



OFFICIAL REPORT  
AITHISG OIFIGEIL

# Meeting of the Parliament

Tuesday 24 September 2019

Session 5



The Scottish Parliament  
Pàrlamaid na h-Alba

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# Scottish Parliament

*Tuesday 24 September 2019*

*[The Presiding Officer opened the meeting at 14:00]*

## Time for Reflection

**The Presiding Officer (Ken Macintosh):** Good afternoon. The first item of business today is time for reflection. Our time for reflection leader is Major Lynn Farmer, of the Salvation Army in Greenock.

**Major Lynn Farmer (Salvation Army, Greenock):** Presiding Officer and members of the Scottish Parliament, I thank you for the opportunity to address you today, on together making a difference.

The Salvation Army heritage centre records that, in 1891, William Booth, the Salvation Army's founder, opened a matchbox factory. At the time, matchbox making was big business, and the workers—mainly women and children—were severely exploited as well as exposed to phossy jaw, which was a painful and disfiguring disease. William Booth's factory introduced fair wages and healthy working conditions. His approach attracted attention from Parliament and news reporters and led to laws that transformed the workplace in general.

In the words of an anonymous writer:

"it isn't the problems that determine our destiny, it's how we respond."

William Booth's response was:

"heart to God and hand to man",

and "soup, soap and salvation." His God-led vision has taken the Salvation Army to 131 countries around the world. He knew that, alone, we can do so little but together we can do so much. He was a pragmatist to the end, living out Isaiah, chapter 1, verse 17: "do good; seek justice", and his final speech continues to challenge to this day.

"While Women weep, as they do now, I'll fight; while children go hungry, as they do now, I'll fight; while men go to prison, in and out, in and out ... I'll fight; while there is a poor lost girl upon the streets, while there remains one dark soul without the light of God, I'll fight, I'll fight to the very end!"

The Salvation Army in Greenock has an integrated mission approach between the church, the Greenock floating support service for people who are at risk of losing their housing tenancy and the Scottish drug and alcohol strategy, which is a recovery programme for people with addictions.

Support comes through not a match factory but a garage project, which started when an unused garage became a meeting place for all, whether people come for peer mentoring, to prevent social isolation or to pick up a bargain at the garage sale and recycle. The project continues to develop and we have just received planning permission to extend, to create a shop and a safe, multipurpose area for our employment plus initiative.

Whether we are talking about a match factory, a garage or the Scottish Parliament, I close with the prayer of Reinhold Niebuhr:

God, give us grace to accept with serenity  
the things that cannot be changed,  
courage to change the things  
which should be changed,  
and the wisdom to distinguish  
the one from the other.

Amen.

## Business Motion

14:04

**The Presiding Officer (Ken Macintosh):** The next item of business is consideration of business motion S5M-19044, in the name of Graeme Dey, on behalf of the Parliamentary Bureau, setting out a revision to today's business and tomorrow's business.

*Motion moved,*

That the Parliament agrees to the following revisions to the programme of business for—

(a) Tuesday 24 September 2019—

after

2.00 pm Time for Reflection

*followed by* Parliamentary Bureau Motions

*followed by* Topical Questions (if selected)

insert

*followed by* Ministerial Statement: Response to Supreme Court Judgement on Prorogation

delete

5.00 pm Decision Time

and insert

5.10 pm Decision Time

(b) Wednesday 25 September 2019—

delete

5.00 pm Decision Time

and insert

6.10 pm Decision Time—[*Graeme Dey*].

*Motion agreed to.*

## Topical Question Time

14:04

### Landfill (Biodegradable Waste)

1. **Maurice Golden (West Scotland) (Con):** I refer members to my entry in the register of interests.

To ask the Scottish Government what action it is taking to ensure that it meets its new target for banning biodegradable municipal waste going to landfill. (S5T-01792)

**The Cabinet Secretary for Environment, Climate Change and Land Reform (Roseanna Cunningham):** There will be a centrally co-ordinated intervention to help remaining local authorities procure solutions for the remaining tonnage of waste. Scottish landfill tax will be used to provide a further incentive to ensure that transitional work proceeds at the necessary pace.

I will also establish a programme board comprising senior leaders and waste management professionals across public and commercial sectors to oversee and drive forward measures to ensure full compliance with the ban by 2025. The board will report to me at regular intervals.

We will continue to prioritise reducing waste and increasing recycling to reduce reliance on energy from waste.

**Maurice Golden:** On 5 September, in response to a written question on the subject, the Scottish National Party gave no indication that the target for the ban would not be met. When did the SNP Government know that it would fail to meet its own target on the issue?

**Roseanna Cunningham:** With the greatest of respect to Maurice Golden, I say that he needs to understand that the delivery responsibility lies with local authorities. Over the summer, we tried to establish the actual picture among local authorities, and we now have that information. I can advise that 16 local authorities have fully compliant solutions in place for the period before 2021; three have secured post-ban solutions that will come on stream after 2021 but still lack an interim solution; seven have a secure interim solution but no long-term solution; and six have no policy-compliant solution in place and are not currently procuring a solution. That is the picture that we have had to consider and make a decision about. When we saw that picture, it was clear to us that the landfill ban in 2021 could not hold at the current level.

**Maurice Golden:** I find that answer extraordinary. Back in 2015, I knew that the target would not be met, and the industry and local

authorities knew. For the SNP Government not to know reeks of incompetence or wilful neglect. How can the Parliament trust the SNP to deliver on tackling climate change when it cannot meet the most basic waste target?

**Roseanna Cunningham:** I remind Maurice Golden what I said at the start: the delivery responsibility lies with local authorities. I will not embarrass him by reading out the Conservative local authorities that are on the list of councils that have not put in place solutions. We are where we are. We have looked at options for the future. The proposal that I have come up with looks to me to be the most secure and certain, and it is the one that we will be working with over the next few years.

**Mark Ruskell (Mid Scotland and Fife) (Green):** Earlier this month, Clackmannanshire Council joined Stirling Council and Perth and Kinross Council in signing a three-year waste management contract that will see its waste being shipped to Sweden for incineration. Does the Scottish Government think that that is an acceptable way to deal with the waste? What support can the Government give to councils that have signed such contracts only to find that the goalposts have now been moved?

**Roseanna Cunningham:** With the greatest of respect, I repeat what I said at the outset: delivery responsibility for the particular ban that we are talking about lies with local authorities. Local authorities make decisions on the basis of understanding that although, unfortunately, in a number of cases, they have not made decisions on that basis. I am happy to talk to any local authority about particular decisions that it has made. We must be incredibly careful to ensure that the 2025 extension is met. That will not be done by incentivising the approach that has led to a failure to succeed until now, and we will look at that closely.

**Willie Rennie (North East Fife) (LD):** There was never a coherent Scottish Government policy on the issue, so last week's decision was always inevitable. Sending waste in lorries to English landfill sites was never a responsible solution to meeting the ban. How will the Government use the delay wisely by encouraging the market to seize the opportunities, given that the record of shipping waste abroad means that our processing capacity is well below where it needs to be?

**Roseanna Cunningham:** There are some real issues that have to be thought through. As well as the fact that local authorities have not done the job that we expected them to do, there has been difficulty in encouraging Scotland-based solutions. I agree with Willie Rennie that shipping waste furth of Scotland is not the ideal scenario, and it is what we are trying to prevent with the extension of the

ban from 2021 to 2025. That is why we are looking carefully at what might be put in place so that we do not incentivise further shipping abroad. I advise Willie Rennie that we are considering what we might do in respect of the landfill tax to ensure that we do not provide an inadvertent incentive to do so.

**Finlay Carson (Galloway and West Dumfries) (Con):** What support will the Government provide to local authorities to implement infrastructure that will reduce biodegradable household waste to zero?

**Roseanna Cunningham:** Every year, local authorities agree with the Scottish Government the sums of money that will go to them. That agreement takes place in a negotiation with the Convention of Scottish Local Authorities. If this issue is to continue to be a key part of the agreement, I would expect that local authorities would wish to ensure that it is raised in the discussions with COSLA.

As the member knows perfectly well, because I have repeated it endlessly this afternoon, the delivery responsibility lies with local authorities. We do not intend to change that, despite the extension to the deadline on the ban.

#### **Northern Isles Ferry Services (Preferred Bidder)**

2. **John Finnie (Highlands and Islands) (Green):** To ask the Scottish Government for what reason it has named Serco Ltd as its preferred bidder for the northern isles ferry services. (S5T-01794)

**The Minister for Energy, Connectivity and the Islands (Paul Wheelhouse):** Serco Ltd was awarded the status of preferred bidder on the basis of an assessment ratio of 65 per cent price and 35 per cent quality, as was set out in the tender documents and made clear to all bidders when the invitation to tender was issued. Serco was assessed as providing the most economically advantageous tender under the terms of the competition, with a tender that was evaluated under the tender criteria to provide high-quality ferry services and value for money for the taxpayer.

The statutory 10-day standstill period commenced on Friday. During that period, I am constrained in respect of what I can say regarding details of either bidders' submission.

**John Finnie:** Last year, the Cabinet Secretary for Finance, Economy and Fair Work signed a commitment to application of the fair work principles across the Scottish Government and associated bodies. The National Union of Rail, Maritime and Transport Workers is in the process of taking strike action against Serco, as the

operator of the Caledonian sleeper train, for renegeing on pledges to address serious concerns about staff safety. Can the minister honestly tell Parliament that Serco is living up to the fair work principles? If not, perhaps he can explain why the fair work convention was considered to be suitable for civil servants but not for people who work in the transport sector under Serco?

**Paul Wheelhouse:** We are required to act lawfully under procurement rules. Under those rules, there are no grounds for excluding Serco from the competition on the ferry services.

Mr Finnie referred to the fair work framework. I stress that there is no direct correlation between the contracts to which he refers and the contract for the northern isles ferry services, which have been operated successfully by Serco for the past seven and a half years.

As I mentioned, Serco was assessed as providing the most economically advantageous tender under the terms of the competition, with a tender to provide high-quality ferry services and value for money for the taxpayer. I reassure Mr Finnie—and the trade unions, as I have already—that the fair work framework applies in the tender, and Serco is signed up to it. That means that there will be protection of pension arrangements for staff, and that there will be no compulsory redundancies during the eight-year period of the contract. I hope that Mr Finnie takes some reassurance from that. The fair work framework applies to the contract: we will see that it is applied.

**John Finnie:** I am very concerned by the Scottish Government's apparent indifference to the possibility of reputational damage. Caledonian MacBrayne was the trusted provider of the ferry services until 2012. Since then, Serco has been involved in a number of controversies across its staggering portfolio of Government work. Last year, MSPs from all parties, including the Scottish National Party, condemned Serco's plans to carry out mass evictions of asylum seekers in Glasgow. Does the minister believe that such a company is fit to carry out public services, and is deserving of public money in Scotland?

**Paul Wheelhouse:** I am not dismissing the issues that Mr Finnie raises about practices elsewhere. However, as I said in my second answer to him, there is no legal basis for excluding Serco from the competition: Serco has won the competition fairly and squarely. The team that has been awarded preferred bidder status has been running the service for seven and a half years without issues such as Mr Finnie has raised coming to the fore.

More important is that Orkney Islands Council, Ryan Thomson from Highlands and Islands

transport partnership and stakeholders across the area have welcomed the decision. I appreciate Mr Finnie's points, but they are on matters that are completely separate from this particular contract. The preferred bidder has delivered the services successfully for seven and a half years, and the decision has been welcomed by the people who use the services.

**The Presiding Officer:** There is quite a lot of interest in the matter. We will have supplementary questions, the first of which is from Liam McArthur.

**Liam McArthur (Orkney Islands) (LD):** I welcome the end to uncertainty, and I welcome the continuity that will come with confirmation of Serco NorthLink's selection as the preferred bidder for the lifeline services.

However, it is strange that when I raised the issue with the First Minister last Thursday, she felt unable to advise Parliament of the announcement that was to come the following morning, even though journalists were tipped off later that afternoon.

Does the minister accept that the contract falls far short of meeting the growing, and increasingly urgent, demand for additional freight capacity that has been highlighted by key businesses in Orkney and Shetland in the past year?

**Paul Wheelhouse:** I welcome Liam McArthur's positive remarks. I point out that journalists were tipped off not about the decision itself but about the fact that one was coming, as is normal practice. As Mr McArthur has mentioned, whether it would be appropriate to make the decision at that time was still being determined during that day.

However, I acknowledge Liam McArthur's concerns about freight. A key factor in meeting state-aid rules is that services that are outlined in the public service contract are necessary and proportionate to the community's needs. Any additional services could have been interpreted as being overprovision of aid and state support, thereby distorting the effect of operation in the market.

However, as Mr McArthur might be aware, the contract has been designed with greater flexibility in order to allow timetabled freight and ferry services to be amended to better reflect changes in demand across the year and from sector to sector. We want to support the key areas of the economies of the Orkney and Shetland islands, including tourism, fishing, food and drink, aquaculture and farming, and to help them to thrive. The new arrangements will support that. I will seek to engage with those key industries, and with Mr McArthur and others, as we move forward.



**Maureen Watt (Aberdeen South and North Kincardine) (SNP):** The new contract provides for a 20 per cent discount on cabin fares and a three-year fares freeze for passengers, vehicles and cabins, which builds on the 30 per cent discount on passenger and vehicle fares that islanders already enjoy, so is not it the case that the SNP Government has listened to islanders and put them at the heart of the contract's terms?

**Paul Wheelhouse:** Maureen Watt is correct, in that, separate from the announcement of Serco Ltd's preferred bidder status, on Friday I was in a position to announce that, from 1 January 2020, islanders who use services between Aberdeen and Kirkwall and Lerwick will benefit from an additional 20 per cent reduction in cabin fares. Passenger, non-commercial vehicle and cabin fares will also be frozen for three years. That will add to the existing 30 per cent discount for islanders on passenger and vehicle fares.

Unfortunately, at this point in time the Scottish Government cannot introduce fare reductions or freezes on the Scrabster to Stromness route, due to the on-going state-aid complaint and the risk that further complaints will prolong the delay to full roll-out of the road equivalent tariff on that route. However, the Government remains committed to delivery of RET and will continue to explore all available options.

As I said in my responses to Mr McArthur and Mr Finnie, we will also continue to listen to island communities, which play a vital role in Scotland's wider wellbeing, and we will take measures to ensure that they are able to access the same opportunities for growth as the rest of the country.

**Jamie Greene (West Scotland) (Con):** I hope that the minister will agree that what is important is that, regardless of who operates the service, islanders should have an affordable and reliable service. The devil will be very much in the detail of the new contract. Has he sought assurances that whoever wins the contract will take action to improve cabin availability during peak times? Will he explain in more detail how the fare reduction and freeze will be funded and implemented? That was not clear from his initial response.

**Paul Wheelhouse:** I acknowledge the point that Mr Greene has raised about availability of cabin space, which we are considering as part of the bid. One detail that I can reveal is that Serco has committed to upgrading 10 cabin spaces to premium standard. Although, in theory, that will reduce the number of standard-fare cabins that are available, given the discount that will be in place islanders will now be able to afford the premium cabins because they will be at the same or a lower price than the original standard fare, so they will be getting better-quality provision.

However, I accept that, in the longer term, we will have to deal with the need for accommodation, especially for families, which has been raised by islanders. We are trying to address affordability first. We hope, in the longer term, to tackle supply.

Mr Greene requested that I explain the funding for those measures. That will become clearer in the budget process, but the Cabinet Secretary for Finance, Economy and Fair Work and I have had internal discussions and have ensured that resources are in place.

**Colin Smyth (South Scotland) (Lab):** Will the minister confirm that under the new contract, all staff on the northern isles ferry services—including subcontracted staff on freight ships, as well as those on passenger services—will be covered by the RMT's collective bargaining agreement?

**Paul Wheelhouse:** I will write to Colin Smyth with an answer about the specific issues of the RMT's terms. However, I reiterate that the contract adheres to the fair work framework, so there is protection for pension arrangements and terms and conditions, and there will be no compulsory redundancies throughout the eight-year period of the contract. I hope that those measures will be welcomed by the trade unions. However, I will be glad to sit down with them and others including Colin Smyth to discuss those matters.

#### **Thomas Cook Group (Support for Staff and Customers)**

3. **Sandra White (Glasgow Kelvin) (SNP):** To ask the Scottish Government what support it will offer to staff and customers of Thomas Cook Group, in light of the company ceasing trading. (S5T-01797)

**The Cabinet Secretary for Transport, Infrastructure and Connectivity (Michael Matheson):** We are saddened by the collapse of Thomas Cook, which had a long history of providing many jobs across the United Kingdom and overseas, including around 640 in Scotland. We are working closely with the UK Government and the Civil Aviation Authority as the situation progresses. The CAA is leading the biggest peacetime repatriation operation, with more than 150,000 travellers returning from Europe, north Africa, North America and the Caribbean over the next two weeks.

We understand that there were 63 Thomas Cook shops in Scotland, with an estimated 390 employees, as well as around 250 staff who were based at Glasgow airport. Additionally, there are Scottish businesses in the Thomas Cook supply chain that will be affected. This will be a very worrying time for employees and their families. We have already made the offer of support for affected

employees in Scotland through our partnership action for continuing employment initiative.

**Sandra White:** As the cabinet secretary said, there were a number of Thomas Cook shops in Scotland, including in my constituency in Glasgow. Yesterday, I visited the shop in Gordon Street in my constituency. It was closed, there was no notice up, and people outside were wondering what was going to happen. I take on board what the cabinet secretary said about help, but people are looking for practical help just now. What practical help can the Scottish Government give to the former employees, who do not even know whether they will get any redundancy money?

**Michael Matheson:** I recognise the concerns that Sandra White has raised on behalf of her constituents. As I outlined in my initial answer, PACE is the primary approach that we use to provide offers of support to staff who are affected by incidents of this nature.

We have also been in contact with one of the special managers from KPMG who have been appointed, and they will provide information to all affected staff on how they should make a claim to the Insolvency Service for any wages or other moneys that may be owed to them. The Insolvency Service will be responsible for pursuing that on behalf of former employees of Thomas Cook. KPMG will include a copy of our PACE "Facing Redundancy?" guide, which contains our PACE helpline number and website details. The guide will be forwarded to all former employees that KPMG has a record of in order to provide them with that information.

**Sandra White:** That seems helpful with regard to the employees—and the customers as well, I presume. However, the cabinet secretary mentioned in his first answer that other agencies are involved, too, and one of those is Caledonian Travel, which I also visited yesterday. It supplies coach tours for visitors who come over to Scotland. It is not just about Thomas Cook itself; there are other agencies, so there will be a wider effect on the economy, not just in Glasgow but across Scotland. The staff of agencies may lose their jobs, and agencies may fall. Will those people be able to get the same help that the cabinet secretary has recommended for the staff of Thomas Cook? Where can we direct those people to so that they can get help?

**Michael Matheson:** I am aware of the concern about the impact that the collapse of Thomas Cook could have on some of its supply chain. The member mentioned Caledonian Travel. Webhelp, which is based in Larbert in my constituency, will also be affected by Thomas Cook going into receivership, as it provided a contact centre for the company's customers.

I assure the member that our agencies, through Scottish Enterprise, have set up a helpline to provide a point of contact for companies in the supply chain that may be affected by the Thomas Cook situation. It has a team of specialists who can provide financial advice and wider support, including access to PACE arrangements if that is necessary and appropriate. Scottish Enterprise has put the helpline in place to support those companies that may be affected by the decision as a result of the impact that it will have on the wider supply chain.

**Pauline McNeill (Glasgow) (Lab):** I thank the cabinet secretary for his considerate response. The BBC reported that a woman from Glasgow was booking a replacement flight to Rhodes and the price rose from £280 to £1,000 the day after. Airline companies says that it is due to an algorithm, which could be the case, but will the cabinet secretary condemn airlines that might be seeking to take advantage of families who are in a tragic situation, trying to replace their plans for holidays and weddings?

**Michael Matheson:** Algorithm or not, it is appalling that any airline should be seeking to exploit individuals in such difficult circumstances. I ask all airlines to consider their actions in the coming weeks for those who have been adversely impacted by the demise of Thomas Cook. It is not an opportunity to make an extra couple of pounds out of people who are in a difficult situation; it is a time to help those individuals to restore their holiday hopes and plans, rather than trying to take more money from them. I call on all airlines to show consideration for those who have been affected by the demise of Thomas Cook and to offer them support and help, rather than trying to take further money off them.

## Supreme Court Judgment (Response)

**The Presiding Officer (Ken Macintosh):** The next item of business is a statement by the First Minister in response to the Supreme Court judgment on prorogation. The First Minister will take questions at the end of her statement, so there should be no interventions.

14:26

**The First Minister (Nicola Sturgeon):** We have witnessed some astonishing developments in the three years since the Brexit referendum in June 2016. The previous Prime Minister resigned after losing three House of Commons votes on her Brexit deal, one of which was lost by a record margin. The work of the Westminster Parliament has ground to a halt. It is important to note that that has had significant implications for this Parliament in areas—such as social security and no-deal preparations—in which we require co-operation to deliver our own commitments.

In recent weeks, the United Kingdom Government has also lost control of the House of Commons and now, even with the support of the Democratic Unionist Party, it has no workable majority. The Prime Minister has yet to win a single vote in the Commons since he took office.

All of that is extraordinary and unprecedented, but none of those extraordinary events compares with what has happened today. Today's judgment of the Supreme Court may be about the prorogation of another Parliament, but the circumstances giving rise to it, and the implications of it, are of enormous significance to this Parliament and the people of Scotland. Indeed, that is why the Lord Advocate intervened in this case, on behalf of the Scottish Government.

Let me turn to the terms of the judgment. The UK Supreme Court has this morning upheld the judgment of the inner house of the Court of Session. It has ruled—and has done so unanimously—that the British Prime Minister acted unlawfully by suspending the UK Parliament. The president of the court, Lady Hale, said:

“the effect upon the fundamentals of our democracy was extreme”.

We should not allow the chaos and unprecedented events of the past three years to diminish or obscure the gravity of what the court has decided today. For the sake of democracy, we must not allow the abnormal and unacceptable to become normal and acceptable. It is truly historic and unprecedented in our modern democracy that a Prime Minister has been held to have broken the law in order to frustrate or prevent

“the ability of parliament to carry out its constitutional functions”.

It is hard to think of another democratic country in which there has been a more damning verdict on the behaviour of a Prime Minister. The judgment could not be starker. The Supreme Court said:

“It is impossible ... to conclude ... that there was any reason—let alone a good reason—to advise Her Majesty to prorogue Parliament for five weeks”.

This is not a technical or narrow defeat for the UK Government. It is not just about, for example, the detail of an act of Parliament. It is a defeat on justiciability, on lawfulness and on remedy, and it is in terms that call into question the UK Government's commitment to basic democratic values and the rule of law.

Let us be clear: a Prime Minister with no electoral mandate and no parliamentary majority tried to shut down Parliament. He tried to prevent the UK Parliament from holding the UK Government to account, from exercising its democratic functions, from challenging the Government, from scrutinising its actions, from holding committee meetings, and from questioning him and other ministers. In other words, he sought to prevent Parliament doing all the things that give meaning and life to the term “parliamentary democracy”.

The Supreme Court mentioned the vital role that such scrutiny has in our system of government. The judgment even noted that, in the advice that was sent to the Prime Minister, the importance of

“consultation with the Scottish Parliament and the Welsh Assembly”

was not mentioned anywhere.

The statutory instruments that are required to prepare the statute book for European Union exit, which this Parliament has to consent to under a protocol that is otherwise honoured by the UK Government, were made instead under an emergency procedure, without the consent of the Scottish ministers or the scrutiny of this Parliament.

“This was not a normal prorogation”,

the Supreme Court ruled.

“It prevented Parliament from carrying out its constitutional role for five out of a possible eight weeks between the end of the summer recess and exit day.”

That is scrutiny that cannot be got back.

The Supreme Court observed that

“Nowhere”

in the evidence

“is there a hint that the Prime Minister, in giving advice to Her Majesty, is more than simply the leader of the Government seeking to promote its own policies.”

Nowhere is there a hint that he has “a constitutional responsibility”.

That behaviour on the part of a Prime Minister shames his office, shames the UK Government, shames the Conservative Party and demonstrates beyond doubt that Westminster politics is badly broken.

We should pay tribute to the campaigners in England and in Scotland—led, of course, by Joanna Cherry MP—who brought the court actions. Let me do so now on behalf of the Scottish Government. Indeed, it speaks volumes that, in his initial reaction to the ruling, the Prime Minister accused those who brought the actions to have the prorogation declared unlawful of trying to “frustrate” Brexit. Not only is that argument wrong, it is also a remarkable argument from a Prime Minister who also claims that the prorogation had nothing whatsoever to do with Brexit.

Now, of course, we must look forward. In my view, four things should happen. First, there must be a clear recognition that the person who is responsible for this fiasco is the Prime Minister. It was Boris Johnson who took the decision to prorogue Parliament; it was Boris Johnson who acted unlawfully; and—I do not say this lightly—it is Boris Johnson who must now resign. It is, of course, possible for a Prime Minister to continue in office if they are unpopular. It is even possible for a Prime Minister to survive in office if they are not competent. However, no Prime Minister should believe that they can act with impunity and remain in office when they have acted unlawfully in the manner and the circumstances that were set out so clearly by the Supreme Court today.

Before he became Prime Minister, many of us said that Boris Johnson was not fit to hold office. Many argued that his past comments should have ruled him out of running even to be leader of the Conservative Party. Those are—of course—political views, and they will be contested. However, the view that he should resign today is not just about politics; it should be the conclusion of anyone who believes that parliamentary democracy, accountability and the rule of law matter.

Secondly, the court has ruled today that the UK Parliament is not legally prorogued. It must, therefore, return to business as soon as possible. To that end, I welcome the statement from the Speaker of the House of Commons a short while ago that it will do so tomorrow. Never in recent times has it been more important for all of us that the UK Government is held to account, and it is right that that work will restart immediately.

Thirdly, the UK Government must make it absolutely clear that it will respect and adhere to the Benn act—the European Union (Withdrawal) (No 2) Act 2019—which is designed to prevent a disastrous no-deal crash out of the European Union. There have been alarming whispers that the Tories are looking for technical loopholes or are prepared simply to ignore the law and press ahead with their no-deal plans.

After today, we need a clear and unambiguous statement that the law will be respected, and that the UK Government will ask for an extension to prevent a catastrophic no-deal Brexit on 31 October. Ultimately, this is—of course—about the fundamentals of our democratic system. However, it is also—never let us forget—about people’s jobs and living standards, the health and wellbeing of our communities and our place in the world. It is about maintaining the hard-won and precious peace in Northern Ireland, and it is about respecting the wishes of the people of Scotland and the views of this Parliament. It is also about avoiding the disruption that we know will take place, and that the UK Government knows will take place, in both the short and long term, if any Brexit—but especially a no-deal Brexit—is allowed to happen.

Fourthly, in my view, this UK Government should be removed from office as soon as possible. There is, in truth, no functioning UK Government right now, and, as of today, we know beyond doubt that, to the extent that it is functioning at all, it is a Government that is prepared to ride roughshod over democracy and the law. It is impossible to have confidence in this Prime Minister or the Government that he leads. Therefore, as soon as the risk of it being used to force through a no-deal Brexit on 31 October has been removed, there must be a general election.

This is an important time to take action but also to reflect. Our Scottish Parliament has been reconvened for 20 years. Its reconvening was a vital step in restoring Scotland’s political voice. Today in this chamber, we need to make it clear that all of us, regardless of party, stand up for democratic values, that we condemn a Prime Minister who was prepared to act unlawfully to shut down Parliament and that we will continue to do everything that we can, as a Parliament, to make Scotland’s voice heard and to protect our citizens from the damage of Brexit.

We should also resolve not to allow our Parliament or the people of Scotland to remain at the whim of an extreme, out-of-touch, law-breaking UK Government. We should instead resolve that the better—the best—foundation on which to build the future of our country is as an independent member of the European family of nations.

**The Presiding Officer:** The First Minister will now take questions.

**Jackson Carlaw (Eastwood) (Con):** Today's judgment by the Supreme Court is as profound as any made by any court in my political lifetime. I start by saying that the rule of law is the foundation of our system of government. The judgment of the courts must be respected by Government, all the more so when it may not like the result. The judgment clearly upholds the principle that Government is subject to the will of Parliament and that Parliament is therefore not subject to the will of Government. That is an important consideration for each of us in every Parliament.

The Prime Minister has stated that the House of Commons and the House of Lords will now return, as confirmed by the Speakers of the House of Commons and the House of Lords, and that, in consequence, Westminster will now have further opportunities to continue the debate on Brexit and other business. In a parliamentary democracy—and, not least, in light of the court's judgment—it is right that our Westminster Parliament will now determine what comes next. That overall priority is unchanged: the possibility of a deal to leave the EU on 31 October in an orderly way is still there. Members of Parliament must redouble their efforts to find that resolution and support a fresh arrangement if that is achieved with our European partners.

In the first instance, I ask the First Minister whether, if a deal with our European partners emerges, Scottish National Party MPs will vote for it. If that cannot happen, does the First Minister not agree that it is clear that a House of Commons that is unable to determine progress in any way must make way for a new Parliament that can, and that there must be, as the Prime Minister sought to achieve, a general election?

**The First Minister:** I welcome Jackson Carlaw's comments about the rule of law and the foundations of our democracy. Such comments are and should be uncontroversial in any Parliament and in any democracy. The fact that they are being discussed in the way that they are in the United Kingdom today speaks volumes about the turn that the UK Government has taken and the direction that it has taken the country in.

On the issue of a deal, I have made my position abundantly clear—indeed, crystal clear—since the day of and the day after the Brexit referendum in 2016. Scotland did not vote for Brexit. My principal responsibility as First Minister is to seek to ensure that Scotland's democratic wishes are respected, and that is what I will continue to do.

That said, I made valiant efforts to strike compromise with Boris Johnson's predecessor.

This Government published a paper as far back as December 2016, in which it put forward the proposal that a single market, customs union future would be a decent compromise. That was not my first or preferred option, but it was a decent compromise that was put forward in an attempt to bring together divided opinion. That attempt at compromise was completely and utterly ignored.

To respond to Jackson Carlaw's question, there is no deal before us to scrutinise. The European Union has made it clear in recent days that the UK Government is yet to put credible proposals for a deal on the table. Of course we will scrutinise anything that comes forward, but I make it absolutely crystal clear that neither I nor the SNP will vote for something that takes our country out of the EU—out of the single market and the customs union—against our will, with all the damage that that would do. I would be abdicating my responsibility as First Minister if I were to agree with that way forward for Scotland.

Lastly, I believe, as I said in my statement, that it is time for a general election. However, as the SNP has also said and worked with other parties to secure—this must continue to be the priority as the UK Parliament returns tomorrow—we must make sure that that general election cannot be used by the Prime Minister as a device to force through a no-deal Brexit on 31 October.

The means of avoiding a no-deal Brexit is now on the statute book in the form of the Benn act, so the first priority for MPs should be to ensure that that act is complied with and honoured and that we avert the risk of a no-deal Brexit. I believe that the UK Government should then be turfed out of office and that there should be a UK general election as soon as is practically possible.

**Alex Rowley (Mid Scotland and Fife) (Lab):** The Supreme Court position shows that the Prime Minister has acted wrongly, in contempt of democracy, and that that is an abuse of power by the Prime Minister. Does the First Minister agree that, regardless of our political colours, we need to unite in this Parliament to send a clear message that the current Tory Government at Westminster must obey the law and take no deal off the table? Does she agree that we should then have an election to elect a Government that respects democracy and the rule of law and brings power back to the people? Given the decision today, does the First Minister also agree that this Parliament should unite to call for the resignation of the current Prime Minister, who is in breach of the law?

**The First Minister:** Yes, I agree with all of that. I think that I set out all those views in the statement that I made a few moments ago. First, we should not allow the extraordinary nature and the significance of what the Supreme Court has

said today to somehow be normalised in the midst of the chaos that the UK and UK politics have descended into. This is an unprecedented judgment; it is truly historic. All of us, as politicians, often tend towards hyperbole but it is not an exaggeration to say that this is truly unprecedented. The Prime Minister has been found to have acted unlawfully, in a manner and in circumstances set out by the Supreme Court that make his continued tenure as Prime Minister unthinkable. If he has any honour, he will tender his resignation in light of the judgment.

Secondly, I believe that MPs should continue to work together, as they were doing before the attempted prorogation, to take the threat of no deal off the table. The Benn act is now on the statute book; the job now is to make sure that the Government cannot circumvent it or break it in any way.

Thirdly, when that has been done, if the Prime Minister will not do the decent thing and resign, the Opposition parties should come together to hold a vote of no confidence to remove the UK Government from office and to ensure that there is a general election.

I know that discussions involving my party and other parties are under way this afternoon at Westminster, and the SNP, as we have done all along, will seek to play a constructive role in those discussions.

**Patrick Harvie (Glasgow) (Green):** The First Minister is quite right to say that Boris Johnson must be held personally responsible for this action. Boris Johnson is someone who, throughout his career, has shown contempt for the truth, contempt for Parliament, contempt for devolution and—although it is out of character for me to stand up for the Queen—contempt for a monarchy that he professes to believe in.

However, is it not the case that the whole UK Government must be held responsible as well? Those people chose to serve under him; his Cabinet and his adviser team include people who were deeply complicit when the leave campaign broke the law in order to secure the referendum result. Why should we expect any better of them now that they are in government? Is it not clear that the UK now has a rogue Government that cannot, in any way, be expected to respect democracy or the rule of law?

**The First Minister:** I absolutely agree that today, when it comes to the Westminster Government, it is not so much a matter of prorogue as just plain rogue.

Seriously—because this is a serious matter—I agree with Patrick Harvie, although we should not lose sight of the personal responsibility that the Prime Minister should bear for this decision. The

decision to put advice on prorogation to Her Majesty the Queen, to seek that agreement and to do what flowed from that was the Prime Minister's decision and he should bear responsibility for the fact that that decision has been found to be unlawful by the Supreme Court today.

However—yes—I think that the entire UK Government should be out of office. I do not expect better of the likes of Jacob Rees-Mogg or Michael Gove, who misled the country in the arguments that they put forward to try to secure the Brexit vote. However, people have a right to expect more of some members of the Government; it is a bit invidious to name names, but it is time to be blunt—people like Nicky Morgan, who argued for remain and who has said previously that the kind of actions that Boris Johnson has engaged in, which have now been found to be unlawful, would have been unacceptable, now seem happy to sit in a Cabinet around the table with this Prime Minister. The sooner that we get that Government out of office and have a general election, the better.

My final point—I know that Patrick Harvie will agree with it, and others in the chamber will not—is that, as long as Scotland is in the constitutional position that we are in right now, we will always be at the mercy of Westminster Governments that we do not vote for taking our country down a path that we do not want to go down. Ultimately, the solution to that is for us to become a normal independent nation, taking our place with the other independent nations of the European Union and the rest of the world.

**Willie Rennie (North East Fife) (LD):** I think that the First Minister knows that we do not need more chaos. We need less of it—so no independence.

Thanks to the UK Supreme Court, parliamentary democracy has prevailed today. When the Prime Minister speaks at the United Nations this evening, he will not be speaking for our country. His unlawful actions have diminished him—if that was at all possible—and humiliated our country once again. The Prime Minister should resign; he is not a fit and proper person, and no person in this chamber, including the Conservatives, should support him.

I agree with the First Minister that we need to bring this chaos to an end. The Prime Minister must resign, we need to stop no deal, we need to have a general election and, most of all, we need to stop Brexit.

**The First Minister:** I agree with all of that, perhaps with the exception of Willie Rennie's first sentence. I obviously do not want chaos, but I want Scotland to be a normal independent country

so that we can avoid the chaos that has been imposed upon us right now.

On the more substantive point that Willie Rennie made, I agree that it is time—this situation cannot continue. There is a Government—if we can still call it that—at Westminster that has no majority; a Government that has been found to have acted unlawfully; a Government that is doing nothing, even on Brexit, and certainly nothing apart from Brexit. The governance of the UK as far as Westminster is concerned has ground to a halt. I certainly am of the view that, as soon as the risk of a no-deal Brexit at the end of October can be averted, we must have a general election. If what Willie Rennie said was an indication that the Liberal Democrats will support that, I warmly welcome it.

I will support anything that puts an end to Brexit. I will support revocation of article 50, a people's vote or anything that allows Brexit to be stopped and the democratic wishes of the people of Scotland to be honoured. Ultimately, however—and this is the point on which Willie Rennie and I do not yet agree, although I live in hope—the only way to make sure that our democratic wishes in this Parliament and in this country are always respected is to make sure that we are independent and in charge of our own future.

**Bruce Crawford (Stirling) (SNP):** The Prime Minister has been found by the Supreme Court to have acted unlawfully in the advice that he gave to the Queen. Let us just think about that for a moment. Does the First Minister agree that Johnson has been stripped clean of credibility and, if he had a shred of dignity, he would have resigned already? It appears that Boris Johnson is not considering resigning or even apologising, despite that monumental and historic decision. If that is the case, does the First Minister agree that Opposition parties should now move for a vote of no confidence in this law-breaking Prime Minister as soon as a no-deal Brexit has been prevented? No one can trust a word that the Prime Minister utters ever again.

**The First Minister:** I hope that all members of this Parliament would agree with that. I know that it is the stuff of politics that resignations are called for regularly and for political reasons—that is part and parcel of the political process. However, this issue today goes beyond that. This is not just about politics; it is about respect for the rules of democracy and for the rule of law. Bruce Crawford is right that, if the current Prime Minister had any honour and dignity, he would have tendered his resignation already today.

However, instead of doing that, we have heard clear evidence from him that—even now—he has not begun to learn the lessons. His Government argued before the Supreme Court that the

prorogation of Parliament had nothing to do with Brexit and was all to do with preparing for a Queen's speech, yet, in his first comment after the ruling, he accused those who brought the cases of trying to frustrate Brexit. It can be one thing or the other, but it cannot be both. In today's statement, Boris Johnson compounds the arrogance that he showed in giving unlawful advice to the Queen on prorogation.

I believe that it is time to get the UK Government out of office. That will mean the Opposition coming together behind a vote of confidence. It is important that we continue to take all necessary action to ensure that an election cannot be used to push us off the no-deal cliff edge at the end of October. However, as soon as that is done, it is time to have an election and get the Government out.

**Adam Tomkins (Glasgow) (Con):** Does the First Minister agree that the core principle on which today's Supreme Court judgment is based is that Governments are accountable to Parliaments and not the other way around? Does she agree that that principle applies to all Governments and all Parliaments in the United Kingdom?

**The First Minister:** Yes, I do.

**Jenny Gilruth (Mid Fife and Glenrothes) (SNP):** The Tory Government has been found by the highest court in the land to have acted unlawfully in shutting down Parliament at a time of national crisis in an attempt to prevent Parliament holding Government to account. Does the First Minister agree that the members of Parliament who supported such action, including the 12 Tory MPs in Scotland, put their careers before their constituents and should face the judgment of voters at the ballot box sooner rather than later?

**The First Minister:** It should not be lost here that all the Scottish Conservative MPs, who were elected from constituencies that rejected Brexit in the referendum and do not want Brexit now—they certainly do not want a no-deal Brexit—have gone along with the tactics and strategy of the Prime Minister from the moment that he was elected. I think that that reflects extremely badly on them, but it is not my judgment of them that will count; rather, it will be the judgment of the electorate that counts. When the time comes—I hope that it will be sooner rather than later—I think that those Tory MPs will face a pretty severe judgment.

**Claire Baker (Mid Scotland and Fife) (Lab):** In interviews today, Boris Johnson has shown that he is prepared to act unlawfully not only once but twice, because he plans to ignore the Hilary Benn act. That is expected to lead to parts of Government and the civil service going on strike, in effect, which would be astonishing. What advice has the First Minister received on the role of

Scottish civil servants and the impact on intergovernmental business if those circumstances come to pass?

**The First Minister:** The conduct of the UK Government in its attempts to prorogue Parliament has an impact on the operation of the Scottish civil service and the Scottish Government. It impacts on our ability to get co-operation on the normal business of government and to plan effectively for a no-deal Brexit.

Any further attempts to circumvent or break the law will continue to have such an impact, which is severe in terms of the practical workings of government and even more severe in terms of the fundamental values, principles and rules of our democracy. It cannot be allowed to be the case that the Benn act is not honoured and adhered to, and whatever MPs have to do to ensure that it is adhered to should be their priority when they gather again in the House of Commons tomorrow.

**Annabelle Ewing (Cowdenbeath) (SNP):** We hear reports that Downing Street is “processing the verdict”. Will the First Minister—Scotland’s First Minister—call on Downing Street and the UK Government to accept the judgment in full and not impugn the independence of the judiciary, as they did following the 11 September ruling of the inner house of the Court of Session?

**The First Minister:** The comments that were attributed to Downing Street sources after the inner house of the Court of Session issued its judgment a couple of weeks ago were disgraceful. I hope that we do not hear anything of that nature again from any party or Parliament in the UK, and certainly not from the UK Government. I have heard comments today from the Prime Minister and others that they respect the independence of the judiciary, but it is important that they do not simply pay lip service to that and that their actions demonstrate it. We can all scrutinise that in the days that follow.

I know more than many, if not more than most, in the Parliament about the accountability of Government to Parliament—Adam Tomkins made a point about that—and the accountability of Government to the courts. That is often uncomfortable territory for Governments, but if we compromise on that ground, our very democracy is at stake. It is vital that all of us are prepared to adhere in substance, not just through lip service, to those fundamental underpinning values of the democracy that we all cherish so highly, no matter how difficult that might be for us on particular issues from time to time.

**Donald Cameron (Highlands and Islands) (Con):** On a similar point, in the wake of the judgment, various commentators and others have, regrettably, already begun promoting the idea of

the politicisation of the judiciary in terms of judicial appointments. Will the First Minister reaffirm the independence and impartiality of the judiciary in Scotland in relation to their appointments as a fundamental principle of our constitution?

**The First Minister:** Yes, I will—unequivocally and unreservedly. I appreciate the question that has been asked and the spirit—I hope—in which it has been asked. If there is anything broken about the UK’s unwritten constitution right now—my view is that there is lots broken about it—it is not the independence of the judiciary, the way in which our judges are appointed, or the way in which our judges go about their business. I would argue that that is one of the aspects of the constitution that have worked effectively over recent weeks and months.

It is important for all of us to respect the judiciary, and that means not calling judges out as enemies of the people when they make judgments that we do not agree with, as some newspapers have done. It also involves not lauding them as heroes when they make judgments that we agree with. Judges are there to do a job independently and to apply the law without fear or favour. Politicians will agree with some judgments and disagree with others, but it is important that we respect the principle of independence. That is fundamental to our democracy and its operation, and any of us would depart from that at our peril.

**Stewart Stevenson (Banffshire and Buchan Coast) (SNP):** Earlier, Jackson Carlaw said that our Westminster Parliament will determine what comes next. Is that correct, in light of paragraph 60 of the judgment, which refers to the need to consult the Scottish Parliament and the Welsh Assembly? Would any decisions that have been made without the agreement of all the jurisdictions in these islands be invalid, as the judgment has shown previous judgments to be invalid?

**The First Minister:** Stewart Stevenson raises a valid and very important point. Obviously, in strict terms, what came next was not simply a matter for the Westminster Government; actually, it was for the Speaker of the House of Commons to decide that Parliament should gather again tomorrow, and I am pleased that he has done so.

I recommend to all members that they read paragraph 60 of the judgment, which talks about the consultations that are required with the Scottish Parliament and the Welsh Assembly. I hope that, in any steps that the Westminster Government now takes, the principle of consulting the Scottish Parliament and the Welsh Assembly is respected in a way that it has not always been previously. Given the terms and strength of the judgment today, I very much hope that the UK Government will take more care over how it



arrives at such decisions in the future than it has done in the past.

**James Kelly (Glasgow) (Lab):** Boris Johnson should resign as Prime Minister. His position is untenable, and he has treated the public, the courts and Parliament with utter contempt. Does the First Minister agree that we should send out a search party for the Secretary of State for Scotland, Alister Jack, who has been posted missing since he took office and is nothing more than a puppet for the lawless activities of the Johnson Administration?

**The First Minister:** That is a very fair point, which is evidenced by the fact that I had almost forgotten about him. I thank James Kelly for reminding me about the Secretary of State for Scotland.

In all seriousness, the question goes back to the point that Patrick Harvie made. This is the Prime Minister's responsibility, but all ministers who sit around the Cabinet table are, of course, part of the Government and part of the decision-making process. That is what Opposition members would say about Scottish Government decisions—and rightly so. It is important that ministers are held to account and that they are not allowed to simply disappear. I am sure that we will hear at length from the Secretary of State for Scotland before the end of today and that we will all benefit greatly from that.

**Clare Adamson (Motherwell and Wishaw) (SNP):** Delivering the Supreme Court's conclusion on prorogation this morning, its President, Lady Hale, said:

"The effect on the fundamentals of our democracy was extreme."

Is that view shared by the First Minister?

**The First Minister:** Yes. The effect of the decision that the Prime Minister took was to end all parliamentary scrutiny. One of the most powerful parts of a very powerful judgment was the explanation of the differences between proroguing Parliament and Parliament going into recess. Prorogation effectively ends all the work of Parliament. That was the context in which the word "extreme" was used.

The judgment is set out very bluntly, not politically but in terms of the law, how it is applied and the effects and implications of the judgment. It is the nature of the circumstances in which the Prime Minister has been found to have acted unlawfully, including the extreme implications of what he did, that makes his position so untenable now.

**The Presiding Officer:** That concludes our statement on responding to the Supreme Court's judgment on prorogation.

## Common Frameworks

**The Deputy Presiding Officer (Christine Grahame):** I am sorry, but I must call members to business. We have—quite rightly—eaten into some 10 minutes of the time for this afternoon's debate, so we must move on.

The next item of business is a Finance and Constitution Committee debate on motion SM5-18951, in the name of Bruce Crawford, on the committee's report on common frameworks. I invite members who wish to speak to press their request-to-speak buttons now, and I call Bruce Crawford to speak to and move the motion.

15:01

**Bruce Crawford (Stirling) (SNP):** I begin by sincerely thanking my colleagues on the Finance and Constitution Committee for the significant work undertaken to develop this unanimous report. On behalf of the committee, I also thank the clerks, in particular Jane Williams, for all their fantastic work in supporting the committee to come to its conclusions.

Last October, I had the pleasure—at least I think that that is the right word—of making the first ever Finance and Constitution Committee announcement to the chamber, when I explained to members the committee's work on the important matter of common frameworks. Is it not therefore fantastic that all the political journalists will be tuning in to this debate?

Common frameworks arise when the United Kingdom and devolved Governments agree to establish, post-Brexit—if indeed that still happens—common approaches across the UK in policy areas such as justice, the environment, health, agriculture and fisheries, which are currently within the competence of the European Union.

Since my announcement, the committee has discussed agreement making with representatives from different tiers of government across Europe and the European Commission as well as with stakeholders from across the UK. All of that activity helped to inform our report on common frameworks, which was published on 25 March. I thank all those with whom we met for so generously giving of their time and expertise.

In its fourth quarterly report in July this year, the UK Government confirmed that there are 78 policy areas, including public procurement and energy efficiency, in which non-legislative common frameworks such as memorandums or concordats may be necessary to deliver common rules or ways of working. Additionally, there are 21 policy areas, including agricultural support and food

labelling, in which legislation may be needed, in whole or in part, alongside a non-legislative framework agreement. Finally, there are four framework areas in which competence is currently disputed between the UK and the devolved Governments, with state aid being one of those.

To date, however, only one outline common framework has been published, in the area of hazardous substances. It came with the caveat that it is

“a suggested outline for an initial UK-wide, or GB, framework agreement in a particular policy area.”

It is somewhat frustrating that more than a year after the committee began its work, we have yet to see what a final common framework will look like. On the upside, at least that means that the recommendations in our report remain as relevant today as when they were published, six months ago.

As the cabinet secretary stated to us, common frameworks are not required for any specific exit day; they remain discrete long-term arrangements that are designed to be put in place post-Brexit. It would be helpful, nevertheless, if, in responding to the debate, the cabinet secretary could update us on the timescales to which the joint ministerial committee on European Union negotiations is working in order to finalise the frameworks.

I turn to what the frameworks will do. As the joint ministerial committee explained, they are there to enable the proper functioning of a UK internal market, a concept that we were not previously required to address while remaining in the EU. They are also there to ensure that the UK can negotiate, enter into and implement new trade agreements and international treaties. They will also help in the area of common resources and will provide access to justice in cross-border areas.

It is expected that a framework will set out a common UK or GB approach, as well as how it will operate and be governed on the ground. It could consist of minimum or maximum standards, it could involve harmonisation, it could place limits on action or it could provide for areas of mutual recognition. The JMC(EN) confirmed that common frameworks will respect the devolution settlements and will maintain, as a minimum, the equivalent flexibility for tailoring policies as is currently the case. From that description, I think it fair to say that common frameworks can be used for many different reasons, that they will serve a range of purposes and that they might contain a range of information and—potentially—different approaches.

That complexity, combined with the fact that common frameworks are subject to intergovernmental negotiations, will inevitably

require confidentiality in some areas, and that poses challenges for parliamentary scrutiny. Parliamentary scrutiny matters, because it enables the public and stakeholders to have a say about the development of frameworks, and it helps to aid an understanding of the compromises that Governments might have to make in order to achieve agreement. It also provides a key test as to whether what Governments think a framework will achieve is matched by the lived experience of those who legislate, or indeed by that of those whose work is affected in the policy area concerned.

In our report, we set out a comprehensive set of recommendations on all aspects of the scrutiny of common frameworks. As our motion recognises, we see formal parliamentary scrutiny as crucial throughout the process, including in development, agreement and implementation, and for both legislative and non-legislative frameworks. We welcome the Scottish Government’s recognition of that. It now falls to officials from the Scottish Government and the Scottish Parliament to develop what the scrutiny process will look like in practice, and the committee looks forward to considering their proposals in the near future. I am heartened that, in the meantime, Scottish Parliament committees are continuing to monitor framework developments in their policy areas.

One of the principal challenges facing all of us across the Parliament lies in the increasing complexity of devolution following any Brexit from the EU. In particular, that concerns the extent to which the constraints on devolved competences arising from the UK’s membership of the EU will differ following any Brexit—and, if so, how such constraints will be agreed—as well as the role for this Parliament in that process.

Common frameworks that consist of voluntary arrangements between the Scottish and UK Governments may nevertheless constrain this Parliament’s powers. There may be good reason for doing that, but it is essential that that is done transparently and is not a solely Executive-driven process.

That complexity also means that, frankly, it could be more difficult to identify the extent of constraints on the competences of the Scottish Parliament and where they arise from—for example, whether they arise from common frameworks or from trade deals.

Responding to the committee’s concerns in that area, the cabinet secretary identified work by the JMC to help

“surface and map these types of interdependencies.”

I would welcome an update on that work, as well as guidance about whether the Scottish Government plans to provide a central, publicly

available site where non-legislative and legislative agreements that interact between devolved and reserved areas can be found.

That complexity also poses a challenge in terms of committee scrutiny. No longer will policy development be solely for the Scottish Government. Instead, it could be the result of frameworks or trade agreements that are agreed elsewhere, such as by the UK Government or indeed between Governments. Following responses in relation to that challenge from Scottish Parliament committees and our counterpart committees in Westminster and the Welsh Assembly, the committee wrote to the UK and Scottish Governments setting out a range of principles to provide for a more co-ordinated approach to scrutiny. Those principles include providing sufficient time for scrutiny, opportunities for public and stakeholder engagement and the ability to influence early on the development of common frameworks. I welcome the cabinet secretary's positive response to our proposals, and we will soon see a process for delivering such scrutiny arising from the work that is under way.

Until now, I have spoken about a consensual common framework process. However, as the cabinet secretary said to us, one of the challenges for Governments working together is that the more that is written down, the less likely Governments are to get agreement. As we heard in Brussels, a robust and trusted intergovernmental relations process is key to avoiding disputes.

In our report, we note that the UK approach to intergovernmental relations is currently under review by the joint ministerial committee plenary. However, that review has been on-going since March 2018, with no final completion date. Although a set of principles has been agreed recently—such as building trust, maintaining positive and constructive relations and resolving disputes according to a clear and agreed process—a greater sense of urgency to complete the review is needed. I would welcome an update from the cabinet secretary on how much trust has been established, as well as his views on whether he considers that the intergovernmental review requires to be completed before common frameworks can be finalised.

Time has not allowed me to do justice to all the recommendations in our report, but I know that others will highlight some of the other report themes in their speeches.

Our work does not end with this report. Our next area of focus will be the internal market and what that means for Scotland.

I again thank my colleagues for their hard work during the common frameworks inquiry, and I look

forward to seeing our deliberations appearing in the national media tomorrow.

I move,

That the Parliament notes the conclusions and recommendations contained in the Finance and Constitution Committee's 4th Report, 2019 (Session 5), Report on Common Frameworks (SP Paper 498), and in particular its recommendations that the Parliament has a formal role in relation to the process for developing, agreeing and implementing both legislative and non-legislative common frameworks.

15:13

**The Cabinet Secretary for Government Business and Constitutional Relations**

**(Michael Russell):** I cannot help but agree with Bruce Crawford's point, because I cannot help but notice that there are twice as many people in the chamber as there are in the public gallery—and there are only 25 of us in the chamber. The debate might not be setting the heather on fire, but that does not mean that it is not important—especially today. A Scottish Parliament committee has given a comprehensive and useful report on the implications of EU exit for devolution, and has undertaken helpful scrutiny of post-Brexit work.

Of course, the best means of ensuring continued application of those principles, in a UK setting, is for Scotland and the whole UK to remain in the EU. I agree with the First Minister, who said earlier that Scotland's interests would be best served by our being an independent EU member state. In that context, frameworks are not our choice, but they are an unfortunate necessity, and are one of the many constitutional consequences of Brexit, many of which are difficult to cope with. What we have here is something that we have been able to build slowly, piece by piece.

The Scottish Government remains wholly opposed to a no-deal exit, but we must prepare Scotland for all eventualities. In that spirit, we also need to prepare Scotland for any type of deal that takes place—even though we do not want it and will not support it—so we need to have working relationships as a result of that deal.

The principles that the JMC(EN) published underpin the frameworks. The frameworks are not complete. On the point that Bruce Crawford made in the early part of his speech, frameworks are not the whole deal or the real deal; they are frameworks, on which we hang other things that will, in the end, produce a complete picture of how we will work together in certain areas.

All such frameworks must be agreed, not imposed, and they must recognise and respect devolution. That is a crucial issue for the Scottish Government. We will agree to frameworks only when they are in Scotland's interests, as is normal

for any country. We will agree to a thing only if we feel that it is in our interests.

There are quarterly reports from the UK Government on frameworks, as part of the agreement on building the frameworks.

**Adam Tomkins (Glasgow) (Con):** If Scotland were ever to be an independent member state of the European Union, it would, under the rules of qualified majority voting, have to accept common frameworks—or the EU equivalent of common frameworks—even if it had not voted for them in the Council of Ministers. Does the cabinet secretary think that there is a place for some sort of qualified majority voting, as has been suggested by the Welsh Assembly Government, in the development of common frameworks in the United Kingdom after we leave the European Union?

**Michael Russell:** Adam Tomkins has made an interesting point, which I take in the spirit in which it was made. It is essential that we complete the intergovernmental review. It is possible that changes that come about as a result of the intergovernmental review will create a landscape of which that suggestion will be a part. However, as the UK Government has not yet moved an inch on the intergovernmental review, I think it unlikely that the UK Government, let alone anyone else, would accede to such a thing. I will come back to the point.

The quarterly reports in relation to section 12 of the European Union (Withdrawal) Act 2018 have so far indicated that there is no need for legislation to impose frameworks. That is welcome; it is also essential, because we have made it clear at all times that if there is any attempt to use section 12 powers, we will cease to co-operate on frameworks. We are determined to ensure that new legislation is introduced in the Scottish Parliament to ensure that our law continues to be aligned with EU law, whatever the frameworks are, in order to maintain current standards and protections in key areas. That is a crucial issue, to which I will come back.

Mr Tomkins referred to the machinery of the intergovernmental relationship, which is a key point. I want to make five contextual points about frameworks before I go into more detail.

First, the current intergovernmental relationship is not fit for purpose. Everybody who has studied and understands the matter, whether we are talking about the work of the House of Commons Public Administration and Constitutional Affairs Committee, the interparliamentary forum on Brexit, or academic studies, has said that the current situation does not work. A different situation is needed, which is why the intergovernmental review was accepted by all parts of the JMC structure 18 months ago.

Since then, the Welsh have published detailed proposals. We have proposals to make, and we will make them. The UK Government has, however, brought nothing to the table. There was an agreement on principles at the end of June, as a result of the meeting of the JMC in Manchester, which was the last meeting that David Lidington chaired, but those principles had been agreed a long time ago. We need some progress.

I do not believe that we can establish a secure basis for frameworks unless the intergovernmental review has been completed and there is agreement on what the structure should be. Bruce Crawford made that point. That also applies to any second stage of EU negotiations: it is impossible to envisage a second stage of EU negotiations in which there have not been substantial changes in the relationships between the nations of these islands. As I have said in the past—I remember Carwyn Jones saying it, and Mark Drakeford has indicated the same thing—Brexit has been too heavy for devolution to bear.

My second contextual point is about the UK internal market—a phrase that we will hear in the debate. We welcome the committee's unanimous view that the creation of a UK internal market cannot be a pretext for adjusting devolution without the consent of the Scottish Parliament. It is important to recognise that there is no definition of "UK internal market", and that the UK Government has not provided, and cannot provide, such a definition.

Thirdly, the shape of frameworks depends on a range of factors—not least of which is future UK trade deals and the future relationship with the EU. We have repeatedly made the case for a guaranteed role for the Scottish Government and Parliament in future trade deals.

Fourthly, it is essential that any frameworks be temporary, that they preserve decision making for the Scottish ministers and that they respect devolution.

My final contextual point is about the principles that are established and the expectation of substantial EU alignment—the level playing field. If there is no level playing field, the frameworks will be at severe risk, because it has been anticipated and planned for that there should continue to be a level playing field. I will write to the UK Government about that very shortly. I know that others share my concerns on that.

I turn to the question of where we are going. The process of agreeing frameworks must be transparent and inclusive, and the Scottish Parliament must have the opportunity to consider and agree all frameworks. Many frameworks will have a mixture of legislation—primary and/or secondary—and non-statutory agreements, so the

scrutiny procedures need to reflect that. Since the committee reported in March, we have consulted extensively, and Scottish Government officials have worked constructively with parliamentary clerks to consider how scrutiny should take place. We are now in discussion with other Administrations and legislators. To answer Mr Crawford's question about timescale, we aim to have an agreed process in place before the end of the year, as the first frameworks are likely to come forward for scrutiny at that time.

In the meantime, we have greater understanding of the scope of frameworks. We are considering how they will be placed in the public domain and what discussion we should have about them. We accept that stakeholders should have a central role in the design and implementation of the final stage of the frameworks, and that they should be able to test and refine them. I will continue to work with Scottish Parliament committees to facilitate meaningful engagement on the issue. That will, of course, include the Finance and Constitution Committee, which has been constructive. Last year, the committee held an excellent event at the Royal Society of Edinburgh, and it is important that such an event happens again.

On the next steps, we will continue to develop the frameworks, but the process is new and unprecedented and there are competing priorities. There is huge uncertainty surrounding Brexit—today of all days, we know that. I say frankly that, because of the pressures of Brexit, everything in Whitehall is in paralysis. We will continue to try to develop the frameworks because they must be available, should they be needed. I would prefer that they were not needed and that Brexit did not happen, but if they are needed, they will be there.

We must continue to address the issues of review, scrutiny and management. I note Mr Crawford's important remarks about publication, which I will bear in mind.

Today, members have an opportunity to influence the process by giving their views. I will welcome comments and contributions from across the chamber. We will take note of them and feed them into the dialogue that we are having with the committees.

I also welcome the interest from across Scotland. In a welcome innovation, we are hearing today the voices of others on what the frameworks should be. For example, the Royal Society of Edinburgh and the Law Society of Scotland have given their opinions. I do not agree with everything that they have said, but I welcome their input.

We have an opportunity to talk about an issue that could be of importance. I stress my hope that, in the end, it will not be important—but it could be.

This is the one area of Brexit negotiations in which we have been able to move forward constructively. That is because we have worked on the basis that there will be no imposition. As yet, the UK Government has not pulled rank, because it knows that it needs the frameworks to be put in place by negotiation. We have made some progress and can probably make more, provided that that spirit continues.

15:22

**Murdo Fraser (Mid Scotland and Fife) (Con):** I thank the Finance and Constitution Committee convener, Bruce Crawford, not just for his opening exposition of the background of post-Brexit common frameworks but for his stewardship of the committee and his constant striving to find consensus on what can on occasion be a contentious issue. I also thank my fellow committee members for their joint working in a complex area of law and public policy.

As we have heard, the UK's departure from the EU will require the construction of common frameworks to enable the functioning of the UK internal market—or, as I might call it, the domestic market. Of the 111 powers that are returning to the UK and which fall within the devolved competence of the Scottish Parliament, a large number will be devolved straight to Holyrood. Another chunk will be subject to non-legislative common frameworks, which will need to be agreed. In 24 policy areas, there will be a need for legislative common frameworks. Those will be mostly in the fields of environmental protection and agriculture and food production.

There is no dispute in principle as to the need for those common frameworks. For example, although the law in an area such as food labelling might properly be devolved, it is generally accepted that, for the good operation of the UK domestic market, it makes sense to have single food-labelling regulations that apply across the UK, thus enabling Scottish food producers to sell their goods freely into all parts of the UK without having to worry about separate food labels. Of course, the opposite applies in relation to food producers from other parts of the UK looking to sell here.

Inevitably, that means some sharing of power—or sovereignty, if you will—whereby at Holyrood we will voluntarily agree to share powers in certain areas, for the greater good. Of course, there is nothing unusual in that concept. It is worth remembering—this is an important point—that the powers that we are talking about have never been exercised here previously. They were all previously held at an EU level, where it was understood that the EU would set rules for the better operation of the EU internal market. By

agreeing to common frameworks, therefore, we are not seeing any diminution of powers that are currently held by Holyrood but, rather, a voluntary transfer of powers that would otherwise be coming here.

Having accepted the necessity for common frameworks, the key issue that the committee had to address was how those might be agreed. It was the clear conclusion of the committee, agreed unanimously, that the process for agreeing common frameworks and their content must be arrived at through agreement and not imposed. Indeed, the signs so far are that the work that is being done on common frameworks between officials in the UK Government and officials in the devolved institutions has been on the basis of negotiation and agreement between Governments, without dispute.

That said, it is clear that the opportunity for future dispute might well arise. A number of different players are involved. There is the UK Government, which has a dual role in representing both the wider UK interest and the specific interests of England. There is the Scottish Government, representing the interests of Scotland falling under the devolved competence, and the Welsh Assembly Government, which has a similar position in Wales. There is the Government of Northern Ireland, albeit that the Assembly there is currently in abeyance.

Clearly, all parties want these common frameworks to be agreed on a consensual basis. While there is no indication so far that that will not be the case, we have to be alive to the possibility that agreement will not be able to be reached. I hope that all Governments will be prepared to act reasonably and avoid that. However, in the event of a dispute, how could any impasse be resolved? Would it be reasonable to give the devolved Administrations an effective right of veto over rules that would affect the whole United Kingdom? Would that be seen as the tail wagging the dog?

Bruce Crawford referred to the review of intergovernmental machinery. It is understood by everyone—not just here at Holyrood, but by committees at Westminster—that what we currently have is not fit for purpose and needs to be improved. Within the EU, such disputes are effectively resolved through the Council of Ministers. In some areas, unanimous voting is required, while other areas operate a system of qualified majority voting. I have written in the past about how a UK council of ministers might operate, with the UK Government and devolved Administrations being represented. The problem with that model at present is that there is no separate voice for England distinct from that of the UK Government. If we were to have an effective

council of ministers with any system of qualified majority voting, that would have to be looked at.

Those are, effectively, arguments for the future, although I believe that the UK's departure from the EU will require us to look at the lacunas that exist in the British constitution sooner rather than later. In the meantime, I remain firmly of the view that agreeing common frameworks by consensus should be the way forward.

The committee recognised that there is scope for policy divergence across the UK when we are dealing with devolved responsibilities. We need to be careful that policy divergence does not create a barrier to trade or competition. If we believe in the importance of the UK domestic market—a market that is worth three times more to Scottish producers than is the EU single market—we should not want to see that disrupted.

Post the return of these powers from the EU, I believe that all Administrations in the UK need to act responsibly when considering policy changes. That is because the starting point will be that there is no policy divergence—we are all inheriting the same rules from the EU and it is only policy changes from the current status quo that are likely to present a challenge.

**John Mason (Glasgow Shettleston) (SNP):** Does the member accept that there is already some policy divergence? Under the present system, there is a common framework that we have to agree to, but we can go in slightly different ways.

**Murdo Fraser:** That is a perfectly fair point. Here, we are dealing with powers that are currently held at the EU level and it is policy divergence in those powers that needs to concern us, because they are the ones that might affect the operation of the UK domestic market post-Brexit. That is what the issue of common frameworks seeks to address.

I will give an example from the area of environmental protection of food standards, in which there might be a political demand from various Administrations to go down a different route from the one that we currently have. We would have to be very cautious about the impact that that would have on the UK domestic market, because how that market is defined will be essential to the process. It was encouraging to hear that the UK Government has on-going work in that area. However, the committee agreed that it is essential that it respects the devolution settlement.

The committee was encouraged to hear about the on-going work that is being done to create common frameworks, especially at an official level. Each of the 24 areas that were under discussion has been subject to at least one stand-alone

discussion session and seven areas have benefited from approximately six sessions each. In those seven areas, an outline template agreement, which will cover a range of governance issues, has been proposed. Therefore good progress is being made, but it is clear that a lot more work needs to be done.

That brings me to my final point, which is the question of parliamentary oversight of such agreements. The committee was strongly of the view that the process for agreeing common frameworks is not solely a matter for Governments; they must be subject to parliamentary scrutiny and must be inclusive. Therefore, the Scottish Parliament must have the opportunity to consider the approach to common frameworks that is currently being negotiated at governmental level. Relevant stakeholders should also have the opportunity to provide input.

Legislative common frameworks will be subject to parliamentary scrutiny through the usual legislative procedure. However, a different approach will be required from that for non-legislative common frameworks. The cabinet secretary has recognised that the Scottish Parliament's role in relation to those is absolutely essential and that it should have the opportunity to consider and agree both legislative and non-legislative arrangements for such frameworks; I was pleased to hear him repeat that pledge this afternoon. It is very welcome that all parties have therefore agreed that the Parliament should have a formal role in the process of developing, agreeing and implementing non-legislative common frameworks.

As I said at the start of my speech, these are difficult and sometimes technical areas, in which we are dealing with concepts of a nature that it has not been necessary for us to address over the decades in which the UK has been a member of the EU. It is encouraging that, thus far, we have seen a largely consensual approach both within the Parliament and from the Scottish Government. I sincerely hope that that persists, as the continued smooth operation of the UK domestic market will be essential to Scottish business in a post-Brexit environment.

15:32

**Alex Rowley (Mid Scotland and Fife) (Lab):** In opening the debate on behalf of the Scottish Labour Party, I will set out its position on the necessary collaborative approach to the process for developing, agreeing and implementing both legislative and non-legislative common frameworks.

Scottish Labour believes that the work done so far on the development of common frameworks is

welcome but that the lack of recent progress is worrying. It strongly agrees with the committee report's view that common frameworks must be arrived at through agreement and not imposed, but it has yet to receive assurances that Boris Johnson's Government will approach the development of such frameworks in that way. That is particularly worrying given the scope that the UK Parliament's European Union (Withdrawal) Bill gives the UK Government to limit the transfer of devolved powers from the EU to Holyrood—and also given Mr Johnson's recent attempts to undermine democracy.

The Royal Society of Edinburgh has stated:

"The UK Government has identified 160 policy areas of EU law that intersect with devolved competences."

It went on to say:

"Reports, including those from the House of Commons Public Administration and Constitutional Affairs Committee, indicate that there is a lack of coherence and coordination at UK Government level in relation to how Common Frameworks should be established, operated and monitored. The Public Administration and Constitutional Affairs Committee has remarked that the current mechanisms for intergovernmental relations in the UK are not fit for purpose."

It is clear that a more robust and transparent mechanism to facilitate intergovernmental working and progress on common frameworks, in a way that respects the UK's devolution settlements, is required. Scottish Labour therefore supports the committee's call for the current review of intergovernmental relations to be undertaken urgently.

Parliament and stakeholders must have a role in contributing to and scrutinising common frameworks. Particularly given the possibility that some frameworks will be created without legislation, we agree that Parliament should have a formal role in their development and implementation. The UK and devolved Governments already have experience of managing policy divergence within the requirements of the EU internal market, underpinned by principles such as subsidiarity and proportionality.

The Brexit and environment academics provided the committee with a range of options for how greater or lesser policy flexibility could be provided to enable individual jurisdictions to adopt their own policies while still supporting a common UK approach to its internal market. Those options included exclusive power on common positions resting with UK authorities, which would represent a rolling back of devolution. That is not the way to go. Labour wants to see more devolution, not less.

Other options included a legal arrangement whereby the devolved authorities would contribute to, and possibly even have a veto over, the

common position but would be obliged to implement it once it was in place, which is similar to the UK's current relationship with the European Union. A political agreement could be reached to follow the common position, meaning that the legal competences of the devolved authorities might not have to be restricted. The common position could be merely a recommendation, with no political or legal fetters on the devolved authorities.

The Parliament requires clarification from the Scottish Government on which of those approaches it is adopting and where it is willing to diverge from the UK Government to ensure that EU principles further to the environmental principles are enshrined in Scottish law. Scottish Environment LINK points out that 80 per cent of our environmental protections in the UK stem from EU law and institutions. It fears that the loss of common EU standards as a result of the UK exit from the EU could compromise the transition of Scotland and the UK to a low-carbon sustainable society, through a race to the bottom on environmental standards.

A collaborative joint approach that respects the devolution settlement in the UK is needed to ensure that environmental standards are protected and enhanced. Ambitious common environmental standards would ensure that there is no drive towards environmentally damaging competitive deregulation in any part of the United Kingdom. Labour believes that, whether in relation to the environment or any other policy area, frameworks, where required, should be based on existing EU legislation, which should act as a common baseline on top of which individual countries can pursue more ambitious standards if they wish.

In "Scotland's Role in the Development of Future UK Trade Arrangements: A Discussion Paper", the Scottish Government states that the UK analysis of the 111 policy areas that may be subject to common frameworks

"was compiled without consulting the Scottish Government and does not reflect an agreed position."

That is surely an unacceptable position for this Parliament. Despite commitments from the UK and Scottish Governments that there is a role for Parliament to scrutinise common frameworks, that has not yet been visible in the approach that has been adopted by the joint ministerial committee.

Legislative common frameworks will be subject to parliamentary scrutiny through the usual legislative procedures, which provide for greater transparency and stakeholder engagement.

**Michael Russell:** I mentioned in my remarks that there was considerable activity between the Scottish Government and parliamentary clerks about involving the Parliament in scrutiny. The member may have read the papers and minutes

from the JMC, but there has been action in that regard by the Scottish Government and the Scottish Parliament.

**Alex Rowley:** That is to be welcomed, and I hope that we will see more progress on it.

The committee concluded that

"Non-legislative approaches, however, do not provide an automatic right for Parliamentary consideration and amendment either during development or once agreed which could mean Parliament being presented with the equivalent of a 'fait accompli' with little scope to influence or test the compromises that have been made in order to secure agreement."

Given some of the powers that Scottish ministers sought to afford themselves through the UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill and now through the Referendums (Scotland) Bill, Parliament must be able to scrutinise the development and implementation of common frameworks.

The cabinet secretary stated that, in the event of the UK leaving the EU without a deal in place, it was unclear what the UK internal market would be. Scottish Labour, and I hope everyone in the Parliament, believes that the UK should in no circumstances leave the EU on a no-deal basis. I hope that that will be the outcome from Westminster in the coming days, and I look forward to our moving beyond this situation.

15:40

**Patrick Harvie (Glasgow) (Green):** I echo Bruce Crawford's thanks to everyone who contributed to the committee's work on the subject. It is worth noting that the context has changed somewhat since we began the work. When we began looking at the topic, the Brexit crisis had only reached about DEFCON 3, I think. Things have moved on somewhat, not least with today's news. However, they have moved on in a way that underscores the importance of some of the committee's conclusions, rather than making them in any way less relevant.

If the UK leaves the European Union, it is clear that common frameworks will be needed, but it is also clear—it is clearer now than ever before—that trust and goodwill are inadequate and cannot be relied on as the basis on which to arrive at those common frameworks. We will need clear, defined and accountable processes for developing, agreeing, monitoring and revising them. Let us remember that, in agreeing a common framework, we may reach consensus on day 1, but consensus, politics and circumstances can change, and the common frameworks themselves will also need to change over time.

In the debate, comparisons have been made with the Council of Ministers and the European



Commission of the European Union. However, it is important to remember that those bodies are intergovernmental bodies. The Council of Ministers has direct representation from member states and the Commission is comprised of people who are nominated by member states. The UK is not an intergovernmental body. The UK Government is not intergovernmental in the sense of representing in a fair and democratic manner the constituent parts of the UK. It continues with the delusion that the UK is a unitary state. It never was, but a great many people in Whitehall and Westminster seem to think that it is and behave accordingly.

For me, the simplest option in order to achieve common frameworks, if indeed Brexit does come to pass, is what we have now: devolution. As the committee heard, that has been done before. For example, a decade ago, we were debating marine spatial planning, which is a complex area with many different policy objectives, some of which are in tension with others. It also involves many different stakeholders and interest groups and a range of devolved and reserved competencies. We did not have the language of common frameworks—we did not use that jargon at the time—but, through discussing the policy objectives and legislating separately in the two Parliaments, there emerged what we could reasonably call a common framework. However, the degree of agreement that was reached would have been a lot less likely had the UK Government threatened to overrule and impose a solution if consensus was not reached. Consensus has to be meaningful, and it cannot be meaningful if one party is holding a big stick during the discussions.

I use marine spatial planning as an example because the debate that we are going to have has a great many environmental aspects. The same applies in relation to the implications of trade agreements. If trade agreements are reached that contain implications for, or impinge upon, the application of devolved responsibilities, it should absolutely be the right, requirement and responsibility of this Parliament and the Scottish Government to be deeply involved in the development and negotiation of mandates, the agreement of draft texts and the finalisation of an agreement before it is, ultimately, signed off.

If we were not talking about Brexit, we could be making progress on what we might call common frameworks in a huge number of areas—data privacy, for example—that cut across devolved and reserved competencies. We could be making progress on a great many other issues—but we are not, because of the energy that is being taken up by Brexit. Despite all the energy and focus that is being taken up by Brexit, here we are, more than six months after the first planned Brexit day, still at the point of trying to figure out a way

through the debate on common frameworks. We do not have a resolution to the fundamental questions that are involved, which are very similar to the questions that were raised during our debates about legislative consent. The principle of legislative consent has not been respected during this process. For consent to be meaningful, it has to be informed, freely given or withheld, revocable at any time, and—fundamentally—respected. Those same principles must also apply to the development and agreement of common frameworks.

Where consensus and agreement cannot be reached—Murdo Fraser asked about this—we will be making, in a democratically accountable way, a decision to accept the consequences of not having that agreement. Let us not kid ourselves—the internal market of the UK is not an absolute. We already regulate things such as alcohol sales differently, and we tax and register land and property transactions differently. There are differences in the way in which those matters are dealt with.

Fundamentally, if we are to remain in the UK, and if Brexit cannot—as it should be—be stopped, we will need a constitutional arrangement that rebalances power and prevents the UK from abusing its power and imposing its will. As long as it holds that power, fair negotiation cannot happen, and we will be less likely to achieve the agreement and consensus that many people argue are necessary.

15:47

**Willie Rennie (North East Fife) (LD):** Some may say that this debate is pointless. I hope that it is—if we stop Brexit, we will not have to have any of this.

However, I do not agree that the debate is pointless. Adam Tomkins is right that we need to reform our decision-making processes across the United Kingdom, so we need to have the debate. The abolition of Brexit might make it a slightly easier debate to have, in that we might have a bit longer to decide on that reform and make it better—I am sure that Adam Tomkins does not agree with that. However, we need to make a change.

I am pleased to support the recommendations in the report that common frameworks will be “required” and

“arrived at through agreement and not imposed”,

with

“robust ... intergovernmental relations (especially dispute resolution)”

in place.

Those are exactly the principles of a federal United Kingdom that I have been articulating for many years. People often attack us, saying that we have not got very far in 100 years. However, we turn to the report and find that more and more people support our ambitions for a federal United Kingdom. I note that Murdo Fraser is smiling—I know that he wants a federal United Kingdom as well.

**The Deputy Presiding Officer:** That is a call to arms if ever I heard one, Mr Fraser.

**Murdo Fraser:** Does Mr Rennie share my regret that, in all the years of the coalition Government, when the Liberal Democrats were right at the heart of the Administration and the position of Deputy Prime Minister was held by Mr Nick Clegg, his party did absolutely nothing to advance the cause of a federal UK?

**Willie Rennie:** Much as I would love to agree with Murdo Fraser, I have to tell him that the forces of conservatism got in our way. The Conservatives were desperate to keep the House of Lords and stop voting reform—and any other kind of reform. If only they had listened to Mr Fraser, we may have got a little bit further along the path.

The Royal Society of Edinburgh has made it clear that there is a constructive development of those ideas around federalism. People should take hope that a much more positive future is available, compared to the divisions of the current debate or simply returning to the Britain of the past.

Federalism is not just for Brexit. We need to make changes for the long term about how Britain makes decisions in areas of common interest, but I recognise that there is still a long way to go.

I will give an example that relates to the UK. I look back to the publication of the UK industrial strategy in 2017, which cut across devolved areas. I would have hoped that such a strategy would have been prepared and agreed between the Administrations in advance of its publication, rather than being imposed by the UK Government, but it was not. An industrial strategy that linked the UK's single market and its international trade with the skills and economic development roles of the devolved Governments would have been stronger, so that is a mark off for the UK.

On framework agreements, I think back to the passage of the Withdrawal from the European Union (Legal Continuity) (Scotland) Bill, which contained a section that was strongly focused on the future frameworks. Colleagues of mine, including Tavish Scott, lodged amendments to set up a federal structure for agreement. My colleagues were adamant that we needed to make those changes. We said that if all three other Administrations objected strongly to an approach

that the Scottish Government was taking, it should be harder for the Scottish ministers to get their plans through. Through that structure, we would be able to protect the workings of the UK single market against what would be, in effect, unilateral action by a single Administration. Our proposal, which represented a federal idea of co-operation, contrasted with the other proposals, which sought to give control of such matters entirely to UK ministers. Of course, the Scottish Government objected, saying, "It surely can't be right." It wanted any changes to be subject to agreement by the Scottish ministers.

When the Scottish Government talks about the involvement of the Scottish Government and its agreeing to things, as Mike Russell did earlier, I hear that as a veto. In areas of common interest, I do not think that we want some kind of veto to be applied. I would call our proposals a form of qualified majority voting. They would foster an atmosphere of co-operation.

There is a common set of standards and rules across the UK that enables businesses to expand across the UK without worrying that they have entered a separate jurisdiction. I have previously made the point that, to be successful, people in a federal system need to know that everyone has an eye on and a care for the success of the whole. That is where I must keep up the work on the arguments for a federal United Kingdom.

I repeat what I have said many times to SNP members. If they attack those who want to cut the UK off from the EU, and all the business and social opportunities that it offers, they should not be surprised when people such as me question their view that their plans to do the same to Scotland and the rest of the UK will not be as damaging. The UK Government might not want a federal UK, but nor does the SNP Government. We can have a different, better future for Scotland as part of a reformed United Kingdom. Such a future will be better for our prosperity and wellbeing. The committee's report and its recommendations make a strong case for that.

**The Deputy Presiding Officer:** We move to the open debate. Speeches should be of five minutes, unless individual members have had previous agreement from the Presiding Officer to have a longer period, thereby shortening the speeches of other members in their group. I hope that that is clear.

Mr Mason, you have six minutes; Alexander Burnett will have five minutes.

15:53

**John Mason (Glasgow Shettleston) (SNP):** I thank my colleague Gordon MacDonald, who gave me one of his minutes.

Although I joined the Finance and Constitution Committee after the report was written, I am happy to take part in the debate and make some comments about it.

It strikes me—this follows on quite well from Willie Rennie’s remarks—that a fundamental weakness of the UK is that there is no written constitution. Proper democracies such as Germany and the United States have an agreed framework that might not be perfect but which sets out in writing the relationship between central Government and the state Governments; between the Governments and their respective Parliaments; and between the different Parliaments. Although it would not be desirable to go to court on a regular basis—I wrote this speech before today’s events—at least that is always an option in the background. That might focus minds when negotiations are taking place. It also means that no single party can control or bully the others. Each party can go to an independent organisation if all else fails.

By contrast, the UK has no written constitution. Some might feel that that is a good thing and allows for flexibility and gradual evolution to take place. However, it results in a lack of clarity, and that is the position that we find ourselves in now.

I am sure that members will focus on different parts of the report, so I will just touch on a few that particularly struck me as a relative newcomer to the details of all this. In the introductory paragraphs of the report, reference is made to the Joint Ministerial Committee on EU Negotiations meeting of October 2017 and the resultant communiqué. Paragraph 5 states:

“frameworks will respect the devolution settlements and the democratic accountability of the devolved legislatures”.

Of course, the UK Government has changed since then, and I wonder how much we can depend on the statements that were made at that time. In particular, the communiqué said that

“the competence of the devolved institutions will not normally be adjusted without their consent”.

I wonder what “normally” means here. Could the current UK Government be considered to be acting normally? The communiqué also says that we have to

“maintain ... equivalent flexibility for tailoring policies ... as is afforded by current EU rules”.

I wonder how convinced we are by that. It also says that frameworks will

“lead to a significant increase in decision-making powers for the devolved administrations.”

Here we are, two years further down the line, and I wonder whether we have seen any evidence of that happening. The committee makes the point in paragraph 22 that

“both the process for agreeing common frameworks and the actual content must be arrived at through agreement and not imposed.”

Again, I am a bit sceptical as to whether that will be the case.

Paragraph 66 is also important. It refers to frameworks being developed “on an interim basis”, which could make a lot of sense, but the risk would be setting precedents that it could be difficult to unravel. It also mentions “pragmatic and practical arrangements” being required in the event of a no-deal Brexit. Again, I would be concerned that decisions could be railroaded through by a UK Government without adequate Scottish Government input and even a lack of Scottish Parliament scrutiny.

One of the final paragraphs is paragraph 189, in the conclusion of the report. It stresses that

“A robust and trusted process of intergovernmental relations ... is also vital to agreement making”,

which must include a process for dispute resolution. There seems to be broad agreement that the JMC process has not been working and needs to be improved if there are to be

“more effective intergovernmental and interparliamentary mechanisms to examine common frameworks and to deliver greater transparency.”

On Thursday, we are due to debate the Scottish national investment bank, so I was reading the Government’s 26 August 2019 response to the Economy, Energy and Fair Work Committee’s stage 1 report. In reference to state aid after Brexit, the Government response states that the Competition and Markets Authority will rule on that topic. Although the CMA may not be perfect and we will need to keep an eye on it, at least it gives a potential model of an independent body to rule on UK-wide issues.

That is a point that the Royal Society of Edinburgh took up in its briefing for today’s debate. It refers to the absence of a clear institutional body or arrangement that could facilitate development and oversight of common frameworks and it proposes the creation of an independent secretariat body. That would also be worth looking at.

Paragraph 190 of the Finance and Constitution Committee’s report also makes some interesting points, setting out that Parliaments are there to scrutinise Governments but other stakeholders need to be involved too. For both primary and secondary legislation, relatively clear procedures are in place, but it may be more difficult when it comes to non-legislative frameworks. If a deal is done by two Governments in a closed session, how does anyone scrutinise that? Such things have happened, for example in the case of the block grant adjustment, when the respective

ministers agreed to split the difference, but that is difficult if not impossible to scrutinise.

Scottish Environment LINK gave us a very helpful briefing, and I agree with a number of its points. Alex Rowley has already partly referred to this, but the briefing makes the point that nature and environmental challenges can cross borders and so cannot be tackled by one country on its own. We want environmental standards that can be protected and enhanced, not drawn down.

There is a lot of uncertainty around this topic. I commend the Finance and Constitution Committee for all its work on the report before I joined it and I will finish by quoting the RSE again when it says:

“Common frameworks should be no more intrusive than they need to be to serve their purpose when they overlap with devolved competences.”

15:59

**Alexander Burnett (Aberdeenshire West) (Con):** With the UK set to leave the European Union at the end of October, I am grateful that the Finance and Constitution Committee has the opportunity today to speak in the chamber about its conclusions and recommendations in its most recent report. I note that the Scottish Conservatives are the only party to support many new powers coming back to the Scottish Parliament; every other party in here would prefer those powers to remain under the control of the European Union. I am delighted that this Parliament will be strengthened with a wealth of new powers, and I hope that this and future Scottish Governments will take advantage of the opportunities that they will provide.

As the MSP for a constituency that covers sectors from oil to farming, I am keen to ensure that common frameworks will facilitate a positive transition for all businesses, no matter what they may be. At this point, I ask members to note my entry in the register of members' interests, which may be affected by common frameworks. As NFU Scotland says,

“it is imperative that the effective functioning of the UK single market is maintained, and therefore regulatory differences must be limited.”

It is important to note that the UK Government is seeking to ensure that the Scottish Parliament is one of the world's most powerful devolved legislatures. With the launch of a review to improve the functioning of the devolved settlement, an increase in the Scottish Government's budget of more than £500 million in real terms and new powers already having been passed to Scotland for welfare, oil and gas and taxation, it is clear that the UK Government is doing its utmost to deliver that.

However, it is disappointing, although unsurprising, that the SNP Government continues to try to negate those positive moves with actions such as the UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill. The bill only created a waste of valuable parliamentary time when crucial health legislation was delayed to accommodate it. I have no doubt that it will have frustrated my constituents to know that we were forced to waste precious hours on a bill that was ruled as “incompetent” by the Supreme Court, yet the SNP is still trying to resurrect the continuity bill in its most recent programme for government. In fact, the SNP is still trying to hand powers back to the European Union through the bill. For a party that pleads to voters to become independent, it baffles many that it is so keen to hand power back to an institution of whose elected members our MEPs constitute less than 1 per cent.

We must take advantage of the fact that the Scottish Parliament will gain powers in areas such as forestry and carbon capture—industries that many of my constituents work in and depend on. By taking advantage of those powers we can ensure that our laws have as positive an impact as possible on our constituents' livelihoods and businesses.

It should not be mistaken that the UK Government has presumed devolution for the powers returning from the EU. The SNP's own MPs have admitted that, with Pete Wishart stating that “nobody” has claimed that powers were being removed from the Scottish Parliament. The UK Government is not seeking to take any powers away from the Scottish Parliament. It wants to ensure that, while frameworks are being agreed, there is the presumption that powers returning from the EU sit at a devolved level.

That is because, as I mentioned earlier, frameworks are vital in order to protect the UK single market. Our UK single market is three times more important to Scotland than the EU single market. Scottish exports to the UK are worth nearly £50 billion, against just under £15 billion to the EU. We must build and strengthen that market.

The SNP should be mindful of its hypocrisy when stating that, when the powers are temporarily held at Westminster, it is an “outrage”, yet when the same powers are permanently held in Brussels, it is “pooled sovereignty”. We should take advantage of those restored powers for Scotland. I look forward to working with members in the committee in order to maximise the opportunities ahead.

16:04

**Joan McAlpine (South Scotland) (SNP):** I welcome today's debate, and I congratulate the

Finance and Constitution Committee on its helpful report into this complex area of law.

I wish that the debate was not necessary. The majority of my constituents wished to remain in the European Union, and that was the case, of course, with the majority of people in Scotland. The discussion on common frameworks is predicated on the assumption that Brexit will go ahead. I do not want that to happen, Scotland does not want it to happen and, after today's Supreme Court judgment, who knows what will happen?

Nevertheless, we must plan for the worst. Developments since the 2016 referendum make it clear that common UK frameworks are only one part of the significant adjustment that is required to how our Governments work together. The Scottish Government's call for a genuine relationship of equals between Governments is absolutely correct. Adjustments should take account of the realities of devolution. That must be the baseline from which common framework negotiations should progress. Anything less than that would not be in Scotland's interests.

The UK Government has been able to pay lip service to the devolved Governments in the Brexit process, and there appears to be recognition that a process overhaul is required to meet the needs of devolved Governments. For common frameworks to succeed, Governments and Parliaments must work together, but the precedents for such working are poor.

Parliamentary committees across the UK consider the joint ministerial committee mechanism to be not fit for purpose, and the interparliamentary forum on Brexit has called for more effective intergovernmental mechanisms to examine common frameworks and to deliver greater transparency. It appears to be accepted across the political divide that the current mechanisms for working together are simply inadequate. However, as others have said, it appears that the UK Government's review of intergovernmental relations has stalled. Why that is so is not clear, but it compounds constitutional chaos and stores up problems for devolved Governments.

I welcome the Finance and Constitution Committee's finding that there is no definition of "UK internal market". The committee heard from Professor Michael Keating that the EU single market is not about particular competences, but about a broad set of principles. Professor Keating pointed out that nothing like those mechanisms exists in the UK or in relation to devolution, and that there may be instances, in his view, in which the internal market principle could impinge on devolution.

In my view, there has been a considerable degree of bad faith in the use of the term "internal market". It is used to attack different policy choices across the UK and, potentially, it could be used to justify a post-Brexit power grab. Devolution already allows quite wide divergence in policy—one thinks of minimum alcohol pricing and, indeed, our new tax powers. Such policies deliver considerable differentiation across these islands, but they in no way interfere with our ability to trade freely across these islands.

I agree with members who have emphasised the importance of consent in all matters regarding common frameworks. Democracy is not served by the retention of section 12 of the European Union (Withdrawal) Act 2018, and I therefore call on colleagues across the chamber to support its repeal. Section 12 allows UK ministers to freeze Scotland's power to legislate in areas that are established as devolved, which is why this Parliament refused to give legislative consent to the 2018 act. The Parliament was right to do so.

In an ideal world, the Scottish ministers—indeed, all of us—would be confident that section 12 powers would never be used by the UK Government. They have not been used to date, but agreement in recent framework negotiations is no guarantee. Consent sought is not the equivalent of consent granted. That is why, if we are to proceed with negotiations on common frameworks across these islands in good faith, section 12 should be struck off.

16:09

**Neil Bibby (West Scotland) (Lab):** The decision of voters in the 2016 referendum to leave the European Union has caused political shock waves, anger and division, along with confusion and uncertainty. As this debate takes place, and following the UK Supreme Court's historic judgment today, there is no obvious sign of the political confusion coming to an end. Many of us do not want the UK to leave the EU—and it is still possible that we will not—but it would be remiss of the Scottish Parliament not to plan for what might happen should the UK leave the EU.

I commend the Finance and Constitution Committee's report on common frameworks, which is timely and relevant, and reflects the usual high professionalism of our committee clerks and convener and the insightful contributions that we received from our first-class witnesses.

At first sight, the topic may appear to be dry and anodyne—the sort of issue that excites only anoraks—but we must stop for a moment to think about what would be involved if the UK left the EU. A large swathe of powers that are currently held by the EU would be repatriated and would

naturally fall within the competence of the UK Government and Parliament. Equally, a large number of powers where EU law and devolved law overlap would pass by default to the devolved institutions. As members have said, given the number of areas in which UK common frameworks would be needed, it is clear that we need a robust and clearly understood protocol for ensuring that those frameworks will be in place.

It would be unacceptable for the Scottish Government and the Scottish Parliament not to play a full and equal part in determining matters that have a devolved competence or implication. That is why it is right for the committee to continue to robustly defend the rights of the Scottish Parliament.

As Murdo Fraser said, it is generally accepted that there are issues—for example, food labelling—that normally fall within a devolved competence that will, after Brexit, require some UK-wide alignment and in respect of which it makes no sense for a Scottish policy framework to be in outright conflict with the policy in the rest of the UK. I know that the Scottish Government has recognised that since 2016. Like Alex Rowley, I agree with the Scottish Government that that should be a matter for negotiation and agreement, not imposition.

I welcome any progress that has been made to date, but I remain of the view that the joint ministerial committee is not fit for purpose. Something entirely new is needed. Members have mentioned the Welsh Labour Government's proposals, which need serious consideration. We need a more robust process in which respect is central. We need something that is more transparent in its operation. That is why the committee has rightly called for the current review of intergovernmental relations to be taken forward as a matter of urgency.

However, there has to be a note of caution. This is not about giving the Scottish Government a blank cheque. The Scottish Parliament has to be given its place, and stakeholders must have a role in contributing to and scrutinising common frameworks. I welcome what the minister said about the progress that is being made in that area, but recent experience suggests that the Scottish Parliament and stakeholders need to be vigilant. We need only look at some of the powers that the Scottish ministers have sought to afford themselves in the UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill and the Referendums (Scotland) Bill, for example. Transparency is required from the UK Government in its dealings with the Scottish Government, but there must also be transparency from the Scottish Government in its dealings with the Scottish Parliament and stakeholders.

It is clear that there needs to be transparency, openness and respect from top to bottom in the whole process. Common frameworks must be arrived at through agreement. We cannot have the UK Government usurping devolved powers or the Scottish Government signing off agreements with the UK without the consent of the Scottish Parliament and without engagement with our stakeholders.

There are worrying signs from the new UK Tory Government that it is prepared to play fast and loose with the law and conventions. Sharp practice needs to be stripped out of any approach to common frameworks.

Change is needed. We need to change the joint ministerial committee process, and we need to change attitudes and practice. There is a danger that, if we get it wrong, we could strengthen ministerial powers at the UK Government or Scottish Government level at the expense of parliamentary scrutiny. There is too much at stake for us to get it wrong, particularly in such troubled and unsettling times.

I again commend the committee's report.

16:13

**Stewart Stevenson (Banffshire and Buchan Coast) (SNP):** It is a shame that Willie Rennie is temporarily out of the chamber. On 24 May 1916, Herbert Asquith appointed the Welsh wizard, Lloyd George, to solve the problem of home rule in Ireland. That went well. The Liberals might have been on the case for 100 years, but we have not seen very much delivered on it.

If my time as a minister 10 years and more ago taught me anything, it was that the jurisdictions in these islands can work together very well when they require to do so. Arrangements existed in my ministerial responsibilities whereby I had the right of veto. That was exercised responsibly on one occasion, and members never heard about it in Parliament because they did not need to. I found myself signing off the sale of land in Birmingham on one occasion because the British Waterways Board was a cross-border authority. Therefore, we can work together perfectly well. As a minister, I also represented the UK at the Polish Government economic conference. There are plenty of case histories and opportunities for working together. We sometimes hear rather more about the difficulties.

The report's committee is excellent and I commend it, as others have. I want to go into one or two areas regarding paragraphs 42 and 43, which are on different possible approaches to the environment. Those differences are perfectly reasonable, because the different geography and climate north and south of the border might need

different solutions. In the Environment, Climate Change and Land Reform Committee this morning, we talked about invasive species. The nature of that problem in Scotland is perhaps different from that in England or Wales. Therefore, it is not too surprising that there might be rather different solutions.

We have heard a lot from colleagues of all political persuasions in the Parliament about the role for Parliament, and I broadly agree with the way that Murdo Fraser characterised the need for that role. The committee dealt with that area in particular. Its report has six paragraphs of recommendations, which end by saying:

“We recommend that Parliament should have a formal role in relation to the process”.

I am quite content to support that.

Paragraph 172 refers to the need to involve external stakeholders in the development of common frameworks, and the report also refers to the need to involve them in the compliance mechanisms that relate to common frameworks. I would go a little bit further and say that we should look at the requirements of stakeholders. My constituency and parliamentary committee interests lead me to look at both fisheries and agricultural support.

On agricultural support, it is not surprising that we need different implementations of the EU common framework, and we would expect to have different implementations of a UK-wide common framework, because in Scotland, 85 per cent of our farming is in less favoured areas, whereas in England, only 15 per cent is, and 85 per cent is not. Therefore, the geography and the nature of the land that is farmed necessitate different solutions, not only in legislative, administrative and regulatory terms, but in the financial structures of support for industries in the agriculture sector.

On fisheries, we have the sea of opportunity—I led the debate on that subject not long after the 2016 referendum. If we depart from the common fisheries policy, we are clearly going to have the opportunity of controlling the area out to 200 miles from our coast. However, we cannot forget that Scotland-registered fishing boats will fish in other nations’ waters—England’s, Norway’s and those elsewhere. Therefore, we need a set of rules that apply to our interests, which may be somewhat different from those south of the border, where shellfish are one of the most important catches.

There is nothing unusual in requiring different solutions for different jurisdictions, while agreeing what we need to do within a common framework.

One of the important things about common frameworks is not just the rules but the funding streams. The common agricultural policy gives us

a view of the funding for five, six or seven years ahead. We need a similar degree of certainty in the policy areas that I have spoken about, and I hope that we will find a way to achieve that.

16:18

**Gordon Lindhurst (Lothian) (Con):** Like others before me, I commend the committee for its work; I particularly commend Bruce Crawford for his leadership on the issue, which is, and will continue to be, vital to Scotland’s economy in the post-Brexit world.

As my colleague Murdo Fraser mentioned, the need for common frameworks has been accepted across the chamber and has been largely dealt with above party-political disagreement.

Therefore, it is welcome news that the Finance and Constitution Committee has also recommended that Parliament have a greater role in scrutinising such frameworks.

Frameworks matter not only because they apply to our trade with Europe in general but because they have shaped and will continue to shape the prosperity of our internal market and our trading relationships with the EU and with every other state. Believe me: there is a world far greater than the part of it that is the EU.

It is vital that we maintain the integrity of the common market across the United Kingdom. That view is shared by many representative bodies across the commercial, manufacturing and service sectors. The Scottish Retail Consortium is just one among a chorus of interests that support proper, consistent and deliberate co-operation across all four home nations.

However, we find ourselves in unfamiliar territory. Eighty-seven new powers will be immediately devolved to the Parliament, and the remaining 24 are to be handed over in the aftermath of any agreed transition period. That has been aided greatly by the UK Government’s acknowledgement in its “Revised Frameworks Analysis” that, of 162 policy areas that will require attention in dealing with Brexit’s legislative effects in the devolved Assemblies, there are only 21 in which future legislation might be required alongside non-legislative frameworks, or where a consistent approach potentially requires to be taken to retained EU law.

I entirely agree with the approach of the cabinet secretary, Michael Russell—frameworks operate on the basis of mutual co-operation and established relationships. It will be important, when powers are newly realised by the Parliament, that both legislative and non-legislative frameworks are properly considered. Constitutionally, such co-operation and the

mechanisms for resolving disagreements or conflicts of interest are very important. Equally, it is vital that the decision-making and arbitration processes are fully deliberated upon. I venture to suggest that it is Conservative values that are driving forward work to transfer new and old areas of the law to this Parliament.

The Scottish Government's budget is to increase by more than £500 million in the next financial year. In 2020, Scotland will receive £1.2 billion in Barnett consequentials. That is the behaviour of a supportive UK Government that wishes to invigorate Scotland's Parliament in setting standards and enabling the economy.

The powers that are to be newly repatriated from the EU should not be used just for powers' sake. Scotland's trade with the other home nations still ranks as three times greater than that with the EU, sitting at a not inconsiderable £48.9 billion last year. Indeed, Professor Jim Gallagher has compelled the Scottish Government to maintain the integrity of the UK's common market on the ground of that being simple economic common sense.

It is therefore vital that the frameworks and the repatriation of power are approached in a good-natured and constructive fashion, as only then will the full potential of our country's economy and trading strength be realised. The Scottish Parliament will continue to be one of the most powerful devolved legislatures in the world. The Scotland Act 2016 means that the Parliament has gained and maintained powers in areas including energy, tax and welfare. It is now time for the Scottish Government to put an end to its constant attempts to create constitutional crises between the UK and Scottish Parliaments on devolution. Let the people see us work constructively going forward.

**The Deputy Presiding Officer (Linda Fabiani):** Your sudden finish caught me by surprise there, Mr Lindhurst. I call Jenny Gilruth.

16:23

**Jenny Gilruth (Mid Fife and Glenrothes) (SNP):** I am not a member of the Finance and Constitution Committee, but the content of the report on common frameworks should be of importance to all members. I add my thanks to all members who were involved in the report, and to the committee clerks.

At the time of its publication in March, the committee's report unanimously called for the Scottish Parliament to have "a formal role" in relation to agreeing any common frameworks between the Scottish and UK Governments. As we have heard, much of the committee's deliberations on the use of common frameworks took place in

late 2018, with the report published in March of this year—a different time; a different Prime Minister, or "DEFCON 3", as Patrick Harvie described it earlier.

The committee should be commended, therefore, for its ability to work in consensus on this issue. The frameworks will be crucial in a post-Brexit Britain—if we ever get there—because they will provide the necessary structure for working between the four Administrations.

In March last year, the UK Government published the breakdown of areas that would interact with devolved areas in Scotland. Some 111 areas of EU law were identified as falling within the devolved competence of the Scottish Parliament. The committee focused its attention on 24 of those areas, where legislative common frameworks might be needed.

As Murdo Fraser mentioned, the committee was of the view that common frameworks must be arrived at through agreement and not imposed upon the Scottish Government. On the UK's internal market, the committee noted the differing approaches across these islands, including on environmental principles. It stated that

"it will also be important to ensure that there is clarity as to where responsibilities will lie in future in the environmental field and that there is no encroachment on devolved competence without the consent of the Scottish Parliament."

Ahead of this afternoon's debate, the Royal Society of Edinburgh's written submission pointed out that the House of Commons Environmental Audit Committee warned that:

"without Common Frameworks there will be little to prevent a decline in the quality of transboundary natural assets, such as air, water and biodiversity, should a future Government decide to reduce their protections or not create new targets for improvement."

In February, Michael Russell told the committee:

"My understanding is that the devolved settlements allow substantial, and sometimes complete, policy divergence on key issues and that an internal market would not overrule that."—[*Official Report, Finance and Constitution Committee*, 24 September 2019; c 4.]

Indeed, Scottish Environment LINK has highlighted the importance of policy flexibility, saying that there is no one-size-fits-all approach. In its written evidence to the committee, it noted:

"Frameworks should act as an ambitious common baseline on top of which individual countries can pursue more ambitious standards."

Now, with just 36 days to go until Britain either crashes out without a deal or Mr Johnson somehow manages to arrive at an 11th-hour deal, we are living in different and very difficult political times. Yesterday, my little sister lost out on her honeymoon to Greece, thanks to the supportive



UK Government that Gordon Lindhurst described in his speech. Thousands of holidaymakers across the UK have lost their holidays, thousands more are stranded and 9,000 jobs and livelihoods are now in real danger. We need to talk about the importance of common frameworks because of the Brexit vote. However, as we hurtle towards that Halloween deadline, there are surely yet more horrors to unfold.

It is worth reminding Parliament of the context of the debate, because common frameworks are not the policy choice of the Scottish Government. They are also not the choice of the Scottish people, who in 2016 voted decisively to remain. However, we all have a responsibility as parliamentarians to ensure that our constituents are protected from the worst excesses of Brexit. That has to be the premise around the establishment of common frameworks.

The committee's report concludes by welcoming the progress that has been made on common frameworks on the basis of negotiation and agreement between Governments. As the cabinet secretary and Joan McAlpine mentioned, the report points out that the JMC mechanism has been deemed to be not fit for purpose and says that

"Parliament should have a formal role in relation to the process for developing, agreeing and implementing"

legislative and non-legislative common frameworks. It continues:

"We commit to work with the Scottish Government to develop such processes and will also work with other Parliamentary Committees at the Scottish Parliament and across the UK to develop a co-ordinated approach."

However, consensus in this Parliament can bring us only so far. Writing to the committee convener in May, David Lidington, who was then the Minister for the Cabinet Office, said:

"The principles of good communication and consultation will remain key to managing our differences and we are actively building additional support into frameworks in order to bolster dispute avoidance".

Given that the current Prime Minister chose—unlawfully—to prorogue the Westminster Parliament, it is somewhat difficult to believe that the spirit that was espoused by Mr Lidington will be emulated by the current Administration.

Michael Dougan, the professor of European law at the University of Liverpool said:

"So: will the UK's newfound 'single market' be the product of rational and informed choices; made on the basis of clear and considered options; decided through inclusive and transparent democratic debate?"

It appears not. Instead, the UK internal market seems to be evolving through ad hoc discussions and decisions; undertaken as part of wider crisis management strategy;

conducted largely behind closed doors with minimal public or stakeholder scrutiny.

So far, at least: if the UK's chaotic and opaque approach to building a 'market federation' proves sustainable at all, it will surely be more by accident than by design."

Today, we heard that the Supreme Court—the highest court in the land—has ruled that the prorogation of Parliament was unlawful, and the United Kingdom is hurtling towards a Brexit cliff edge. Common frameworks will be essential in a post-Brexit Britain—I just hope that we do not get there.

16:29

**Claire Baker (Mid Scotland and Fife) (Lab):** I thank the Finance and Constitution Committee for taking evidence and for preparing its thorough report. Our committees' scrutiny work is vital in preparing Parliament for its work in the event of our leaving the EU, and in ensuring that Parliament is equipped to carry out its business. I also thank the committee for its research on the models that operate in Canada, Germany, Norway and Switzerland.

The committee's report was published a few months ago, in March, and it is fair to say that we are now in a different situation. We have a different Prime Minister, a no-deal exit is being promoted, there is the prospect of a general election, and today the Prime Minister has been found to have acted unlawfully in the proroguing of Parliament. As 31 October gets ever closer, the accountability of Government and the Prime Minister must be enhanced—not avoided.

As I have said in other debates over the past few weeks, we must raise our eyes above the current political situation and attempt to chart a course through the challenges that we expect to face when the UK is no longer a member of the EU.

As a member of the EU, we have followed regulatory processes, in common with all other member states. There is agreement between the Scottish, Welsh and UK Governments on the need for common frameworks, and a definition and set of principles for reserved and devolved areas have been agreed by the JMC (European Union negotiations). That much has been agreed.

There is overlap between common frameworks, the Trade Bill, the withdrawal act and the UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill, all of which have the potential to influence the common frameworks process. The lack of progress on reaching a withdrawal deal means that very little progress has been made on common frameworks, although, as the committee makes clear, common frameworks will be required whether or not there is a deal.

As members have said, there has long been a need for reform of the JMC, and the EU negotiations have stretched the structure's workings to breaking point. The mechanism is vital for intergovernmental relationships, and will be increasingly important with the advent of common frameworks. I am a member of the interparliamentary forum on Brexit, for which reform of intergovernmental workings is a key theme that we want to be addressed. The devolution settlement has changed and evolved, but the JMC is not living up to the task. We need a more robust and transparent mechanism that has the confidence of the devolved Parliaments.

I understand that if a new arrangement is to work effectively, good terms between Parliaments will be needed, which must be underpinned by a strong and transparent working relationship that encapsulates meaningful consultation and decision making. The agenda for achieving that has been pushed by the progress that has been made in the common framework discussions, which call for a mature approach from Governments.

As part of that mature approach, conflict resolution will be an issue, whether the common frameworks are managed through the current JMC or some other incarnation of it. There will need to be a mechanism that can resolve disputes in a way that is respected by all partners. The RSE suggests that there is a role for an independent secretariat that would develop evidence-based decision-making processes that would facilitate consensus between Parliaments. Surely, that idea is worth consideration.

It is positive that the committee reports that progress on common frameworks so far has been achieved on the basis of negotiation and agreement between Governments. However, we are in the early stages of the work. This Parliament should make it clear that the content of the frameworks must be finalised through agreement, and not simply imposed.

There is common interest in ensuring the functioning of the UK internal market. The committee's evidence is that clarity is needed on what a "UK internal market" is, and what principles it should embody. The committee's exploration of the complicated questions of how to accommodate policy divergence, how to manage public procurement policy and how to provide state aid demonstrates how much remains to be resolved.

The combination of legislative and non-legislative common frameworks raises issues to do with parliamentary, stakeholder and public scrutiny. The committee made important points about the need for a collaborative approach to the creation of frameworks, and about Parliament's ability to scrutinise that work. The Scottish

Government has given assurances in that regard, but there remains a tension between the ability to legislate in future frameworks and a commitment to maintain agreed frameworks, which Bruce Crawford described as "constraints".

The lack of conclusions in all those discussions reflects the political quagmire in which we find ourselves. All attention has been, and continues to be, on the negotiations, and there is not the capacity to look beyond the current circumstances. That is worrying, because the current circumstances are creating stress over the prospect of our crashing out of the EU on 31 October—although the cross-party legislative measures that have been taken to avoid that happening must be adhered to—or leaving with no deal at some future date. In the event of our leaving the EU with no deal, the need for common frameworks would be urgent, because there would be no transition period to provide a cushion. That situation would damage UK business, public services and environmental protections.

There are many challenges ahead. I thank the committee for interrogating the issues.

16:35

**Gordon MacDonald (Edinburgh Pentlands) (SNP):** In carrying out some research for the debate, I came across the Institute for Government's article "Common frameworks, devolution and Brexit", which explains the background to the committee's report. It explains that, if the UK leaves the European Union,

"powers exercised at EU level will be 'repatriated' to the UK."

The article highlights that much of EU law

"intersects with the legislative competence of the devolved institutions"

and that

"powers currently exercised by EU institutions will transfer to Scotland, Wales and Northern Ireland"

in areas such as

"environmental regulation, agriculture, public procurement and aspects of justice, transport and energy".

The article continues:

"When the UK leaves the EU, if no changes were made other than to remove the statutory requirement to comply with EU law, these policy areas would fall completely under devolved control."

That is the position that I would prefer. However, if there is a need for common frameworks in certain areas, they must be created by agreement. The committee's conclusion on that states:

"we strongly believe that common frameworks must be arrived at through agreement and not imposed. We consider that key to this is resolving by negotiation the

extent to which policy divergence can exist within common frameworks.”

If we are to have common frameworks, it is important that there is a role for the Parliament. The committee’s report states:

“There are a range of reasons why Parliamentary scrutiny is considered to be essential to developing effective common frameworks”.

The report goes on to say that such scrutiny enables Parliaments

“to fulfil their scrutiny role in holding government to account for their actions”

and

“to judge between potentially competing interpretations of intergovernmental discussions”.

The committee points out that Parliament can

“provide a mechanism by which wider sectoral and stakeholder engagement can be delivered”

and

“ensure that in making final decisions, the different vested interests are properly balanced.”

The committee commissioned comparative research on agreement-making in Canada, Germany, Switzerland and Norway. One interesting point from the research on Switzerland is that there is a set of guiding principles that state that

“Where possible, tasks should be allocated to one single level of government only”,

and that

“Decisions should be taken as close to the citizens as possible”.

The research goes on to say that

“Where a task cannot be allocated to one level only, common frameworks come into play.”

The Swiss political system is oriented towards consensus, and co-operation is the preferred strategy. I hope that the UK Government’s response to the committee’s report is in that spirit of co-operation, when it states:

“The UK Government is committed to working with the devolved administrations to create frameworks that offer stability and certainty to businesses and individuals as decision-making powers return from the EU to Westminster, Edinburgh, Cardiff and Belfast.”

I will conclude by referring to another of the committee’s unanimous recommendations. It states:

“We strongly agree that the ongoing work to define the UK internal market also respects the devolution settlement such that enabling the functioning of the UK internal market must not and will not be at the cost of adjusting the devolved competencies without the consent of the Scottish Government and Scottish Parliament.”

**The Deputy Presiding Officer:** We move to the closing speeches.

16:39

**James Kelly (Glasgow) (Lab):** I thank the Finance and Constitution Committee for the work that it carried out in producing its comprehensive report on common frameworks. I recently left the committee, so I know how much work colleagues, clerks and the various witnesses put into the report. I also thank the convener, Bruce Crawford, for the way that he has convened the committee, not just on the issue of common frameworks but generally. As Murdo Fraser said, the convener always seeks consensus and to produce reports that are underpinned by expert evidence, and that was very much the case with this report.

It has been quite an unusual day, in that events elsewhere have dominated proceedings.

As Patrick Harvie said, the circumstances in which the committee looked at common frameworks are very different from what they are now. There is no doubt, however, that it is crucial that we examine the issues. I agree with Bruce Crawford that the devolution process has become more complex over time. If we were to leave the EU—I hope that that will not be the case, but we need to accept that it is still a real possibility—there is no doubt that that complexity would increase.

A number of colleagues pointed out that of the 111 areas that have been identified that are currently covered by EU law and that would be wholly or partially devolved to the competence of the Scottish Parliament, 24 are areas where there is not currently agreement. It is crucial, therefore, that work is done to ensure that if common frameworks are put in place, they will be adequate. The committee’s role in informing Parliament on that issue has been very helpful.

Murdo Fraser and other members raised the issue of disputes and disagreements that will obviously come up when laws are passed in areas that are shared by the UK Parliament and the Scottish Parliament. When the committee visited Brussels and looked at a number of international examples, two things struck me about resolving disputes. We spoke to colleagues in Germany and Canada, and, although there were clearly big areas of political disagreement in both those countries as a result of the different levels of government that they have, they were very clear that they were able to seek resolutions where there were disagreements. The culture seemed to be that they should continue to discuss issues in order to find appropriate solutions.

The lesson that we can all learn from that—this is not just for the UK Parliament or the Scottish

Parliament—is that we are perhaps a bit too confrontational in such matters. If we are to find proper resolutions to disputes on common frameworks, there needs to be some change to our political culture. On finding solutions, Willie Rennie and Neil Bibby proposed the idea of qualified majority voting, which might help. We certainly need a structure in place that everybody understands and agrees to.

One issue that will be crucial is the funding of the different areas of devolved work. Alex Rowley and Jenny Gilruth mentioned the briefing from Scottish Environment LINK that explains that 80 per cent of environmental protections stem from the EU. If that work comes to Scotland, funding arrangements need to be clear—we need to be clear where the money will come from—and they need to be fair, with no dilution of current projects.

Another feature of the debate has been the lack of progress around the JMC, and indeed the lack of progress in finding solutions to the common frameworks issue. Progress has slowed even more since Boris Johnson became Prime Minister. I appreciate that these are hectic political times, but common frameworks do not seem to have been a priority for the UK Government.

To sum up, there are important issues around common frameworks. The crucial point is that in the future there must be a clear scrutiny process that involves both Parliaments and Governments and a mechanism for resolving disputes and dealing with funding. Many such issues are touched on in the committee's report, which is helpful in contributing to the overall debate.

16:45

**Donald Cameron (Highlands and Islands) (Con):** I refer members to my entry in the register of members' interests in so far as it relates to farming.

I welcome the opportunity to contribute to the debate. I also thank Bruce Crawford for leading on the report alongside other colleagues on the Finance and Constitution Committee, many of whom have spoken today. It is not often that a committee can agree unanimously on a report. On a day on which unanimous decisions are all the rage, the Finance and Constitution Committee should be praised for its consensual approach to this important issue and for the thorough and rigorous examination during committee proceedings that it took to get to this point.

The fundamental point of the report is an acknowledgement that change is required to reflect the fact that when the United Kingdom leaves the European Union, a significant number of powers will be returned to both Westminster and Holyrood, some of which will require co-

operation. It is right and proper that we approach that in a sensible and pragmatic manner, which I feel the committee has done in its report.

As other members have noted, it is the clear view of business and industry that appropriate common frameworks and joint working will be essential. For example, the NFU Scotland has said that regulatory differences must be limited. The Royal Society of Edinburgh, which other members have quoted, has said that

“as the EU frameworks for certain areas of public policy cease to apply, new UK frameworks will have to be evolved to replace them”.

Most importantly, the Federation of Small Businesses has noted that

“there will be certain areas where a common UK framework will be desirable, particularly in relation to the integrity of the single market within the UK”.

That is an important point, which many speakers have stressed, and it is a key component of the committee's report in relation to the necessity of common frameworks. It notes that such frameworks are necessary to

“enable the functioning of the UK internal market, while acknowledging policy divergence”.

The latter point is important, in my view. Naturally, there will be differences of opinion across the devolved nations. Given that we have a UK-wide Parliament and three devolved institutions, that is to be expected and respected. However, we must avoid a situation in which policy divergence creates unintended consequences between constituent parts of the UK, which was a point made by Murdo Fraser. I concur with the report, which says that

“resolving by negotiation the extent to which policy divergence can exist within common frameworks is critical to securing longer term agreement”

to such frameworks. The report notes that both the

“UK and Devolved Governments already have experience of managing policy divergence within the requirements of the EU internal market”.

In my view, such experiences should ensure that appropriate measures exist to protect the integrity of the UK internal market, which, after all, is Scotland's most important market, because it accounts for three times the worth of the EU single market to Scottish producers.

I want to focus on one area in which common frameworks will be necessary in the future, and in which appropriate action is being taken to meet that challenge. Again, it is one about which other members have already spoken: environmental protection. That was discussed when I sat on the Environment, Climate Change and Land Reform committee, in the chamber and during various meetings with environmental organisations.

The Finance and Constitution Committee's report notes that, in 2018,

"the UK Government published the Draft Environment (Governance and Principles) Bill which proposes a set of environmental principles which will be applied ... and that the Scottish Government has produced its own consultation on environmental principles and governance earlier this year."

It is clear that clarity will be required as we move forward. Like Jenny Gilruth and Alex Rowley, I was struck by the submission of Scottish Environment LINK, which noted its understanding that, since that report was published, the UK Government and devolved Administrations have been progressing a five-phase approach to developing common frameworks across a number of areas relating to the environment. If that is indeed the case, it is clear that all Administrations are taking this matter seriously, which the Scottish Conservatives strongly welcome.

In the remaining time that I have, I want to highlight some other important contributions to the debate. In a typically measured speech, Bruce Crawford mentioned transparency. He spoke about how our approach must not be led solely by the executive and how Parliament must have a formal role in developing, agreeing and implementing common frameworks. I was struck by paragraph 190 of the report, which says:

"Parliament and stakeholders have an important role in contributing to and scrutinising common frameworks."

That point was also made by Murdo Fraser, and I think that it was recognised and acknowledged by the cabinet secretary in his speech.

Murdo Fraser also spoke about a council of ministers and the fact that, under that proposed model, there would be no separate voice for England. That requires to be looked at.

Gordon Lindhurst and James Kelly mentioned the importance of mechanisms for resolving conflicts of interest and the need for good arbitration processes and a constructive approach. I was struck by what James Kelly said about international comparisons. However serious a disagreement may be, we do need to change the culture of politics, particularly when trying to reach a fair and consensual result.

On behalf of the Scottish Conservatives, I reiterate our thanks to the Finance and Constitution Committee for the important work that it has done in putting together its insightful report. It is vital that, as we leave the EU, all Administrations within the UK are able to work cohesively and productively as we take control of the some 111 powers that are held by the EU and begin to set clear policy destinations. I welcome the fact that the Scottish and UK Governments are already working together on establishing such

common frameworks, and I hope that the Scottish Government will seek to keep this Parliament informed on the matter as it continues to progress.

**The Deputy Presiding Officer:** I call Michael Russell. You may give us up to nine minutes, Mr Russell.

16:51

**Michael Russell:** Thank you, Presiding Officer. I will start by commenting on something that Donald Cameron has just said, which is a good place to start in summing up the debate. The report that we are discussing is a unanimous, cross-party report and, by and large, the debate has been consensual. There is a willingness to work together to try to get common frameworks to work.

The only discordant note came from Alexander Burnett, who took a very absolutist approach. It must be something genetic, I think. The reality of the situation is that we are trying collectively to make a difference in this matter. Even Willie Rennie, whom I think of as the Willy Loman of his party as he is endeavouring to sell something that people have long since decided they do not want, had something constructive to say about the need for constitutional change.

I am going to try to stress the positive, but I do so against some strong headwinds. Alex Rowley made the point early on, and it needs to be borne in mind, that there are strong headwinds on the matter. The first is to do with the Brexit process itself. Today—James Kelly has just commented on this—we are in the midst of even more constitutional chaos. We are so far into uncharted waters that we do not even recognise anything around us. These are strange and unique times in which to be living. I think that it is the commentator David Allen Green who says—I am sure that Mr Tomkins would agree with this—that constitutional law should be boring and it is dangerous when it becomes exciting. Unfortunately, it has now become exciting.

In all the circumstances, the headwinds have to be taken into account. There is the Brexit process, which is a complete distraction. It is absolutely clear that the vast majority of time at Whitehall—it is virtually all of the time—is spent on the Brexit process and not on the detail of matters such as common frameworks. Mr Kelly was right to observe that things have slowed down considerably under the new Administration. In fact, there has not been any real discussion of frameworks in that time.

There is the issue of funding. We cannot bring in frameworks unless we have a suitable funding package. Whether they eventually exist will depend on the post-EU funding that supports

them, and we have not the faintest idea what that will be. It has not been addressed in any way.

There is an issue of terms. Sometimes, we are talking at cross purposes. There was lots of discussion in the debate about the UK single market, but Joan McAlpine quite correctly quoted Michael Keating on the subject, saying that there is no agreed definition of that. Devolution allows—in fact, it exists to permit—a variety of divergence, and that divergence is not in itself damaging, nor is it a barrier to trade. I think that an example that Damian Green once gave was the difficulty that would be created by having different food regulations for a jam maker in Dundee from those for a jam maker in Durham. The reality is that there is already the flexibility, for example on issues of sugar content, for such differences. That is simply a trading difference; it is not a barrier to trade. Therefore, we have differences with terms.

Then we have the profound difficulty with the intergovernmental review. I will spend a moment or two on that, because it is important that people know where it is at. The very hopeful view that, in some sense, federalism was just around the corner—although it has been a century-long corner—is, I am afraid, not true. It is not true because of the UK Government, which is not moving on any constitutional issue.

The intergovernmental review was agreed to almost two years ago in the JMC (Plenary). Over the period until June this year, virtually nothing happened. There was a great deal of discussion behind the scenes between civil servants, but there was virtually no progress. In June this year, at David Liddington's final JMC, which was held in the margins of the British-Irish Council in Manchester, three things were agreed. The first was that the UK Government would publish the principles on which the intergovernmental review was taking place. The devolved Administrations did not wish to be part of that, because we agreed the principles ages ago—we felt that it was false to claim that in some sense they were new.

However, there was an agreement, which we were happy to sign up to, that there would be a timetable for the intergovernmental review by the end of September, and detailed proposals by the end of December. We are almost at the end of September and we have seen no timetable. Two weeks ago, the new Paymaster General proposed that discussion of the intergovernmental review be removed from the JMC process in the JMC (European Union negotiations) and become a matter for trilaterals between Wales, Scotland and the UK, which would feed into a JMC (Plenary) on an as yet unspecified date.

It was important to reflect to David Liddington, as the Welsh minister and I did, that the control of JMC agendas should not be solely for one part of

the process. It is now agreed that the JMC(EN) will consider those parts that deal with Brexit and trilaterals will also go ahead. There has not yet been a trilateral—I think that that has been due to diary issues more than anything else—but we are not really in a position to say that any progress has been made by the intergovernmental review. Therefore, if we are looking to the intergovernmental review as a foundation for frameworks, we have a very long way to go.

On other issues, there has been progress. It is quite clear from Bruce Crawford's opening speech, and from my responses in my opening speech, that things are happening. On scrutiny, there are substantial amounts happening. When I wrote to the committee on 2 August in response to its report, I made the point that the scrutiny issue was very much on our mind. At the bottom of page 3 of the letter, I said:

"I would reiterate my previously stated view that there is a need for Parliaments to have a role in developing, agreeing and implementing all frameworks and the arrangements put in place should ensure that the necessary time and information is provided to allow for effective scrutiny to take place in advance of the final agreement of any framework."

I do not think that I could have been clearer. The Scottish Government welcomes the involvement of the Parliament, not only in drawing up the frameworks, but in scrutinising and operating them, and we will take that forward.

Those are the major issues that have been raised in today's debate, but I will make two final points. The Scottish Government will continue to work on frameworks in co-operation with the other partners, but not if frameworks are imposed. That has to be crystal clear. If there is an attempt to impose frameworks through the section 12 process, we will not co-operate on them. That is the right thing to do, because they can work only if they have been agreed to.

Finally, I make the point that it would be best for all of us if the frameworks were not needed. I believe that it would be far better if we had a different system. Let us look across the Irish Sea to a different framework that operates—the framework of EU relations with the UK has supported Ireland tremendously well over the past three and a half years. I would much rather that we were part of such frameworks and that our relationships, one to the other, were governed by them and enforceable at law. That would be the best way to operate, and it requires us to be an independent nation.

**The Deputy Presiding Officer:** I call Adam Tomkins, who is closing for the committee. Around 10 minutes would take us up to decision time, Mr Tomkins.

16:59

**Adam Tomkins (Glasgow) (Con):** You normally tell me that I have up to 10 minutes, Presiding Officer.

It has been a fascinating day to be a constitutional lawyer in politics. I mean no disrespect to anybody who has spoken in today's debate, but the principal reason for that fascination has not been common frameworks.

Before the summer recess, I gave an interview to *Holyrood* magazine in which I said that, if I had a time machine, I would go back to the year 1642. I said that because I wanted to witness how constitutional conflict between Crown prerogative and the will of Parliament is resolved. Well, strike that interview from the record, because that is exactly what the Supreme Court ruled on this morning.

I do not know whether the constitution of 1642 featured common frameworks—perhaps Stewart Stevenson and others who were there at the time can tell us. However, the post-Brexit UK constitution of 2019 will certainly need common frameworks. We did not need them before we joined the European Union in 1972, because, in those days, there was no devolution in the United Kingdom. However, whatever form it eventually takes, Brexit cannot mean that we return to the constitution of 1972. We did not need common frameworks while we were a member state of the European Union, because the policy areas that they will concern fell within the legal competence of the EU.

It is welcome—and not to be taken for granted—that both the UK and Scottish Governments have not merely acknowledged, but accepted, the need for common frameworks. Unionist ministers in London have accepted that policy divergence will be a feature of the United Kingdom internal market post-Brexit, as indeed it already is. Nationalist ministers in Scotland have, likewise, accepted that such policy divergence cannot extend so far as to damage the integrity of the UK-wide marketplace on which, as we have heard, Scottish businesses and consumers rely so much. That is all welcome.

A number of SNP members said that they do not really want common frameworks, because, of course, they do not want Brexit. Indeed, I think that the cabinet secretary himself—he will correct me if I am wrong—said that. I gently point out to them that, if Scotland ever were to become an independent country, it would need a whole slew of common frameworks with the rest of the United Kingdom. Be that as it may, common frameworks may be new for us, but the issues that they will govern are completely normal for mature federal democracies—or, if people do not like the F-word,

for mature democracies with multilayered government.

What policy divergence at state level can be accommodated within the commerce clause of the US constitution is a bread-and-butter issue for the US Supreme Court, and how the division of legislative and executive competence between the provinces of Canada and the federal Government in Ottawa impacts on the integrity of Canadian economic regulation is a matter that appears routinely in the docket of the Supreme Court of Canada.

**Stewart Stevenson:** I am very interested in what Adam Tomkins is saying. However, how does he resolve the fundamental difficulty of the fact that our poor neighbours in England have no independent representation in their own legislature, and that the state Parliament is, therefore, conflicted and schizophrenic in the way that it has to deal with the devolved Administrations?

**Adam Tomkins:** We resolve that in the way that the British constitution always resolves such difficulties, which is pragmatically and in an uncodified way.

As it is for the US Supreme Court, and as it is for the Supreme Court of Canada, so it will prove to be here. As both Murdo Fraser and Willie Rennie said in their interesting speeches, it is about how our constitution navigates the sharing of power—or, as Willie Rennie put it, “co-operation”—between two layers of government. Willie Rennie was absolutely right to say that we would need to be thinking about that even without Brexit. However, I am sure that he will agree that Brexit means that it is all the more vital and important that we get on with it.

That brings me on to IGR, or intergovernmental relations. Here, I confess to something of a frustration. Many speakers, including the cabinet secretary, said—quite rightly—that the UK's intergovernmental relations are “not fit for purpose”; that has become the go-to phrase that people use on these occasions. However, none of the speakers, not even the cabinet secretary, bothered to identify what they think their purpose is. I am very happy to give way to the cabinet secretary in a minute—I see that he is itching to intervene. However, is it not clear that taking the sharing of power seriously, as common frameworks invite us to do, means that our intergovernmental machinery must develop into a system that allows Governments not only to meet and discuss items of mutual interest, but to take decisions jointly? In my view, that needs to happen.

Does the cabinet secretary want to intervene at this point?

**Michael Russell:** No.

**Adam Tomkins:** In that case, I will finish the point and then I will take an intervention from the cabinet secretary, if he still wants to make one.

The committee's convener, Bruce Crawford, was quite right to point out the very serious challenges that that entails, not least for transparency. There needs to be effective joint decision making, but there also needs to be effective parliamentary oversight and scrutiny of such decision-making processes.

**Michael Russell:** I do not disagree with a single word of that. I ask Mr Tomkins to look at the speech that I made to the Institute for Government three months ago, in which I made those points. Mark Drakeford made the same points on behalf of Wales. We will shortly publish our own paper on such matters, which will make a substantial contribution. I have referenced with approval the Welsh paper of 18 months ago.

Nobody disputes those points—those things are on the table. The problem is that the UK Government has brought nothing to the table.

**Adam Tomkins:** I welcome the contributions that the Scottish Government, the Welsh Government and, indeed, the Welsh Assembly are making in this area, which I think are vital.

It is a bit of a mouthful, but there is this thing called the interparliamentary forum on Brexit, which meets on a quarterly basis; it rotates between Scotland, Wales and London. It brings together the conveners and deputy conveners and the chairs and vice-chairs of all the key parliamentary committees in this Parliament, the House of Commons, the House of Lords and the Welsh Assembly to discuss matters of mutual concern. One of the things that we have said is that intergovernmental relations are not fit for purpose, and that interparliamentary relations are even worse. The last bit of that sentence needs to be rewritten, because interparliamentary relations in the UK are now beginning to bear fruit, and the interparliamentary forum on Brexit is the prime example of that.

In a speech that contained what I thought were a number of useful insights, Patrick Harvie said that the UK is not the EU—it is not an intergovernmental organisation—and that we cannot just copy and paste the structures of the EU and transplant them on to the UK. I agree. However, one area in which we can learn from the EU is in the use of principles such as those of proportionality and subsidiarity. We will need some basic constitutional principles to navigate between the integrity of the UK internal market and reasonable policy or regulatory divergence.

**Patrick Harvie:** Under the scenario that Adam Tomkins outlines, how does he believe that the power of the UK Government can be constrained so that it is not in the future able to do things that require the consent of devolved Administrations or Parliaments without that consent being in place?

**Adam Tomkins:** I will come on to offer a personal solution to that; we will have to see whether it is a solution that will be accepted by the committee.

Proportionality and subsidiarity are two such principles. They can be and are used to navigate the dispute between the integrity of markets and reasonable policy divergence. I, for one—I stress that this is my view and not the committee's—am not squeamish about thinking of those principles as matters of law for courts to enforce in cases of dispute. To address Patrick Harvie's perfectly reasonable question, we have seen just today that the UK Supreme Court emphatically has the power to impose its judgments on the UK Government.

It has been a genuinely useful debate that has shone light on important aspects of the way in which Brexit will have to be delivered compatibly with our devolution settlement while at the same time necessarily changing key aspects of that settlement. I thank all the members who have taken part in the debate, all the members of the committee and especially the committee's clerks, for their contributions to the report that we have debated. Most important, I would like to support the motion in the name of my friend Bruce Crawford.

**The Presiding Officer (Ken Macintosh):** The next item of business is decision time. We are running slightly early. Can we move decision time to now?

**Members indicated agreement.**

**The Presiding Officer:** Good.



## Decision Time

17:09

**The Presiding Officer (Ken Macintosh):** There is one question to be put as a result of today's business. The question is, that motion S5M-18951, in the name of Bruce Crawford, on the Finance and Constitution Committee's "Report on Common Frameworks", be agreed to.

*Motion agreed to,*

That the Parliament notes the conclusions and recommendations contained in the Finance and Constitution Committee's 4th Report, 2019 (Session 5), *Report on Common Frameworks* (SP Paper 498), and in particular its recommendations that the Parliament has a formal role in relation to the process for developing, agreeing and implementing both legislative and non-legislative common frameworks.

## Idiopathic Pulmonary Fibrosis Week 2019

**The Deputy Presiding Officer (Christine Grahame):** The final item of business is a members' business debate on motion S5M-17948, in the name of Colin Smyth, on idiopathic pulmonary fibrosis week 2019. The debate will be concluded without any question being put.

*Motion debated,*

That the Parliament welcomes Idiopathic Pulmonary Fibrosis (IPF) Week, which takes place from 16 to 24 September 2019; understands that around 2,500 people in Scotland are living with IPF and that, across the UK, an estimated 6,000 are diagnosed with it every year; acknowledges that it is an incurable and life-limiting condition, which results in a build-up of scar tissue in the lungs, restricting normal breathing; understands that current treatments can only mitigate the symptoms; notes the view that more research is needed to help people with the condition, and praises the British Lung Foundation for its "Meet the Expert" events, which allow people living with IPF to speak to specialists, and for raising awareness and funding vital research to improve diagnosis and treatment, which it believes will allow people to have the chance of experiencing a better quality of life.

17:11

**Colin Smyth (South Scotland) (Lab):** I thank all the members from across the chamber who signed my motion, helping to raise awareness of idiopathic pulmonary fibrosis. It is a little-known condition, but it is one that around 2,500 of our constituents across Scotland are living with today.

I used to joke that I had the only grass in my street that never got any longer; I would go out to work and when I came home at night, it had been mysteriously cut, because that is what dads did. I remember, though, that in the summer of 2011, I noticed that the grass was getting a little bit longer between those cuts. Dad was not without his health challenges—he had suffered a couple of heart attacks over the years and had been diagnosed with heart disease and diabetes—but he was a strong and active man.

When I asked him whether he was feeling okay and whether he wanted me to cut my grass, he said, "Don't be daft. I'm fine—just a little tired. Anyway, I've seen the state of your lawn after you've cut it." A few weeks later, Dad developed a dry cough. Again, he brushed aside my concerns. Soon the cough became a chest infection and I convinced him to go to the general practitioner, who treated him with antibiotics. However, the infections became more frequent, taking longer to treat and longer to recover from each time.

The GP also detected a build-up of fluid on Dad's lungs. That was put down to his heart disease and doctors began adjusting his

medication but to little effect. Tiredness became breathlessness when he walked even the shortest distance. Dad's GP prescribed oxygen at home to help to ease the symptoms—a few hours a day to begin with but soon all day when he was at home.

More than a year after the first symptoms, the hospital admissions became more frequent, but there was no real diagnosis other than Dad's long-standing heart disease. In early 2013, Dad was admitted to hospital yet again, when his breathing became more and more difficult. Then one day in hospital, out of the blue, he said to me, "Good news! They've got to the bottom of what's wrong at last—I've got idiopathic pulmonary fibrosis."

I had never heard of it, but I remember leaving hospital that day feeling quite upbeat. After months of frustration watching the one person who never let anything get in his way battling just to walk even the shortest distance without being out of breath, I thought, "At last—they've got to the bottom of the problem. They can now get on with fixing it."

I went home and did what we all do. I did a Google search of the condition to find out what IPF was and what could be done. The results told me that IPF was scarring of the lungs. It caused the lungs to harden, making it more difficult to breathe. Then I read on and I remember feeling sick to the pit of my stomach when I did. It said that the scar tissue cannot be repaired. There is no cure for IPF. Survivability is worse than for most cancers. Few survive more than three to five years after diagnosis. There are no drugs that would make any meaningful difference. In fact, I remember Dad's consultant prescribing steroids but openly admitting that they were unlikely to have any effect at all.

Dad continued to battle his condition, but he began to deteriorate further. The impact of IPF was simply putting too much pressure on his heart condition. Almost two years after first showing symptoms of IPF, but just weeks after being diagnosed, he passed away on 8 May 2013.

What causes IPF remains largely unknown. Researchers believe that some people may be genetically predisposed to develop the condition. They also believe that the body creates fibrosis, the scarring that I referred to earlier, in response to injury to the lung—for example, in those who have been exposed at work to dust. Certainly, Dad's background was that he had worked in an industrial setting for many decades.

That highlights the issue of inequalities in lung disease. Incidence tends to be higher in post-industrial areas, meaning not only that rates in Scotland are higher than the United Kingdom average but that the rate of lung disease-related deaths in Glasgow, with its industrial background,

is almost double that of its neighbouring local authorities of East Dunbartonshire and East Renfrewshire.

A serious shortage of data on IPF makes it difficult to get a precise idea of the impact of those regional inequalities, with neither the national health service Information Services Division nor the Scottish Government holding data centrally on how many people are diagnosed with IPF. However, from the information that we have, we know that the problem of IPF is growing, with its prevalence and mortality increasing here and across Europe.

The condition remains poorly understood; its non-specific symptoms make it challenging to recognise and the high risk of fatality that is posed by a biopsy makes it difficult to diagnose. More than a third of people with IPF have been misdiagnosed, with the condition commonly mistaken for asthma, chronic obstructive pulmonary disease or heart problems. More than half of patients waited more than six months before they were diagnosed, with one in five waiting more than two years.

The Government's forthcoming respiratory care action plan will be a chance to change the situation and make much-needed progress in both the diagnosis and the treatment of IPF. It is critical that GPs and other healthcare practitioners have the knowledge and training to recognise symptoms and to know to run the appropriate tests. A lung cancer screening programme, at least in the form of a pilot, would help to detect lung cancer earlier, rather than the current position in which half of all lung cancer diagnoses in Scotland are at the most advanced stage. It would also detect other lung conditions such as IPF. There needs to be greater understanding of how IPF relates to other conditions and how it presents, for example, in people with heart disease.

More also needs to be done to improve treatment. I said earlier that, when Dad was diagnosed, no drugs could make a difference, but today, new medications, such as nintedanib and pirfenidone, have been shown to slow down the progression of the condition, not only extending lives but improving quality of life. However, those medications are available only to people with lung function of below 80 per cent, excluding many who would benefit from early intervention to improve their life expectancy. There is also a postcode lottery in the prescribing of such medication.

Although those medications can help to slow down the scarring process, IPF cannot be stopped entirely. That is why long-term specialist support is essential. Specialist nurses have a vital role to play in delivering the high-quality expert care that those who live with IPF need. At present, provision

is woefully lacking. Only four health boards across Scotland have access to any specialist nurses who are trained in dealing with IPF. Their time is incredibly stretched; for example, just one specialist nurse covers the entirety of NHS Greater Glasgow and Clyde. The respiratory care action plan should therefore include an increase in specialist nurses for IPF across Scotland as a key priority.

As well as access to specialist nurses being very limited, access to pulmonary rehabilitation varies significantly. Pulmonary rehabilitation is typically associated with the treatment of COPD, but it can be useful to those with IPF. It equips people with exercises to improve their fitness, helps them to control the physical symptoms of their condition and acts as a source of support and information from health professionals and from peers with similar conditions. Despite those clear benefits, the referral rate in some areas is as low as 2 per cent, with capacity consistently falling short of demand. The charity Chest Heart & Stroke Scotland is campaigning vigorously for improvements in that regard.

Much more can and needs to be done to improve the diagnosis and treatment of idiopathic pulmonary fibrosis and I hope that the Government's respiratory care action plan will help to deliver it. The outstanding work of the British Lung Foundation to campaign so effectively in all areas of lung health will also play a vital part, and I hope to play my part as the IPF champion.

In the long term, we should not settle for managing the symptoms of a fatal condition. In the past six years since my dad passed away, we have seen advances in the medicines that are available. With enough investment in research, we can turn the focus from managing this dreadful condition to better understanding its causes and, ultimately, curing or preventing idiopathic pulmonary fibrosis.

**The Deputy Presiding Officer:** Thank you very much, Mr Smyth. I remind members who wish to speak in the debate to press their request-to-speak buttons. I call Emma Harper, to be followed by Alexander Stewart.

17:19

**Emma Harper (South Scotland) (SNP):** I congratulate Colin Smyth on lodging this important motion, which welcomes idiopathic pulmonary fibrosis week. I also thank the British Lung Foundation and Chest Heart & Stroke Scotland for providing briefings, which I found very helpful, ahead of the debate.

Today's debate allows us to raise awareness of interstitial lung disease and idiopathic pulmonary fibrosis. As the Parliament's IPF champion, Colin

Smyth laid out the issues perfectly in his opening speech, particularly by referring to his dad's story.

The British Lung Foundation recently created a number of lung health champions. As convener of the cross-party group on lung health, I was delighted to lodge a motion that congratulated the BLF on the lung health champions initiative. The initiative aims to raise awareness of many lung and respiratory conditions, including IPF, that cause poor respiratory health and often lead to severe consequences, such as the need for hospitalisation, on-going medication and treatment and even end-of-life support. I am sure that we will all raise those specific issues in future members' business debates, which will keep lung health high on the Scottish health agenda.

I am looking forward to the Scottish Government's publication, before the end of this year, of Scotland's first respiratory care action plan. The plan is being led by NHS Tayside's Dr Tom Fardon, who has been very active in progressing the work and will present a draft plan at the next meeting of the cross-party group on lung health, in November. I would welcome the minister's attendance at the meeting, if that is possible.

I will focus the rest of my time this evening on raising awareness of IPF and ILD by informing people specifically of the e-learning modules for respiratory learning that have been created by Chest Heart & Stroke Scotland. The e-learning resource is called RESPe—respiratory education to support professionals through e-learning—which has been created for health professionals and is aimed at staff and students who work with respiratory patients in areas including anatomy, physiology and the assessment, treatment and management of many lung conditions. The module is free and interactive, and it can be used as evidence in reregistration. At the weekend, I completed the IPF module, which I will be able to use for my portfolio of learning to show that I am keeping up my nurse registration. As I am sure members know, I am a registered nurse.

The module provides lots of information, including on ILD and IPF and on the challenges of managing breathlessness, which is associated with IPF. The module presents much of the data that has been mentioned, such as that on the assessment, diagnosis, cause and treatment of rheumatoid arthritis—which relates to the immune system—systemic sclerosis, lupus and dermatomyositis.

It is interesting to hear that IPF affects 2,500 people in Scotland and that it is more common in men and in people aged over 65, but it is not limited to those people. The module also highlights the effectiveness of pulmonary rehab. I thank

Chest Heart & Stroke Scotland for creating the great resource.

In relation to IPF and ILD, I ask the minister what is being done in Scotland regarding vaping. We hear interesting news and concerns from America regarding deaths and illnesses being linked to vaping. Are we gathering any evidence? Is any research being conducted in Scotland? I am thinking about whether particular aspects of vaping contribute to poor lung health, IPF and even ILD. I look forward to the minister's response.

Again, I thank Colin Smyth for securing the debate on IPF.

17:23

**Alexander Stewart (Mid Scotland and Fife) (Con):** I am delighted to take part in this important debate. I congratulate Colin Smyth on securing it, and I thank him for giving a very personal account of his father's diagnosis, which showed the live situation in which we find ourselves. As we have heard, idiopathic pulmonary fibrosis causes fibrosing, or scarring, of the lungs, and there is currently no cure, so the awareness week is to be commended.

We are in a serious situation, especially because little is known about the debilitating condition either in the medical world or among the wider public, compared with other diseases in the family of pulmonary fibrosis. That has to change. We need to increase awareness. The number of nurses who can be deployed also needs to be increased so that we can develop the process. That issue has already been raised, and I am sure that the minister will mention it in summing up.

There are very few statistics relating to IPF in the national health service in Scotland. However, I pay tribute to the British Lung Foundation and its report entitled "The battle for breath—the impact of lung disease in the UK". That report estimated that 32,500 people across the UK have IPF, and that about 5,200 people across the UK die from it every year. I will put that into context: more people die from IPF than die from leukaemia.

The British Lung Foundation's statistics also show that the death rates from IPF in Scotland are higher. In 2011, an average of 11.3 people per 100,000 in Scotland died from IPF, compared with 9.4 people per 100,000 in England and Wales. The mortality rate is rising throughout Europe, and the UK has seen an increase of 3.8 per cent for females and 4 per cent for males.

The British Lung Foundation has spent in excess of £2.5 million on funding IPF research, but it urgently needs more funding so that it can look

into its causes and treatments and, ultimately, find a cure.

It is also important that we look at and address the care and support that are available for people who live with the disease, because it appears that there is a postcode lottery across Scotland.

As we have heard, IPF causes breathlessness and a chronic cough, and that increases. Breathing is affected in two ways. The lungs are hardened, and the individual finds it difficult to inhale. The lungs are attacked and scarred, which causes difficulty for the bloodstream in respect of oxygen passing into it.

It is clear that the condition affects many people, but it has been found that the majority of people who are affected are older—they are in the 60 to 75-year-old age group. The disease is much more prevalent among them. Younger people do not seem to have it.

We have talked about environmental factors, such as breathing in dust. Individuals who have worked with wood, metal, textiles or stone in their normal day-to-day lives have been more prone to the disease.

We also have to think about people who smoke. Emma Harper made some very good comments about vaping, which is a major issue. As has been rightly identified, some startling reports are coming out that could really change the way in which that is managed.

We have to be very upbeat about where we are, but we also have to think about the research that is currently being done. Some people believe that there are vital factors. Funding is therefore urgently needed so that we can find out distinct cures and better treatment for patients who have IPF.

At the beginning of my speech, I mentioned awareness. It is up to all of us to raise awareness, and the debate is one way of achieving that. Every member of the Scottish Parliament has the ability to ensure that awareness is raised in their constituency or across their region. Funding, research and scientific proof are vital, and we all have our part to play. As Colin Smyth said, it is vital that we do that.

Again, I congratulate Colin Smyth.

17:28

**Monica Lennon (Central Scotland) (Lab):** I thank my colleague Colin Smyth for bringing the debate to the chamber, and for having the courage to stand up and tell us about his dad's experience and the impact on his family, in order to raise awareness and to help other people across Scotland.

I thank the British Lung Foundation for its hard work. I know that it has worked hard to raise awareness during idiopathic pulmonary fibrosis week this year. It was great to join colleagues to support its photo call and other activities in Parliament last week, and to help—I hope—to move IPF higher up the agenda.

I agree with the points that have been made about the comparatively low awareness of IPF, which is unlike levels of awareness of other respiratory and lung illnesses, such as chronic obstructive pulmonary disease. I have to admit that prior to the British Lung Foundation's recent work, my knowledge of the life-shortening condition was patchy. It was shocking to me that as many as 5,200 people in the UK die from the disease each year. It is equally worrying that Scotland and the UK have among the highest mortality rates from the disease in Europe.

That is why I have to commend the BLF for the work it has already done in raising awareness of the condition. The BLF-commissioned opinion poll for IPF week confirms that awareness of the condition is low, with over three quarters of respondents stating that they would not know what to do if they were diagnosed with the condition, and that more research into IPF is needed.

For a condition that affects so many Scots, it is troubling that the treatment options for managing IPF remain so narrow. It must be difficult for people who are affected and for their families. It is clear that early diagnosis is absolutely key, so that in cases in which lung function is dependent on drug prescription, people with IPF have as much time as possible with their loved ones.

As the recently appointed BLF parliamentary champion for pulmonary rehab—that news is hot off the press, as of yesterday—I assure colleagues across the chamber, and people who are watching the debate, that I will do all that I can to raise awareness of, and improve the availability of treatment for, IPF. I am delighted to be working with so many lung health champions across the chamber.

I was disappointed to learn that only 53 per cent of IPF patients have completed a course of pulmonary rehab, and that only 14 per cent receive pulmonary rehab that is specifically tailored to their needs. The interstitial lung disease pulmonary rehab classes that are delivered in Greater Glasgow and Clyde NHS have made significant improvements to patients who are managing their chronic conditions. However, it is deeply unfair that such a service is not available equally throughout Scotland. I am sure that we would all like to see that type of specialist care being developed and delivered in health boards across the country, and that we agree that it

should be addressed in the forthcoming respiratory care action plan.

We know that lung diseases such as IPF cause misery for patients and their families. They remain among the biggest killers, shorten the lives of far too many people and cost our NHS billions of pounds.

It is clear that we need to take more action to improve our understanding of the diseases, and that we need to invest in treatment options for those who are affected. I would certainly like to see the proposed respiratory care action plan being brought forward as quickly as possible, and for that to contain concrete actions on how we can improve data collection and treatment for people with IPF, and increase the number of specialist nurses who are so needed.

Emma Harper made some good points about vaping—an issue on which I have lodged a number of parliamentary questions and had a few responses. It is clear that we need to be vigilant about vaping and to take a precautionary approach.

By working together with our plethora of lung health champions, we can make a difference. I cannot think of a better IPF champion than Colin Smyth.

17:32

**David Torrance (Kirkcaldy) (SNP):** I thank Colin Smyth for securing this debate, and I welcome to the Parliament the daughter of a member of the Fife and Tayside IPF support group.

Like many people, until fairly recently I did not know very much about idiopathic pulmonary fibrosis. I had heard of it, but I did not fully understand the disease or appreciate the impact that it has on individuals and families until I headed along to show my support for the Fife and Tayside support group when it had an awareness-raising stall at the Victoria hospital. The stall was not only successful in raising more than £300, but a great opportunity to highlight the effects of the disease.

Despite a steady increase in the number of people who live with it, the disease remains poorly understood and incurable. There are two treatments for IPF, but they only help to reduce the rate at which it progresses, and they can often have significant and severe side effects. A lung transplant, which is only suitable for some people, is the only other solution.

Average life expectancy following an IPF diagnosis is only three to five years, so it is clear just how important it is to ensure that the proper support is available to patients.

The facts and figures relating to the disease are startling, but it was not until I met members of a local support group that the harsh and stark reality of living with this chronic disease really hit home. The Fife and Tayside IPF support group is one of three in Scotland and has been active since November 2017. Born of the needs of individuals and families who were desperate for information, reassurance, support, understanding and hope, it is a place where friendships are made.

The group currently has around 27 members, but as one member explained to me, due to the often rapid progression of the disease and the increase in people being diagnosed with IPF, the number can fluctuate greatly over a very short time. I was saddened to hear that that one small group alone had lost five of its members this year.

When I spoke to its members, it was clear to me just how vital support such as that provided by the group is, not only for those who have received the diagnosis but for their families and loved ones. Words that I frequently heard when members discussed that moment in the consultant's room when they listened to their diagnosis included "shock", "bewilderment" and "confusion". When people are told that they have a chronic and progressive lung disease, which has no apparent or known cause, which they have probably never heard of before and for which there is no cure, that tears their worlds apart.

"How did this happen? Why did this happen? What will happen to me now? How long do I have?" Faced with such uncertainty and a multitude of unanswerable questions such as those, sufferers often find themselves spiralling into depression, which is why access to practical advice and support at that crucial time is so important.

It is vital that patients are given as much information as possible and are made aware of the support that exists. One member of the Fife and Tayside group, Alan, described the moment when he was diagnosed, following a year of being treated for COPD:

"The penny didn't drop at first. Both my wife and myself were just relieved that I didn't have cancer of some sort—not realising that IPF is in fact a terminal condition. I am not a fan of looking up the internet on medical matters, because it usually gives examples of the worst cases. However, on this occasion curiosity got the better of me and I looked up IPF. It's fair to say we were both stunned into silence by what we read".

Another member, Robert, or Bob, described his experience:

"The doctor told me he thought I had IPF. I'd never heard of it before. He printed me a 3 page article and sent me on my way. When I got back into my car, I sat and read the printout. It was only on the last page, in the last paragraph, that I read the prognosis: 3-5 years life expectancy. This completely knocked me for six."

Both those gentleman have now sadly passed away, but their testimonies clearly illustrate the need for increased awareness and understanding of what is a debilitating disease.

I welcome the actions of Action for Pulmonary Fibrosis, the British Lung Foundation, the Pulmonary Fibrosis Trust and every support group across the country during IPF world week, as they work to advance understanding and increase awareness of the disease and the devastating impact that it has on the lives of sufferers and their families. As the research continues, I very much hope that new treatments and, ultimately, a cure, can be found.

17:37

**Brian Whittle (South Scotland) (Con):** I congratulate Colin Smyth on securing time in the chamber to debate this topic. I thank him for his personal testament on his father's and his family's journey through IPF. In reality, that will be much more effective than anything else that we are able to add to today's debate.

What causes idiopathic pulmonary fibrosis? It forms part of a group of conditions known as interstitial lung diseases, which cause scarring to the tissue deep inside the lungs—which, in turn, prevents proper airflow from occurring within the lungs. The condition gets progressively worse.

In several cases of interstitial lung disease, the cause is known. In the case of idiopathic pulmonary fibrosis, however, the cause is unknown. The medical term for unknown causes is "idiopathic", therefore IPF is defined as lung scarring of unknown cause.

Although the causes of IPF are unknown, there are certain factors that might increase someone's chances of developing it—and "might" is an important word here. To me, that says that we do not know enough about the condition. They are known as IPF risk factors.

As we have heard, they include cigarette smoking. It makes sense to me that something such as cigarette smoking would be a risk factor. The Parliament has done groundbreaking work on that issue, and it is important that we continue to drive that work forward, because it is not finished yet.

Emma Harper raised a point that has been raised before: the impact of vaping. When representatives of vaping companies came to my office, they expected me to support what they were doing, and they were taken aback. Inhaling anything foreign into your lungs has to be bad for you. It is right that we raise that point. As my colleague Emma Harper suggested, it is really important to take cognisance of that, especially

given some of the stuff that is coming out of the United States.

Viral infections are another risk factor. Viruses such as the Epstein-Barr virus are quite difficult to detect—I am aware that we have a nurse in our midst, and she might be able to correct me. Influenza is another one of those viruses, as is herpes. Another one is hepatitis C, which I read it is within our gift to eradicate.

One issue that jumped out at me is that of exposure to environmental pollutants, including inorganic dust, such as silica and hard metal dusts; organic dust, such as bacteria and animal proteins; and gases and fumes. Again, the environment is an issue that is coming much more to the fore, and is something that we can make an impact on.

Certain medications are risk factors, such as the ones that can keep people's heartbeat regular and ones that are used in relation to Crohn's disease, urinary tract infections and rheumatoid arthritis. Some chemotherapy treatments and cancer medicines can also have a negative impact.

Gastroesophageal reflux disease is another risk factor. Scientists have found that nine out of 10 people with IPF also have GERD. As a result, some scientists think that some people who have GERD might regularly breathe in tiny drops of acid from their stomach, which might injure their lungs and lead to IPF. However, again, more research must be done to confirm that assumption.

There are many conditions that are linked, and some of the work that we are doing will impact on instances of this disease. It is progressive and debilitating and, ultimately, it will shorten people's life expectancy. Before I sit down, I will acknowledge the impact of this debilitating condition in relation to loneliness and isolation.

There are many things to think about here, and I thank Colin Smyth for giving us the opportunity to debate the issue today.

17:42

**James Kelly (Glasgow) (Lab):** Like others, I thank Colin Smyth for bringing this important debate to the chamber. I genuinely thank him for telling his dad's story, which shone a light on IPF and some of the issues that have come out during the debate. It is clear that not enough is known about the disease, and I hope that the debate will help to raise awareness.

I am aware from the briefing that was provided by the British Lung Foundation that 32,500 people across the UK are affected by the condition. However, the more we look into the issue, the more we see that there are clearly areas of concern around it. Only two drugs are available to

treat the disease, and they are not available to everyone who suffers from it. That has to be a matter of concern.

The British Lung Foundation does a lot of work around raising awareness of lung disease, and I pay tribute to it. Recently, it hosted me when I attended a meeting at the new Victoria hospital in Glasgow with a group of patients who attend classes for people with lung disease, particularly chronic obstructive pulmonary disease. The patients explained the great benefit that they get from those classes through, for example, help with exercises for their lungs and education about their various conditions.

The debate has highlighted the fact that the Parliament must consider a range of actions, working across parties. We need to raise awareness of IPF. There is little in the public domain about the disease and its causes, as Brian Whittle and others said.

We also need to better understand the treatments for the disease. As I said, currently only two drugs are available to treat it.

Part of our approach has to involve the production of a respiratory care plan, and I welcome the fact that the Scottish Government will produce that later in the year. The plan will flush out a lot of the issues that we have talked about this evening.

I thank Colin Smyth for bringing the debate to the chamber and for sharing his personal experience. I hope that in our speeches members have identified firm action points, not just for the Government but for parliamentarians and for organisations outwith the Parliament, such as the British Lung Foundation, which campaigns so strongly on the issues.

17:45

**The Minister for Public Health, Sport and Wellbeing (Joe FitzPatrick):** I am delighted to respond to this important debate on behalf of the Government. I congratulate Colin Smyth on securing the debate and I thank him for sharing his dad's experience, which I know was not easy to do—I could see that sharing the experience brought things back to him. I thank him very much, because sharing such experiences helps us to understand exactly what we are talking about. I am also grateful to members of all parties for their invaluable speeches.

The debate provides us with an opportunity to highlight IPF week and reflect on this rare, poorly understood, chronic and, for some people, ultimately fatal lung disease.

David Torrance made it clear why it is so important that we raise awareness of IPF. We

know about the impact that living with the condition has on individuals and their families. Members talked about that.

One of the difficulties is that we do not yet know what causes the condition. There are lots of suggestions, and it is reasonable to suggest that smoking might well be a contributory factor. As Brian Whittle said, the Parliament has a good record of doing groundbreaking work on tobacco, but that work is not finished.

Emma Harper suggested that vaping might be a cause of IPF in future and asked about our position on the issue. The Scottish Government has rightly taken a precautionary approach. We legislated to restrict the availability of e-cigarettes to young people and non-smokers, and Scotland is the first country in Europe to consider a ban on all advertising and promotion of electronic cigarettes.

I have mentioned just two potential causative factors; we are still not clear about what causes the condition.

**Brian Whittle:** Does the minister agree that a good starting point would be for the Government to seek more accurate statistics on the condition's prevalence in Scotland?

**Joe FitzPatrick:** I was going to come on to that. On that point, and in the context of Colin Smyth's point about health inequalities, data is important in informing improvements to services and decision making. I agree that we need to consider how we improve the collection of high-quality data. The development of the respiratory care action plan, which I will talk about—if I have time—provides an opportunity for us to consider that issue.

Given the challenges, the work that third sector partners undertake is crucial in helping to support people who live with the condition. As James Kelly said, it is important that we raise awareness, and in that context I congratulate the British Lung Foundation for its meet the experts events, which have raised awareness of the condition and provided information to people who are affected and their families. We know that increased knowledge and skills are important for any member of the health and social care professions who works with people living with respiratory conditions, whether they do so in a health, social or private care setting. That is why the Scottish Government has provided funding of £112,000 to Chest Heart & Stroke Scotland to support the development of RESPe, the online free, interactive, e-learning tool that Emma Harper mentioned.

The Scottish Government is absolutely committed to improving the quality of care in Scotland, and one way that we will do that is by developing Scotland's first-ever respiratory care

action plan, which members are aware of. The aim of the plan is to provide a framework for action by health boards and other partners. It will set out how we—the Government and its partners—can ensure that those living with the range of respiratory conditions in Scotland can access the care and support that they need to live well on their own terms.

My gratitude goes to all those who have contributed to developing the plan but, in particular, I thank the British Lung Foundation and Chest Heart & Stroke Scotland, which have represented patients' interests throughout the plan's development, ensuring that patient experience is fully taken into account and that patients' voices are heard.

Monica Lennon asked whether we could just produce the plan now. One challenge in trying to co-produce something is that it takes a little longer. As we are developing the first-ever plan, it is right that we ensure that patients' experiences are central to it.

**Monica Lennon:** The minister knows by now that I am not the most patient of people. At the moment, specialist nursing support is available only in NHS Greater Glasgow and Clyde, NHS Grampian and NHS Lothian, so what can I say to my constituents in the NHS Lanarkshire and NHS Forth Valley areas?

**Joe FitzPatrick:** As we have heard, the plan will be published before the end of the year. I think that specialist nursing is important, which is why we have given NHS boards more than £2.4 million extra to enhance clinical nurse specialist provision across Scotland. Some boards have used that to directly employ specialist nurses and others have used it to provide training, so there has been a bit of flexibility.

It will be interesting to hear the feedback on the action plan when it is published towards the end of the year. It will be a draft plan, so there will be the opportunity to give feedback. We have engaged to reach the point of publishing a draft plan, but members will know about my ability to listen and hear, which is what I will do if there is a need for the plan to be further amended. The plan will be a genuine draft. We will hear thoughts on it and will continue to work with the British Lung Foundation, Chest Heart & Stroke Scotland and others.

The British Lung Foundation and Chest Heart and Stroke Scotland are already planning how they will ensure that there is additional patient engagement when the draft plan is published, which is really important. In trying to improve services, it is important that we listen to the people who know best, and they are the people who currently use the services.



One final issue that I want to cover is pulmonary rehabilitation, which Colin Smyth, Emma Harper, Monica Lennon and just about everybody else mentioned. There has been good lobbying on the issue, and rightly so. There is a well-established evidence base for pulmonary rehabilitation, which clearly shows its benefits in helping to support self-management. The approach is already the subject of a key recommendation in national clinical guidelines, which we expect NHS boards to follow. However, we have all spoken to people who have raised issues with that. I have spoken to a number of people in Forfar in Angus about the issue. The feeling is that they have particularly good pulmonary rehabilitation, but they ask why it cannot be the same everywhere, which is a good point.

I have one final point—I apologise, Presiding Officer, but it would be remiss of me not to mention this. Research is important, and we support it through the chief scientist office. The Scottish Government funds an active portfolio of research. Respiratory conditions probably punch above their weight in accessing that funding, and we would welcome applications for research into IPF.

I pay tribute to all the staff and volunteers who work tirelessly in our NHS to improve prevention, diagnosis, treatment and support for people with all lung conditions. I give a huge thanks to Colin Smyth for lodging the motion for this important debate.

*Meeting closed at 17:54.*



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

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