



OFFICIAL REPORT
AITHISG OIFIGEIL

Culture, Tourism, Europe and External Affairs Committee

Thursday 25 April 2019

Session 5



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**CULTURE, TOURISM, EUROPE AND EXTERNAL AFFAIRS COMMITTEE
12th Meeting 2019, Session 5**

CONVENER

*Joan McAlpine (South Scotland) (SNP)

DEPUTY CONVENER

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

COMMITTEE MEMBERS

*Annabelle Ewing (Cowdenbeath) (SNP)

*Kenneth Gibson (Cunninghame North) (SNP)

*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:

Alan Johnston (Scottish Government)

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

CLERK TO THE COMMITTEE

Stephen Herbert

LOCATION

The Robert Burns Room (CR1)

Scottish Parliament

Culture, Tourism, Europe and External Affairs Committee

Thursday 25 April 2019

[The Convener opened the meeting at 09:31]

Article 50 (Withdrawal Negotiations)

The Convener (Joan McAlpine): Good morning, and welcome to the 12th meeting in 2019 of the Culture, Tourism, Europe and External Affairs Committee. I remind members and the public to turn off their mobile phones. Any members who are using electronic devices to access committee papers should ensure that they are turned to silent, please.

The first item on the agenda is an evidence session on the article 50 withdrawal negotiations. This morning, we will take evidence from the Cabinet Secretary for Government Business and Constitutional Relations, Michael Russell, and his Scottish Government officials. Ellen Leaver is head of negotiation strategy and delivery, and Alan Johnston is deputy director, European Union exit readiness. I thank you all for coming to the meeting.

I understand that you are happy for us to move straight to questions. Cabinet secretary, has the First Minister had any response to the letter that she wrote to the Prime Minister during the recess?

The Cabinet Secretary for Government Business and Constitutional Relations (Michael Russell): Not as far as I am aware. However, I spoke to David Lidington last night, and the channels of communication are open. That said, there has been no response to the direct request to take part in face-to-face negotiations on the same basis that the Labour Party is involved in them. The Welsh Government has also made that request, and it was made again in a three-way call involving me, Jeremy Miles, who is my Welsh equivalent, and David Lidington two weeks ago today.

The Convener: And you have not had any response.

Michael Russell: I think that the response was, "We hear what you're saying," but we are not there. I have not been in London this week. That indicates that that negotiation is not taking place.

The Convener: I want to drill down into that. The Minister for Europe, Migration and International Development, Ben Macpherson, has

written to the committee about the proposals for a joint common priorities framework between the United Kingdom Government and the devolved Administrations. Have you any idea where we are with that?

Michael Russell: I do not think that there has been a response to that yet either. It is clear that that is a positive proposal. We try to make as many positive proposals that we think would be helpful as we can to move things on and create circumstances in which there could be agreement. However, they tend to fall on deaf ears.

The Convener: I want to drill down into a specific area of concern that has been raised, which relates to the Scottish Parliament's powers as they are affected by the Brexit process. You will be aware that an area of disagreement between the UK Government and the Scottish Government was state aid and, in particular, whether it was reserved or devolved. I know that the Welsh Government is extremely concerned about that issue. My understanding is that the UK Government has lodged regulations in the UK Parliament that would transfer responsibility for state aid to the Competition and Markets Authority, which would become an independent regulator. What is the Scottish Government's position on that?

Michael Russell: State aid was one of the very few issues—procurement was the other prominent one—on which there was no agreement on where they sat in the long list of frameworks for areas in which there is an intersection between devolved powers and powers that are held in Europe. I think that there are 153 of those in total and 111 in the Scottish list. State aid was one of the rare issues on which we could not get an agreement on whether it was a devolved or reserved matter. There is a very strong feeling in Scotland and Wales that it is a devolved matter; in any case, it is not a reserved matter. It is not specifically referred to in our legislation, and the power was not exercised in the UK. There was therefore a view that it was a matter for the devolved Administrations.

Two current issues arise from that. One issue is the UK's attempt to establish a common regime on state aid that is imposed and not negotiated. We have made it very clear that we will not accept the imposition of powers in areas of devolved competence, but we will negotiate. We have been negotiating, and there has been progress on that in relation to the frameworks. I have given evidence on that to other committees. A very simple change in the regulations would be enough to cope with that. Rather than the devolved Administrations being consulted on setting up the body, they should be involved; in other words, we should be decision makers in that. That is not

arcane, because very serious things arise from it, particularly in agriculture and fisheries, where there are exemptions on state aid. Agriculture and fisheries are, of course, wholly devolved matters. There is an issue to be resolved.

Ivan McKee wrote to Greg Clark in November to say that we need to resolve the issue and to ask him to tell us why it is a reserved matter if he believes that it is. Amazingly, he did not reply. Instead of responding and saying what the case is, he has made no response. In January, Ivan McKee wrote to him again to say that he might have missed the letter in the Christmas fun and festivities and to say what the issue was, to ensure that we understood what his position was. There has been no reply.

Secondary legislation was introduced, and it went through the Westminster committee by a majority—I think that that was on 10 April. It will now have to go to the House of Commons. That is legislating in an area that we and the Welsh—we are very clear about this—believe is not a reserved area, and that is a very serious situation. There can be negotiation, but people have to reply to letters in order to start that negotiation. The Westminster response is simply to ignore letters in the hope—I presume—that, eventually, the legislation will be passed and we will all be fine.

The Convener: So if something is in dispute, there is no resolution mechanism under the current system, and the UK Government can do exactly what it wishes to in taking disputed powers.

Michael Russell: I think that most people around the table—no matter their political perspective—would accept that the current intergovernmental arrangements are not fit for purpose. There have been endless reports on them by a variety of institutions and organisations—including, most recently, the Public Administration and Constitutional Affairs Committee at Westminster—and they have come to the same conclusion: the system does not work. That is why there is a review of intergovernmental activity. Westminster has accepted that the review should take place, but nothing has happened in it.

One of the many weaknesses of the system is that there is no structure for decision making and dispute resolution; or, rather, the dispute resolution structure is that, in the end, the UK decides. In fact, the UK decides whether there is a dispute to be resolved and then decides how to resolve it. That was seen most recently with the issue of the additional funding for the Democratic Unionist Party. The UK's reaction was to say "Nothing to see here. Move along." Both the Welsh Government and the Scottish Government raised that as a breach of the standing arrangements, but the UK Government said that it was not a breach

and that it would therefore not allow it to be raised under the dispute resolution procedure.

The Convener: The issue of state aid sounds quite dry, but it is not at all dry. Obviously, there is the potential for real tension between the devolved and UK Administrations. You mentioned agriculture and fisheries, but the committee has repeatedly heard about state aid rules in its investigations into the film industry in Scotland. That was one of the reasons why it was difficult to establish a Scottish film studio. It is one thing to point to European state aid rules but, if the UK Government prevented something like that from happening, there would be a lot of tension.

Michael Russell: It is easily resolved. The frustrating thing is that we are not disputing that the Competition and Markets Authority should have a role or that there should be a framework that is entered into voluntarily. That has been our position since the beginning, on that and other issues. However, it is not a wholly reserved area, and that needs to be recognised in the regulations. Once that is in place, we will have an agreed structure, and we could operate it in the way in which many agreed structures are operated.

The irony of the frameworks discussions is that there were existing frameworks that had operated broadly on the basis of consensus over the past 20 years. Outwith the joint ministerial committee structure, there have been practical actions—as there will always have to be—between the two Administrations. That will continue, no matter the constitutional situation, because there are things that need to be discussed and that need to take place. The issue can be resolved very simply, but issues are not resolved by refusing to respond to letters.

The Convener: Thank you very much. Does Jamie Greene have a supplementary question?

Jamie Greene (West Scotland) (Con): Yes—just one. Good morning, cabinet secretary.

I want to progress that theme. What has been said raises the interesting question of what happens if the devolved Administrations take the view that a certain responsibility is entirely devolved and the UK Government takes a different view, perhaps via or on the back of legal advice. What is the arbitration process for coming to a formal legal outcome on that? It sounds as though there is none at the moment. What would the ideal scenario be if there is clearly a difference of opinion? It is entirely feasible that that would happen. How do we get to a situation in which somebody—in a court, for example—would say that they have decided it is a devolved, a reserved or, perhaps, a shared matter?

Michael Russell: We have a template that could be applied, of course. That template is

successfully applied in situations that require good relationships that are based on trust, but there is also a need to underpin that trust. We see that operating successfully in the European Union, in which there are currently 28 members that have to operate on the basis of trust. The Taoiseach has pointed that out very strongly; I heard him speak about that in the British-Irish Council meeting in Jersey last year. There is that basis of trust, but it is underpinned by law.

If countries cannot agree on something, they will go to the European Court of Justice. There is a rules-based system that comes up with an answer that is binding on the parties because the rules are binding on them. That is not what exists in these islands. There is no written constitution, no statutory establishment of various bodies, and no equality in the relationship. A rules-based structure also works on the basis that all the partners are equal and therefore will operate one to one and collectively through the judgments of the ECJ.

There is a means by which we could move to that. First, we could have an equal relationship, and then we could ensure that there was a rules-based structure. If that were done in the current United Kingdom, it would have to be done on the basis of a statutory set of obligations that are enforceable at law. That would, of course, create the circumstances in which it was no longer accepted that one Parliament was sovereign. The issue of parliamentary sovereignty bedevils the problem at its very heart. Parliamentary sovereignty means that, at the end of the day, Westminster cannot be bound by any other decisions, and that is a problem.

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

An extension has been agreed until the end of October, Parliament is just returning and it is still unclear what the next steps will be. Will the cabinet secretary provide some kind of reflection or judgment on how the situation might progress over the next few weeks? Obviously, the Labour Party and Conservative Government discussions are still on-going, but we might reach a stage at which the UK Parliament agrees to the withdrawal agreement and political declaration.

The UK Government has indicated previously that it believes that any withdrawal agreement and implementation bill would require legislative consent from the devolved legislatures. Can you confirm whether that is still the case and whether there are any discussions on how that would operate? It is difficult, because we do not yet know what that withdrawal agreement would finally look like, but can you give an indication of how the Scottish Government might respond in that situation?

09:45

Michael Russell: It is difficult to predict what will take place; I suspect a crystal ball would be as useful as any other instrument to do so. However, broadly, we could postulate that there is a possibility that the Prime Minister's agreement could be agreed to, after which the withdrawal agreement bill would need to be passed before ratification. There is no indication that that could happen at present. Whatever the Labour Party position is in these negotiations, there has not yet been an agreement and we do not know whether any such agreement would be predicated on a people's vote, for example.

There is a simple route by which one could say that there had been an agreement: the withdrawal agreement bill could be passed in the House of Commons and then ratified. The UK Government could then move on to seek legislative consent for the bill. In that situation, we would not recommend that the Scottish Parliament gives legislative consent to the Prime Minister's agreement, for a variety of reasons. One reason is that we believe that the system of legislative consent is broken, as we have made clear. That was obvious after what took place with the European Union (Withdrawal) Bill and the UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill. Secondly, elements of that agreement are unacceptable to us, particularly in relation to freedom of movement and lack of membership of the single market, so we would not recommend legislative consent.

We then have a range of other possibilities. One is that the situation limps on until October and we go back into the impending threat of no deal and the negotiation of a further extension. That is perfectly possible. Another possibility is that there is an agreement predicated upon a referendum, which is something that we would judge on its merits. We have been in favour of a people's vote, but it would depend on how that was put together and what the choices were.

The timescales are unknown. If there is an agreement in the next week, it might be conceivable that that could be sorted before 1 June, although I think that it is highly unlikely. If that were the case, there might not be European elections. Cancelling elections does not look good for any democracy. If there is not an agreement then, I suppose that it could be any date thereafter—as you know, the agreement with the EU is that exit would take place on the first of the month following ratification, so we would then be looking at 1 July, 1 August, 1 September or 1 October. Given where we are now, it is difficult to see it happening on any of those dates.

On the substance of the question, there would be no recommendation of legislative consent at present and it is difficult to imagine that there

would be such a recommendation in the circumstances in which we are, but of course I cannot say what would happen in every possible set of circumstances.

Claire Baker: As you describe, that is one possible scenario. What would be the consequences of the Scottish Parliament or the Welsh Assembly not agreeing to legislative consent?

Michael Russell: We would be saying as a Parliament—if this was the Parliament's wish—that we did not agree with what had been agreed at Westminster about leaving the EU in that way. Indeed, many of us would be saying that we did not agree with leaving the EU.

As you are aware, if we refuse legislative consent, the practical effect is that it places the onus on Westminster to decide whether to ignore our refusal. That is the weakness of the system. Jamie Greene spoke about the ways in which something can be enforced, but there is no way we can enforce that refusal. The situation has happened only once in devolution: it happened with the withdrawal bill. It could happen again. That is the difficulty that exists in the system.

Claire Baker: Yesterday, the—

Michael Russell: Sorry, may I just add something? We have put proposals to the UK Government on resolving the issue of legislative consent for a year now. There has been no attempt to move forward on it. There has been discussion; I could not tell you how many JMCs the issue has been raised at, but I would be surprised if I had not raised it at almost every single JMC since it arose. There has been no movement at all, or acknowledgement that that is a problem. I have made the point that that would stymie not just a withdrawal bill, but bills on specific subjects, whether on agriculture, fisheries or a range of other issues, were they to come to this Parliament for legislative consent.

We made one exception, on healthcare arrangements, where we came to the judgment that the issue would adversely affect UK individuals in Europe, which we did not want to happen.

There is no requirement for legislative consent for secondary legislation in the same way—there is in Wales, strangely, but not here. We have worked hard with the UK Government on the specific issues of no-deal planning, because that is the only way in which we could protect—in so far as we could—the interests of the Scottish people.

Claire Baker: I was about to ask about no-deal planning. In her statement yesterday, the First Minister said that the Scottish Government's no-

deal planning had been stopped or suspended. The UK Government has given similar indications in the past week or so. Although the date of Brexit has been moved to 31 October, one scenario would be for us to ramble along for the next few months and approach the same situation that we experienced in March and again face a no-deal Brexit.

You said that you have worked with the UK Government on no-deal planning. Although both Governments have suspended such planning, are discussions on-going? What is this state of affairs between the Governments on planning for that scenario?

Michael Russell: Thank you for that question, because it is important that people understand very clearly what the situation is.

The resilience committee, which is at the heart of planning in Scotland, has been meeting weekly since the beginning of December. Alan Johnston has responsibility for a substantial part of that. Last week, the committee did not meet, which was the first week that it had not done so. Although we continue to have in place the structures and arrangements for moving forward on a no-deal basis—let us hope that we do not have to—we have, in a sense, deactivated them. We froze them where they were; we did not intensify them.

If we had gone into a no-deal situation two weeks ago, the Bilston Glen control room that the police and first responders are responsible for would have moved to a 24-hour operation. There would have been a cycle of daily activity through the resilience structure; very close liaison with the other countries of these islands; and a decision-making process in place, starting with officials meeting in the early hours and onwards, to make clear plans.

Stockpiling work took place, so there are issues to be addressed about what we do and how we unstockpile and restockpile if we have to do so.

We stopped that work. The structures and arrangements are there and they can be activated. We will activate them, should we be required to do so—that will be a judgment call.

We should take the opportunity to assess what we have done, to see whether our approach was right or adequate and whether there is more to be done. At some stage over the next few weeks, ministers will work with the resilience team, senior officials, responders and the resilience partnerships throughout Scotland. How many of those are there, Alan? I cannot remember.

Alan Johnston (Scottish Government): There are maybe nine.

Michael Russell: There are nine or so. We can confirm that.

Working together, we will review what took place and say whether we have learned things that we can use to make improvements, if we have to carry out such planning again.

The UK has broadly done the same thing. The First Minister was invited to take part in the UK Government Cabinet's sub-committee on preparations for no deal. I represented the First Minister on, I think, three or four occasions. John Swinney was there on a couple of occasions, and I think that the First Minister went to the meeting at the beginning of April. The three of us have played a role in that sub-committee.

A small ministerial group was also established, which was essentially an executive group. I took part in a telephone meeting of the group at the beginning of April. Again, that is a UK Cabinet sub-committee. That approach has never happened before, and it indicates how work took place across the Administrations.

We had to work closely together for a number of good reasons. To be honest, that was primarily because I do not think that the UK Government could deliver in Scotland in the way that we can deliver in Scotland, and it recognised that.

Equally, there was no sense in us running a parallel stockpiling operation if we did not have to, although there were things that we needed to do that the UK did not do. There is a difference in the formulary between Scotland and England of about 16 per cent, so there are some things that we need that England does not use, and there were some different arrangements for consumables and clinical supplies that needed to be dealt with.

There were also some issues with supply chains, for example, that we need to be mindful of. As the MSP for Argyll and Bute, I am very aware that supply chains come to an end in the islands in the west and, as Mr Scott will be aware, in the islands in the north. As a result of that, some special arrangements needed to be made. There were also issues around exporting seafood and fish, for example, that required to be looked at.

Special things were therefore happening here, but co-operation was happening elsewhere, including with Wales. Mark Drakeford, who was my counterpart and is now the First Minister, attended a number of the sub-committees, as did Jeremy Miles, the Welsh Counsel General, who also deals with Brexit.

Claire Baker: I agree that it was vital to prepare for a no-deal situation while the no-deal option remained on the table. Has the Scottish Government made any evaluation of the costs involved?

Michael Russell: We are in the process of doing so. I am sure you will agree that the

important thing was to do it. Indeed, I had a conversation about that this very morning. I am keen to see a further evaluation of cost.

Of course, Governments do not tend to cost individual activity like that, but we need a clear understanding of the considerable expense that we have gone to. There are some examples. The chief constable has indicated that an additional cost of £19 million has been incurred in the current year as a result of the activity. I hope that we will be able to come to a firmer and clearer estimate in the fullness of time. That is one of the things that we will be working on.

Jamie Greene: I have a few questions of different sorts. I want to pick up on yesterday's statement by the First Minister. I was of the view that you would be the lead contact for the cross-party discussions about the future for Scotland. Can you update the committee about the nature of those discussions and how parties might participate in them? I am looking for a general overview of the purpose of those discussions and what you think the outcomes might be.

Michael Russell: I am not going to predict the outcomes of such discussions. The First Minister made it absolutely clear yesterday that she is entirely open and that will be the spirit in which I enter into this. The First Minister has written to invite the party leaders to take part, and I will contact them shortly to seek initial meetings.

I want the process to be open and constructive. I will take external advice on the process. I will try to find a way in which we can enter into dialogue. Some people might choose not to, and some might choose to. I hope that people will participate, and I look forward to it.

Jamie Greene: What is the point of the discussions? What are you trying to achieve with them?

Michael Russell: Nobody has a monopoly of wisdom—not the Government nor the political parties.

Jamie Greene: What is it that you want to discuss?

Michael Russell: You know the ideas that we have. What ideas do the other parties have about the changes necessary to repair a badly broken system? Unless you believe that the system is not badly broken, I would have thought that, as your colleague Murdo Fraser has said, there will be people who have ideas who will say that there are things that need to change, and I am keen to hear them. I think that Scotland is keen to hear them.

Jamie Greene: Surely the outcome that you and the First Minister want is independence for Scotland, so how do you think that cross-party talks will help you to achieve that?

Michael Russell: With the greatest respect, what you are doing here is creating a set of circumstances that has led to the problems that we have with Brexit, for example. It is important that we put on the table, and are able to exchange opinions on, diverse views of our future.

The terrible problems that we have experienced with Brexit result from not being able to hold a dialogue. That is why we have proposed the cross-party talks and want to take forward the idea of a citizens assembly, which I am personally enthusiastic about, because I have seen how it has worked elsewhere. This is an opportunity for us to have constructive and respectful dialogue in a time when that is difficult—I freely acknowledge that it is difficult in an age of extremes when everything seems to be extreme. It is important that we try to do that, and the First Minister was clear about that yesterday.

Therefore, it is important not to rush to judgment. I appreciate that some people's first view might be to say, "No, no—we are having nothing to do with this. This is completely pointless and we're not doing it." I want to take a bit of time to step back from that, and I hope that others might want to do so, too.

10:00

Jamie Greene: I presume that all potential outcomes are on the table.

Michael Russell: The First Minister said that yesterday, in response to a question from Miles Briggs.

Jamie Greene: I move on to a question of a different nature. Yesterday, the First Minister said—I think, repeatedly—that independence is the only way to secure Scotland's future in the European Union. Will you outline to the committee what criteria Scotland would need to meet to become a member of the European Union? How many of those criteria do we currently meet? What conversations have you or the First Minister had with the European Union on Scotland's potential membership?

Michael Russell: As you know, there is no queue to join the European Union, but countries have to observe the *acquis*. Over the past 45 years, Scotland has observed the *acquis* through its institutions and actions, so, to that extent, Scotland qualifies—it does not stand outside. We would then need to have a range of discussions with the EU about institutions and how we go forward. We are not able to have those discussions now because we are not in a position to: we are part of another member state.

Nobody would deny, however, that the atmosphere has changed since the Brexit vote. I

do not think that anybody who spends any time in Brussels is in the slightest doubt that there would be tremendous good will towards Scotland. John Kerr, who is the author of article 50, believes that the accession process would be the fastest on record. Today, I noticed that a French MP has tweeted that he hopes that France will change the view that it held in 2014, and that it should take a very constructive approach so that there is no delay. Such issues will be matters for negotiation and discussion.

It is absolutely clear that Scotland is no different from any other small country in Europe, and is therefore fully able to be a member of the EU if it becomes an independent state. We would then take that process forward step by step.

Jamie Greene: The First Minister uses language that suggests that our membership is almost guaranteed. That is the premise on which she made her statement yesterday. I am happy to repeat my original questions. What are the criteria? Do we currently meet those criteria? What conversations have you had? It sounds as though the answer is none.

Michael Russell: Mr Greene, with the greatest of respect, you want to get us into a situation—*[Interruption.]* Mr Scott is now joining in, so I am happy to have that dialogue. You want to get to the situation in which, in some way, Scotland is uniquely unqualified to be a member of the EU and will therefore stand outside it. There is no evidence of that whatsoever.

Jamie Greene: I am asking a very simple question about what you think the rules are and whether we meet them.

Michael Russell: There is a process to be gone through.

Jamie Greene: What is that process?

Michael Russell: Scotland is fully capable of going through that process, in the same way as all other European countries are able to do. Some time ago, I had a fascinating conversation with a group of judges in the European Court of Justice. One of them, who had been a key activist during their country's accession—I will not say which country—said that Brexit is in essence de-accession; the process is being unravelled. Any country that wants to join has to go through the process, and one has to accept that. However, Scotland has been in the EU, as part of a member state, for all this period of time. There is absolutely no doubt that Scotland can be a full member of the EU and it will qualify to be one. Anyone who throws doubt on that does not know very much about the EU.

Jamie Greene: With the greatest of respect, I am not throwing doubt; I am asking very simple

questions about the conversations that you have had and about Scotland's eligibility.

Michael Russell: From the conversations that my colleagues and I have had in Brussels, I am in no doubt that Scotland is able and willing to be a member of the EU, and that it will be through a process of accession.

Tavish Scott (Shetland Islands) (LD): Further to that question, could you write to the committee with specific details of the meetings that you have had in relation to the questions that Jamie Greene has just asked?

Michael Russell: I can certainly write to the committee about the discussions that have taken place, but I will not go through, day by day, a process that is designed to say, "You haven't asked and therefore you cannot be—"

Tavish Scott: That is not what I asked. I asked for a simple list of the dates on which you—and, I presume, other ministerial colleagues—have had the discussions about which Jamie Greene has just asked. It is a very simple request.

Michael Russell: You know, and the committee knows, because you are experts on this matter, that the EU will not enter into formal discussion—

Tavish Scott: That is not what I am asking.

Michael Russell: —with any country until that process starts, particularly not with a part of a member state. However, there is no doubt that the atmosphere is different and that, when those conversations take place—they are sometimes confidential—they lead to the conclusion that it is not a difficult process.

Tavish Scott: Will we get a letter from the Government saying when—

Michael Russell: I shall consider what information I can give, in the light of those confidential discussions. I will be as transparent as I can be. However, I am in no doubt that the process can be successfully entered into and concluded, and therefore that is the evidence that I am giving you.

Tavish Scott: In fairness, that was not what I was asking about, although your answer of course stands on the record.

The First Minister said yesterday that there will be a referendum in 2020. Is that the Government's position?

Michael Russell: With respect, she did not say that. What she said—

Tavish Scott: Well, she said that it will be before 2021 and not in 2019, so that means 2020.

Michael Russell: No. She said that it would be within this session of Parliament, which I presume

concludes at the end of March 2021. She said that, to protect the mandate that we have, she will put in place legislation that allows a referendum to take place should there be a section 30 order. That is what she said and the timescale that she put in place.

Tavish Scott: How many civil servants are working on that plan now?

Michael Russell: I cannot give you that number but, if you write to me, I would be happy to give you the information.

Tavish Scott: Perhaps you could just write to us with the number.

Michael Russell: I am happy to indicate to you the arrangements that we will make.

Tavish Scott: Do you have civil servants working on the bill that the First Minister mentioned yesterday and on another white paper?

Michael Russell: The bill is fully within the competence of the Scottish Parliament and therefore has been worked on by officials. No work is being undertaken on a new white paper.

Tavish Scott: So there will not be another white paper.

Michael Russell: You asked about civil servants working on a white paper. I can only tell you that there is no civil service work on a new white paper.

Tavish Scott: How many civil servants are working on independence at the moment?

Michael Russell: I would have to go and look at the work that is being done by individuals on a range of issues. However, the bill to which you are referring is fully within the competence of the Scottish Parliament.

Tavish Scott: That is not what I asked about. I asked how many civil servants are working on independence.

Michael Russell: I would have to go and find out what individuals are doing. However, we are operating entirely within our mandate and the way in which we normally operate.

Tavish Scott: I do not doubt that. I am simply asking a factual question.

Michael Russell: I shall reflect on that question as well.

Tavish Scott: I would be grateful if you would just furnish the committee with an answer.

Further to the points that the First Minister made yesterday on this process, whatever that means, do you have any reflections on your Government's response to the Smith commission, given that that was the last time that the parties came together?

Michael Russell: I heard Mr Rennie's question about that yesterday. We took part fully and constructively in the Smith commission, and that process came to its conclusion. That was different from the situation in which we now find ourselves, which has been created as a result of Brexit.

Tavish Scott: When the Deputy First Minister said, on the day of or the day after the publication of the Smith commission report, "it's continued Westminster rule", was that a constructive contribution to the work that all the parties put in?

Michael Russell: I do not think that that was a reflection in any sense on the work that the parties put in.

Tavish Scott: It is what he said. He is your Government minister and your colleague.

Michael Russell: People who know John Swinney know that he is the most constructive individual. He worked very constructively in the Smith commission, and he reflected on what appears to be the truth.

Tavish Scott: So you think that it is continued Westminster rule.

Michael Russell: Westminster rule is what exists.

Tavish Scott: So, when the Parliament sets 20mph speed limits for local roads, is that continued Westminster rule?

Michael Russell: No. What I said, and what John Swinney said, is that it is continued Westminster rule. As I pointed out to Mr Greene, we are part of a system that has a sovereign Parliament that can veto this Parliament, and that has done so—it has vetoed this Parliament on issues that you have supported, Mr Scott. Therefore, that is a reasonable statement to make.

Tavish Scott: In that context, how can the rest of us have confidence in the process that you are going to write to us about?

Michael Russell: Because today is today.

Tavish Scott: No kidding.

Michael Russell: No—I am very serious about this. If we are endeavouring to make progress in whatever way, we will have to speak to each other.

Tavish Scott: But you have already said—

The Convener: I have been very generous with your time, Mr Scott. Are you coming to a conclusion with your questions?

Tavish Scott: Okay.

Michael Russell: I want to make sure that there is continued dialogue. It is being offered. It is an

open offer without preconditions, and I really hope that people take it up.

Tavish Scott: Thank you.

Kenneth Gibson (Cunninghame North) (SNP): Cabinet secretary, you pointed out that we cannot negotiate with the EU, even though, apparently, we are not under Westminster rule while this stramash is going on. What kind of positive, constructive engagement is the Scottish Government having with EU member states?

Michael Russell: We make sure that dialogue takes place at every level. For example, Fiona Hyslop meets ambassadors and consuls regularly; there are bilateral discussions between ministers on certain issues; and we have a very active and extremely able set of officials in Brussels and a good presence in Paris, Berlin, Dublin and London, which are used greatly to our benefit in terms of having dialogue. There is a productive and positive set of conversations that take place all the time in a variety of ways.

However, you absolutely are right to say that, as part of a member state, we cannot enter into an official negotiation with the EU or anybody else on those matters. That is just the reality.

Kenneth Gibson: How are relationships evolving? You have indicated that, since the Brexit situation, France and other countries have a different attitude towards Scotland. Has there been a blossoming of relationships across the European Union or is it just with certain countries? What nature has that taken? Is it about good will? Does Europe now want to engage more directly with Scotland, given the result of the vote here, which would have kept us in the European Union if we were not under Westminster control?

Michael Russell: During the 2014 referendum, there was quite clearly a strong effort by the UK Government—David Cameron and others—to get as negative a view as possible from the EU. Cameron wanted favours and favours were called in. However, I never felt that that was particularly genuine.

We are now seeing a reversion to an interest in Scotland, a view that Scotland has a lot to offer and—this is a really important point—an acknowledgement that if Scotland chooses to be independent, which is a choice that only Scotland can make, it will be welcomed and will be a constructive part of that family of nations. I do not see anybody saying the opposite.

Much is sometimes made of the position of the Spanish, but the Spanish Government has been very clear that if the constitutional road to independence is the road that the Scottish people walk, that will be recognised and the path into the EU will not be blocked. There has never been any

doubt about that. That view was reiterated by the most recent Spanish foreign minister and will be reiterated by the Spanish consul general. If people ask them about that, that is the answer that they will get.

In those circumstances, there is positive dialogue. When I or Fiona Hyslop go to Brussels—she goes more often than I do—there are conversations with a variety of individuals at different levels in the European Commission, individual member states and the permanent representations, and there is a positive discussion of issues.

Any country going through the accession process has to negotiate, indicate what its priorities are, give and take. There has to be genuine negotiation—unlike what the UK has been doing—and that is what we should do. I have absolutely no doubt that that is a normal, positive process. The point that the First Minister made yesterday in her statement was telling. A substantial number—11, I think—of EU member states are of the same size or smaller than Scotland, yet they went through that process and none of them had been member states or part of a member state for almost half a century. Where is the problem?

Stuart McMillan (Greenock and Inverclyde) (SNP): Earlier, you touched on the intergovernmental relations situation. It has been well documented that those processes do not seem to work and are broken. Over the next six months, how do you see the roles of the joint ministerial committee on European negotiations and the ministerial forum on EU negotiations with regard to Brexit and how the Scottish Government influences what is going on?

10:15

Michael Russell: We and the Welsh Government are in regular dialogue about that. It is an issue that has arisen and been discussed at the ministerial forum and the JMC, but it is now of even greater concern. First, we have to accept that there would be a second phase of negotiations, and we do not know that. This time a year ago, all of us would have been astonished to discover that we would still be without any conclusion to that. If we postulate that there will be a second round of negotiations, those would clearly be the substantive, detailed and difficult negotiations about the substance of a future relationship, and they would be bound to touch upon areas of devolved competence: more than that—areas of devolved competence would be on the table.

The principle that needs to be applied is that there cannot be a negotiation that trades away or

affects areas of devolved competence without involving the devolved Administrations in the decision-making process. The question is how then to convert the decision-making process into the negotiating process, because the negotiating parties are the UK and the EU. That is the issue that has to be addressed, and it is on the table. There is no resolution of the issue, but we are taking it forward.

There have been many warm words over the past two and a half years and a lot has been said about the number of meetings. It is not the number of meetings that counts but what happens in them, and most of those meetings have been desperately unsatisfactory. The terms of reference of the joint ministerial committee on European Union negotiations are to:

“discuss each government’s requirements of the future relationship with the EU; ... seek to agree a UK approach to, and objectives for, Article 50 negotiations; and ... provide oversight of negotiations with the EU, to ensure, as far as possible, that outcomes agreed by all four governments are secured from these negotiations; and, ... discuss issues stemming from the negotiation process which may impact upon or have consequences for the UK Government, the Scottish Government, the Welsh Government or the Northern Ireland Executive.”

An awful lot of that just has not happened. If it is going to happen, we need to go back to that text and ask how we can make it real in the light of what will be infinitely more complicated and difficult than what has gone before, if those second stage negotiations take place.

We know where the problem is and how it has to be resolved, but the UK Government has to be willing to resolve it in a meaningful way and we have not seen that in two and a half years. That has been the real problem. I will not say that I am entertained by it, but I am certainly struck by what is happening with the direct negotiations with Labour. They are following a playbook that I and the Welsh would recognise very strongly. You can talk and talk, but you cannot get the Prime Minister to the point where she says that she is prepared to look at and reconsider her red lines. What we have seen, all the time, is that the talk does not touch upon what the UK Government has decided to do and intends to do—but cannot do, because it cannot get it through Parliament.

Stuart McMillan: I take it that the Welsh Government is very much in the same position as the Scottish Government.

Michael Russell: I do not speak for the Welsh Government, but our position has been very closely aligned on the issue of what happens next. Both of us have been concerned about that. Mark Drakeford may have raised the issue more than a year ago. It has been on the table for a long time but not got to any conclusion.

Stuart McMillan: Will discussions continue to take place over the next six months?

Michael Russell: In so far as we know.

Stuart McMillan: If the Prime Minister still does not want to give up on any of the red lines, what is the point in having those discussions?

Michael Russell: I do not think that there is any point in stopping the talking. It is always important to try to keep channels open, no matter how difficult that is. We have been through that over the past two and a half years and I cannot say that it has always been a pleasant experience. I do not know how many miles I have done and what the cost has been to the public purse, but I think that we have to keep on talking. One could draw that analogy here, where we have to keep on talking across the party divides. We have to keep on talking about it, although it is often frustrating.

The red-lines issue is absolutely crucial. If you decide upon red lines at a very early stage in a negotiation and you will not change them, no matter what happens, and you will not negotiate seriously, no matter what happens, then you will end up in this position. Those red lines dictate the outcome. If you change the red lines, you change the outcome.

Stuart McMillan: You mentioned the cost. Has an estimate been made of the financial burden that has been placed on the public purse?

Michael Russell: We know that the cost of Brexit has been rising steadily. I think that I saw £4 billion as an estimate of the cost of the no-deal preparations. However, the answer is no. There has been no quantification of the cost. It is an expensive process.

Ross Greer (West Scotland) (Green): I want to explore intergovernmental relations, not just in the context of Brexit but given what the First Minister announced yesterday. If we leave aside the issue of an independence referendum and look at the two other elements that were announced, is the Scottish Government in a position to propose new structures for intergovernmental relations?

I accept what you said about the review that has been committed to but has not started yet. In the medium term, leaving aside the Brexit issue, if cross-party talks are to be convened here to gain a new understanding of what is needed to resolve the deficiencies in the settlement, that will require a level of intergovernmental co-operation that will not happen under the current structures. Does the Scottish Government have an idea of what new structures would work for that process?

Michael Russell: In the lecture that I gave to the Institute for Government about a month ago, I put some suggestions about intergovernmental relations on the table. The Welsh Assembly

Government has done work on the subject, too. It published a paper on the subject in, I think, August 2017. There were also indications of how devolution might change as a result of Brexit in the first "Scotland's Place in Europe" paper, which we published in December 2016, so there is a lot of material here. I anticipate that we will publish further suggestions for the intergovernmental review that is to take place. A lot of work is being done on the subject.

I am interested in the other parties' views, of course, and I think that the subject will be part of the discussions that we will now, I hope, have with them. The First Minister said in her statement yesterday that she is keen to see whether there are agreed positions that we could put forward, as a Parliament, to the UK Government, and I presume that that would feature in the intergovernmental review. There are some connections here that we can move forward with.

Ross Greer: If we look at each of the two additional parts individually, again moving the referendum issue to one side because of the clear political issues around it, does the Scottish Government expect and intend to seek the UK Government's buy-in to the process of the interparty talks before or as they begin, or is the intention to try to convene the parties here to come up with a collective offer that the UK Government will then be approached with?

Michael Russell: We should take this a step at a time. I want to talk to people in the other parties individually about their expectations of how we will take the work forward. We will have that conversation with your party, as I hope we will have it with other parties. I want to see whether the involvement of external mediation and discussion would be helpful so that we do not just dig ourselves back into where we all are.

I do not know whether members saw the Scottish Trades Union Congress's reaction yesterday, but it reminded us of civic Scotland's role and how it might be engaged, and others commented on that yesterday, too.

We should go at the process carefully and step by step, but I am not ruling out anything at all. I hope that ownership of the process can move in such a way that we all feel that we have something to get from it, so I want us to do it carefully and not rush our fences.

Ross Greer: I pose the same question with regard to the citizens assembly process. Will you seek to engage with the UK Government as you develop the proposals and the structure for that?

Michael Russell: We can make a link between the intergovernmental review and what we might discuss with parties in civic Scotland. I am not sure that I see the link as clearly with the citizens

assembly. We have not seen a citizens assembly operate in this way and on this scale in Scotland before, so I want to make sure that, in so far as people want to be involved, views from others come in to influence the process.

This is something new, and it is something that we should welcome. We have seen a tradition build up in Scotland. For example, we can look at the way in which the Scottish Constitutional Convention led to the Parliament. I acknowledge that the SNP was not part of that, and there is a historical debate to be had about that. If you look at the detailed history, you will see where I was in that debate—

Kenneth Gibson: And where I was.

Michael Russell: You and I are always soul mates, Mr Gibson.

I think that you can look at what we are talking about now as being part of that tradition. It can be seen as building on that tradition and developing it in light of how participative democracy is changing. That is a positive thing, but we have got to learn about it, so let us think about it and get other people's views about it so that we can move it forward.

Ross Greer: Does the Government have a process in mind for agreeing the structure and the format of the citizens assembly?

Michael Russell: No. However, as I think that the First Minister made clear yesterday, what we hope to do is to come back to Parliament towards the end of May with some views and ideas on the bill and the citizens assembly for discussion. Those ideas will not be *ex cathedra* pronouncements; they will be up for discussion. We hope to have a bill to publish at the end of May. We are about to go into *purdah* for the European Parliament elections, so there will be a period during which things are not happening. However, I hope that, by the end of May, we will be clear about those issues.

The citizens assembly is a work in progress, and people should influence that progress.

Annabelle Ewing (Cowdenbeath) (SNP): Good morning, cabinet secretary. I would like to pick up a thread that the committee was looking at a wee while ago. I wanted to remind myself of the number of countries that had acceded to the European Union over the past 15 years, so I checked. I noted that the following countries had done so: the Czech Republic, Cyprus, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, Slovenia, Bulgaria, Romania and Croatia. I suggest that it would be difficult to find any credible argument to suggest that an independent Scotland would be in a uniquely different position as far as membership of the EU

is concerned. I am sure that the cabinet secretary would agree with that.

Michael Russell: I do not think that we need to spend time on that—I would agree.

Annabelle Ewing: I just think that that encapsulates the ridiculousness of that argument.

I had an opportunity to ask the cabinet secretary a few questions about the continuity bill yesterday, but I would like to tease out a bit more information on it. I note that the cabinet secretary intends to introduce legislation to ensure that Scots law continues to align with EU law. When does he intend to do that and what is his thinking on what the mechanism or trigger would be to alert us to where we need to take action and so forth?

Michael Russell: The continuity bill has been an interesting and difficult experience over the past year and a bit. The conclusions that I wrote to the Presiding Officer about some weeks ago were, in part, the result of discussions between the parties. Initially, I had been tempted by the idea of a reconsideration phase of the bill—that is part of the standing orders that has never been used before and, as the clerks know, I am fond of using bits of the standing orders that have not been touched on before. It would have been nice to have taken forward the reconsideration process but, looking at the issue closely, I think that that part of the standing orders looks a bit like something that was written 20 or so years ago. It is very restrictive. I think that, if we were simply to bring back the bits of the continuity bill that we could bring back, that would be very inflexible.

There are bits of the continuity bill that we can bring back in that process, because there are bits that the Supreme Court has agreed we can continue with. Of course, the whole bill, with one tiny exception, could have been brought back had the UK Government not changed the law in a way that it could not have done in the case of criminal law, but which it could do constitutionally because there is no court of appeal, as Mr Greene noted earlier. However, those who discussed the issues decided that there was probably a better way to proceed. One or two things have already moved forward as things have changed.

You specifically asked about the keeping-pace powers. They were introduced in the continuity bill but not in the United Kingdom equivalent legislation. We felt, and Parliament agreed, that there were places in which having such powers would be useful, such as environmental law. The example that I gave in the stage 2 debate concerned fish disease. Presently, there is an automatic change to the law when the EU identifies a new threat in agriculture and changes its law accordingly. In that circumstance, that change becomes part of Scots law, so we do not

have to keep going back to primary legislation. It seemed entirely sensible, given the expertise that exists in the EU on those matters, that we should plug into that and that our legislation should reflect that. There are various places in environmental law where such an approach would be useful, but there may well be others.

10:30

The original proposal that we had in the bill was constrained, entirely properly, by the Parliament—I think that Mr Scott was the author of one of the amendments that constrained it—because there was a view that the provisions of the bill could be misused or more widely used. It may well be the case that, now, people will take a different view and say that, after considering the issue again, they can see other reasons why the approach should be used. That gives us an opportunity to bring that issue back, and that is something that we could usefully legislate on. However, if we were to use the reconsideration stage, we could not change the proposal as it exists in the bill that went to the Supreme Court. That one area is a good example of why we need to bring fresh legislation that is informed by the change of circumstance.

There are a range of other issues. On the human rights issues, we have had the report of Alan Miller and his team, and there is an indication of legislation that it would be possible for the Scottish Parliament to pass and it would be useful to have. There is a possibility that we can bring that into the legislation that we are discussing.

We do not want to end up with a portmanteau bill, not least because that is not legislatively possible—it would not pass. Therefore, we need to have a theme and a recognition of what we can do. That is what we are working on. I do not want to put words into the mouths of those who were at the cross-party discussions, but that is what I think they felt, in the end, would be the most useful thing to do. That group saw a couple of papers from officials that set out what was possible, and I think that, in the end, the conclusion was that this was the best way in which to proceed.

Annabelle Ewing: It is interesting to hear the suggested approach. I imagine—although, these days, one never knows—that, in light of the fact that we would be talking about devolved matters, Westminster would have nothing to do with this and would not be able to put any spanners in the works. Can the cabinet secretary provide any reassurance in that regard?

Michael Russell: I think that it would be perverse of Westminster to get involved in that way if we were bringing into the Parliament a bill that had elements within it that had already been

considered by the Supreme Court and found to be within the powers of the Parliament, even after the UK Government paucity. As you say, though, who can tell? However, we will not legislate on the basis that we are afraid of who is looking over our shoulder; we will legislate on the basis of what we think is right for Scotland, within our legal competence.

Annabelle Ewing: Do we have an idea of timing yet? When might we expect to see a bill?

Michael Russell: I hope that we will see such a bill in year 4, which is the next legislative period. That would be my intention. I think that, in this calendar year, we will end up with roughly the same number of bills going through and receiving assent as was the case last year and the year before—or in any normal year, as the year before last was, of course, an election year. There will be no diminution of the legislative process.

That is important, because, this year, we have had to add in a substantial amount of secondary legislation because of Brexit. I pay tribute to the committees that have been involved in that, which have performed well, and I pay particular tribute to those who have been involved in the drafting and preparation of that secondary legislation. We recognise that a substantial additional burden has been placed on people, and we have had to make special arrangements to take the work through. However, I hope that we can bring in this legislation and that that will not diminish the opportunity to legislate on other things, because year 4 will be busy in other ways, too.

Alexander Stewart (Mid Scotland and Fife) (Con): You talked about the frustration around the process. There is no doubt that this Parliament has felt frustrated, as have the Westminster Parliament, the European Commission and the European Parliament. People in our communities feel that way, and the business community also has a feeling about the process. The issue of how we and others engage in the process from this point on, which you touched on earlier, is vitally important. The Scottish Government has a role in that with regard to the way in which it is perceived in the process.

You touched on the offices that we have in other parts of Europe. There is a Brussels office and there are other offices in various capitals. It would be good to get a flavour of the impact of that on the whole process that the Scottish Government has seen and how that has supported or diminished the frustrations that you have discussed this morning.

Michael Russell: You are absolutely right to draw attention to those frustrations, particularly in the business community. I hear about them the whole time from people who are unable to plan or

unable to put in place what they want to put in place and to invest.

I think that, as a committee, you have visited our office in Brussels and seen the work that it is doing, and I am very happy for you to see the work that is being done in other places. The job of those offices is to explain what we are doing to help and to understand what others are doing. Also, we are doing everything that we can to assist with the practicalities.

Yesterday morning, I was speaking to a business and academic audience at the University of Edinburgh about some of the practicalities that we have put in place. I hope that you will allow me to talk about those for just a moment. On the business side, we have boosted resources for exports and placed a focus on exports because we need to support those people who will have to change their practices.

One of the important things that we have done is create the prepare for Brexit toolkit that Scottish Enterprise, Skills Development Scotland and Highlands and Islands Enterprise put together, which I launched last September. The toolkit has allowed businesses to guide themselves through the process of preparation, and it has had a good take-up that has increased substantially in the past few months. The UK Government has also recognised the difficulty it has had in engaging with business, but the toolkit has been particularly useful.

We have also made additional resources available to businesses to help them to move forward. We have kept in close contact with the chambers of commerce and a range of business organisations, and we continue to do so. I think that Derek Mackay is speaking today to the Confederation of British Industry. A lot of things are taking place.

What everybody in politics wants to do is create security, as there is no pleasure in insecurity. We also have to ask ourselves how we create security for the long term. You and I will have a different perspective on that, and that is a legitimate difference to have. We have to settle this down, so that people are in a relationship of equality across these islands. In my view, that is not the present situation. However, you and I would not disagree that we should do as much as we possibly can to help and assist.

There are some difficult areas that we need to acknowledge, one of which is companies looking at the situation and saying that the only solution to the Brexit issue is to move their activities elsewhere. It is not the role of the Scottish state to pay for jobs to leave Scotland. I have confronted that issue on a number of occasions—it is a real difficulty.

Pharmaceuticals has also been a big issue. The moving of the European Medicines Agency was a blow, and there is still no clarity about what associate membership of that would look like. As you will know, the regulations on the testing of drugs and medicines are difficult. Regrettably, one of the really misleading—I use that word charitably—parts of the 2016 referendum was the view, which was promulgated by Michael Gove among others, that a UK medicines agency would mean a faster, better route to medicines approval. He was told at the time, by the pharmaceutical industry, that that was not true—the pharmaceutical industry invests in its biggest markets. With the growing together of the regulatory processes in Europe and North America, that would be the target market. The industry creates new drugs for the biggest market first—it gets that regulatory approval and then goes for regulatory approval in other markets. The UK market, at less than 3 per cent, would be one of those other markets. Losing the EMA adds to that difficulty.

There are industries in which direct aid has been more difficult to get, but, even so, through the life sciences group and other things, lots of work has been done. I think that, yesterday, Ivan McKee was at a large life sciences company at Inchinnan, making absolutely sure that it understands what we are able to do and that we understand what it needs us to do.

Alexander Stewart: What will the Scottish Government prioritise as we continue through this turbulent time? Also, what will happen afterwards if we have a Brexit situation? What will the Government prioritise going forward from that?

Michael Russell: The maximum protection and mitigation for Scottish economic, social and cultural interests would be the issue in the event of Brexit. However, we must recognise that some elements, particularly of the Brexit that appears to be on the table, would be impossible to mitigate. An example of that is freedom of movement. The reality—I speak as a Highlands and Islands MSP—is horrific. About 20 per cent of the Highlands and Islands workforce will retire in the next five to 10 years. Demographically, we are getting older. That is not a personal remark; it is just where we are. We are also not reproducing enough. Again, that is not a personal remark; it is just where we are.

Tavish Scott: Steady on.

Michael Russell: Indeed. I am not saying that to any of the Highlands and Islands members, such as Mr Scott; I am just saying what the situation is.

We cannot cope with a 20 per cent drop in our workforce without having a system that allows

people to come in and participate easily, and a migrant salary threshold of £30,000 is not that system. Inevitably, we will end up with continued depopulation from the west to the east, for example, which is seeing a decline in services. Services are predicated on there being a population.

Freedom of movement is not an abstract concept. When I hear the Prime Minister—or anybody—say how glad she is about the end of freedom of movement, that is a death knell to some Highlands and Islands communities. That needs to be understood.

The Convener: Jamie Greene has a supplementary question.

Jamie Greene: It is a very quick one. Unfortunately, it is about a subject that we have previously talked about.

We have discussed the continuity bill. One of the potential ways forward is

“agreeing new protocols with the Scottish Parliament ... to give MSPs more scrutiny over Brexit legislation.”

Will you expand on what that might mean? The quote comes from the briefing paper that I have. It says:

“the Constitutional Relations Secretary ... said that the Scottish Government will ensure the choices made by the Scottish Parliament are respected by ... agreeing new protocols with the Scottish Parliament ... to give MSPs more scrutiny over Brexit legislation.”

I am not sure what that will entail.

Michael Russell: What document are you referring to?

Jamie Greene: It is the committee’s briefing paper from the Scottish Parliament information centre.

Michael Russell: Okay. I think that that relates to my discussions with the Finance and Constitution Committee about the protocols that we put in place for the additional Brexit legislation that will go to Graham Simpson’s committee, whatever it is called.

Stuart McMillan: It is the Delegated Powers and Law Reform Committee.

Michael Russell: Thank you for that information.

We are committed to renewing the protocols in the light of additional Brexit legislation, should Brexit happen. I do not think that we have even quantified how many Brexit-related bills there will be, but there will be a raft of them, so the scrutiny process will be repeated and intensified.

We have said that the scrutiny was useful, but it had to be truncated because of the timescale. We

need to improve the scrutiny. There was a protocol between the Government and the Parliament, to allow that process to go ahead. As far as I am aware, officials are working on a renewed protocol that would allow even greater scrutiny of those matters—Ellen Leaver has confirmed to me that they are. She has very helpfully handed me a piece of paper that says that we need to deliver effective and timely legislation—there will be a time element to the work—and there needs to be transparent scrutiny by the Parliament in holding the Scottish Government to account when consenting to UK Government legislation. The consent process will be involved in that aspect. That is, I think, where we are on that issue.

Jamie Greene: I appreciate the update. As members who sit on other committees will know, the secondary legislation and accompanying papers that come through often run to hundreds of pages. It is often very difficult to get through the research that is required to make any judgments on the Brexit-related statutory instruments.

Michael Russell: That is why we try to help if we can. The volume of Brexit-related material is not of our making. We are aware of the issue. As somebody who has been through the process as a member of a committee, I am always aware of how difficult it is for committees to do their own research. However, they have an absolute right to spend as much time as they can on scrutinising legislation. We will try to square that circle.

The Convener: I will wrap up the session with a couple of questions that are directly pertinent to some of the committee’s work. You will be aware that, last year, the committee conducted an inquiry into the Erasmus+ programme. Have you had any indication from the UK Government of whether there will be replacement funds to continue a full Erasmus+ programme? As you are aware, the programme is really important well beyond the university sector.

10:45

Michael Russell: That is an important issue for us. We are aware of the UK Government’s value-for-money exercise on Erasmus+, horizon 2020 and other programmes, and we understood that the process concluded that Erasmus+ is not deserving of continued support under the value-for-money criteria. We have tried to influence those criteria, and we have made it very clear that we think that the consideration of the criteria has been flawed.

There is a slight difference in attitude to the issue north and south of the border. Some of the university sector is not terribly happy about Erasmus+, because it deprives universities of fees. In Scotland, the situation is different.

Overall, I am not happy about how the UK Government has taken forward the issue. Our view is that Erasmus+ needs to continue, and that appears to be the unanimous view of various sectors in Scotland. Yesterday, Fiona Boucher—many of you will know her through her work on lifelong learning—from Scotland's Learning Partnership told me of the extensive use of Erasmus+ in relation to lifelong learning and her concerns about the issue. I have a particular interest in lifelong learning. We are supportive of Erasmus+, as are Fiona Boucher, the Scottish Further and Higher Education Funding Council, the higher and further education sectors and the youth sector, so we will continue with the programme.

The Convener: It is very concerning that you have been told that the UK Government said that Erasmus+ does not fit its value-for-money criteria. We picked up on a little bit of that informally when we were in Brussels. Do you have that in writing? Do you have anything formal that confirms that?

Michael Russell: I do not think so, but we understand that the issue will be decided in the next phase of negotiations. It is quite clear that this is a future relationship issue, so we will continue to influence that. The committee might want to take actions that will allow it to do so, too.

The Convener: Yes—thank you very much for that.

The committee is about to look at the Scottish Government's external relations policy. I know that this strays slightly outwith your responsibilities, but will you touch on what impact the Government's European Union office in Brussels, for example, will suffer as a result of Brexit and what the Government's priorities will be—setting aside the constitutional issues that we discussed earlier—for its relationship with the EU and its institutions after Brexit, should it happen?

Michael Russell: You are asking me to step outside the area for which I am responsible. That matter sits in the area for which Fiona Hyslop is responsible, and I think that it is important that she be given the opportunity to talk to you about that. I can say that the role of the Brussels office becomes ever more important, and, should we leave the EU, there is very clear agreement that we will have to continue to invest in and prioritise the work that it does.

There will be a clear and substantive difference between being one part of the EU28 and being part of a third country—there is no doubt about that. Therefore, we will have to mitigate the damage that will be done, maintain our voice and keep our ears open, which is what the Brussels office does, and we will continue to promote and protect Scottish business and industry through that

office. That will be true in Dublin, Berlin and Paris. We will need to carry on and intensify our work. The detail of that work and the priorities that will be set are for Fiona Hyslop, and I am sure that she will be delighted to talk about that.

The Convener: Cabinet secretary, I thank you and your officials for coming to give evidence to us today.

10:48

Meeting continued in private until 10:58.

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