



OFFICIAL REPORT
AITHISG OIFIGEIL

Finance and Constitution Committee

Wednesday 12 August 2020

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FINANCE AND CONSTITUTION COMMITTEE

14th Meeting 2020, Session 5

CONVENER

*Bruce Crawford (Stirling) (SNP)

DEPUTY CONVENER

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

COMMITTEE MEMBERS

*George Adam (Paisley) (SNP)

*Tom Arthur (Renfrewshire South) (SNP)

*Jackie Baillie (Dumbarton) (Lab)

*Alexander Burnett (Aberdeenshire West) (Con)

*Donald Cameron (Highlands and Islands) (Con)

*Angela Constance (Almond Valley) (SNP)

*Patrick Harvie (Glasgow) (Green)

*John Mason (Glasgow Shettleston) (SNP)

*Alex Rowley (Mid Scotland and Fife) (Lab)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Michael Russell (Cabinet Secretary for the Constitution, Europe and External Affairs)

CLERK TO THE COMMITTEE

James Johnston

LOCATION

Virtual Meeting

Scottish Parliament

Finance and Constitution Committee

Wednesday 12 August 2020

[The Convener opened the meeting at 10:00]

Decision on Taking Business in Private

The Convener (Bruce Crawford): Good morning, and welcome to the 14th meeting in 2020 of the Finance and Constitution Committee. The first item on our agenda is a decision on whether to take item 3 in private.

As no members object, we agree to take item 3 in private.

United Kingdom Internal Market

10:00

The Convener: Our substantive business is to take evidence on the United Kingdom internal market from Mike Russell, the Cabinet Secretary for the Constitution, Europe and External Affairs. He is joined by Euan Page, who is the head of UK frameworks at the Scottish Government.

I point out that the committee issued an invitation to the UK Government's Secretary of State for Business, Energy and Industrial Strategy. We heard just this morning that he has declined our invitation. That is very disappointing, particularly given the complexities and timescales involved and that responses to the UK Government's consultation are required within four weeks. I sincerely hope for a better response in the future.

Having said that, I warmly welcome the cabinet secretary to our meeting. Do you want to make some opening remarks, Mr Russell?

The Cabinet Secretary for the Constitution, Europe and External Affairs (Michael Russell): I will speak briefly, because I know that you will have lots of questions, and I have provided the committee with the paper that we will submit to the UK Government today as our initial response to its white paper. I am sorry that that has been at short notice. We had a short period in which to consult on it, but we are issuing a response. As you would expect, it is a comprehensive rebuttal of the principles behind the white paper and of the detail in it.

Clearly, we will talk about frameworks, the place of frameworks and how they are the means by which we should move forward, but I will first make three brief points.

First, the white paper leans heavily on, I suppose, historical continuity. There is much discussion of the union of 1707. I point out that what has been written is not necessarily accurate. For Scotland, the union of 1707 was at least as much about accessing overseas trade as it was about internal trade. Access to overseas trade had been removed by the English Government through the Navigation Acts. We should be careful of the history and background in the paper.

Secondly, the white paper is about power. It is designed to extend the power of the UK Government in a number of areas of clear devolved responsibility. If the UK Government wants to expand its power, it should address the issue through the Scotland Acts and the proper constitutional mechanism. It is endeavouring to take power away from the devolved

Administrations and concentrate it in its own hands.

Thirdly, the paper is about removing the ability of the devolved Administrations to choose where they think that there should be policy differentiation. There is no threat, in my view, to trade within these islands, and that point is made strongly in our submission to the UK Government. The white paper is about ensuring that the decisions that the UK Government reaches cannot be contradicted or gainsaid by the policy decisions of the devolved Administrations, which are theirs by right and should continue to be exercised.

I am happy to answer questions. I can confirm that, as this matter progresses, we will bring it to debate in the chamber. When we see the proposed legislation, if the UK Government proceeds with it—I profoundly hope that it does not proceed with it—we will issue commentary on it. We will oppose that legislation, we will not recommend that legislative consent is given and we will continue to oppose it in other places as well.

The Convener: Thank you, cabinet secretary. I will start the questions.

It may be that there have been only four weeks to respond to the white paper, but my understanding is that, as long ago as last year, the Scottish Government withdrew from discussions with the UK Government on the internal market. Why was that? That seems an unusual thing to do, and I can assume only that the Scottish Government considered that it had a good reason for doing so.

Michael Russell: Indeed, we considered that to be the case, and I am happy to address the point.

In March 2019, it became increasingly clear to me that what was taking place was not a discussion of how the frameworks could provide the basis for the regulation of activity within these islands, but that there was instead the development of an approach by the UK Government that would present a real risk to the devolution settlement. At that stage, I considered that it was wrong to encourage that, unless it was to be done openly and above board, through the Scotland Acts.

We made those points, and I made it clear that the direction of travel that was being taken was unacceptable, and would not be accepted by the Scottish Government. I think that it was fair of me to do so.

That was well over a year ago, and I am sorry that the UK Government did not pay any attention to our position at that stage, but I decided that we would not take part in any joint analytical work on policy development.

I asked my officials to keep apprised, insofar as they could, of the UK Government's policy thinking, and, if there was the possibility of attending events, to hear what was taking place, they could do so. However, we were not going to go along with a proposal that, by its stealth—and now, we see, by primary legislation—would take powers away from the Scottish Parliament. If the UK Government wanted to discuss that, it should have come openly. The proposal would also have undermined the work that we had been doing on frameworks, which we had entered into voluntarily and was proceeding well.

The Convener: You said that you entered voluntarily into discussions with the UK Government on common frameworks. What stage are those particular discussions at? What progress is being made on them? What is the relationship between the UK Government's internal market proposals and the development of common frameworks?

Michael Russell: Your questions are at the heart of the issue. When the original European Union (Withdrawal) Bill passed through Westminster, we agreed that we would voluntarily take part in the development of common frameworks. We recognised that the frameworks might be needed in areas in which there was an intersection between EU powers, UK powers and devolved powers. A great deal of work went into identifying the areas.

It was not without controversy at the time, and we would not accept compulsion, but, in the end, we came to an agreement that there were a limited number of areas in which we should look for formal agreement of one sort or another—whether through legislation, memorandum of agreement, or simply through the establishment of agreed and present working practice—and that we would endeavour, in the areas in which we considered it was needed, to have an agreement among the devolved Administrations, particularly between the UK and ourselves in some areas, and sometimes more widely, that could help us to operate.

A list of those frameworks has been provided in my letter to you. To summarise, seven have been agreed, but they require parliamentary scrutiny. Of course, it has been difficult during the Covid period to account for parliamentary time, but they can get that scrutiny and can come into effect as soon as they have had it.

Another 20 to 25 frameworks are in the process of being agreed, and could come into effect as soon as that happens and there is consultation and parliamentary scrutiny.

In our view, those frameworks would provide all that is necessary in replacing EU structures. They

are comprehensive and cover a whole range of areas. For example, those agreed are nutritional labelling and compositional standards; emissions trading; food and feed safety and hygiene law; hazardous substances; radioactive substances, recognition of insolvency proceedings; and statistics.

There are more frameworks, we are ready to enter into concluding discussions on them and there is already a mechanism to do so. The UK Government has to report every three months on whether any compulsion has been involved—and there has been none.

That reporting has been taking place, and has most recently been signed off by Michael Gove, so he is aware of the progress that is being made. As a belt and braces approach, we are saying that, if the UK is prepared to continue at the table on frameworks—it is the one that is walking away from the table—there is no need for any other action, we will accelerate matters as quickly as we can and, during that time, there will be no proposals for changes to internal arrangements, because we will be putting new things in place.

That is the solution to a problem that the UK Government has made and to which it has proposed a solution that is utterly unacceptable.

The Convener: Do the common frameworks contain minimum standards?

Michael Russell: Some will contain minimum standards. Each one will be different. They will not contain standards that are not negotiated. One of the huge differences between what is presently in place in the EU and what the UK is proposing, which the UK glosses over in the white paper, is on the question of consent. The system that operates in the EU is a complex and long-standing one that has minimum standards and a range of other principles, such as subsidiarity and proportionality, which are very important to it. There are exemptions. It is a subtle system that is based on a great deal of case law.

We propose a simpler set of structures in the frameworks. The UK proposes a boiled-down set that forces blanket conditions and standards on the devolved Administrations, no matter what they say and without any negotiation or discussion.

The Convener: This morning, I read the submission that the Royal Society of Edinburgh sent to the committee on the white paper. The RSE says that it is not convinced that the legislation that is proposed in the white paper is required to achieve its objectives. As the white paper acknowledges, the UK internal market is extremely strong, with almost completely frictionless trade and without any legislative requirement for mutual recognition or non-discrimination between different political units in

the UK. The RSE says that there is no urgency demonstrated by the evidence supplied in the white paper for legislation. What are your views on the RSE's position?

Michael Russell: I have not yet seen the RSE's position but, from what you have mentioned, I agree with it entirely. It seems entirely clear to me—others have made this point—that the white paper presents a solution in search of a problem and that it should be resisted. There is no need for it and, as I said in my opening remarks, it is in fact about transferring power from the devolved Administrations to the UK Government; it is not about problems.

Murdo Fraser (Mid Scotland and Fife) (Con): I do not know whether you have had the chance to look at the submissions that the committee received after our call for evidence, but there is a common theme throughout the responses that we have had from trade bodies such as the Scottish Retail Consortium, the Food and Drink Federation Scotland, NFU Scotland and Oil & Gas UK. All those bodies mention the importance of the UK internal market for doing business and the need to maintain regulatory alignment between all parts of the UK to assist with the flow of trade. Does the Scottish Government accept, as a matter of principle, that that regulatory alignment needs to be maintained?

Michael Russell: First of all, I congratulate Mr Fraser on his new post. I cannot say that I am terribly sorry that he will not be shadowing me, but I wish him good fortune in that role.

Of course we believe that there should be frictionless trade. The system that is presently in place provides frictionless trade, as would the frameworks, should any need for them be demonstrated. Of course, if you believe in frictionless trade and that there should be no barriers of any description, you would not be leaving the EU. That is the irony of the UK position. The preaching about the importance of political union and political action to enforce free trade is coming from a UK Administration that is walking away from the world's biggest single market. That irony is not lost on us. Moreover, nor do we know what the situation will mean for business. All the organisations that I have been talking to in the past fortnight are completely at sea when it comes to knowing what will actually happen at the end of this year.

The reality is that what we have through the frameworks accepts that a structure should be put in place. However, the white paper imposes a structure and does not acknowledge the variations that take place and have been financially beneficial. An interesting historical analysis that you can apply is whether devolution has helped internal trade and the operation of economic

prosperity within these islands. The answer is yes. If the existence of devolution was such that it was providing barriers, the answer to that question would be no. We have a good system that works well and that allows some policy differential, which the present system also allows for. One example, of course, is minimum unit pricing, but there are other examples.

10:15

Murdo Fraser: Thank you for those points and for your kind words. I, too, shall miss our exchanges, although, as I will still be on this committee, I am sure that we will have many more over the coming months.

You have accepted that the principle of regulatory alignment is desirable. Similarly, you acknowledge that mutual recognition, which is embedded in the single market rules, is also important for trade within the UK.

Michael Russell: I would acknowledge the importance of mutual recognition if there was a system, as there is in the EU, that ensured that it also allowed for policy variation. One of the mistruths—if I may refer to them as such—in the white paper is that it implies that all that it is doing is trying to substitute a UK system for an EU system. That is not true. It is trying to invent a rigid system of compliance and enforcement that does not exist in the EU and under which there would be no appeal for the devolved Administrations.

Mutual recognition would have to work in such a way that there was recognition of minimum and maximum, that there were exemptions to it and that there were ways to operate where you could say, “This policy objective requires us to operate in such a way.” Again, I cite minimum unit pricing in that regard.

Far from that being the case, the white paper proposes a very wide range of areas in which mutual recognition of standards would in fact be subordinate to whatever standards the largest member of that group were to set. If that largest member were to set standards below, for example, the standards in Scotland, there would be no question that Scotland’s economy and businesses would suffer. That is basic economic theory. If there were a lowering of standards, the largest market would be the one that would predominate, and that market would drive out of business Scottish businesses. Perhaps, I might say, Scottish businesses in the region that Murdo Fraser represents would suffer economic hardship as a result of the proposals.

Murdo Fraser: That is debatable, as is, of course, the extent to which there is a difference in principle between what is proposed and the rules of the EU single market.

My final question goes back to the convener’s line of questioning from a few moments ago. You have spoken about how you see common frameworks as an alternative way to try to address the issues to maintain regulatory alignment in the UK. In its submission, the NFUS makes the point that no single devolved Administration should have a veto over the terms of the common frameworks. However, from what I recall of our previous discussions about that, the Scottish Government’s clear view is that the Scottish Parliament should have a veto on the terms of UK common frameworks. What is your position on that? Should the Scottish Parliament be able to block a common framework if other parties agree it?

Michael Russell: There should be no veto for anybody. That has been my position from the beginning. There should be a possibility of agreeing on the common frameworks in a sensible, grown-up manner. The UK Government is saying in its proposals that it should have a veto on everything, because it should be able to prevent anything happening but that which it wishes to happen. My position is entirely clear, which is that there should be no veto for anybody, and that we should get away from the ludicrous nature of so-called parliamentary sovereignty at Westminster and operate as equals. If we operate as equals, there is no veto.

Angela Constance (Almond Valley) (SNP): Following on from vetoes, you are probably familiar with paragraph 154 on page 51 of the UK white paper, in part 3, which is on “Governance, independent advice and monitoring”. It says:

“In this White Paper the Government has made clear that the evolution and overall shape of the UK’s Internal Market will be overseen by the UK Parliament, and that key decisions will be put to the UK Parliament for approval.”

Could you spell out the implications of that? Is it consistent with the devolution settlement? Is it not the case that, in taking back control from the EU, the UK Government is also taking back control from Scotland?

Michael Russell: Yes. Paragraph 154 is entirely clear. The words are there:

“key decisions will be put to the UK Parliament for approval”.

To go back to the question from Murdo Fraser that I just answered, it does not say that key decisions will be agreed by the four Administrations together, with no one having a veto. Decisions will be put to the UK Parliament, which will decide. It is a major power grab, and paragraph 154 of the white paper confirms that.

There is a lot of contradictory material in the UK Government’s paper; it wanders backwards and forwards. Just occasionally, however, the mask

slips, and it does so in paragraph 154. It is the UK Parliament, driven by the UK Government, which has a majority of 80, that will decide, and Scotland, Wales, and Northern Ireland will have no say.

Angela Constance: There is a range of evidence from commentators and experts—it is not just politicians' views—that points to the fact that the imposition of standards on devolved policy is possible. Some would say that it is likely, whereas others have intimated that it is a power that the UK Government retains as a threat to all the devolved Administrations. Given that this is potentially the biggest power grab in the history of devolution, what will you do when Scotland is compelled to accept standards that are set by the UK Government and the UK Parliament that are contrary to the views and decisions of the Scottish Parliament and Scottish Government?

Michael Russell: Let me go through it step by step, because it is important that we understand what the options are and how we take them forward.

First, we have responded to the consultation and we have made it clear that we do not accept the proposals. We are and have always been constructive. I have spent a difficult four years trying to be constructive with the UK Government, but I will continue. We have suggested that the proposals are misguided. It is a solution looking for a problem. The UK Government should just forget about this and look at the joint frameworks, as we should be doing in any case.

Secondly, we published a rebuttal and we will debate the issue in the Scottish Parliament.

Thirdly, should the UK Government decide to go ahead with the legislation—we hope profoundly that it does not—we will recommend to Parliament that it does not grant legislative consent.

Fourthly, we will actively oppose the legislation in the House of Commons through the SNP parliamentary group, as will others. I hope that there will be a common front in the House of Commons. We will continue to do that in the House of Lords as we did with the European Union (Withdrawal Agreement) Bill.

I do not rule out other action, up to and including legal action, because this is an outrageous power grab and a major weakening of devolution and it should not be permitted to take place. It completely reveals the agenda of the current UK Government, which is hostile to devolution and particularly hostile to Wales and Scotland for exercising their rights under devolution, which, of course, we will continue to do. We will also continue to make the case for independence. I know from the front of *The Times* today that it

appears to be growing in strength with every passing month.

Angela Constance: Thank you, cabinet secretary. It would appear that the devolved Administrations are the only adults in the room who appear to be constructive. I have no further questions.

Jackie Baillie (Dumbarton) (Lab): Cabinet secretary, I am sure that you would agree that effective working relationships are the key to making any of this work. I absolutely agree that we need to ensure that the UK Government respects the devolution settlement. That said, the white paper says very little about what kind of institutional architecture we would want in place to encourage those relationships. Have you any thoughts as to what an appropriate mechanism would look like?

Michael Russell: That is a very interesting and important question, and I thank Jackie Baillie for asking it. This afternoon, I will have a videoconference with the UK Government on the intergovernmental review. The review is a long-term process—it has been under way for two and a half years, coming on for three years now.

As a former minister, Jackie Baillie will know that the joint ministerial committee structures are completely inadequate. Every single report, including a report by this committee, has shown that they are inadequate. The intention of the intergovernmental review was to look at the structures and ask how we get something that is more capable of bearing the weight of devolution.

However, I do not think that we are much further down the road than we were two and a half years ago. Last year, a timetable was agreed, and David Lidington—in his last action before he left his job a year ago—agreed the principles on which the intergovernmental review would go forward. The next issue that is meant to be discussed is dispute resolution; I have not seen any detailed proposals on that.

I had already argued—as had Mark Drakeford, the Welsh First Minister—for a much more radical approach to the intergovernmental review that treated the four nations as equals. There would be no vetoes, but there would be a system of dispute resolution by which we could move forward.

Jackie Baillie will not be surprised to hear that I believe in independence more than in devolution, but we have been trying to get in place something that would at least be able to bear the weight of the difficulties that we are facing. That weight has increased substantially as a result of Covid; in relation to finance, for example, given—as we see today—the recession that has struck the UK and the difficulties that exist. The current structure is simply not capable of operating effectively, but the

UK Government has not shown any urgency to change it. At the same time, however, the UK Government is bringing forward profound changes to how devolution and its powers would operate, and ignoring the positive work that is being done on the frameworks.

I do not believe that there is much of a commitment from the UK Government to restore a better structure that might allow us to work together better. As I said, I have been through four years of the current joint ministerial committee. I had some experience of it previously, 10 years ago, when I was in another ministerial role. Until the structure is changed, it is hard to see how anything can improve.

I should, however, say that things have definitely got worse in the past year with the advent of the Johnson Administration, which is running a clear and deliberate anti-devolution policy.

Jackie Baillie: There are certainly mixed experiences with regard to joint ministerial committees. My experience of such committees 20 years ago was certainly more positive than your experience now. I am very clear that we need a more robust mechanism.

You referred to the Welsh Government. The last time that we spoke, I asked you whether you had studied its proposal and whether you supported it, and you said that you would go away and look at it. Can I take it from what you are saying that there is common agreement between Wales and Scotland on the nature of institutional architecture that is required, which would allow for disputes to be resolved?

The Royal Society of Edinburgh has discussed the idea of a new institutional body that would help out and provide oversight specifically on issues around the internal market. Can you comment on that?

Michael Russell: On your second point, I am not convinced that an internal market group would be required if the frameworks were operating properly. There would be huge questions about who appointed its members, what powers it would have and how it would operate. It could not instruct the UK Parliament to do anything because the UK Parliament regards itself as sovereign, and in those circumstances I do not believe that it should be able to instruct the other Parliaments. There are very considerable difficulties around how such a body would operate.

There was a proposal in the 1920s for a similar body, in a slightly different area—I think that it was in the Government of Ireland Act 1920—but that never actually happened. There are huge difficulties in having bodies that are meant to sit

above Parliaments in order to operate; I do not see how such bodies can operate.

10:30

I think that I have talked publicly and I am happy to talk again about the basis of our co-operation with Wales, which has been extensive and which I certainly have found productive. Mark Drakeford and I agreed very early on, when Mark was in the position that I hold, in relation to Brexit, that we had different destinations but were on the same journey. We did not agree on the main issue of independence, but we certainly agreed that there was no advantage to be had in seeing devolution damaged by the fiat of a Westminster Government. Mark gave a full lecture at the Institute for Government 18 months ago and I gave one shortly after that; I do not think that you would find the two speeches incompatible. They have different emphases but they address the same problems. I greatly respect the work that Mark Drakeford did and that Jeremy Miles is now doing. We were able to co-operate.

I would not want to leave out Northern Ireland in this context. It is in Northern Ireland's interests to have a better set of intergovernmental relationships, which is an issue that I think sometimes restricts Northern Ireland, as well. There are big differences between our ambitions and objectives, but we have made common cause with the two main parties and other parties in Northern Ireland—I try to keep an open mind to them—where it is helpful to do so, to try to get some reasonable discussion.

John Mason (Glasgow Shettleton) (SNP): Cabinet secretary, you mentioned alcohol minimum unit pricing a couple of times. The policy was introduced because we have particular health problems in Scotland, which might or might not be problems in other parts of the UK. It was challenged in the courts and our position eventually won. In a scenario in which we introduced a similar policy, are we clear where it would go, given the current proposals?

Michael Russell: No, but I think that we can make a guess, from what we have heard so far. There are a number of references to minimum pricing in the document, some of which appear to have been shoehorned in when it became obvious that we considered the issue to be a problem. You will remember that I wrote to Michael Gove about a fortnight before the paper was published, after having discovered and been very concerned about what was going on. We thought and still think that minimum pricing would be at risk.

When the paper was being discussed in the House of Lords about two weeks ago, Martin Callanan, Lord Callanan, in response to a point

from Dafydd Wigley, specifically rejected the idea about intergovernmental structures, about which I have been just talking to Jackie Baillie. He said that we have “fine courts”—I think that those were his words—which could supervise and implement issues that arose from the paper. If we take minimum unit pricing as an example, that would mean that a drinks manufacturer or whoever could go to court and say, “The standard that is applied south of the border is not being applied north of the border; we insist that it is.” I think that such a precedent would be a present threat.

There would be a threat in other areas, such as national health service privatisation. We can certainly envisage circumstances in the public sector in which commercial companies, possibly from other countries or parts of the UK, said, “No, sorry, the standards that we live by here are the standards that you must apply.” It would be difficult to defend against that position. That is one of the insidious and problematic outcomes.

Michael Gove said—and Murdo Fraser repeated his remarks when I made my statement on the matter—that he and we could not point to a single power that we were losing. I could point to every power that we have, because every power that we have could be undermined by what is proposed, progressively, by the courts. We should be very alarmed by that.

John Mason: Thank you. I have just one more question. There was a case in Germany in which the EU tried to restrict all tobacco advertising—something I am sure that I would agree with. Germany resisted that, and went to court and argued that the EU had overstepped the mark and that the matter would be better decided at a national level. Do there appear to be any such protections for Scotland, Wales and Northern Ireland if the UK were to overstep the mark?

Michael Russell: There are not and could not be such methods, because the UK Parliament regards itself as sovereign, so it can always overrule the devolved Administrations. That would simply be an impossibility.

There are many differences between the structure in Europe and what the UK is proposing, and one of them is enforceability. If you have 27—it was 28—members who willingly, or even unwillingly, agree to something, they know that they can fall back on a legal structure.

I previously told the committee about something that Leo Varadkar said when he was Taoiseach that very much struck me. It was at the British-Irish Council and there was a discussion about trust. Mr Varadkar said that trust worked in the EU because it was enforceable by law; in other words, you could trust the other countries to do things, because if they did not do them there was a

sanction that could be applied. There is no such structure in the UK—there is no such legal sanction to be applied—and that is why real trust is impossible, because in the end the UK can do whatever it wants.

Previously, under devolution, there were UK Governments that would have balked at doing that. They would have recognised that that was the wrong thing to do. We do not see that from the current Tory party. It has already overridden the Scottish Parliament, and on one occasion it changed the law so that it could override the Scottish Parliament after we had done something. That is probably the dictionary definition of sneaking. In those circumstances, how can we trust it? There is no means of enforcing.

Tom Arthur (Renfrewshire South) (SNP): The UK Government’s white paper uses the term “mutual recognition”, which seems to be a straight lift from EU practice, but that operates within the context of 27 independent member states. What do you think are the practical implications of transposing that concept from an EU of 27 member states to a UK of four jurisdictions in which one jurisdiction represents 85 per cent of the population?

Michael Russell: It is like comparing apples and pears—it is impossible to compare. The origins of the rules and regulations lie in the active decisions of the 27 members. They have agreed that that should happen, they have negotiated how it should happen and they have accepted that that is how it should happen. Then, when it does happen, and anybody does not like it or falls foul of it, there are established legal routes for resolving the issue. There is also a broad range of flexibility and exemptions and, as David Edwards has observed, a big body of EU case law to back that up. It is complex and subtle but it works.

What is being proposed here is crude, unsubtle and designed simply for the UK to get its own way. There is no real role for the devolved Administrations because whatever they choose to do they will be undermined, and to that extent it is a deeply cynical proposal.

Tom Arthur: A key policy priority for the UK Government is to secure a trade deal with the United States of America, and a key ask of the United States is going to be changes to rules on food standards and agriculture. One such issue that has been brought to me by a constituent is that of genetically modified crops, which we have a ban on in Scotland. I think that the US is likely to push that issue with the UK, and I know that the Prime Minister has described some of the concerns as mumbo-jumbo. With the mutual recognition mechanism, is there a scenario of a cascading effect, in which the UK Government capitulates to the US on GM crops and starts to

allow the growing of GM crops in England that could then be sold in Scotland? Am I scaremongering? Is that a realistic scenario?

Michael Russell: I dealt with the issue of GM crops when I was environment minister more than a decade ago, and we were able to take a distinct position because of EU law on the matter. We were able to say that we did not wish it to happen. We took that stance, correctly, not just for higher standards but because we believed that our brand in Scotland presented a natural product, and because of the importance of the landscape—the *terroir*, as the French say—for our produce. That was important to us.

There is no doubt that agriculture and animal welfare will be big issues in the UK. There will be huge issues over ensuring access for American products, which is why America and all other countries do trade deals. In those circumstances, once that is accepted south of the border, there can be no resistance.

Tom Arthur: Thank you, cabinet secretary. I have no further questions, convener.

The Convener: We now have Donald Cameron, to be followed by Patrick Harvie.

Donald Cameron (Highlands and Islands) (Con): Good morning, cabinet secretary. I will ask about state aid rules, given that they are key to our ability to remain a thriving economy. They allow for open and fair competition between businesses. Do you accept as a matter of principle that there requires to be a single UK-wide system regulating state aid?

Michael Russell: Before I answer, I congratulate you on your new post. I am sorry to be losing you as well. Everybody who shadows me appears to be sent to other jobs. Whether it is a promotion, I do not know, but good luck with the health portfolio.

I take issue with your words “thriving economy”. It will not be a thriving economy under Brexit—that is absolutely clear. It has been made clear today that we are already in recession and there will be an additional element of recession after Brexit, which is utterly foolish to pursue. It is not and will not be a thriving economy.

That having been said, I would have hoped that there could be a sensible discussion between the four Administrations about what the structure for state aid could be. There was such a discussion on how it might operate, but it has been abandoned. We now desire the UK to do one of two things: either to set its own state aid regime in the way that it thinks it should operate without reference to the EU, which would mean that there will be no deal, or to have no state aid regime. That is really interesting. Because Donald

Cameron is a key member of the Conservative Party and I am sure policy discussions involve key members, he will know that some people in the Conservative Party desire not to have a state aid regime but to allow a free for all. Therefore, ensuring that state aid’s power is held on to by the UK is key.

State aid is and has remained devolved. Its operation in a European context has worked well, and it could work in a UK context if there was a consultation on how the system should work. It will not work if there is a desire to have none or to do it solely as the UK wants to.

Donald Cameron: I will ask my question again. Do you accept as a matter of principle that there requires to be a single UK-wide system regulating state aid?

Michael Russell: I accept that there requires to be a state aid structure that operates between the four countries. Elements of devolved competence mean that it would not be exactly the same in every detail—the economies are not exactly the same—but it would be broadly the same across across the four Administrations. An example is migration; the work of the Migration Advisory Committee has always been inadequate, in my view, because it has not recognised the differences in the Scottish economy.

I am happy to agree with Donald Cameron that a structure should be agreed by the four countries that gives flexibility between them within broad parameters, as presently exists.

Donald Cameron: I will ask about one of the contradictions. I briefly read your submission, in which you say that there is no reason for the UK Government to have exclusive competence over subsidy control. How can that be said, when you have been quite happy for the European Commission to have exclusive competence over subsidy control?

10:45

Michael Russell: It has not had exclusive competence; that is a misreading of what is happening, which accepts, in some sense, that state aid is reserved. It is not reserved. The *Financial Times* commentary on that was interesting: the only reason why the UK Government is pursuing the matter in its paper is that it has had to accept that state aid is devolved and it is trying to rereserve it. This is a rereservation.

The situation is that there is local devolved competence, which allows variation in practice and requires local control. If you think that there is a circle, I can quite happily square it, on the basis that what we have now has worked effectively and

what is being proposed is a centralisation of the power, with no influence from Scotland, Wales and Northern Ireland on a very important part of policy. Indeed, it might well be that we are sacrificed on the ideological altar of Dominic Cummings, with no state aid policy at all.

Donald Cameron: I am happy to leave it there, convener.

Patrick Harvie (Glasgow) (Green): Cabinet secretary, I want to pick up on some of the issues with the content of the proposal, but first let me step back and talk about the process that has got us here. Since you decided not to continue to participate in dialogue about these issues, because you believed the framing and terms of the discussion to be unacceptable, to what extent has there continued to be communication at official level between the Scottish and UK Governments about the process? For example, did the Scottish Government know in advance—were you informed in advance—that this very short consultation was coming and would be launched in the middle of our summer recess?

Michael Russell: No, on that detail, not at all.

It would be remiss of me not to ensure that officials keep their ears to the ground on such matters. There are conversations among officials of all four nations. We made it very clear that we could not and would never agree with the way in which the policy was going, which is why we did not take part in it. That was a clear signal—and the right signal—from us. However, clearly, we understood that discussions were continuing.

Let me be entirely accurate about this: I think that my knowledge of the matter resurfaced some time during May and June, when it became obvious that work was continuing in the new Government and a new special advisor—a former Tory MP—was active in taking it forward. Towards the end of May and beginning of June, we became very concerned and, as you know, I wrote to Michael Gove in early July, when I believed that the paper was imminent.

I had no idea that a period of a month would be given. That is a calculated insult. If it is being excused by the urgency of the matter, my response is that the frameworks are there and no issue to do with barriers to trade is arising or on the horizon at the moment. I understand that some UK ministers are saying that this is a short-term solution. The reality of the situation is that the matter is being handled in this way deliberately.

Patrick Harvie: Has the UK Government kept the Scottish Government informed at all about the contents of the paper, even though you were not participating in meetings about it?

Michael Russell: No. I saw the paper in its entirety on the morning that it was published—I think at about 20 past 10; it might have been an hour before it was published.

Patrick Harvie: Has the secretary of state responsible, Alok Sharma, met you or anyone in the Scottish Government?

Michael Russell: No. On the day that the paper was published, he asked for a call with my colleague Fiona Hyslop—the UK Government is attempting to regard this as a trade issue and not a Brexit issue—and it was agreed that I would field that call, as someone who has been involved in the issue over the long term. He declined to have that call.

Patrick Harvie: As you know, he has also refused to give evidence to this committee, even remotely. He was in Glasgow last week. Did he get in touch to offer a meeting with the Scottish Government?

Michael Russell: I did meet him. I do not know whether Fiona Hyslop met him—I would be surprised if she did, but I would have to check that. Of course, the chancellor was in my constituency on Friday, not 5 miles from me. I did not get a call to come and have an ice cream with him at Zavaroni's cafe.

Patrick Harvie: I will move on from the process. Is there any set of changes to the UK Government's proposal that would make something in its general shape acceptable to the Scottish Government? If, for example, it incorporated the principles of subsidiarity and proportionality and a recognition that exceptions to uniformity are necessary on grounds such as public health, the environment and welfare, would something of that basic structure plausibly become acceptable, or does it fundamentally fall on the lack of intergovernmental parity?

Michael Russell: The fundamental flaw is that the proposal undermines many and possibly all decisions of the devolved Administrations. If that is the foundation stone, it cannot be acceptable. What could be acceptable—I have indicated this strongly—is for us to move forward with the frameworks process, which is coming to completion. It provides the structures that we need and that we have identified in the past three years. That is the way to do it. Three years of work should not be thrown away on the whim of a UK Government that wants to undermine devolution.

Patrick Harvie: Finally, I will ask about the white paper's "design rules." Design rule 1 is that the internal market system should

"Foster collaboration and dialogue"

and

“encourage good intergovernmental relations by creating opportunities for different levels of government ... to collaborate and engage in constructive dialogue, including increased transparency”.

No specific proposals are included for intergovernmental machinery or mechanisms that would achieve that.

Design rule 2 is to

“Build trust and ensure openness ... The system should embody the principles of open government and transparency towards stakeholders.”

Do you see anything in the process that has got us to this stage that suggests that the UK Government is already complying with its own design rules for fostering collaboration and dialogue or building trust and ensuring openness? Is there anything it could do now to start putting into place those design principles, so that those aspirational words can become a reality?

Michael Russell: I do not want to appear overcynical, but I read that part of the white paper with utter amazement. You look at the paper and you know what it is endeavouring to do. However, I consider my experience over the past four years of the joint ministerial structures and read a series of statements, which are, at the very best, misleading, and at the very worst, utterly untrue in terms of how they underpin what has taken place.

I was struck by something that I read the other day, which included a George Orwell quote:

“The great enemy of clear language is insincerity. When there is a gap between one’s real and one’s declared aims, one turns as it were instinctively to long words and exhausted idioms, like a cuttlefish spurting out ink.”

The design rules are an example of the truth of Orwell’s words.

George Adam (Paisley) (SNP): I want to expand and possibly move on from Patrick Harvie’s questions. I will ask about the governance of the UK internal market. From the white paper, it seems unclear what the relationship is between the proposed independent body and the devolved nations. The more that you look at it, it all becomes—I will use a parochialism—a wee bit wobbly at that point. I have checked various sources and I cannot work out what the relationship would be. Is that lack of clarity not concerning, considering the timescales that we have?

Michael Russell: Yes, I agree. You would think that, if so much effort had gone into those proposals, they would be clearer.

As I indicated, the idea of that parliamentary super-governmental body is a non-starter, because it could operate only in telling the devolved Administrations what to do; it could not operate in telling the UK Government what to do.

The issue of who would be part of it would be enormous. On every other occasion that we have dealt with the UK Government on Brexit issues, it has refused to accept nomination; it has said simply that it would consult with devolved Administrations for a variety of bodies.

I do not see it as right or proper for any non-parliamentary body—or any body at all—to tell the Scottish Parliament what it can and cannot legislate on, if the statute says that it can legislate. It would override the existing statute, so I do not think that it is a starter. If it is a starter, it is designed to hide something; what it will hide is the fact that the UK Government can do what it wants.

Neither can I see the circumstances in which, if a standard was imposed that was, for example, inconvenient to the UK, it would not simply refuse to accept it. My final point is that, in setting standards, it is highly likely that the UK Parliament will apply English votes for English laws. Therefore, Scottish representatives will not get to vote on issues for standards in the UK Parliament; they will be excluded from that, and the Scottish Parliament will be overridden. If that is not contrary to the spirit of devolution, I do not know what is.

George Adam: For clarity, when we get down to the brass tacks of the whole scenario, as you mentioned, there is no reference to how the devolved institutions will be involved in the governance of the UK internal market; I have tried to find it. Do we know how it will be composed and how the devolved Administrations will get an opportunity to feed into it? To use a football parlance, it seems like we have a referee who can make up the rules as they go along.

Michael Russell: There is no clarity on the plans and there is absolutely no commitment to ensuring that the devolved Administrations would be an equal part of those plans. Angela Constance quoted paragraph 154 of the report, which says:

“the Government has made clear that the evolution and overall shape of the UK’s Internal Market”,

which is germane to any individual group,

“will be overseen by the UK Parliament, and that key decisions will be put to the UK Parliament for approval”.

There is no role for the devolved Administrations. Therefore, any involvement that they had in governance would be tangential and cosmetic and would have no effect.

The Convener: Have you completed your questions, George?

George Adam: Thank you, cabinet secretary. Sorry, convener—I must be out of practice if I did not say “finally” before my last question.

Alexander Burnett (Aberdeenshire West) (Con): Good morning, cabinet secretary. Every

trade body submission to us has stressed the size and importance of our trade in the UK internal market and, with the on-going pandemic, that is no doubt changing all the time. How regularly does the Scottish Government review the size and importance of it?

Michael Russell: The size and importance of what? I am sorry; you broke up.

Alexander Burnett: The value of Scotland's trade in the UK internal market.

Michael Russell: The Scottish Government reviews and considers the value of its trade in every market and recognises the value of the UK as a market. Taking those issues, that is why we find it astonishing that the UK should endeavour to remove itself from its largest market in the EU and to argue hypocritically—although I am sure that you would not agree with that word—that we need a single set of regulations within these islands but that we do not need that if we continue selling into the EU. At best, that view is inconsistent. We do not believe that threats to the internal market come from the issues that are raised. We accept that trade should operate as freely as possible; that is what has happened under devolution, and the economic evidence is there to prove it.

11:00

Alexander Burnett: Finally, it is interesting that you talk about consistency. We have seen and heard your views on the need to follow and ensure harmonisation with the EU, even though we are leaving that political union. Have you been putting the same amount of effort into driving harmonisation with the rest of the UK?

Michael Russell: Harmonisation with the rest of the UK is neatly taken care of when we are all members of the EU. That is the best way to do it. That view was shared by the majority of people not just in Scotland but in your constituency, when the referendum took place.

Of course we want a harmonious relationship. I am sitting here suggesting how the frameworks on which we worked for so long can be used to achieve that. I suggest that I am the one who is consistent in my view and the UK Government is an absolute example of inconsistency.

The Convener: Was that your final question, Alexander?

Alexander Burnett: Yes.

The Convener: You probably said that, but I did not pick up on it. No one has indicated a wish to ask further questions, cabinet secretary—

Michael Russell: I think that Alex Rowley did so, convener.

The Convener: Okay. Nothing came up in the chat bar, Alex, but perhaps you indicated that in another way. Forgive me. Go ahead.

Alex Rowley: My name is on the list of questioners that was circulated before the meeting. I did not realise that I had to indicate my wish to ask a question.

I have questions on a couple of issues. I asked one of the committee advisers about centralisation of powers to one Government in the United Kingdom, and it was suggested to me that what is happening is more radical, in that power is being redistributed. Cabinet secretary, you said that trade currently operates freely. Will what is proposed give more powers to the multinationals and billionaires who want to enhance capitalism and make money out of the system, or will it give more powers to the courts, who might decide, for example, that we have no right to try to tackle our issues with alcohol through a minimum pricing policy? If it is about power, where is the UK Government trying to put the power?

Michael Russell: That is a good question. Clearly, in any US trade deal, for example, the power will lie with the big corporations that are involved in trading activity, which will wish to enforce the rights that they have been given by use of the courts.

That will operate against Scottish interests in a number of ways. It will operate against Scottish business interests, as I think that many businesses now recognise. It will also, of course, operate against the interests of individual citizens, because, at the end of the day, we live in a democracy and citizens have the right to choose Governments on the basis of particular policies, and if a prospective Government is honest about saying that it wants to do A, B and C and then gets into power but cannot do A, B and C, because an arrangement has taken power away from that Government and handed it to corporations and courts, that is wrong. Individual citizens and democracy will suffer in those circumstances.

We should be vigorous in defence of the Scottish Parliament and its powers, not for ourselves as individual parliamentarians or a particular Government but on behalf of citizens. The citizens of Scotland voted to stay in the EU, so it is bad enough that they are being treated in the way in which they have been treated for four years, but to go further and use the situation as an excuse to diminish the rights and opportunities that they have, which is what is in these proposals, is utterly wrong. I hope that we will speak on that with one voice.

The Finance and Constitution Committee made clear in a report last year that it did not believe that the UK should ride roughshod over devolution in

its desire to have trade deals and cement what it calls the internal market—utterly wrongly—but that is precisely what is about to happen and it will help me if politicians and the Parliament can stand together on that matter.

Alex Rowley: On state aid, a key part of the devolution settlement was the opportunity to have far greater powers to make industrial and economic interventions. What is proposed is a threat to that. Do you agree? During the Covid crisis, many people have been asking what we actually produce ourselves. Given the state of the economy as a result of the crisis, is there a case for Governments to have more powers to intervene directly in the economy?

Michael Russell: The idea of state aid and state aid regulation, particularly in the EU, is about having a fair and level playing field; it is not about stopping national interests being encouraged. During the Covid crisis in the EU, there were very big departures from the state aid rules, and those departures were understood and agreed, because they were required at the time. There are often departures when national interest demands it, which can be agreed within the single market.

What is being proposed by the UK is nothing like that: it is grabbing something, either to abolish it—which simply means that Government would be unchecked in what it could do, and businesses in Scotland would suffer from that, particularly in trading terms—or to put in place rules that suit only the UK Government and those who support it.

That is a considerable worry, because the arguments about state aid—which is devolved; let us not argue that point—are being driven by a group of determined deregulators, who want the lowest common denominator. That would not work for any working person in Scotland.

Alex Rowley: Do you agree that we need to work together and avoid a scenario in which people start to see this argument as being about whether someone is for or against independence? I know that you are for independence. The fact is that state aid is a key part of the current devolution settlement and what is proposed is a threat to that settlement. I think that we can build overwhelming majority support in Scotland for protecting the devolution settlement that we have, which has worked. How do you think that we can do that, and what are the timescales in that regard? Do you agree that we need to avoid the argument becoming about nationalists and unionists? I am a socialist. I want to unite the country on this matter; how do we do that?

Michael Russell: You and I have been able to work on a variety of things while holding different views. I made the point that I have been able to work with Mark Drakeford, Jeremy Miles and other

colleagues in Wales. I am sure that we can continue to do that. You will not ask me to give up my view that independence is a better solution and I will not ask you to give up your view that the job that we must do now is to defend devolution.

I do not think that what I want to do can be achieved unless we stand up for the rights of Scotland. On this occasion, we are standing up for the rights of the devolved Parliament and a Government that, to be fair, has exercised its devolved powers over the past 13 years well, I believe.

In those circumstances, I want to see the maximum unity on the matter, and I would love to find a way to achieve that with you and others—even the Conservatives—so that we can stand up for the rights of the people of Scotland and the settlement under which they presently live. That will not stop me campaigning for something else, but I will be vigorous in standing with you to defend that.

The Convener: I hope that Alex Rowley will forgive me. I did not appreciate that we had a list of speakers and that “TBC” meant that you wanted to come in at the end—I thought that that was about supplementary questions.

Cabinet secretary, thank you for your evidence. As we agreed at the start of the meeting, we will take the next item in private via Microsoft Teams.

11:08

Meeting continued in private until 11:39.

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