



OFFICIAL REPORT
AITHISG OIFIGEIL

Finance and Constitution Committee

Wednesday 3 April 2019

Session 5



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FINANCE AND CONSTITUTION COMMITTEE
8th Meeting 2019, Session 5

CONVENER

Bruce Crawford (Stirling) (SNP)

DEPUTY CONVENER

*Adam Tomkins (Glasgow) (Con)

COMMITTEE MEMBERS

*Tom Arthur (Renfrewshire South) (SNP)

*Neil Bibby (West Scotland) (Lab)

*Alexander Burnett (Aberdeenshire West) (Con)

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

Angela Constance (Almond 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:

George Adam (Paisley) (SNP) (Committee Substitute)

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

CLERK TO THE COMMITTEE

James Johnston

LOCATION

The David Livingstone Room (CR6)

Scottish Parliament

Finance and Constitution Committee

Wednesday 3 April 2019

[The Deputy Convener opened the meeting at 10:00]

Brexit

The Deputy Convener (Adam Tomkins):

Good morning and welcome to the eighth meeting in 2019 of the Finance and Constitution Committee. We have received apologies from our convener, Bruce Crawford, and from Angela Constance, and I welcome George Adam to the meeting as a committee substitute. We have also received apologies from Alexander Burnett, who is at the Local Government and Communities Committee speaking to amendments to the Fuel Poverty (Target, Definition and Strategy) (Scotland) Bill. However, he hopes to join us later. Before we start, I remind members and witnesses to put their phones into a mode such that they will not interfere with proceedings.

The first and only item on our agenda is an evidence-taking session on Brexit with the Cabinet Secretary for Government Business and Constitutional Relations, Michael Russell, and two Scottish Government officials: Jenny Brough, European Union exit readiness team, and Ellen Leaver, head of negotiation strategy. I welcome them to the meeting.

I understand that the cabinet secretary does not wish to make an opening statement, so I will launch straight into questions, starting with no-deal planning and the Scottish Government's readiness in that respect. I think that nobody here wants a no-deal Brexit, but unfortunately it is still possible that there might be such a Brexit on 12 April or thereafter. Cabinet secretary, will you give us an update on where the Scottish Government is with readiness planning for such an eventuality?

The Cabinet Secretary for Government Business and Constitutional Relations (Michael Russell): Thank you, convener. I confirm that I do not think that anybody in this room wants a no-deal Brexit, and we are—as everyone should be—doing our best politically to avoid that. Equally, though, we will do everything we can to mitigate the effect of no deal, should that take place, but I stress very strongly at the outset that we cannot do everything. That should be understood. It would be an unprecedented set of circumstances. We have tried to cover all the

bases but, clearly, it is very difficult to do everything.

We should also be clear that, as you will have seen from the published figures, a no-deal Brexit could reduce Scottish gross domestic product by up to 7 per cent, which would be very serious. We would be dealing with the effects of a very sharp and sudden slowdown plus a number of other effects that are not primarily economically related, such as interruptions to the supply chains.

As a result, we in the Scottish Government have taken the view that we should deal with the issue through our resilience mechanism. Tomorrow, we will have, I think, the 16th meeting of the resilience committee, which has been uprated and has grown substantially in size to ensure that a range of other interests such as local authorities—the Convention of Scottish Local Authorities is there—and food standards are round the table and taking part in preparations.

Moreover, the Prime Minister has invited the First Minister to take part in the United Kingdom exit Cabinet sub-committee, which is meeting this afternoon in London. I was there last week. I have been to three of its meetings, Mr Swinney has been to two and I think that the First Minister will be there this afternoon. Those meetings, in which we have participated, involve most UK Cabinet ministers alongside the First Minister of Scotland, the First Minister of Wales and the head of the Northern Ireland civil service. On the structural side, a lot of work is going on.

I do not think that I am giving anything away in saying that, in the papers for last week's meeting of the sub-committee, the word "interdependency" was used. It was, I think, the first time that I had seen that word used in a UK Government sense. There has been an acknowledgement that all the Governments have to work together, simply because of our responsibilities. The Scottish Government is responsible for delivering the health service in Scotland, civil order and so on. All those things have to be done in Scotland, but they have to be and are being done in collaboration with the UK Government.

As for where we are with readiness planning, we have participated in the medicines stockpiling activity. The Cabinet Secretary for Health and Sport has been very actively engaged in that and she has had discussions with her UK counterparts. As far as we are aware—and we have had reports on this through the UK structures—that system is in place and is ready to operate.

On food distribution, retailers and others are reasonably confident that they can continue to supply goods, although perhaps not in a completely uninterrupted way for every item. We have expressed particular concern about the ends

of supply chains in Scotland—for example, in the north and west and at the peripheries of the country—and work has been and continues to be done to ensure that the transport infrastructure is robust enough to cope. Transport Scotland has, of course, been key to and much involved in that.

Aileen Campbell and COSLA have also been focusing on ensuring that those who are particularly at risk or vulnerable are thought about and that structures and arrangements are put in place for them.

Of course, we are aware through the UK structures of the difficulties with exports. It is one thing to get goods into a country, but it is another to ensure that companies are able to export. The companies that export foodstuffs will be particularly vulnerable, and we have been looking at and will continue to examine and work on the possibility of a two-way process whereby goods can come in and go out on the same transportation. That would be possible, but the biggest barrier to exports, particularly with foodstuffs, is phytosanitary inspection and the EU's confidence in the foodstuffs going into it, given that—as you will appreciate, deputy convener, with your background—there would no longer be a legal mechanism to enforce the regulations. If we were not in the EU, we would not be subject to the European Court of Justice, and the regulatory framework could not be enforced. It is, therefore, not a question of failing to trust on Monday the things that people provided the previous Friday; there is just no mechanism to enforce that trust, and that is a key issue.

All the things that I have outlined are in place. We continue to meet, have discussions and put structures in place. We now have a resilience control room at Bilston Glen, and the first responders, organised by the police, are fully in operation. The 24-hours-a-day operation of the resilience room, which is at the core of all of this, is ready to go at any time. Things could have been stepped up in the week before 29 March—indeed, that was the intention—but that proved not to be necessary. However, we will review things on a daily and weekly basis. For example, the issue will be discussed again tomorrow. Moreover, with the extra time that we have had, we have been able through the Scottish Government resilience room mechanism to do some deep dives on some of the issues that have arisen. We are therefore reviewing and are confident in the arrangements that we have put in place.

I conclude, though, as I started: although we have done everything we can, I am quite sure that we have not done everything.

The Deputy Convener: Thank you for that very full answer, cabinet secretary, but you did not mention where the Scottish Government is with

regard to budget planning in the context of the possibility of a no-deal Brexit in April. Perhaps that is a question for the Cabinet Secretary for Finance, Economy and Fair Work rather than one for you, but he is not in front of us at the moment. I must therefore ask you: where are we with budget planning?

Michael Russell: There are two parts to the budget question. The first is that the consequential that we have received so far have gone into the system. The system has been undertaking budget planning, and the consequential have been distributed across the portfolios and, for example, in the local government settlement primarily to cover work that is already being done. It is not that additional costs have been identified and paid for; this is just part of the normal process of Government. What was last year, will be this year.

We are now in the second phase, which relates to additional costs that are being incurred over and above those covered by the moneys that have been provided. The resilience structure is being developed to allow people to come forward with those costs and to ensure that they are apportioned. In that sense, a bill is being created for the additional costs over and above the moneys that are in the system. That is where we are. I cannot give you any detail on that, but at some stage in the coming weeks we will have an idea of what the additional expenditure has been, and it will be an issue that we should discuss with the committee.

The Deputy Convener: Does the Scottish Government anticipate, in the event of a no-deal Brexit, presenting an emergency budget to this Parliament?

Michael Russell: The UK Government has said that it would have to present an emergency budget. We would have to do broadly the same, but we would have to get additional resources from the UK. As I have said to the committee before, the principle that we have applied from the beginning is that there should be no financial disadvantage to any part of the Scottish public sector, let alone the private sector, and we would expect to have those moneys paid to us.

The Deputy Convener: I think that James Kelly will cover some of those issues, but at this point I will bring in Emma Harper to talk about no-deal planning and freedom of movement.

Emma Harper (South Scotland) (SNP): Good morning. It was interesting to hear about medicines stockpiling, because I am one of the type 1 diabetics who are insulin pump users and I am still a wee bit wary about the future continuity of supply, but I suppose that I can follow that up.

Michael Russell: I know that you are. All that we can go by are the assurances that we receive. The assurance from the UK Department of Health and Social Care is that insulin has been stockpiled by more than one manufacturer so it would be available for an extended period of time. The other problem with a no-deal Brexit is that we do not know how long it would last. Figures came out earlier this week showing that British business has gone through extraordinary stockpiling in recent weeks. There is a remarkable graph, which I am sure we can provide to the committee, that shows the extent of stockpiling, which is unprecedented at any time in the past half century. Apparently, pharmaceutical companies have done that and the stockpiles exist. As far as we are aware, there are very few drugs for which there are no alternatives, even if the drug is not stockpiled, but insulin is a particular worry because it is not manufactured in these islands.

Emma Harper: I am interested in what will happen with immigration if there is a no-deal Brexit. There will be an immediate ceasing of free movement, which will have consequences for our hospitality businesses, the care sector and, as I said in the chamber, dairy farming in the south-west of Scotland. I am interested to hear about the consequences of an immediate ceasing of free movement.

Michael Russell: The first thing that people would notice would be that there were very restrictive border controls for a time. They may not last for ever, but the first reaction would be intense checks at the border. We do not know what rules would apply. The UK Government has said that it is not exactly relaxed, but reasonably confident that there would be no particular slowdown in people coming in and out. However, if we look at what has happened in the past month with French immigration, with customs controls being imposed and people working to rule, we see that there have been considerable delays. For example, there have been four-hour delays on Eurostar. In such circumstances, the functioning of the borders would become quite slow for a time.

What migration rules would be applied is another issue. The UK Government says that it will have temporary migration measures, but there is a complication in this regard, of course—the common travel area between Ireland and the UK, which predates the EU and which there is a commitment to continue.

I think that there would be some confusion for a time. That would be a legal matter. There is also a matter of sentiment. People would not necessarily want to stay if they felt that there were problems in living here. I think that, as a result, we would see an increase in the number of people leaving,

which would be very problematic for the labour market.

Emma Harper: We are already seeing an increase in the number of people leaving. I am aware that nurses and midwives are not registering with the Nursing and Midwifery Council to come here from Europe. Is that still the case?

Michael Russell: Yes. There are two issues at play here. One is the sentiment issue. It is universal that people want to go where they feel that they are needed or wanted and that there will be no prejudice against them. People, although not everybody, are uncomfortable.

The second issue is the value of the currency. If the currency falls, the benefit to people who are paid in it falls, and it may not be worth their while. I noticed that Michael Gove gave that as a principal reason for the slowdown in migration. He is not entirely wrong, but we have to ask why the currency has fallen, and Brexit is clearly an issue in that regard.

People have other places to go to, and there is considerable competition in particular sectors. The health sector is one in which there is always a Europe-wide shortage, and agricultural labour is in short supply. That is one of the drivers behind the increase in the numbers of agricultural permits for people from the Ukraine and the Ukraine association agreement. That will be an issue, and not just in fruit picking in the east of England. Last week, I noticed an article about asparagus growers in the south-east of England who think that they will lose 20 per cent of their crop this year because they, like fruit growers, rely on migrant labour and it will not be available.

10:15

The Deputy Convener: Patrick Harvie has a supplementary question.

Patrick Harvie (Glasgow) (Green): In responding to Emma Harper, you came on to talk about the sentiment issue and the danger that people from other EU countries, who have been feeling insecure for the past few years, might make an urgent decision to leave. Has the Government attempted to carry out any assessment to gauge the extent to which that is a risk for public services or the rest of the economy?

Michael Russell: Both Governments know that that risk exists. I do not know whether the UK Government has quantified it. We have not quantified it, but we are seeing that experience.

We are mounting a campaign—it will go live shortly—to encourage EU citizens to stay, which will make it clear that they are valued and wanted. We believe that there is evidence of a sufficient

risk for us to take some exceptional steps to encourage people to stay.

Patrick Harvie: But there is no evidence—

Michael Russell: I have not seen any exact numbers, but there has been a drop in the registration of nurses and midwives from the EU, as Emma Harper mentioned. As individual MSPs, we will all have met people in our surgeries who have said that they are going to leave. I can think of somebody in my constituency from Germany who had lived in Scotland for 20 years, but who has gone back to Germany because they were uncomfortable. The settled status issue has been problematic. People who have paid tax all their lives resent having to register. That is a factor.

Not everybody from the EU has been affected. Scotland has made it clear that it wants people from the EU to stay. However, events such as the demonstration in London on Friday really upset people and they feel threatened.

James Kelly (Glasgow) (Lab): You mentioned that COSLA has been involved in the discussions about resilience, as we would expect. Why has none of the £92 million that the UK Government has allocated to the Scottish Government for no-deal planning been passed on to COSLA to carry out the planning that it will have to undertake?

Michael Russell: I think that there is a misunderstanding of what the system is in terms of how the money flows. I am not saying that local authorities should not receive additional funding for Brexit preparations. I have had conversations about that with Alison Evison, and I will continue to have them. Last week, I encouraged Alison Evison and Sally Loudon to quantify the costs that they are meeting and to make sure that that information is given to us, and I am sure that that will happen.

Very few of the costs of Brexit preparation have been separated out. Part of my portfolio is a specific cost of Brexit preparation. The procedure that we have followed in the previous financial year and this financial year has been to make sure that the money is allocated. Where people are spending money, money has been allocated in the spending settlement. That is what has been happening. Therefore, moneys will have been allocated right across the Government.

What we are talking about here is specific additional costs that are being met. I have made it clear that I think that money should be provided to meet those additional costs, but that must come from the UK Government. The costs that we are meeting must form part of our accounting process. South of the border, there is a direct funding relationship between the UK Government and local authorities. In Scotland, funding has been provided to the Scottish Government, which has been spread across the portfolios of the Scottish

Government. However, we are concerned about the additional costs that are being incurred now, for which money will be required, and we are seeking for those costs to be covered by the accounting process.

James Kelly: But, at the moment, none of the £92 million that has been allocated for no-deal planning has gone to local authorities.

Michael Russell: No, that is not the case. That money exists right across the system; it has been used by every part of the Scottish Government. I am differentiating between the £92 million, which has been spread in that way and is helping us to meet all the additional costs across the public sector, and additional specified costs, which we need to know about so that we can draw up the bill. That is the distinction that I am making.

James Kelly: But none of the £92 million that the UK Government has provided to the Scottish Government has gone to local authorities. That position has been outlined previously by the Cabinet Secretary for Finance, Economy and Fair Work.

Michael Russell: With respect, I disagree. That money has been spread across the system and is being used by every part of the system.

However, I entirely agree—I have made this point to Alison Evison and Sally Loudon—that local authorities must quantify the additional sums that they have spent, as Government departments must do. That has been a constant refrain from me and the finance secretary. That is necessary to ensure that we are ready to present the bill.

James Kelly: I will leave it at that, convener. The position that Michael Russell is outlining is a bit inconsistent with what we have heard in previous answers to Parliament.

Alexander Burnett (Aberdeenshire West) (Con): First, I apologise for being late—I was at another committee speaking to my amendments to the Fuel Poverty (Target, Definition and Strategy) (Scotland) Bill.

What preparation is the Scottish Government doing for a no-deal Brexit to ensure that the oil and gas sector can continue moving goods and services to and from oil rigs?

Michael Russell: We are in regular contact with the oil and gas sector—that goes through the appropriate departments in the Scottish Government. Whatever assistance the sector requires, we will be looking at whether we can provide it. We have tended to find that, in the private sector, people know and are making arrangements to get what they need. Other sectors are trying to charter boats and making sure that they are protected by stockpiling. I imagine that, in the oil and gas sector, there will be

issues to do with equipment that companies will require to have, including spares, that comes from other parts of the EU. Presumably, that has been stockpiled—I would have to check that with individuals.

I will give you an example from the public sector. Caledonian MacBrayne was examining whether it could purchase spares for some of its vessels that had been built in Poland, so that it had those spares available rather than having to get them at a later stage. I do not know how much of that the company has done, but I presume that it has done it.

There are areas that the oil and gas sector cannot prepare for, because doing so would require decisions to be made by the Scottish Government or the UK Government, in particular, on migration. Again, my expectation is that there would be a flow of labour of some sort—probably highly specialised labour—from other European countries that would not be allowed if there was a more restrictive migration system. Emma Harper asked about that issue.

I think that three things are taking place. First—I am sure that this is happening—a discussion is taking place between the Scottish Government and its officials and the sector about any special things that need to be done. Secondly, the sector and businesses have—rightly—made preparations, and that work has accelerated in the past couple of months. Thirdly, some things are, regrettably, insoluble because they require decisions by the UK Government, such as on migration, or by the EU, such as on regulation, which cannot be anticipated at present.

Alexander Burnett: I am sure that your initial remarks are applicable to the larger companies that have been able to spend more time and resource on preparations, but what about the smaller companies? What is being done to maintain the supply chain in the UK and ensure that the flow of services can continue in a no-deal Brexit?

Michael Russell: The best thing that can happen is no no-deal Brexit. As was said at the beginning of the meeting, I do not think that anyone in the room wants a no-deal Brexit and anyone who can influence that matter should do so.

A number of things apply to small companies, not just in the oil and gas sector but across industry. We have had particularly strong support from Scottish Enterprise, Highlands and Islands Enterprise and Skills Development Scotland in their prepare for Brexit work. In recent months, there has been a big increase in the uptake of the self-assessment tool, which allows companies, particularly small companies, to assess what the

impact of Brexit would be on them. We have encouraged people to make such an assessment. If companies have not done that, they need to do it. Even at this stage, I say to anybody who is watching this session and who has the opportunity to do that work, “Do it now.” They can talk to people in Scottish Enterprise, Highlands and Islands Enterprise and Skills Development Scotland about how to get additional help in the supply chain.

Professional associations are important, too. They know their peers; they know how the supply chains work. Those in the supply chains need to negotiate with businesses, and businesses need to approach those in the supply chains. We cannot approach every contractor and tell them what they need to do, but they need to know that that preparatory work is happening.

Exporting companies can register with and get up-to-date information from UK systems, but we cannot legislate for what happens when a lorry gets to Zeebrugge or Calais. There will be compliance issues, which are not entirely clear at present.

All those things are, and have been, available; the information has been there. We launched PrepareforBrexit.scot last year. So far, that has worked particularly well. We have added resources into the system—I think that we put in £2 million earlier this month, to help businesses to do more preparation for Brexit. We will go on doing as much of that as we can.

The Deputy Convener: Thank you. We want to move on from no-deal planning to the possibility of there being an alternative to a no-deal Brexit, which is obviously a deal. Neil Bibby will kick off with some questions on that.

Neil Bibby (West Scotland) (Lab): Good morning, cabinet secretary. There were a lot of votes in the House of Commons last week and on Monday evening. Will you clarify why your Westminster colleagues abstained on Ken Clarke’s proposal for a minimum of a permanent customs union?

Michael Russell: It did not include freedom of movement, which is crucial to us. We have never supported a customs union per se; we believe that it is the single market and customs union relationship together that would make the difference.

We did not support Nick Boles in his first attempt, because we did not think that it was clear enough. However, there was negotiation over the weekend—negotiation can produce results—that produced a clearer text from Nick Boles and assurances that we thought were satisfactory, and we backed his resolution. There are some differences, but it was similar to the position that

we took in December 2016. A customs union on its own does not do that. It does not provide the protection that we need, particularly in terms of regulation. It allows substantial regulatory divergence, and it is the regulatory divergence that is the problem.

In addition, freedom of movement is absolutely central to this. There is no doubt that the Scottish economy needs freedom of movement. I have used before at this committee the example of the Highlands and Islands being a region that will lose 20 per cent of its workforce in the next five to 10 years because of demographic factors. That will lead to substantial continued depopulation unless the labour force is replaced, and there is no clear way to replace it without the present freedom of movement arrangements. That is what we should go for.

Neil Bibby: I realise that your preference is for no Brexit and for maintaining freedom of movement, but the key point about Ken Clarke's proposal was that it called for a permanent customs union "as a minimum", so people who wanted to go further could still support it. If that proposal were to come back, would you be willing to compromise on it at all?

Michael Russell: It would have to be fleshed out so that we understood it. With the greatest respect—and I take Ken Clarke at his word—a bare minimum from someone who is a back bencher is not actually very reassuring at this stage. There needs to be more than that.

In considering what happened on Tuesday, we need to focus on the old Westminster maxim that the vote follows the voice. In a sense, we know what people supported. They supported the Common Market 2.0 proposal and they supported a referendum, so those seem to me to be the two big areas that it would be possible to coalesce around.

The situation is changing almost hourly, and we will want to see what happens. We do not know what Jeremy Corbyn will take to the table, and the First Minister is in London today, too. Our views are absolutely clear, and we believe that ignoring Scotland by refusing to discuss the matter with the Scottish Government today—so far—is not a sensible idea.

That said, however, I think that there could be continued movement around Common Market 2.0 and a referendum, and that is where the focus might be. I would much rather not have a Brexit, and if there is to be one, having a confirmatory vote is essential given the changes that have taken place over the past two and a half years.

Willie Coffey (Kilmarnock and Irvine Valley) (SNP): Ten Labour members also voted against the Ken Clarke motion that my colleague Neil

Bibby mentioned. However, we could nit-pick all day about who voted for which option. Where do you think we are in the space of trying to get some kind of agreement on a deal? It looks as if the Prime Minister has finally accepted that her deal cannot go through. She has had three attempts at it, but it has not gone through. She is opening up discussions with Jeremy Corbyn, and hopefully with others, too. Where do you think we might be coalescing around some kind of deal that might get a majority?

Michael Russell: I am not sure that the Prime Minister accepts that her deal will not go through. Her statement last night was open to a number of interpretations. That said, there would be little point in taking her deal back to the House of Commons as it is, because it is inevitable that it would be defeated again. Even some of the people who voted for it previously seem to have voted against it on Friday. I think that we need a pretty calm sough on this. The clock is ticking.

10:30

It is very difficult to interpret the European Council decision on 22 May as anything other than, "If you're going to have an extension on 22 May, you have to have elections". That is very clear, and nothing in the coverage of the past 24 hours has changed it. I believe that there should be European elections, which I would positively welcome. The preparations have been made in various places, but the elections cannot take place unless there is a decision to allow them. There should be a much longer delay and people should be encouraged to have their say. A people's vote would be entirely right.

At this moment, it is very difficult to say what will take place in the next 24 to 48 hours. It is alleged that the Prime Minister wants a conclusion by the end of this week, which is probably flexible into Saturday. In those circumstances, the EU would want to know the proposal for the Council. It is very difficult to see what the proposal would be, but if I were able to wave a magic wand and get what I want—apart from no Brexit, which has been a complete distraction and disaster of massively damaging proportions for the past two and half years—it would be a very long delay, a referendum and the European elections, as well as perhaps some calmness coming into how we look at the damage that would be done by proceeding along the present lines.

Willie Coffey: Is there any sense that MPs and political parties are willing to compromise a little further to get some kind of deal? They seem to be fairly intransigent at the moment, with people on both sides swapping sides. Is there any movement towards a deal? We all seem to be agreed that nobody wants a no deal.

Michael Russell: You would have to be pretty hard of heart not to have been downcast last Wednesday and Friday and on Monday. It tries everybody, and a lot of people are very affected and profoundly depressed by this. I worry about all of us, in that sense, and certainly about those who are at the very centre of it.

We always have to try to take a brighter note from what takes place. In the negotiations over the weekend with Nick Boles about his resolution, it was possible to get a coming together in order to do something, and that was positive. I regret that some MPs did not support it, because the evidence is that some Liberal MPs thought that they would weaken the case for a people's vote if they supported it. I do not think that that would or could have been the case in a ballot in which they could choose as many things as they wanted.

There is movement and people are focused. I do not know what will come out of discussions with Jeremy Corbyn, but if there is, as the Prime Minister seemed to indicate, a commitment to accept the outcome if a vote was on a multiple choice—not just one thing—that would be interesting.

The Deputy Convener: I share that frustration and anguish at the various outcomes of the House of Commons votes in recent days, cabinet secretary. Do you agree that we are well beyond the point at which any of us can insist only on our first preferences? We have to accept that in the interests of reaching a compromise—and it will be a compromise—we will have to rub out “red lines”, a phrase that you have used many times before.

You have been consistent in insisting that any form of Brexit must continue to have single market membership and membership of not just “a customs union” but “the customs union”, as it is understood with regard to the common commercial policy and single tariffs. Where is the Scottish National Party prepared to compromise in order to ensure that we do not leave without a deal? That is where we are; we all have to not insist on our first preferences—or even our second preferences—with outcomes that we agree are suboptimal, in order to avoid catastrophe.

Michael Russell: I say seriously that it must be recognised that compromise is not about accepting the lowest common denominator. It is certainly about bringing to the table flexibility in discussion, but it is not about saying, “What is the least we can all agree on?” There are strong reasons for saying that, without freedom of movement, there will be enormous problems for Scotland that will be very difficult to overcome.

We have had our differences in the past, but I genuinely believe that, from the beginning, I have taken on the Scottish Government's behalf a

stance in which we have attempted to compromise. In “Scotland's Place in Europe”, we put forward what we thought the compromise would be but, for two and a half years, we have seen no willingness to compromise. If there is such a willingness—I think that we are edging towards it—I welcome it, but my first preference is not to leave. In June 2016, Scotland chose not to leave. Accepting Common Market 2.0, which means leaving the EU, would therefore be very much a compromise on our part. Even Common Market 2.0 raises issues about flanking policies, for example, that are unclear and problematic.

I accept that continued discussion is needed and that things might change over the next 24, 48 or 72 hours. I do not want it to be understood that we are not compromising, because we have compromised substantially. We will see over the next 72 hours whether there are more compromises to be made by everybody.

The Deputy Convener: But a compromise that took the UK out of the single market is one that you would not be prepared to make in any circumstances—even if it was the only way of avoiding a no-deal Brexit.

Michael Russell: I am not saying that. Such language from me probably would not help in the next 72 hours. I am describing where we are, what we have said consistently and how we have tried to bring that to the table. I have lived, eaten and breathed “Scotland's Place in Europe” for the past two and a half years. Sometimes, people in my party have been unhappy that I have espoused that as a compromise. I still believe that it is workable, but I would rather not do it. The evidence that we have seen so far is that not doing it might be the best choice.

A people's vote would square all the circles. In the end, if the political system could not reach the decision, the people would reach the decision.

The Deputy Convener: That is helpful.

George Adam (Paisley) (SNP): I have a quick supplementary. I have been watching all this from the relative calm of the Scottish Parliament, but you have been down in the bear pit that is Westminster, which is like a three-ring circus—no one can agree on what day of the week it is, let alone anything else. I do not want to labour the point on compromise, but what scope do you see for compromise, given the heat at Westminster and the way in which it has discussed Brexit?

Michael Russell: A three-ring circus looks wonderfully well organised in comparison with what we witness at Westminster most of the time. The subject has produced a lot of heat. All of us will have said and done things that, when we look back, make us think, “Gosh—that really got under

my skin and I might have said things I shouldn't have said."

As people tried to show on Monday, this particular moment is so serious that everybody has an obligation—I am repeating what I wrote for my column on Sunday—to ask themselves what is best for the four countries that are involved and what is best for the people they represent. That should be at the forefront of people's minds.

Having debate, discussion and negotiation on a genuine basis is therefore really important, and that is what everybody will try to do in the next 72 hours. However, that is tough, because we can never throw away the past, and people are pretty wrung out by the situation. The past two and a half years have been tough for people who are at the heart of this. At this stage, people get up every morning and think, "What on earth could happen next?" People need to have a calm sough on this now.

George Adam: The thing is, we are effectively at Brexit minus five days and the public are getting to the stage of asking desperately, "What is the future? Where are we going?"

I like to keep things simple. I am a simple guy and just want to get on with life. It is difficult for the public to understand why politicians at Westminster will not sit down and agree with one another.

Michael Russell: It is not an analysis that would be shared universally around the table, but you and I believe that it illustrates that the Westminster system is broken. It has been in the process of being broken for half a century or more. However, at this particular sharp juncture, we have to see whether negotiation can produce a result.

Patrick Harvie: A few minutes ago, you said that it was unclear whether the Prime Minister would be willing to meet the First Minister. While you were speaking, a UK minister was on television, saying that there would be absolutely no point in Theresa May meeting the SNP about Brexit. The interviewer then said, "We are just hearing that May is to meet Nicola Sturgeon today," and the minister replied, "That's fantastic news."

Events are clearly—

The Deputy Convener: Fluid.

Patrick Harvie: Fluid, somewhat.

Michael Russell: Mr Harvie, you have illustrated perfectly the world in which we live.

Patrick Harvie: Having said that, if the purpose of those meetings with the Prime Minister is to make the generous offer for Jeremy Corbyn and perhaps others to share the blame for Brexit, do you agree that they need to be cautious about the

process and the real intention and purpose behind it? From your comments so far, can I take it that the conceivable compromise from the Scottish Government's point of view is that, whatever deal might end up getting support, it has to be put to the people? Is that a requirement?

Michael Russell: Yes.

Patrick Harvie: Should the remain option be on the ballot paper?

Michael Russell: I do not think that we could possibly have a second vote without remain being an option. That would be inconceivable. I have been clear from the very beginning that that would not be possible.

Patrick Harvie: Thank you. That is very clear.

Murdo Fraser (Mid Scotland and Fife) (Con): I was going to ask a question about the second referendum option, but you have been quite clear about that in responding to Patrick Harvie. Just so that I am clear, is it the Scottish Government's view that a second referendum is required in all circumstances?

Michael Russell: I am sure that, like me, you would not want to appear to be an extremist of any description.

Murdo Fraser: Perish the thought.

Michael Russell: Indeed. Let me put it this way. The best outcome would be a people's vote. We can discuss the options. However, I will never say absolutely never. I made it clear to Patrick Harvie that I think that a second referendum is essential, but I do not wish to close any possible avenues—I take the deputy convener's line—in the next 72 hours. It would be difficult to justify refusing to take the matter to the people.

Murdo Fraser: I appreciate that this is all entirely hypothetical at the moment, and that we are in a fast-moving environment. Let us say that we end up with a referendum that gives a choice between the withdrawal agreement as it stands and remaining. You want remain to be on the ballot, so I assume that the Scottish Government will press for that. Let us say that there was a narrow vote of 52 per cent to 48 per cent in favour of the withdrawal agreement. Would the Scottish Government then accept that withdrawal should proceed?

Michael Russell: That would depend on the vote in Scotland.

Murdo Fraser: Ah.

Michael Russell: I have been consistent from the beginning. You and I disagree on that and we are not going to reconcile today. I suspect that we will never reconcile on it.

A situation in which the people of Scotland continue to support being members of the EU but are denied that for a second time would be insupportable.

You and I have had exchanges on the matter, and I have had exchanges with other members of your party on it during the past two and a half years. We have our positions and we will not change them today.

The Deputy Convener: I have a related question. It is not about the referendum, but is about revoking article 50. As I understand it, it is Scottish Government policy that article 50 should be revoked. Is that correct?

Michael Russell: Yes. We would be very pleased if that were to happen—especially this morning.

10:45

The Deputy Convener: In the Miller case, the Supreme Court ruled that to invoke article 50 would require bespoke legislation, but the Prime Minister does not have that legal authority. In the Wightman case, the European Court of Justice decided that it was for the United Kingdom to decide whether it wished to revoke article 50 in accordance with the constitutional requirements of the UK. What, if anything, can you tell us about the Scottish Government's understanding of what the UK's constitutional requirements would be, were the Prime Minister or the Cabinet to decide to revoke article 50? Does revocation, in light of the Miller judgment, require legislation or not?

Michael Russell: I really think that it would be very dangerous for me to bandy words with you on that. You are far better positioned to argue the matter than I am.

The Deputy Convener: My position is that it can be plausibly argued either way. [*Laughter.*]

Michael Russell: That proves why I am not going to get involved in that discussion.

The Deputy Convener: I am interested in finding out whether the Scottish Government has a legal view on the matter.

Michael Russell: No, I do not think that it does. Perhaps it should have, but my own view is that the matter is arguable either way—which I am glad such a distinguished lawyer has confirmed for me. However, I do not think that that is the issue. If we got to the position in which revocation was the political decision that was made, a way would be found to revoke in double-quick time, whether by emergency legislation or by other means.

The Deputy Convener: My advice is that that is the sort of argument that might not stand up in the Supreme Court.

Emma Harper will come in on compromise and deal making.

Emma Harper: Obviously, the mood at Westminster, and what we are seeing unfold there, are different from what we see in our own young, sensible and sane Parliament, but are people there moving towards compromise and are they open to negotiation, debate and discussion in order to ensure that we do not go down the no-deal route?

Michael Russell: We have seen from the indicative votes process that there are people who are very keen to find a way forward and people who are stuck in their trenches and will not move from them. Without a doubt, some will be stuck in those trenches for ever—in particular, the European research group. There are people who will never, ever, accept anything but the hardest of Brexits, and that is their position.

I do not want to say, “Here’s tae us; wha’s like us?”, but the Scottish Parliament has tended to show a more impressive ability to work on a cross-party basis. We had differences on the UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill, but in the lead-up to it we were able to reach an almost unanimous view that there should be no imposition on the Scottish Parliament’s obligations, rights, duties and competencies. Since then, we have managed to get pretty substantial majorities of two thirds or three quarters of the Parliament for propositions. We have shown a way of working together that is helpful; it is not perfect, and we have had some pretty heated debates and discussions, but I hope that it is a way of working that will rub off on and be recognised by others. I think that there are people at Westminster who recognise it.

What we have here is just different. If we go back to 1997 to 1999, we will see that the people who established the Parliament had a desire to put a different system in place. It has not worked entirely—politicians are politicians, so they will be adversarial—but our standing orders, the layout of the Parliament and so on have made a difference.

Tom Arthur (Renfrewshire South) (SNP): Good morning, cabinet secretary.

The process of negotiating and attempting to pass the withdrawal agreement has been characterised as the easy, simple or straightforward part of Brexit, with the future agreement being viewed as the most contentious element. Many of my constituents will be deeply alarmed at that prospect. Given the situation in which we now find ourselves, and in light of your experience over the past two and a half years, what do you think are the reasons for the impasse that we face? What has been political or the result of politicians’ decisions; what relates to the culture

of institutions; and what has been constitutional—in other words, what is related to the legal relationships that govern these islands?

Michael Russell: The situation is very interesting. The question why what took place in June 2016 went so terribly wrong will be a matter for considerable analysis in the future.

There are many reasons for that. I am being very straight with the Prime Minister when I say that there were two fatal flaws in the approach. First, the Prime Minister's desire to keep ambiguity around what the UK wanted, in order to keep on side the broadest coalition of her own party, was very damaging. It was only the Chequers agreement of June 2018 that led to the Government writing down what it wanted. It should have written down what it wanted in a quasi-legal text in the first month. That was a big problem: June 2018 was when the Government started to disintegrate and people started to resign because they could not agree to what had been written down.

Secondly, there was a failure to bring people together. That has been commented on many times—Andrew Rawnsley wrote a very good piece on it at the weekend, which repays reading. The moment to bring people together is not now: it was towards the end of 2016, when it was clear that there were major decisions to be made, including on whether we should be in single market and the customs union. We should remember that that was still up for grabs until the Lancaster house speech in January 2017.

That was the moment for the Prime Minister to bring together Jeremy Corbyn, Nicola Sturgeon, Carwyn Jones, Arlene Foster and Martin McGuinness—he was still alive then and the Northern Ireland Assembly was still in operation—to ask how the Government could command the broadest support. That never happened. It is not what happened at the joint ministerial committee in October 2016—the first JMC plenary since 2014—at which the Prime Minister said, “Brexit means Brexit”. That is what she said, without defining Brexit and without any indication of how it would happen. She did not seek consensus on what it meant and how we could move forward.

We published our paper, “Scotland's Place in Europe”, in December 2016, which argued for a customs union and single market membership. I remember sitting in David Davis's office in the House of Commons and asking him whether it had been ruled out and he said, “No, absolutely not. It hasn't been ruled out. This is still on the table.” However, a week later we had the Lancaster house speech: there had been no consultation, we did not see the text of it and we did not know what was happening. That was a failure by the UK Government.

Tom Arthur's question alludes to something that underpins all that, which is how the devolved Administrations work with the UK Government. That is a long-term problem for devolution—for agreeing what it is and how it operates. Devolution is, essentially, a system of compromises that are built around the concept of the parliamentary sovereignty of Westminster. It is impossible for it to continue in that way. The weight of Brexit has finally illustrated that.

My preferred solution is equality, in which an independent Scotland works with an independent England. I addressed the point in a lecture that I gave last week at the Institute for Government. If the committee does not have the text of it, I will be happy to provide it. In accepting that that is what we want, if we take part in a debate—even in the short term—about intergovernmental relations, we should do so on the basis that a new settlement is needed. That settlement needs to be defined by a different relationship between the parts. It must also be defined by a means through which we can enforce that relationship.

I constantly remind people of the Taoiseach's remarks from the British-Irish Council in Jersey last year, at which he talked about the relationship of trust between the countries in the EU being dependent on how the relationship is enforced, which is through the European Court of Justice. The intergovernmental relationship that will be required for devolution to work in that way will need to be justiciable. The problem with that—I will say this before the convener points it out—is that it is not possible within the concept of Westminster sovereignty. That is the conundrum that must be solved.

Devolution is not about a hierarchy of Governments—Governments have defined roles—but it is about a hierarchy of Parliaments. How we resolve what has become the difficulty in that is the big issue for the intergovernmental review. That review is under way, although it has not got anywhere yet.

The Deputy Convener: There are a couple of issues that we want to talk about before we wrap up. One is the UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill.

Neil Bibby: Where are we with the continuity bill and addressing the ruling of the Supreme Court?

Michael Russell: I have been meeting representatives of the parties. I hope that we have agreement on how to move forward. I am seeking agreement from the other parties on a draft letter, before I send it to the Presiding Officer. It is not possible for me to go into any detail about the letter because it is still in draft form and is being discussed with the other parties, but I hope that we will have that resolved within the next few

days. Neil Findlay has the draft letter; I think that he has said that it is okay. I am waiting for responses from others.

I am sorry that the timing is not as good as it could be, but I think that we will be able to resolve it. I can probably say that I do not think that it would be possible for us to move to a reconsideration stage for the bill, but I want the detail to be agreed by other parties and I am following through on that.

Neil Bibby: I understand what you are saying about cross-party engagement. What role will there be for Parliament to scrutinise what you are suggesting?

Michael Russell: Once I have written to the Presiding Officer I will, of course, be open to questions and scrutiny. I am happy for that to happen through questions in the chamber or in this committee. I will say how I think we should take things forward. However, we have been doing this on a cross-party basis, so I feel that I should wait for the draft letter to be approved.

The Deputy Convener: I am not quite clear how this committee fits into that. We spent a long time scrutinising and debating amendments to the continuity bill—not late into the night by Westminster standards, but certainly late into the evening by Holyrood standards. When will the committee be told what the Scottish Government's view is of the future of the UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill?

Michael Russell: The question is whether to have a reconsideration stage, so I intend to write to the Presiding Officer to say what the Government's intention is for the bill, which is a Government bill. I will ensure that the committee is sighted on that when it happens. I am waiting for the agreement of the other parties to do so. I said at the very beginning that I want the other parties to seek a common position: that is what I am trying to achieve.

The Deputy Convener: Thank you. There are no more questions about the continuity bill.

I have a question about frameworks. The committee published a report on common frameworks on Monday last week. You will have seen it and, I hope, studied it. I do not expect a full response—we will get a written response from the Government in due course, before the end of this month. However, I would like to get on the record your response to one issue that was raised in that report.

Concern has emerged in parliamentary scrutiny of a number of legislative consent motions, related to the so-called Brexit bills, about provision of delegated powers to the UK Government to legislate, without seeking the consent of this

Parliament, in non-reserved areas that are currently within the competencies of the European Union. The committee has expressed concern about that in three of its reports. Do you share that concern and, if so, how should it be addressed?

Michael Russell: Yes, I share that concern. I want to respond on how it should be addressed in my formal response, but I can certainly say that we share it. It is another illustration that an ad hoc system is operating that impinges on the proper operation of the Scottish Parliament. I want to respond in detail and to work with the committee to resolve that issue.

The Deputy Convener: The committee wants those issues to be dealt with openly and transparently, rather than negotiated and agreed behind closed doors by ministers and officials. That specific concern is what the committee wants to bring to the table.

Michael Russell: I agree that it would be undesirable to do it behind closed doors, and we do not want to continue with that approach. One of the pressures has been the weight of material in the past six months resulting from no-deal preparations. I want to find a way to make sure that the process is more transparent.

I was and remain very keen to have as much transparency as possible—as we saw with the protocol between the Government and Parliament on how to handle the big increase in statutory instruments. I am keen that that continues and expands.

Quite a weight of Brexit-related legislation could come to Parliament in the next three to six months. I want to make sure that it, too, is dealt with in a very transparent way. Some of that legislation will relate to the issue that the deputy convener mentioned.

The Deputy Convener: Thank you for that. Yesterday, there was a lot of discussion, including on Twitter, about a possible recall of Parliament during the forthcoming recess. What would be the purpose of a recall?

11:00

Michael Russell: Recall would have three purposes. The first would be to ensure that members are updated on the arrangements for no deal. They are very serious arrangements: we want every MSP to be aware of them and to be able to scrutinise them.

The second purpose would be to update Parliament on political issues or issues of sensitivity that arise during the previous week—if we meet next Thursday and Friday—in the light of negotiations and the implications of any ruling of the European Council.

The third purpose is about what members want. I would be surprised if members did not want to be at the forefront of ensuring that the devolved competencies and interests are looked after and defended, and of scrutinising that at a time of no deal. I would be surprised if members wanted to be elsewhere at that particular moment of crisis. We have been in a perpetual crisis, but the crisis will intensify if, next Thursday and Friday, we find ourselves with no deal.

The Deputy Convener: Do all those purposes relate to a no-deal Brexit?

Michael Russell: They do. The problem with the timing is that we might not know whether that is happening until Wednesday evening. It depends on the European Council.

The Deputy Convener: Indeed.

Michael Russell: Therefore, at the moment, it is likely that we will meet on Thursday, barring something happening in the next few days.

The Deputy Convener: That is very helpful. Thank you very much.

Patrick Harvie: The cabinet secretary has touched briefly on the question of the European elections. Over recent days and weeks it has felt as though we can be more hopeful than we could previously that we will still be in the European Union in one shape or form for the longer term. In terms of cabinet ministerial responsibility, you are not directly responsible for European election planning, but is it the Scottish Government's view that we should work on the assumption that the elections will take place? Are arrangements being made at local level for administration and organisation of the elections?

Michael Russell: Actually, I am the minister who is responsible for election planning.

Patrick Harvie: I beg your pardon.

Michael Russell: The European elections are organised by the UK, as the member state, and not by Scottish electoral administrators. They administer them, but the driving force for the elections is the UK. If we could do it ourselves we would, but we do not have that ability. I think that we should work on the assumption that Patrick Harvie mentioned. There is a cut-off date for the elections, which I think is 12 April, so the decision will have to be made in the next week. Unequivocally, I say that I believe that the elections should happen: I want them to happen. The EU's position is that they must happen if negotiations go beyond 12 April. I hope that they will happen: we will contest them vigorously.

Patrick Harvie: I appreciate that you are not in a position to press the go button and say that we will conduct the elections. However, organisations

that are under devolved control—local authorities, schools and the police—would be involved. Are you confident that they are working based on the assumption that there will be elections?

Michael Russell: I have got to know electoral administrators well over the past few months—although, as a member of the Arbuthnott commission on voting systems, I have had an abnormal interest in the matter for a long time—and I am absolutely confident that Scotland's electoral administrators will be prepared. The moment they are told that elections will happen, they will do their work efficiently and effectively.

The Deputy Convener: I thank witnesses for their time and contributions, and I thank members for the tone of their questions. Given the subject matter, perhaps it is unusual that the session has shone light on the issues rather than generated heat. I am grateful to everybody for that.

Meeting closed at 11:03.

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