I made that clear in what I said in the programme for government debate on Tuesday and next week, I will make a statement in the chamber on how we will take that forward. It is a considerable legislative burden but we will have to take it forward.

On specific issues such as the stockpiling of medicines, there is an interaction between Jeane Freeman's department and the UK Department of Health and Social Care, and that will be true in other departments where there are preparations to be made. We will continue to look at any Scotland-specific issues. For example, if no new trading arrangements were to be in place, what would be the implications for Grangemouth and the Larne to Stranraer route? We have to work on those, and we are doing so.

A great deal of work is being done on the no-deal scenario. That is the responsible thing to do, but it would be far better if there was acknowledgement that it simply could not happen.

09:45

The ready-made solution that takes us beyond that is the single market and the customs union

position. I was very supportive last night when I saw Keir Starmer say that Labour would not support the free trade option, which is not nearly as good as the single market and customs union option. I think that there is—I would not say an identity, but a growing recognition across the field, with the exception of the Conservatives, that there are many alternatives to a no-deal scenario, and that those need to be taken.

**Claire Baker:** Although I agree with much of that, the Conservative Government is handling the negotiations, and the possibility of a no-deal scenario is still on the table. The 24 notes that the UK Government has published were partly intended to advise the sectors and businesses. Does the Scottish Government intend to publish any? You have said that work is under way, but do you intend to publish any materials for businesses in those sectors? Are discussions on-going with the particular businesses and sectors that might be affected?

**Michael Russell:** It would not be our intention to supplement those papers unless we felt there was a material deficiency in terms of Scotland, and we have not identified one. If we found a material error that the UK Government would not change, we would undoubtedly correct that publicly, but at present we do not have that thought.

We also have to guard against two other things. One is to say that we can do everything to avert the dangers of a no-deal scenario—that we can cope with that. That is the Prime Minister's language: "It's not the end of the world," and all the rest of it. By definition, we do not know what a no-deal scenario would look like, so it is difficult to plan for it.

The other thing is that we should avoid momentum towards a no-deal scenario. I have heard some very distinguished voices in the European Parliament say that one of the dangers is that once people such as those in the financial sector start to prepare for a no-deal scenario, it creates a momentum towards that. We need to make sure that we do not contribute to that, so a careful approach needs to be taken.

However, the biggest issue for the Scottish Parliament will be to make sure that we have in place the legislative framework to correct deficiencies. That will also require us to accept some UK statutory instruments. We have a position on Brexit legislation in terms of Sewel, but there are some compromises to be made on that simply to make the statute book work, and that is our obligation.

**Tavish Scott (Shetland Islands) (LD):** I did not want to leave the European Union either, Mr Russell, but we are going to do that. Similarly, on



the no-deal scenario, to follow Claire Baker's very fair line of questioning, I think we have got to do all that we can to prepare for it.

I do not follow the logic. I understand the politics of why you say what you say, but I do not think that businesses or the skipper of the *Serene*, which I was on in Lerwick harbour on Monday afternoon, would thank me or you for not being ready in every possible way just in case that is what happens. To continue Claire Baker's line of questioning, is it not absolutely the Government's responsibility to publish any analysis—and its best analysis—of how business is going to cope if we fall off that cliff edge, because there has to be a fair chance that that will now happen?

**Michael Russell:** Of course. I have not said anything to the contrary. I am not disagreeing with you—

**Tavish Scott:** That is the politics back. I think this is about practical issues for businesses the length and breadth of Scotland.

**Michael Russell:** That is why we are taking a pragmatic view and working with the UK Government on the no-deal scenario. On the politics side and the constitutional side, we are against the legislation, but we are making a distinction between the no-deal scenario and other matters. Not only is that clear in what I am saying now, but it will be even clearer next week. We are putting in place all the arrangements that we can and doing all the work that we can.

Equally, however, it would be utterly irresponsible of me not to say that the consequences of a no-deal scenario are in many regards unknown, because it has never happened before. In those circumstances, it is not possible to say, as the Prime Minister is saying, "Och, well, it's not the end of the world. We'll just get through it." We do not know what will happen.

My view—we may disagree on this, but I hope not—is that the prospect of a no-deal scenario has been deliberately talked up in order to frighten the Brexiteers away from it, and it now has a momentum of its own. We should therefore try to work against that momentum, because I think that, at the end of the day, a no-deal scenario actually means lots of small deals. Some things would have to be cobbled together at the end of March simply because it is impossible for things to continue without that.

Where we are now is the result of utter incompetence, and it is completely wrong to say, "Och, that doesn't matter, because we'll muddle through." There are things that we just cannot know, and it would be very foolish of us to say, "We know that. Everything will be all right."

**Tavish Scott:** I do not dissent from any of that, and I could enter into flights of rhetoric about the politics of it, but I am trying to divorce that from the practicalities of being a fishing skipper in Lerwick or in your constituency, or of running a fish processing business that will be trying to export to Boulogne on 1 April next year.

I looked at the Scottish Government website, but right now the only thing that I can find in relation to your answer to Claire Baker a moment ago is a letter that was written to health boards about health products on 23 August. I may not be navigating the website correctly, but that is the only practical thing that I could find there about what would happen. Can you help me to understand what the Government is actually doing for all of us?

**Michael Russell:** There are three tranches of UK documents on a no-deal scenario. The first has been published and there are two more to come. We have co-operated in their publication, we have fact checked them and legally checked them where we have been asked to do so, and we have made it clear that they are the UK Government's guides and that they are available. We are not adding to those unnecessarily. We disagree with some of them, but we have not published an analysis of each of them, which I could do. I think that the trading one, frankly, is irresponsible, because it says that we will just carry on as things are now. I do not think that that will happen.

That is what we have done. Where there are areas in which we have to take additional steps, as in health, we will take those steps. As time goes on, we will look at those and see if we can provide more, but let us boil it down to individuals. You go to Lerwick in Shetland, and let me go to Tarbert on Loch Fyne, where there are people exporting live langoustines that will not be live if they sit on the M20 for five days. I have no solution to that. There is no solution that the Scottish Government can offer, because the UK Government does not offer a solution to that. If that problem occurs, there is nothing that we can say or do that will make those langoustines get through those circumstances.

I was in Grangemouth last week, launching our trade paper, and I talked to people at the port. At present they have no idea what will happen on 30 March next year—none whatsoever. My job within the negotiating structure is to try to get that information and to find the person who has it, if there is one, and that is the issue. However, at the moment, six months away, they do not know what is going to happen. Is there going to be a massive new customs operation? We just do not know, and I cannot tell people. It is impossible.

**Tavish Scott:** I entirely accept all of that. You make a fair point about langoustines from Tarbert. In the Financial Times today, we read that the ports in the north-east of England are investing money in new port facilities and lorry parks to try to get round Kent becoming a lorry park. That is a result of scenario planning for what may happen in the context of trade. Would it not be fair for the Government here in Scotland to be part of that scenario planning? I entirely agree with you that we want to avoid Dover, because it will grind to an 18-mile roadblock. Would the right thing to do not be to scenario plan on the basis of other ways in which we can export our products to the European Union?

**Michael Russell:** Of course. There are plans for a Northern Irish route and people are talking about how that will take place. We support those plans. I speak to businesses on an almost daily basis, and so do my colleagues. It would be wrong to say that we are not doing that, but it would be equally wrong to say that there is some easy solution to this or that we can just wave a wand and it will happen. There is no easy solution.

**Tavish Scott:** I am not suggesting that it is easy, and I do not think that anyone on this committee would do so. However, I am arguing that, rather than saying that we cannot do anything because we do not know anything, we need to scenario plan. You gave the very good example of the seafood industry. That is probably the best example of real-time product that will need to be exported on 1 April. Should we not be planning for that?

**Michael Russell:** Of course, if there were ways to do so and we could find ways to do so, but there may not be ways to do so—particularly now. One of the issues is preparedness. I look constantly at businesses and their preparedness and I talk to businesspeople. I did an event on Tuesday night in a sector in Scotland where a number of businesses are only just saying, “What do you think we’re going to do in six months’ time?” I am not criticising them, but that is also an issue. What has focused people on a lot of the work that is now going on is the issue of a no-deal scenario. People have suddenly become focused on that, and that is profoundly disturbing. We will do everything that we can to help, and we will go on doing that.

We have made a crucial distinction. I think that Adam Tomkins said in the debate on the programme for government last week that people have said to him that they just want the Scottish Government to carry on working with the UK Government on Brexit. However, the UK Government does not have a Brexit plan; it has half a dozen plans, none of which will work. We have made an absolutely clear distinction between

that chaos and what we are trying to do to protect Scotland. That is our job.

**Tavish Scott:** You recognise that export businesses of every kind—big, small or whatever—apart from the ones that are only now waking up to the issue, which you mentioned, are asking how they will survive on 1 April. Most that I meet certainly ask about that. We need to support them, and I just do not see that happening.

**Michael Russell:** Of course, and we will do everything that we possibly can to do so, but we must also be realistic about the barriers to that. That allows us to try to overcome them. There are considerable barriers, not the least of which is the lack of knowledge of what is taking place.

**Ross Greer (West Scotland) (Green):** I want to drill down on the issue a little more, cabinet secretary. I completely understand what you have said about the impossibility of knowing what having no deal would look like. As you said, even that would have a range of small, individual crisis deals inside it. However, Tavish Scott and Claire Baker have made the point that scenario planning can be done. I accept what you have said about not wanting to replicate the UK Government’s papers, but there is a distinction between trying to assess what the impact might be and how to mitigate and cope with the impact, which is the second stage. Has the Scottish Government completed scenario planning? Is there existing scenario-planning documentation in the areas for which you are responsible?

**Michael Russell:** A range of possibilities and options is being worked on in each of our portfolios. My responsibility is to meet ministers from time to time to discuss those and ensure that preparations are in place. Those are primarily legislative possibilities and options at the moment, because the most important thing that we have to do at this particular time is to ensure that there is no legislative cliff edge and that there is, for example, a structure that can continue to pay agricultural subsidies. It would be utterly irresponsible if there was not such a structure.

The departments that deal with business are also in active discussion with us about things that they can do to help, just as the health side is, for example. Over time, they will refine those things and be in a position to provide as much help as they can. That is also Scottish Enterprise’s position. That is an uncertain process, because we do not know many things. For example, we have seen only a third of the papers from the UK Government, so we do not know what its proposals are on all the particular areas. We are doing everything that we can do, and we will go on doing so.

**Ross Greer:** I accept that your work is on-going, but we are trying to assess what you intend to release into the public domain to allow others to prepare, or at least to understand what the impacts might be. I presume that that work is on-going in every Government department. What are your intentions for publishing your scenario planning?

**Michael Russell:** It is not our intention to publish anything in addition to the notices that the UK Government has published, unless we believe that it is required. We look at the papers as we get them and ask whether there is anything to add to them. We could subtract from them and say that we do not think that any of it will work, but we will not publish anything unnecessary. If there are areas in which we need to publish information, we will do it.

**Ross Greer:** Again, that goes back to the distinction between much of what is in the UK Government's papers, which is about how to deal with the situation, and how to mitigate the impact of having no deal, which is the second step. I am asking you about the Governments' assessments of the impact of having no deal. If you do not want to replicate the UK Government's proposals for how we deal with that, you could just publish a projection of what that will look like.

**Michael Russell:** We have published the financial projections. We did that in "Scotland's Place in Europe" in 2016, which we updated in January this year. We know the financial projections without doing that.

**Ross Greer:** But we know about much more than just the finances. We know that there would be an impact on the health service and farming, and not just financially.

**Michael Russell:** Indeed. That is why the health service, which I have specifically referred to, is discussing stockpiling medicines and why, for example, I have raised this week the issue of veterinary medicines, which has not yet been tackled. I have said that we need to look at that and ensure that we have a plan in place for it.

The whole effort of the Government could become focused on planning for having no deal, at the expense of everything else. As Tavish Scott has indicated, that is one option among many. We need to have a sense of balance and proportion.

The three options that are currently on the table short of staying in the EU—incidentally, I do not rule that out as an option; indeed, none of us should ever rule it out as an option—are single market and customs union membership, a free-trade deal of some sort and the no-deal scenario. We have to be prepared for all those options, but we should also spend a considerable time arguing for the one that we believe is least damaging,

which is single market and customs union membership.

10:00

**Ross Greer:** I agree with that political position, as you are aware. There is a distinction: we are not asking you to do more work on a no-deal scenario; we are asking about publishing and putting into the public realm the work that the Government is clearly already doing, so that the public can understand the potential impact.

**Michael Russell:** I do not want to add to the sense of uncertainty and panic, but I will consider your request. However, we have enough to do on the legislative side, for example, and there is not an unlimited ability to do things. We will try to do that. I have been prepared to co-operate with the UK Government on supporting the publication of the notices, and I thought that that would have been welcome. However, I am reluctant to carry on adding to the situation.

**Ross Greer:** We will come back to that over the next weeks and months.

**Jamie Greene (West Scotland) (Con):** If I have read you correctly, cabinet secretary, you are saying that your cabinet colleagues, across their respective portfolios, are planning comprehensively for all scenarios, but you are not willing to publish any of those findings because what has already been provided by the UK Government is perfectly adequate.

**Michael Russell:** No—you have read me incorrectly, and I will not be misrepresented on those matters. My take is very simple: the UK Government has made a complete Horlicks of the situation, and we are faced with unprecedented chaos.

**Jamie Greene:** Those are your personal political views. What is the Scottish Government's view?

**Michael Russell:** Those are the Scottish Government's views. Even the former governor of the Bank of England has pointed to the UK Government's incompetence. We are endeavouring to ensure that, first, we do everything to protect Scotland in the event of there being no deal, and we are endeavouring to ensure that the information that the UK Government has on that is put out and that it is accurate.

**Jamie Greene:** But you will not add to it.

**Michael Russell:** We will add to it only when we believe that we need to add to it. In addition, departments are having conversations to ensure that we are as prepared as we can be.

**Jamie Greene:** How do we know whether you are prepared if you will not publish any of the findings?

**Michael Russell:** It is utterly disingenuous to argue that the difficulty is with the Scottish Government. The difficulty is with the UK Government and the mess that it has made. The Scottish Government is working very hard to ensure that there is preparation and information. To divert that into some sort of attack on the Scottish Government will not assist Scottish businesses.

**Jamie Greene:** You are perfectly entitled to your political views on what the UK Government is or is not doing. That is fine, and those views are on the record. Notwithstanding our political differences on the committee, we are asking collectively how we know that the Scottish Government is prepared for every possibility. Why will the Government not give the Scottish public and businesses any sight of the research?

**Michael Russell:** I will make a statement next week on preparedness. I am not prepared for every eventuality because that is impossible. Nobody knows what a no-deal scenario would bring. No deal is an appalling prospect, and it should not happen. We are putting enormous political effort into saying that that must not happen and we are also working hard to ensure that, to the best of our ability, Scotland is protected. However, the responsibility for getting us here is that of your UK Government. The work that we are doing is to try to protect Scotland against the work of the UK Government.

**Jamie Greene:** Okay. Let us move on.

You talked about March next year. Nobody knows what will happen the day after we leave the EU. What is your understanding of the transition period and whether it is likely to proceed? My understanding is that that would provide an interim period in which to continue the complex trade negotiations with the EU.

**Michael Russell:** We hope that there will be a transition period. That is the expectation of the EU, but the UK Government has upped the rhetoric on no deal in the past few months—I think that that was designed originally to frighten the Brexiteers—which has caused this situation. I have argued for a transition period from the beginning, whereas the UK Government was against it to start with. It is essential that there is a transition period, and many of us think that it will have to last longer than is proposed under the current plan, because it will be impossible to put in place the new relationship thereafter.

**Jamie Greene:** You say that the official Scottish Government position is a preference for single market access and a customs union with the EU.

What discussions has the Scottish Government had with the EU on the terms of such membership? The rhetoric from the EU is that having single market access and a full customs union is not possible without being a full EU member. What is your understanding of that?

**Michael Russell:** That is not the rhetoric from the EU; the EU says—accurately—that a country can be a member and have full access to everything but that there are other options. The other option that I suspect is more likely in a transition is being a member of the European Economic Area, as Norway and Iceland are. That is not as good as full EU membership, but it provides membership of the single market, because the four freedoms are observed. EEA membership was designed to be a way in and has become a sort of holding pen for those countries, which are neither in nor out.

The Scottish Government's ambition is, first, to remain in the EU—the Scottish people voted for that. However, if we are out of the EU, the ambition is to re-enter. Re-entry would, of course, have to be negotiated. John Kerr, who is a bigger expert on Europe than you or me, thinks that that would be the easiest accession on record. However, there would be work to do. That work would be created because the UK Government is ignoring the will of the Scottish people to stay in the EU.

**Jamie Greene:** I appreciate that you have a view on whether the UK should stay in the EU, but the reality is that the UK is leaving. You said that you are looking at re-entry. What type of re-entry to the EU are you looking for?

**Michael Russell:** We want to be a full member of the EU.

**Jamie Greene:** That will not happen, so what are you looking for?

**Michael Russell:** You cannot say that it will not happen. All that you can say is that, in your opinion, it should not happen. In my opinion, staying is still a possibility—the chaos in the UK Government might lead to its collapse or, even if we left in March next year, there would be a way for the single market and customs union option to be on the table in the transitional period, as Barnier has said. A re-entry process could take place thereafter, which would be the best option for Scotland's future. Staying in the EU is also what Scotland voted for, and we represent the Scottish people.

**Jamie Greene:** The vote was UK wide.

**Michael Russell:** I described what the Scottish people voted for.

**Stuart McMillan (Greenock and Inverclyde) (SNP):** Mr Greene did not speak for me when he used the word “collectively”.

Yesterday, the Scottish Parliament heard from the UK trade minister about consultation and dialogue. However, you have talked again about the record of the UK Government’s lack of consultation and dialogue with the Scottish Government. Given that appalling record on dialogue and consultation, how can we trust anything that any UK minister says about potential trade agreements?

**Michael Russell:** I do not want to personalise the issue but, as I have said publicly before, the relationship and the trust between the two Governments are at their lowest ebb ever. Trust requires to be rebuilt, which can happen only with a framework and a structure on which to build it. Earlier this year, the Taoiseach made the interesting comment that trust in the EU comes not simply because we want it to come but because there is a legal structure and framework on which to build it.

The JMC process provides a structure, but such structures need to be renewed in a meaningful way that gives them statutory authority. If we could build on structures, that might bring improvement. That would require honouring of the commitments that have been made, but commitments have not been honoured. There might be many reasons for that. The staff turnover rate in the Department for Exiting the European Union is 50 per cent, so that department has huge inexperience. It also faces huge pressure. Another issue is that civil servants are nervous about what their ministers share or do not share.

Trust could be rebuilt. I try hard to keep open constructive channels of engagement and discussion, which is what we should do.

**Stuart McMillan:** I was not planning to ask about this, but your reference to a 50 per cent staff turnover rate is interesting. When new people come in, does that make it harder for Scottish Government officials to get over your message? Do they have to explain what devolution is, never mind the present-day situation?

**Michael Russell:** I am sure that the committee will have read and reflected on the Public Administration and Constitutional Affairs Committee report “Devolution and Exiting the EU”, which indicates that there is a severe lack of knowledge of devolution among those who are operating as part of the UK Government. That is just a reality. I gave evidence to the PACAC inquiry, and I think that it has summed up the situation pretty well. I think that, after the 2014 referendum, David Cameron said that the UK devolved and forgot. That has happened: the UK

has largely forgotten what devolution is and how it operates. It is important that people understand that there is no hierarchy of Governments in devolution. There is a hierarchy of Parliaments, but Governments deal with different issues, and what is lacking is respect for or understanding of that situation.

There also needs to be an understanding that, although the issue of devolution has been around for a long time—in essence, it arose in the 1970s, 1980s and 1990s—there is now a very heavy weight on it from Brexit, so devolution will have to change. We presaged that in “Scotland’s Place in Europe” in December 2016, chapter 4 of which was headed “Further Devolution and the Constitutional Consequences of Brexit”. It is worth looking at that chapter again, because in it we pointed out three areas where we expected Brexit to create issues for the constitutional settlement, which would need to change. One was the issue of rights. We outlined employment law, equalities, health and safety at work and consumer protection as areas where additional devolution was needed. Secondly, there was the issue of the four freedoms and how we reacted to those; we outlined areas of involvement, including on trade. The final issue was international engagement. We raised the issue of our having a distinct legal personality so that we could take part in international engagement.

Those issues, which we laid out in 2016, now need discussion. We are not alone in saying that. The Welsh Government says the same thing—it published a paper last year on the operation of devolution. Whatever happens, we must not undermine the current settlement. I would much rather have independence but, at present, along with the Welsh and Northern Irish, we need to look at the evolution of devolution rather than a stand-still approach, because Brexit has changed things.

**Stuart McMillan:** In your opening comments, you highlighted some of the issues with intergovernmental relations, which have been a problem for some time. In October 2015, in the previous session of Parliament, the Devolution (Further Powers) Committee, of which Tavish Scott and I were members, published a report on IGR. Do you see any improvement in the intergovernmental relations mechanism or machinery that provides some hope for the future when, or if, the UK leaves the European Union?

**Michael Russell:** I do not see that at present. We have ideas on the table, which I mentioned, as do the Welsh. Earlier this year, the JMC (Plenary) agreed that there would be a review of the relationships and the JMC mechanism. We have proposed a review of the Sewel mechanism and we will bring forward ideas on that shortly. There is activity, but there has to be a commitment to doing

that, and I see little commitment to those changes and reviews, despite words from the UK Government. That is a pity, but it is where we are. We need to bring some energy to that.

**Stuart McMillan:** Do you believe that the UK Government is listening to anyone outside of Whitehall?

**Michael Russell:** There are individuals who recognise that things have to change and that we cannot go on like this. It is a very centralised Government, and I am not sure that the Prime Minister thinks that things have to change. I do not know whether those individuals will prevail. There are also individuals who are deeply hostile to devolution, and some of them might assume power at some stage, which would be damaging.

**The Convener:** Have you had any indication on what progress might be made on the review that you mentioned?

**Michael Russell:** I am not aware of anything happening yet.

**Ian Mitchell:** Are you talking about the intergovernmental review?

**The Convener:** Yes.

**Michael Russell:** Yes.

**Ian Mitchell:** The process has commenced but, as Mr Russell said, the issue is the degree of commitment to it. The pace behind it is not established yet, but the process is under way—there is agreement on the process.

**The Convener:** What is the process? Are there meetings?

**Ian Mitchell:** At the moment, civil servants are scoping the nature of what will be covered as part of the intergovernmental review. An initial focus of discussion is how the process has coped under the pressure of Brexit and the weight of that.

10:15

**The Convener:** The review is being scoped. Have you been given any idea of the timescale for the review?

**Ian Mitchell:** No. That is not clear at this stage.

**Alexander Stewart (Mid Scotland and Fife) (Con):** We have had a lot of good discussion and some of the questions that I wanted to ask have been covered.

Cabinet secretary, you said that we face potential chaos in a no-deal scenario. You also believe that we face chaos in the scenario where a deal is reached that does not give people or organisations the confidence to manage the process.

You have painted a strong picture of what is happening in Scotland. Are you aware of what the UK Government is doing south of the border with organisations and individuals to ensure that risk assessments of the different scenarios are carried out? If such dialogue has taken place, have you learned anything from it?

**Michael Russell:** Risk assessments are not shared with us, so we have not seen any. We hear of meetings taking place and we talk to stakeholders, who meet us and the UK Government. They often come back from meeting the UK Government with a sense of frustration that they do not know any more than they did before they went. That seems to be the general picture.

The feeling that a sense of chaos is driving things is pretty generally held. People would like certainty. I would like certainty, because I do not enjoy not knowing what will happen tomorrow. Businesses require certainty. Even the no-deal papers do not give people any additional certainty.

I welcome this morning's announcement about a seasonal workers scheme, although it is a very small step—I think that the numbers are too low. Inherently, it admits the fact that freedom of movement is important, which should be understood. More will undoubtedly be required, because that scheme is not enough. In addition, it takes a sectoral approach, which I think is the wrong approach.

The announcement of the seasonal workers scheme is the first movement that there has been. I visited one of the fruit farms in Angus in early May 2017, when people were saying to me, "There has to be something soon, because we're due to order bushes and we're expecting the next tranche of workers to arrive." Fruit farms send massive orders for bushes to Holland.

The announcement of a seasonal workers scheme has been long delayed. It might presage the publication of the Migration Advisory Committee paper, which we believe is now with the Government; it might indicate that a sectoral approach will be taken in the MAC paper. We have advised strongly against that, because a whole-economy approach needs to be taken in Scotland. A sectoral approach would not be helpful; it would weaken the situation. If that turns out to be the case, we might think that that is the wrong approach, but at least we would know what was happening.

There is no white paper on migration, either, and that affects matters, too.

**Alexander Stewart:** You mentioned the pilot scheme that has been announced, which is now with us, and you discussed what role you would like the Scottish Government to have. You have talked about the various scenarios, which you are

prepared to discuss and have dialogue on. In the past, you have said that Scotland could lead in some areas of the process and could give advice and support. Is it the case that you would be prepared to do that? Is that the scenario that you think should be followed?

**Michael Russell:** That was a really interesting contribution, because you used the word “scenario” in an accurate way. We have done a great deal of work, but it is difficult to put it into a box and say, “These are the scenarios.” The point of that work is to set out what we would like to happen and how it could happen.

We published comprehensive work on migration as part of our submission to the Migration Advisory Committee. We indicated what would work for Scotland—that is a scenario. That stuff is already in the public domain. We believed, and we still believe, that there is a productive way to approach migration in Scotland, which involves freedom of movement. Freedom of movement is very helpful to us. We know that freedom of movement is to stop but, up until today, we have been given no idea of any other scheme. A seasonal agricultural workers scheme has existed before and it is a very bureaucratic response. To go back to having such a scheme is not the way that we think we should go. However, we have our own projections and proposals for how it should go, and that is a scenario.

If we can revisit the issue of scenarios, what we are getting slightly closer to—it is helpful that Mr Stewart has taken us there—and talking about is a range of material that we have published over the year. “Scotland’s Place in Europe” is a set of scenarios, as are “Scotland’s Role in the Development of Future UK Trade Arrangements” and “People, Jobs and Investment”. All the documents that we have published over the past two years are contributions to the scenario exercise and, if they are seen in that way, they are positive contributions.

**Alexander Stewart:** The dialogue that you portray as not taking place between the UK Government and the Scottish Government seems to be a logjam—just a trickle of information is getting through—rather than a meeting of minds, with a real connection being made. How have you tried to move that forward? How have you ensured that your way of thinking is more focused than the UK Government’s?

**Michael Russell:** We produce material, which, by and large, the UK Government has not done. I have here a list of the papers that we have published—16 have been published in the past two years and there are another six in the pipeline. We are not short of material that we have put into the public domain. That has tended not to be the case with the UK Government.

We have been very open and transparent about what we want to happen. We have stood absolutely foursquare behind the idea of the single market and the customs union since we published the first paper and, increasingly, people are moving in that direction. I indicated that Keir Starmer’s response yesterday to the issue of the free-trade treaty was another step towards that, which I welcome—that was important and helpful. Our position is well known, as are our projections.

The difficulty in the past month to six weeks has been that the focus has increasingly been on the no-deal scenario. Therefore, the expectation that the Scottish Government should jump to it and provide all the answers is false because, by definition, it is a scenario that is impossible to completely scope out. We have never seen this before. However, there are things in all the work that we have done that would indicate ways in which we can move forward. There are also facts available on what would happen in terms of the finances in that scenario, which are very clear.

**Alexander Stewart:** As you say, the issue of a no-deal scenario has recently become much more prevalent. However, many people still believe that a deal will be struck, whether it is the complete deal that is expected or a partial manipulation of that, with progress as we move forward. What is your view on the scenario that a deal is reached, if not the complete deal that some people expect, but in relation to which opportunities exist during the transition period for things to be put together, hardened up and made concrete?

**Michael Russell:** The problem with the blind-Brexit scenario is that we could get a high-level deal in March that said very little—remember that that would be on exit, not on a future relationship—and was eventually agreed to.

There is a distinguished former European Commission official who describes the UK’s negotiating approach as being to say no at the start of each round of talks, to refuse everything during the round and, at the end of the round, to suddenly say yes and to treat it as a triumph that the next stage is being moved on to. That is what has happened so far. We never thought that it would get to this stage, but the UK Government could do that again in March.

The real problem with that for Scottish businesses and organisations is that we will not know any more about some issues this time next year than we know now. For example, in a year’s time, Mr Scott’s skipper in Lerwick will not know what will happen, just as he does not know now. We do not want to encourage that to happen. We want some definition and finality.

A high-level outcome of a blind Brexit has that difficulty, and it also has the difficulty of removing

even the small amount of leverage in negotiations that the UK Government presently has. It would have none, as it would be outside the EU, and trying to get a deal of any sort with no leverage is pretty difficult.

If that is what happens, it will happen, but it will not be good or helpful. In my view, that is more likely than the no-deal scenario. You will have heard the noises from Germany yesterday about the prospect of no deal—no one sensible really wants that. What I hear from inside the European Parliament is that members would not accept no deal; they would find a European mechanism, such as the clock that stops, to make sure that there was some outcome to the process.

**Alexander Stewart:** It is up to all Governments to do as much as they can to ensure that that does not happen, and dialogue, negotiations and discussions must be focused on that.

**Michael Russell:** I have made that clear today and in other material, but it takes two to tango. The UK Government must say that this is not what we want.

**The Convener:** The Scottish Government's trade paper was brought out on 30 August. I was pleased to see that, in it, you recommend having a statutory intergovernmental trade committee, because in our first report, we unanimously recommended having an intergovernmental trade committee to ensure that Scotland's voice would be heard in future trade negotiations.

Can you say a bit more about the trade paper and, in particular, whether any of your proposals have any realistic chance of being adopted, given the evidence that George Hollingbery gave to Parliament yesterday?

**Michael Russell:** To give George Hollingbery the benefit of the doubt, that was an initial reaction; I do not think that he had read the paper. I hope that the paper stimulates debate and discussion. It follows on from the things that we said in the original "Scotland's Place in Europe" paper two years ago. It builds on that and it asks what a modern set of trade relationships would look like and how we would arrive at them.

The last time that the UK negotiated trading deals on its own was almost 50 years ago. It is a very different world. There has been devolution but, in addition, this Parliament has set an agenda for the type of world that we want to see, the type of Europe that we want to see and the type of relationships that we want to have, which would require us, for example, to be very mindful of environmental issues and to look at equalities and human rights issues within trading relationships, which is the modern way of doing things.

We are saying that that is necessary and that accountability and scrutiny of trading deals are necessary; we are also saying that nobody can decide for us. If we are dealing with matters that are our responsibility, we should be able to speak on them.

We have used the example of the reaching of the comprehensive economic and trade agreement—CETA—when the provinces in Canada were in the room and were able to commit to delivering it. That is a positive example from CETA; unfortunately, the UK Government has taken a negative example from CETA to heart, when there was a problem with the Parliament of Wallonia in the final stages. However, that problem was resolved in an amicable fashion.

We are putting forward some ideas for discussion. We want the Parliament to discuss the trade paper and we are looking forward to people coming on board with it or making alternative suggestions. In committee yesterday, I think that Adam Tomkins eventually reached the stage of being pleased that his suggestion about wording was one that I was quite happy to consider.

We are not saying that we have a veto on anything; we should remember that, in devolution, the UK Government is the only body that has a veto; nobody else has a veto.

However, if there should be a requirement to agree, there should be a mechanism that makes agreement meaningful, not a Sewel mechanism that makes agreement pointless. All those are things that we can discuss, and I hope that the trade paper is a helpful contribution. This committee's view and the parties' views will be welcome.

**Claire Baker:** Reports suggest that 80 per cent of the withdrawal agreement has been agreed, with 20 per cent still to be discussed, including the issue of the Irish border and the backstop. Does the Scottish Government have any views on how that issue could be resolved? Does the Scottish Government think that there will be particularly challenging consequences for Scotland if the backstop is introduced?

**Michael Russell:** The way to resolve the issue is for the whole of the UK to stay in the single market and the customs union. That would resolve it.

**Claire Baker:** So far, the UK Government has said that it will not accept that. I recognise that it is a difficult issue to resolve and that nobody has come up with a solution—

**Michael Russell:** Politics is a process of arguing cases, and I argue that case. I am pleased that the Labour Party accepts at least part of that



case and that others accept all of it. I think that it is the solution and that is why we put it forward.

The backstop, if it were implemented with a border down the Irish Sea, would have implications for Scotland; so would differentiation for one part of the UK but not for another part of the UK. We have made our views known on those issues.

We are absolutely determined to support a peaceful settlement in Northern Ireland. We do not want to do anything at all that jeopardises that. Equally, we must reflect on the fact that, if there is the opportunity for one part of the UK to stay in the single market and the customs union, we proposed that option for Scotland two years ago and we would want to continue to argue for that.

**Claire Baker:** It is a difficult situation, given that the UK Government has said that it is not supportive of us staying in the single market and the customs union, which would be the obvious solution to the situation that we are facing with Northern Ireland. You recognise that the backstop will present challenges for Scotland. Even though you would like to see a different scenario, if we end up in that set of circumstances, can you say a bit more about what the challenges for Scotland will be in relation to trade in particular?

10:30

**Michael Russell:** A border in the Irish Sea would be challenging for the ports on that sea. If Northern Ireland could compete economically as a full member of the single market and the customs union but Scotland could not do that, that would be challenging. There would also be security issues.

We do not want to do anything to disturb the situation in Northern Ireland, but we do not see why Scotland should be excluded from such arrangements as, like Northern Ireland, we voted not to leave the EU. Excluding Scotland in that way would negate Scottish democracy. There are serious implications, which we have discussed frequently and will continue to address. We do not want to stand in the way of the right solution for Northern Ireland, particularly as that would be the right solution for Scotland, too.

**Jamie Greene:** I have two short supplementary questions.

**The Convener:** Two?

**Jamie Greene:** The questions are unrelated.

The First Minister has announced a series of bills that are to be introduced, the Parliament is still working on about a dozen bills from last year's programme, and we have members' bills. That makes at least 25 bills. What work has the Scottish Government done with the Parliament to

ensure that committees and members can process the secondary legislation that might come through our Parliament in the next two years, in addition to the primary legislation that the Government introduces?

**Michael Russell:** We have proposed to the Parliament a protocol for handling such material, which Mr McMillan is aware of, that involves the Delegated Powers and Law Reform Committee. However, we cannot disguise the fact that it will be a considerable additional burden, which will probably require more sitting time for committees and more chamber time.

The number of items is still under review, but I hope next week to give people not only a better estimate but a view on what the flow will be. I said on Tuesday that the cut-off date for the no-deal scenario is 25 January next year. A great deal of material has to go into the system before then. That requires us to co-operate with the UK Government as much as we can, which Mr Stewart talked about. We do not like the scenario, but we will co-operate on such matters, and I am sure that that will be welcome.

**Jamie Greene:** On co-operation, what is Mr Mitchell's understanding of the day-to-day relationships between Scottish civil servants and UK civil servants on issues that arise from Brexit? Are the relationships positive, neutral or indifferent?

**Ian Mitchell:** As Mr Russell said, it is not the case that no contact takes place or that day-to-day business is not being done between civil servants. Such activity continues. However, Brexit and the volume of work that the UK civil service must shift are proving to be a great strain, along with the churn that Mr Russell referred to.

The tightness of decision making in the UK Government puts officials in a difficult situation, too. That might be one reason why officials cannot be more open with us. There is also a concern about security and information leaking.

Mitigating circumstances are placing relations under strain, but my experience of working on such issues in the past two years has been that we are nowhere near the necessary upstream engagement in which officials talk to officials about options that might be put forward for negotiations. That would involve sounding us out early and allowing us, in a safe space, to give an idea of the reaction to options. Such an approach is traditional, but it has been largely absent; everything is piled to the 11th hour—we are given documents on that timeframe, so everybody feels under pressure and up against it.

I have to say that we are nowhere near the necessary engagement to take forward such a

complex issue as getting through Brexit. Relations have—inevitably—suffered.

**Jamie Greene:** Thank you for your openness.

**The Convener:** On that rather depressing note, I suspend the meeting to let the cabinet secretary and Mr Mitchell leave. I thank them for giving evidence.

10:34

*Meeting suspended.*

10:36

*On resuming—*

## **Scottish Government Reports**

**The Convener:** Our next agenda item is to consider the biannual reports from the Scottish Government that relate to a range of EU issues. I invite members to comment on the reports if they have any views.

The letter from the Minister for Trade, Investment and Innovation notes that the Scottish programmes were placed

“in ‘interruption’ due to the result of audits carried out in 2017.”

The committee might wish to obtain further information about what audit issues resulted in the period of interruption and the impact of that interruption. I am interested in raising that, so I suggest that we write a letter to the Minister for Trade, Investment and Innovation with regard to that issue. Members might wish to circulate views on any other matters, and we will circulate the letter before it is sent.

Are we agreed on that approach?

**Members** *indicated agreement.*

10:37

*Meeting continued in private until 11:21.*

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.

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