



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Finance and Constitution Committee

**Wednesday 9 September 2020**

**Session 5**



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**FINANCE AND CONSTITUTION COMMITTEE**

**19<sup>th</sup> 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)

\*Angela Constance (Almond Valley) (SNP)

\*Patrick Harvie (Glasgow) (Green)

\*Dean Lockhart (Mid Scotland and Fife) (Con)

\*John Mason (Glasgow Shettleston) (SNP)

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

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Claire Murdoch (Scottish Fiscal Commission)

Dame Susan Rice (Scottish Fiscal Commission)

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

Professor Alasdair Smith (Scottish Fiscal Commission)

**CLERK TO THE COMMITTEE**

James Johnston

**LOCATION**

Virtual Meeting



**Scottish Parliament**  
**Finance and Constitution**  
**Committee**

*Wednesday 9 September 2020*

*[The Convener opened the meeting at 09:33]*

**Decision on Taking Business in**  
**Private**

**The Convener (Bruce Crawford):** Good morning, and welcome to the 19th meeting in 2020 of the Finance and Constitution Committee. The first item on today's agenda is a decision on taking business in private. Do members agree to take in private at future meetings consideration of a draft report on pre-budget scrutiny 2020-21?

I see no indication of disagreement in the chat bar, so that is agreed.

**UK Withdrawal from the**  
**European Union (Continuity)**  
**(Scotland) Bill: Stage 1**

09:34

**The Convener:** Item 2 on the agenda is evidence from Mike Russell, Cabinet Secretary for the Constitution, Europe and External Affairs. I welcome the cabinet secretary and his supporting officials from the Scottish Government: Emma Lopinska, constitutional policy manager; Charles Stewart Roper, head of environment strategy; and Francesca Morton, solicitor.

I invite the cabinet secretary to make a brief opening statement.

**The Cabinet Secretary for the Constitution, Europe and External Affairs (Michael Russell):** Thank you. I am just waiting for the camera to come on.

**The Convener:** Give it a couple of seconds.

**Michael Russell:** Sorry about that—there was obviously a glitch.

Thank you for the invitation to give evidence to the committee. As suggested, I will give a brief opening statement and I will be happy to answer the committee's questions.

These are perilous days, weeks and months for the future prosperity of Scotland and the rest of these islands. The eighth round of negotiations between the United Kingdom and the European Union takes place this week, and significant issues are still outstanding. We are apparently hurtling towards the cliff edge of no deal or a very poor low deal by the end of this year, because the UK Government has refused to seek an extension to the transition period. In the middle of all that, a bill on the UK internal market will be published today, which will ride roughshod over the competence of the Scottish Parliament and the Welsh Assembly and will severely damage the withdrawal agreement.

In that context, I believe that it is vital that we take action now so that we can protect the interests of the people, businesses and environment of Scotland, and the bill that we are considering today is crucial to that task. It is critical in ensuring that there continue to be guiding principles on Scotland's environment and it will establish an environmental governance body to secure full and effective implementation of environmental law. It is also critical that it gives us the legislative tools that we need in order to maintain some stability and consistency in our laws after the powers in the European Communities Act 1972 are lost. The bill is also

critical to ensure that, where it makes sense to do so, Scotland can continue to align with EU law in future, which the people of Scotland expressed as their preference in the 2016 referendum. We have waited for more than four years for clarity and we cannot wait any longer. It is for the Parliament and Scotland to decide how to legislate for those matters, and that is what the bill aims to do.

I will briefly address issues that have arisen during the course of the evidence that the committee has taken. To clear up a couple of misunderstandings, I will clearly set out what the bill provides for. In recognition of the unique circumstances in which the bill is brought before Parliament, the power will expire after 10 years. The length of the sunset period is an attempt to provide stability, to avoid the potential need for numerous and different bills, to allow time for us to assess the impact of Brexit and, if I might say so, to take us very comfortably through the period of accession of an independent Scotland to the EU. For the purposes of clarity, I ask the committee to note that, although the power at section 1(1) will, at some time, expire, section 3(3) makes clear that any regulations that are made under that power will not expire.

Although Roseanna Cunningham is leading on part 2 of the bill, I will take the opportunity to clarify the scope of section 10(2). That duty requires UK ministers to

“have regard to the guiding principles on the environment”

when developing policies

“so far as extending to Scotland”.

That duty applies to all policies that are developed by UK ministers that extend to Scotland, subject to the limited exceptions that are set out in the bill. Comparisons have been made between section 17 of the UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill and section 10(2) of this bill, but section 10(2) is a very different provision.

I want to make clear that the Scottish Government intends to work with the Parliament to agree an appropriate and proportionate decision-making framework for future alignment with EU law. We all agree that decision making on the issues on which we might wish to align with EU law will vary, depending on the specific measures that are being considered. As I said to the Environment, Climate Change and Land Reform Committee last week, the Scottish Government does not have all the answers; that is why it is important to work with the Parliament and others.

I agree with those who have said that the broad nature of EU law and the different scenarios that we might face make agreeing such a framework on the face of the bill not only unhelpful but very

difficult. However, I am more than happy to commit to liaising with the Parliament to allow the Scottish Government to consider how, at the earliest stage of policy development, we can build in an appropriate level of consultation with the Parliament and stakeholders. The Scottish Government is not ruling out the use of primary legislation where that is the best and most appropriate legislative route, but it should not be the default or the only route.

Finally, I remind the committee that, in the Scottish Government’s view, the power in section 1(1)—the core power, which I am sure that we will discuss today—is pragmatic, practical and proportionate as well as discretionary and time limited, and it will be subject to full parliamentary scrutiny.

**The Convener:** Thank you.

One of the many challenges that the committee and the Parliament face in considering the bill is the on-going uncertainty regarding the constitutional impact of Brexit on devolution. In particular, the future relationship with the EU remains unclear, common frameworks are still to be agreed and there is now the possibility presented by the United Kingdom Internal Market Bill. You have touched on the issue but, given the existing level of uncertainty, can you give us a bit more detail on why you have introduced the bill at this time?

**Michael Russell:** The bill has been delayed by the Covid pandemic. We should have considered it in spring and early summer this year, but that was not possible after the lockdown began on 23 March, and the bill’s progress was therefore delayed. It has been introduced later than I would have wished, but it is still vital that we have the tools available to us.

In addition, we should not allow the agenda to be dominated or set by the UK Tory Government. Today is significant, given that the internal market bill will be published. In case anybody is tempted during this session to attack me in any way because the Scottish Government is objecting to that bill, I draw their attention to the statement last night from the Welsh Labour Government, which, if anything, uses language stronger than any that I have used.

The internal market bill is a major threat to devolution, and it is a major destabilising force. For a UK Government that supposedly seeks stability, all it does is create instability, as it is continuing to do by its failure to come to a negotiated agreement with the EU.

I am trying to ensure that we have the minimum powers that we believe that we need to do some of the things to preserve European regulation, which the Parliament has already agreed that we

should do. A variant of the powers in the bill existed in the original continuity bill, and it survived unscathed the challenge from the UK Government in the Supreme Court.

I wish that the current UK Government would see sense. Yesterday, I had another conversation with Michael Gove and Alok Sharma about their internal market bill; I really wish that they would see sense and accept that the frameworks are the right way—a voluntary way—to go forward. I have given assurances on those frameworks and how they would operate. If there is anything missing in that programme—as Michael Gove keeps on claiming, although he does not say what is missing—we will plug the gap.

We should not have the internal market bill, which has, of course, been made even worse by an admission by a UK Government Cabinet member of its illegality under international law. It is almost beyond belief that we are in that position.

**The Convener:** My questions are intentionally general, because other members will want to ask more detailed questions in these areas.

You touched on the internal market proposals. In the Scottish Government's "UK internal market: initial assessment of UK Government proposals", you provide a case study on the potential impact on the food and drink sector. It states that the continuity bill will allow the Scottish Government to "keep pace" with the high environmental, social and regulatory standards provided by EU law that apply in the sector. However, we have heard evidence that the internal market proposals would potentially undermine those policy choices. Why might that be the case, and how does the Scottish Government intend to respond to that potential constraint on the use of its devolved powers?

**Michael Russell:** We have no intention of acceding to the internal market bill. It is being published just today—the speed with which it is being pushed through is, in fact, obscene. We intend to resist that bill. It was resisted in the House of Commons by Wales as well as Scotland, and I am sure that it will be resisted on a cross-party basis in the Scottish Parliament, with the exception of the Tories. We will continue to challenge it in the House of Commons and the House of Lords, and we will look at other options for challenging it. Therefore, I do not accept that it is a done deal by any manner of means.

09:45

It is clear, however, that, were that bill to be passed and if it were to be observed in Scotland, and if the UK were to accede to lower standards, which I think is inevitable, there would be a lowering of food standards in the case of agriculture. I know that the US-UK trade talks are

recommencing today; I think that *The Independent* has published something today about documentation from last year's discussions, showing that the US was seeking full market access. If those food standards were lowered to allow the UK to accede to those trade deals—which they will be, because the UK is desperate to do those deals—American providers and importers could successfully go to law, in my view, to challenge high standards in Scotland.

Scotland has a right to choose what standards to have. Scotland has had high standards as a member of the EU and it has a right to continue with those high standards. Those standards should not be undermined by will or diktat from the UK Parliament, which essentially leaves the Scottish people defenceless, and that is what would happen, so we are determined to oppose the bill and we will go on opposing the bill. It is not a done deal.

**Murdo Fraser (Mid Scotland and Fife) (Con):** I want to ask about parliamentary scrutiny, which has been a theme in all our evidence sessions so far. Among others, Professor McHarg and Professor Keating, the Law Society of Scotland, the Faculty of Advocates and NFU Scotland have expressed concern that, although there may be a case for giving ministers powers to introduce minor changes to existing EU law through secondary legislation, there is a less strong case—if there is a case at all—for giving ministers the power to introduce substantial new laws and significant policy changes, which should properly be done through primary legislation. The same point is made in the report that we have just seen from the Delegated Powers and Law Reform Committee.

How can you justify proceeding with the bill, which will give such sweeping powers to ministers to introduce new laws by way of secondary legislation?

**Michael Russell:** I do not accept that the bill will give ministers sweeping powers to introduce new laws by means of secondary legislation, so I object to the premise of your question.

The reality of the situation is that we have made it clear—indeed, I did so in my opening remarks—that, where primary legislation is required for particularly major pieces of work or legislation, we are open to that. However, primary legislation is not required for more minor pieces of work, nor for keeping pace with existing standards as they develop. It would be a waste of parliamentary time and it would be a means by which those who are opposed to any keeping pace could frustrate the legitimate will of the Scottish people to keep pace with high standards. It would, in other words, be a Trojan horse that would be introduced to stop the bill being effective.

The levels of parliamentary scrutiny in the bill are entirely clear; they consist of an either/or power. Of course, there is scope in every bill to debate—I do not think that I have ever taken a bill through the Scottish Parliament on which we have not had major discussions about whether negative, affirmative or super-affirmative secondary legislation powers should be used.

We can have that debate as we move into stage 2. I predict that amendments will be lodged by Murdo Fraser and others to change negative to affirmative and affirmative to super-affirmative procedures. That is what happens. However, it would be an astonishing use of parliamentary time if we were to have to use primary legislation to keep pace with every single European regulation. Nobody else does that. It is not required.

I draw attention to the flexibility that I referred to in my opening remarks as to the process that we follow, the consultation that we carry out and how people suggest that we should keep pace. The Government will not decide on that alone. Parliamentary committees, interest groups, third sector groups and businesses will want us to ensure that the highest standards are maintained and that we keep pace with European standards. For example, on water quality regulation, which is a key issue, new powers are coming in through the EU that will deal with higher water quality standards and issues such as plastics that it would be necessary and useful for us to adapt to as quickly as possible, as we would have done as a member of the EU. Those are all reasonable ways in which to move forward with the highest level of parliamentary scrutiny and the highest level of confidence.

**Murdo Fraser:** You used in your response to me the argument that to proceed by primary legislation in the event of a policy change would be a waste of parliamentary time. I asked members of the bill team at the start of this process whether they could tell me how many significant measures would be brought in on an annual basis under the bill, but they could not tell me that. I therefore cannot understand how the policy memorandum makes the case that it would be too burdensome to respond to policy change with primary legislation. You have just repeated that point, but the bill team could not give a figure for how many primary bills we might be talking about. Can you give us that figure now?

**Michael Russell:** Clearly, we would have to go through all the measures that we might intend to keep pace with and come to some assessment as to whether they were major or minor. However, no—[*Interruption.*] If you would like me to answer you, I am happy to, but I have to have the opportunity to do so.

As I said, we would have to go through all those measures. Up to 70 minor items could be changed in a normal year, which seems entirely reasonable. However, I do not think that we would wish to keep pace with all 70. I do not think that we have the capability, even with secondary legislation, of keeping pace in that way. Regrettably, because, as you know, the people of Scotland voted to stay in the EU and are being dragged out of it against their will, we cannot keep pace with the highest of standards in everything, even in the environmental sphere, let alone in the range of other areas in which we would be interested.

However, having to go through the full primary legislation route on every occasion when we wanted to continue to keep pace with the EU on issues—for example, water quality or fish diseases—would be an astonishing waste of parliamentary time and a Trojan horse to prevent those powers from being used. That route would be used by people who do not wish Scotland to keep pace: the fanatical Brexiteers, for whom the very mention of European regulation is anathema. The people of Scotland deserve to have the highest of standards, which is what we are seeking to provide.

**Murdo Fraser:** That response is a strange characterisation of bodies such as the NFUS, which has expressed concerns that I have outlined to you this morning about, for example, new environmental measures being brought in that do not go through the full route of consultation and parliamentary scrutiny. To dismiss the NFUS as “fanatical Brexiteers” is, frankly, ludicrous.

**Michael Russell:** I did not do that. I would be grateful if you did not put words in my mouth.

**Murdo Fraser:** That was the term that you used about people who have expressed concern about the bill. If I can just conclude my question—

**Michael Russell:** I am concerned about your approach, not the NFUS’s approach. I think that you are misrepresenting matters here.

**The Convener:** Gentlemen, all that those of us who are listening hear is two voices talking across each other. If you could take turns to speak and not interrupt each other, that would be helpful.

**Michael Russell:** Convener—

**Murdo Fraser:** Perhaps I can—

**Michael Russell:** I am trying to ensure that words are not put into my mouth. I did not criticise everybody. I indicated that there was an attempt to put words into my mouth, but I am not going to take that.

**The Convener:** I understand that, but in this hybrid meeting set-up, it is difficult for committee



members and probably the public to understand what is going on when two voices are talking across each other. Murdo, you interrupted Michael the first time round and then he interrupted your question, so you have both been at it. Just keep it to one speaker at a time, please.

**Murdo Fraser:** Thank you, convener. I will continue with my question, just to close that off. The point that I was making was that the concerns over the bill go far beyond people who could be dismissed as “fanatical Brexiteers”. However, we will leave it at that.

This will be my final question. Cabinet secretary, you spend all your time talking about power grabs. That is exactly what the bill is, as it stands. It gives sweeping powers to the Scottish ministers to introduce new laws to Scotland without the required level of parliamentary scrutiny and consultation. That is what the responses of those who have given evidence to the committee over the previous weeks have been telling us. Is it not time for you to think again?

**Michael Russell:** I know that the Conservatives are keen to prevent legislation from proceeding—that is what they will be attempting to do this afternoon in the chamber.

That is not the evidence that the committee has been receiving. Where there are concerns about primary and secondary legislation, we have been prepared to address those. I made it clear in my opening remarks that I think that there is a ground for primary legislation in case of major innovation. I have never denied that; you are the one who appears to be denying it. I am happy with that, but I repeat that it would be a waste of parliamentary time to use primary legislation for every small change, which is what you have been suggesting.

Secondly, I believe that the Tory hostility to the bill and to the EU is unbalancing the debate. I am prepared to stand up and argue vigorously for the right of Scotland not to be dragged out of Europe against its will nor to have the high standards that we are used to and have in place trashed in order to have a bad trade deal forced on us by the UK Government. I will not have that and I am determined to fight against it.

**Alex Rowley (Mid Scotland and Fife) (Lab):** The Tories are in denial of the devastating impact that Brexit will have, so we are unlikely to have a reasonable debate with any Tories. The cabinet secretary highlighted higher water quality as a good example of where we would want to maintain EU standards. However, given all the bills that are coming forward just now, such as the Trade Bill and the internal market bill, are we confident that this bill will be able to deliver on examples such as higher water quality? Would any of the other

legislation that is going through the UK Parliament supersede it or be able to overrule it?

**Michael Russell:** That is a very good question, because I fear that the situation with the internal market bill will be used to undermine devolution in many of its aspects. It is also possible—it has happened before—that the Advocate General will attempt to challenge this bill, although it is clearly within competence; it has been recognised as being within competence.

We should put in place the legislation and regulation that we believe we need to take forward the highest standards and we should continue to oppose those who are trying to stop that from happening. Should they continue to do that, we should work very hard to stop that interference in the rights of Scotland.

I make this point clearly and know that you agree with it. Whatever your position concerning the constitution, in areas that are devolved to the Scottish Parliament, it has the right to choose the standards and to ensure that they are applied in Scotland. That is a basic tenet of devolution. We should insist on that and pass legislation to show that we have that right.

**Tom Arthur (Renfrewshire South) (SNP):** Good morning. The context in which the bill operates will be determined not only by whatever legislation is passed by Westminster but by whatever agreement, if any, is reached between the UK Government and the European Union. Will you update the committee on what dialogue you have had with the UK Government vis-à-vis its negotiations with the EU and, with regard to its scenario planning for after 1 January, tell us what central assumptions the Scottish Government is working towards?

**Michael Russell:** There was a meeting of the joint ministerial committee on Thursday at which an update, if one can call it that, was given by David Frost. I cannot say that I learned any more in those circumstances than I could read in the newspapers. All that I know is gleaned from that meeting, the newspapers and conversations with others who are engaged in the process.

10:00

I do not think that it would be news to anybody to hear that those talks appear to be deadlocked. They appear to be particularly fractious on the UK side, with all sorts of statements being made at the weekend about insisting that the EU understands the UK's position. We have also had yesterday's unfortunate development in the House of Commons, which has produced a very negative reaction even among the most friendly of countries, such as Ireland, where the new Taoiseach, the Tánaiste and the foreign minister,

Simon Coveney, have in the past 24 hours expressed concern about the UK Government's willingness to flout international law.

As far as I am concerned, all I fear is that the process is going nowhere. Even if it was to produce a result, the result that the UK is looking for is what I have been calling a low deal—a very unambitious deal, which is essentially the bare bones. We should never stop reflecting on the fact that the UK is the only country in history that has gone into a negotiation endeavouring to get a worse deal than the one that it entered with; it wants to walk out of the room with a worse deal than it already has, so I am not sanguine about the prospects. Whatever happens, we will have a problem, so we are actively preparing for the end of transition on 1 January. I report regularly to the Cabinet on that. We are now getting—as a result of the JMC, I think—the reasonable worst case planning assumptions from the UK Government, but we still do not get enough information on what it is doing. There is a meeting tomorrow, I think, with the Paymaster General that is meant to look at one or two further details, but trying to get information out of the UK Government is often like pulling teeth, and that is information on the transition that we need.

I will make a final point. When we have dealt with no-deal planning on two major occasions, there was a clear understanding between David Lidington and me—both were when David Lidington was in post—and between Lidington and Mark Drakeford and then Jeremy Miles in Wales, that this would be outwith normal politics and we could find a way to ensure that we could work on this without the usual political difficulties, but that is not the case now. We have seen that recently in the newspapers and elsewhere. It is now handled in a very political way by the UK Government, which is designed to undermine and damage the other Governments of these islands, and that needs to be regretted.

**Tom Arthur:** I am conscious in these exchanges and in other exchanges that we have had in previous evidence sessions on the bill that we routinely slip into talking in abstract and legalistic terms, but could you sketch out what the practical implications will be for your constituents, for example, of leaving without a deal after 1 January and how the powers that the bill provides for could address some of those concerns and issues?

**Michael Russell:** I am very nervous and concerned about the range of food, environmental and other standards that we would expect to take as normal in Scotland. The internal market bill will allow all those standards to be progressively undermined, and that is what will take place. Lower standards will be set no matter what the UK

Government says now. Those lower standards will be forced to prevail, which concerns me. Food standards, for example, are about basic health issues—countries that have lower food standards tend to have more illness as a result. That is simply reality—that is where things are.

We can consider how sectors will be affected. For example, Scottish seafood producers were saying yesterday that they are worried about having major amounts of phytosanitary inspection, which would hold up shipments and massively increase the cost of shipments of seafood leaving the country. In my constituency, we have a range of small seafood producers—the village of Tarbert has 11 or 12 processors—and that would be hugely disadvantageous for them. I declare an interest in that I am an honorary president of the Clyde Fishermen's Association, but I also know that there is a possibility that fishermen will have to base themselves in Ireland to take advantage of selling directly to the EU. There are practical difficulties.

I had a fascinating conversation earlier this week with somebody who knows far more than I do about logistics. The reality of exporting and importing is that the systems are absolutely not ready. We know that from what the hauliers have been saying publicly to the UK Government. The person I was talking to said that, in the end, people could get the systems to work, although they will not be working by 31 December. Some of the computer systems have not even been written yet. In the end, people can probably get things to work in a year, 18 months or whatever. The long-term issue, however, is that all that business will be much more difficult and much more expensive, because there will be more bureaucracy and paperwork as a result, no matter what happens. Even if there are no tariffs—the great amount of attention is on tariffs—the logistics of trade, on which jobs depend, will become much more difficult.

There is no pot of gold at the end of this rainbow. The implication is that, once we have got shot of the EU, we will have some fantastic set of arrangements with America or whoever knows—Alpha Centauri, perhaps. It is simply not going to happen. There is nothing to compensate for what we have now in the same way.

This is a downward spiral, and it is pretty tough for us, as politicians, to have to be honest with our constituents and say that the UK Government is presently forcing them into a downward spiral. That is why having an option of something else, of the normality of being an independent country as part of the EU, is something that we should also be talking about.

**Tom Arthur:** You are right that there is an alternative future for Scotland, rather than the

bleak isolationism of Brexit. In your opening statement, you referred to the sunset period for the bill being 10 years, with an opportunity for extension, and you said that that could include a period for the accession of an independent Scotland to the European Union. Given that support for independence is at 55 per cent, and given that people in my generation, in their 30s and younger overwhelmingly rejected Brexit and overwhelmingly support independence, can you outline how the bill will enable Scotland, both as it stands at the moment, before an independence referendum, and after an independence referendum, to prepare for accession to the European Union as a full, independent member state?

**Michael Russell:** One of the useful effects of the bill will be to maintain regulation that would otherwise atrophy. We do not want standards to slip in such a way that it would take a long time to get back to them. I am absolutely certain that accession can be achieved well within any period in the bill. That said, we do not want standards to slip because, the further they slip, the further back they have to come. The bill has the useful effect of ensuring that, in areas that we choose—we cannot do it in all areas—we do not let those standards slip.

**Dean Lockhart (Mid Scotland and Fife) (Con):** I wish to bring the discussion back to the terms of the continuity bill. In giving evidence to the committee, Professor Aileen McHarg explained that, whereas UK members of the European Parliament would previously be fully involved

“in the formation of EU law ... that will not be the case in future”

under the EU continuity bill. In her words,

“we will become purely rule takers.”

The professor went on to say that,

“In those circumstances, it seems very hard to justify putting such an extensive power”—[*Official Report, Finance and Constitution Committee*, 26 August 2020; c 4.]

into the hands of the Scottish ministers in order to keep pace. Given those concerns, can the cabinet secretary confirm what influence, if any, the Scottish Government will have on the future direction or content of EU laws that it intends to keep pace with?

**Michael Russell:** Clearly, I would be much happier if we had MEPs who were taking part in that process. That is what we should have, and that is what we aspire to have, but that is what we are not going to have because of the actions of your party and your Government, against the will of the Scottish people. The regret in that is all mine, but the blame is all yours.

However, the best is the enemy of the good. We will have to make up as much ground as we can by trying to ensure that, in the limited areas in which we can and choose to keep pace—as we will not have the space to do it entirely—we do so in the most effective way possible and in the way that involves the most possible scrutiny. That is what we are endeavouring to do.

As I said in my opening remarks, we do not rule out primary legislation in particular significant areas, but we believe that, operationally and sensibly, other areas can come through by means of normal parliamentary scrutiny—and there will be parliamentary scrutiny. As I said to Mr Fraser, the balance between negative, affirmative and super-affirmative resolution will no doubt be one that we will work out during the course of the bill, as always happens. I do not think that there is anything inherently wrong with the proposals. Provided that Parliament has the opportunity to scrutinise and can be proactive in the process of developing our approach, that is beneficial.

My final point is that, of course we will, as third countries often do, try by means of business in Brussels and active debate to make our views clear. I agree that it would be far better if we had full democratic participation in making regulations in Brussels, and I look forward to the time when we have that again.

**Dean Lockhart:** In an answer to Tom Arthur, you said that part of the rationale of the bill was to maintain regulatory alignment with the EU system, but if you adopt your ad hoc, pick-and-mix approach to which regulations and directives to follow, will that not defeat the purpose of maintaining regulatory alignment and leave Scotland in a regulatory no-man's-land?

**Michael Russell:** No, I do not follow that. In so far as we are able to do so, we will do it to the maximum of our ability, but we cannot do it all because we are being deprived of the core tool, which is full independent membership. That is why we want to get full independent membership. Being able to maintain alignment with some things is still better than not doing it at all, which is, of course, what the UK has been trying to force us to do. We are not willing to be forced into that position.

**Dean Lockhart:** The reason why I raise that concern is that that was the evidence that we were given at previous meetings. Indeed, the Environment, Climate Change and Land Reform Committee received evidence that it is unclear whether Scotland will keep pace with the EU, adopt similar standards to the rest of the UK, or take a completely different approach. In other words, the evidence that we heard was that there was a risk that Scotland could be, at the end of the day, out of sync with EU regulations and out of

sync with regulations in the rest of the UK. That is the possible consequence of the EU continuity bill.

Do you recognise the uncertainty that having potentially to comply with three different regulatory systems—EU regulations for exporters, devolved powers in Scotland and different regulations in the rest of the UK—will create for business across Scotland? You referred to uncertainty earlier; does the bill not introduce massive uncertainty for business in Scotland?

**Michael Russell:** Absolutely not. It provides certainty in the midst of the complete boorach of uncertainty produced by the UK Tory Government. It provides clarity. When we know the European regulations, which people observe at the moment, and we choose to stay with those European regulations, that will be absolutely clear.

With respect, I think that you are sowing a bit of uncertainty yourself—unwittingly, I am sure—but one can go on from three and say that we could align ourselves with other things and build confusion. It is actually very simple: we want to continue as much as we can with European regulation. That is also democratic, because that is what the people of Scotland want to do. We do not wish to go down the aggressive deregulating line that the UK Government is bent upon to lower standards in order to get bad trade deals. We want to support Scottish business.

Unfortunately, the internal market bill will also damage Scottish business because it will create unfair competition and circumstances in which businesses in England particularly will be able to dominate the Scottish market. We think that that is unfortunate. We just wish that the Scottish Conservatives would stand with the rest of us to defend the devolution settlement and Scottish business against those encroachments. They would be very welcome.

**Dean Lockhart:** Thank you, cabinet secretary, but our priority is, as always, to protect and secure the internal market with the rest of the UK which, as you know, accounts for more than 60 per cent of Scotland's trade and protects more than 500,000 jobs in Scotland, according to the Fraser of Allander institute. In all of this, the economic priority of the internal market bill is to secure the UK internal market.

Convener, I appreciate that I have taken up quite a lot of time so I am happy to leave it there, thank you.

**The Convener:** That was a statement and not a question, Dean.

10:15

**John Mason (Glasgow Shettleston) (SNP):** I do not know whether I am depressed by all that so

far, but we will keep going anyway. The cabinet secretary has touched on quite a lot of issues around standards. We had the NFUS before the committee and it clearly wants to sell products to the rest of the UK, but it also wants to sell products to the rest of Europe. It is fearful that, for example, poorer products will be used in English farms and then come into Scotland. Is it possible to square that circle? Can we maintain high standards with Europe at the same time as the UK Government appears to be undermining those standards? We now know that we cannot trust the UK Government, even if we have an agreement with it.

**Michael Russell:** Alas, that is true, Mr Mason, and the whole world is regrettably discovering that after yesterday. There is no reason why we cannot find a sensible solution to all those problems, and the frameworks are the way to do so. Mr Lockhart made his definitive statement at the end—he clearly wanted to get the answer in before the question.

I want to make absolutely clear that I am committed to the highest standards and to the openness of the internal market. A lot of nonsense is spoken about the internal market—Alok Sharma lectured me on its history yesterday, which I found a bit curious. It has not existed since time immemorial with one set of regulations for these islands. Time was regulated only in 1840 with the arrival of the railways. Until the Great Western Railway's regulated railway time, every part of these islands did not observe the same time.

The reality is that the internal market is a comparatively modern concept that can, will, and was meant to be dealt with by the frameworks process. If any impediment to the internal market has been discovered, nobody has ever been able to point it out to me. As far as I can see, the whole edifice of the UK bill is predicated on a non-existent problem, but if there is a problem, the voluntary frameworks that we are putting in place can undoubtedly deal with it.

We could short-circuit all the difficulty, the time that we will spend on the bill and all the angst that is involved in it, if we simply said that we have done good work on the frameworks, that more needs to be done—which we can accelerate—and that we can commit to ensuring that there are no barriers in it. In the consultation on the internal market, the NFUS said that it wanted that, as did the Scottish Council for Development and Industry and a whole range of others. We want the devolution settlement to continue as it is, we want the frameworks to operate, and we want the opportunity for them to do so.

For a variety of reasons, such as the fear of not being able to impose trade deals, what I have previously called a deep-rooted dislike of

devolution in the current UK Government, and a sovereigntist view of the Westminster Parliament—wherein it must always have the final say even in areas of devolved competence—we have come to this unfortunate pass.

Mr Mason, you started your question by saying that you did not know whether to be depressed. I think you should be depressed, but you should also be somewhat hopeful that sense might prevail, even with the current UK Government.

**The Convener:** I hope that made you feel better, John.

**John Mason:** On a completely different point, some of the environmental witnesses gave evidence that they were keen for us to go further and not just to enable ministers to keep pace but to require them to do so. How do you respond to that suggestion, cabinet secretary?

**Michael Russell:** I am aware that, with any piece of Government legislation, forces on both sides want different things—some do not want us to do something and some want us to do more. We got that balance right. I am more than willing to say that we should have the means to listen to and respond to people outside the Parliament and politics about what we should keep pace with. Although I do not believe that we should be mandated to keep pace, we should be sensitive to those who have views about what we keep pace with.

**The Convener:** Alex Rowley, I am not sure whether your earlier supplementary was also your main question. Do you want to ask a question now?

**Alex Rowley:** Yes, please. I want to pick up on that point, cabinet secretary. You talked about the frameworks and said that the Scottish Government entered into discussions on them with a real desire to make them happen. Will you reflect on that? I note that Michael Clancy of the Law Society of Scotland talked about dispute resolution and argued that the real idea would be to seek consensus in advance, and avoid the dispute in the first place. He talked about the JMC as part of that.

Twenty years on from devolution, do we really need to look at all those mechanisms? Are they not working as well as they could, given where we are? Will you say a bit about that? I believe that devolution is the best way forward, but that we have to have—[*Inaudible.*]—mechanisms.

**Michael Russell:** I respect that, as I do the position of the Labour Party in Wales on its wish to have an effective dispute resolution mechanism. Quite a lot of work has gone into that. It is a sort of holy grail of devolution. If we could put an effective dispute resolution procedure in place, we could at

least get some stability into the current situation, as well as the ability to work well with people.

I think that I have said previously to the committee that I was very struck when I heard Leo Varadkar at the British-Irish Council talk about trust in the EU, and how all the existing 27 members trusted each other, not because they thought that they were all nice people and they could go out for a drink with them, but because there was a legal framework on which that trust hung; they knew that there was a way in which they could enforce how they had to work together.

There is nothing like that in the relationship in these islands, just an unwritten constitution. Essentially the dispute resolution procedure is that, when there is a dispute, the UK Government says, “Nothing to see here; move on, please,” because it will not take seriously things such as, for example, the fact that the money that it gave to the Democratic Unionist Party in 2017 was not Barnettised. It simply refused to discuss that issue.

The barrier to dispute resolution is the medieval concept of the sovereignty of the UK Parliament, which means that it cannot be overruled, bound by or subject to the same regulation as everybody else. If we could put in place equity between Parliaments, we could have an effective dispute resolution procedure.

The issue has still not been resolved. The intergovernmental review creaks on; I was involved in a meeting about it about three weeks ago.

That is the basic problem. Until the UK Government accepts that there requires to be equity in the relationship, it is difficult to see how it can work.

**Alex Rowley:** Thank you.

**Angela Constance (Almond Valley) (SNP):** Last week, the committee heard evidence from the Human Rights Consortium Scotland. You are probably aware that, in its written submission, it said that it would like section 6 of the bill to be amended, in effect to state that ministers should have due regard to their obligations under the Human Rights Act 1998. Your bill team was of the view that that was unnecessary.

Last week, Mhairi Snowden said that, as the “Human Rights Act 1998 is increasingly being challenged at UK level”,

there is a need

“to do everything to ensure that it is secure in Scots law.”— [Official Report, Finance and Constitution Committee, 2 September 2020; c 31.]

Do you agree with that?

**Michael Russell:** Yes. We need to address that issue as we move to stage 2 of the bill.

It is taken as read. You and I hope that we live in a world in which such things are taken as read. Regrettably, and even more so after yesterday, I do not think that we can take anything as read, not even the rule of international law. I am therefore more than willing now to consider how to move ahead on the issue, and I shall ask my officials to have discussions with the relevant organisations, to see whether we can agree a way forward.

**Angela Constance:** Thank you for that; that will be very much appreciated.

Human rights stakeholders are very supportive of the work that the Scottish Government is doing to bring international human rights directly into Scots law. However, the keeping pace effort is about ensuring that we do not go below a minimum standard. Given that the UK does not see even the European convention on human rights as a basic minimum in trade negotiations, either with the EU or other countries, are we not in real danger of still being the poor man of Europe when it comes to human rights?

**Michael Russell:** It is distinctly possible, because that is the situation that is developing. It is very difficult to predict what will happen next with the UK Government. I do not know whether there is a genuine agenda to refuse to accept norms in international law and to say that, for example, treaties will not be binding if we choose them not to be binding. Some incredible stuff has been said, and not just by Brandon Lewis yesterday. He did not misspeak. He was clearly working from a briefing, and I do not think that he misread his briefing that much.

Others have said similar things. Yesterday, I was astonished to hear Bernard Jenkin, who is not an unreasonable human being, making it clear that he always knew, because he was obviously told by the UK Government, that the UK Government would repudiate the withdrawal agreement, and that all that people had to do to get themselves past the hump of leaving the EU was to vote for it and sign off on it, and then it could be cast aside. You cannot do business on those terms.

In a sense, I feel that I have had that experience in dealing with the UK Government for far too long. It does not surprise me, but it does depress me that we have got to this stage, and it has been getting worse and worse. In the circumstances, we need to reassert what we believe in Scotland and the values that we have. Those are mainstream European values. There is nothing exceptional about what we are talking about. They are ordinary, mainstream, human, European values that we would take as read, but which now appear

to be almost exceptional compared with what the UK Government believes.

**Angela Constance:** The cabinet secretary makes the point that human rights and other values are often agreed at an international level, and that Britannia waives the rules—its own rules as well as international agreements. As I understand it, the purpose of Mr Russell's bill is to prevent, as much as possible, Scotland from going backwards and to mitigate being dragged out of the EU against our will. However, at the end of the day, how on earth can we compensate for a low or no deal, for trade trumping our rights and for the biggest power grab—or, as the cabinet secretary describes it, assault—on devolution? Is there not a bigger point, or, perhaps, the need for a bigger bill, that says that, at a fundamental level, we are not prepared to put up with this any longer? I am much older than Mr Arthur and not quite as old as the cabinet secretary, but can we not just get them telt?

**Michael Russell:** Aye, I think that you are absolutely right. We are at that stage. To be blunt, that would do no harm.

**Patrick Harvie (Glasgow) (Green):** I have two questions. First, I want to pick up on the issue of whether the Scottish Government should be able, or have a duty, to keep pace. Glyphosate was one of the examples that was raised last week. A couple of years ago, there was a decision at EU level not to introduce a ban on glyphosate. There is a strong argument in favour of a ban but, at that point, the issue was put off for a few years. I think that we are expecting the decision to be reviewed in a year or two. Over the period, Germany has changed its position.

Now that the UK has left the EU and does not have a vote on that decision, if the balance in the EU was such that it supported a ban on glyphosate, but the UK continued to not support a ban, you would take the view that the Scottish Government should not be required to keep pace by introducing the ban, but should be able to make the decision itself.

Would you accept that the bill needs to provide the opportunity for people in Scotland to challenge that decision in either direction? The Scottish Government, whether the current Government or a future one, could decide to go with the UK position rather than the EU position. We cannot have a framework that would allow such a decision simply to be nodded through. Any such decision has to be open to public challenge, not just through consultation but through public engagement, and through a formal process in the Scottish Parliament. Is that reasonable and does the bill achieve that, or is there a danger that it gives too much power to ministers to simply make a

decision, with Parliament having to take it or leave it?

10:30

**Michael Russell:** There is always a power of challenge, for example through judicial review of a decision. The power of challenge is also included in the bill: there is a power of challenge to any decision that is made under the bill, because decisions are not made without regulation and regulations can be challenged.

Let me take that specific example. I cannot imagine the circumstances in which the decision would not become a live debate as the issue is revisited. It would be a very active debate. I am sure that, in the Scottish Parliament, the Environment, Climate Change and Land Reform Committee would want to be part of that discussion and that the third sector would want to be part of the discussion, too. The Government would want to be mindful, and should be mindful, of that debate before it made its decision. When the Government makes the decision to ban or not to ban, or to keep pace or not to keep pace, that will be challengeable by members of the Parliament through the committee structure and the passage of the regulations as they are agreed to or otherwise. As I said, it will also be open to the normal challenge of judicial review. I think that that is in there, and that it should be in there.

The difficulty with mandating keeping pace is that it is indiscriminate. In those circumstances, the Government might find itself overwhelmed. That is something that will take resource and we do not have unlimited resources. At the moment, while we are not an independent member of the European Union, we have reached the right solution. When we return to full membership, we will be mandated to keep pace because it will be our duty to observe EU regulations, but we will also be involved in the process of making them, which is very healthy.

**Patrick Harvie:** By focusing on Roundup, I am perhaps making the same mistake as those who focus on chlorinated chicken. Everyone fixates on one issue when there will be hundreds of lower-level issues that will not become major political debates. Would you agree that there is at least a case for a sifting mechanism to ensure that the proper level of scrutiny is brought to bear on such measures, rather than the danger of there being the lowest common denominator in scrutiny and debate?

**Michael Russell:** The sifting mechanism lies in the current committee structure and those who are concerned about the issue. When it is known that we have the power in the armoury—provided that it is not treated in the same disgraceful way as

was the previous power that the UK Government created—I would be highly surprised if each and every committee of the Parliament was not considering issues that it wished to be included. I am not necessarily in favour of a new sifting committee. We have difficulty staffing the structures that we already have and I am not sure that we would want additional structures. However, there will be an opportunity for every committee to do that work, and I am happy about that.

As I said in my introductory remarks, I am giving thought—and I am happy to hear thoughts from others—on how the whole process can work. We should continue to talk about that as we go into stage 2 and stage 3 of the bill.

**Patrick Harvie:** There will probably be opportunities to look at several options at stage 2.

I also want to ask about the interaction of the bill with the internal market bill and future trade agreements. Several members have already discussed the issue, so rather than going over the same ground again, let us just acknowledge that the UK Government and the Scottish Government have fundamentally different purposes here: one wants to maintain a close relationship with the European Union, with a view to getting back in, and the other wants to cut those ties and, at the very least, to permit a deregulation agenda. Those objectives are not compatible and the question rests on where the power lies. Is it not overdue for the Scottish Government to take that question to court to ask whether the UK Government has the correct interpretation of its power to legislate, which is that it will “not normally” legislate in devolved areas, but actually it will legislate whenever it sees fit? To the UK Government, “not normally” apparently means, “not unless we feel like it or want to.” Is it not time for the Scottish Government to seek a judicial review of what that means? There can be no resolution of the situation with any kind of equanimity if there is no equanimity in relation to power.

**Michael Russell:** I do not disagree with your analysis. I think that the issue is about power—it is about the misuse of power by the UK Government, without a doubt; its overbearing approach to the matter is quite clear.

I am always cautious about going to court. There is an unwritten constitution, and it is difficult to enforce that. However, as I have said before to the committee and as I am happy to say again, I have not ruled out any actions. I am not necessarily going to advertise those actions before they are taken, but I have not ruled out any actions at all, and I hear clearly what you are saying. There might be a range of legal options in front of us—I would not want to go any further than that at this stage.

**George Adam (Paisley) (SNP):** Good morning. I want to ask you to go into a bit more detail about common frameworks. I think that, if you have people with different opinions, ideals and beliefs, having a sit-down to discuss those issues is surely more sensible than the current proposals from the UK Government, which, as you have already said, involve riding roughshod over devolution.

What are the threats that we face because of the UK Government's attitude, and how do we find a way to get some form of compromise with a UK Government that appears not to want to compromise?

**Michael Russell:** The compromise is there to be had. I have made that very clear in committee appearances and again last week at the joint ministerial committee. I also made it clear yesterday in my conversation with Alok Sharma and Michael Gove.

As you say, the solution involves a civilised and sensible approach in which we sit down with the frameworks and discuss whether there is anything missing from the programme—Michael Gove asserts that there is, but he has not said what. If it appears that something is missing, we should put it in place. We should all make a commitment that we will all operate as if the frameworks are in place while we finalise their detail, and we should make a commitment to placing no barriers in the way of internal trade. There are no barriers. We have never had any intention of putting any barriers in place—neither has anyone else, as far as I can see, so the entire issue is a chimera—but, if it makes Michael Gove feel better, I say again that there will be no such barriers. The approach is available to us—we could do it today and resolve the issue. However, instead, the UK wants to bring in the internal market bill, and it wants to make assertions about the bill that, frankly, are not true.

I read the comments from the Secretary of State for Scotland, Alistair Jack, and I am sorry to say that they are simply not true. The internal trade issue is not a risk. There is no threat to internal trade in these islands. Moreover, to say that that threat would lead to the loss of 500,000 jobs or something is just not true. The situation is bedevilled by that type of spin and bluster. However, the resolution is simple. The issue should never have come along in the first place.

In case people think that this is just the SNP's point of view, I say that they should go and look at the statement from the Welsh Government. If anything, it is even angrier about this than we are. Like us, they have put in a lot of effort to try to make the frameworks work. Those frameworks are there, and it is extraordinary that any responsible Government would behave in this way.

**George Adam:** You have said that the internal market bill, which will be introduced today—it might already have been introduced—is a major threat to devolution. Because you are ever the optimist, you have also said that you hope that the UK Government will see sense.

However, the narrative from many of our unionist colleagues on the committee seems to be along the lines of "This is just the nationalists trying to pick a fight. It's just the way they are—they can't help themselves."

I know that Twitter is not the centre of the universe, but I have a unionist tweet here that says:

"You can't run a complex union state like the UK as a majoritarian unitary state."

If even unionist correspondents are writing such things, surely, as you say, people should see sense, and we should be able to have a conversation. It is not just the nationalists; it is the Welsh Government as well. Surely we can get to a place where we can get that compromise.

**Michael Russell:** I entirely agree. We will have enough difficulty dealing with whatever the outcome of the negotiations is. Whether it is no deal or low deal, our hands will be full for the rest of this year coping with it. It is something that we did not ask for and did not vote for, and we are having to cope with it.

The whole of the past four years is a story of a failure to compromise by the UK, starting with Theresa May's failure to talk sensibly to people and bring them into the discussion. It has simply been a story of galloping extremism, which has deliberately excluded other points of view—as you say, in a majoritarian sense—and it has led us to the spectacle of a UK cabinet minister essentially endorsing illegality yesterday in the House of Commons and a bill that is unwanted. The Scottish Parliament voted against the draft bill and the Welsh Parliament will vote against the bill—I am sure that neither we nor Wales will give legislative consent to the bill. There is also huge upset in Northern Ireland. The peace process in Northern Ireland and the establishment and continuation of Stormont are all at risk because of this utter obsession with something that it looks like the majority of the people on these islands no longer support. It is an utter tragedy. If only there was a reasonable sense of a way out. How good that would be.

**The Convener:** The final question is from me, and it is about common sense and a way out. Understandably, the Scottish Government has put a lot of store in common frameworks as the process to enable a sensible way forward for all the islands of the United Kingdom. If the negotiations on common frameworks are still



going on, how can they possibly be successful at the same time as the internal market bill is proceeding through the House of Commons? Does that not potentially mean the end of common frameworks?

**Michael Russell:** That is a very sensible question. It is not just about the frameworks process, important though that is. How can you continue with an intergovernmental review with people who refuse to listen to you, who refuse to accept any of your arguments and whose aim is to remove your powers? The UK bill is an immensely serious threat to everything that we have been doing, and it is utterly unnecessary. We have put a huge amount of effort into the frameworks. I think that the Welsh Government feels even more strongly than we do that the process is being completely thrown away because of a desire by one or two people in the UK Government to do down devolution and try to ensure that they can get the type of trade deals that they want. It is shocking and it is tragic.

**The Convener:** Cabinet secretary, I thank you and your officials for giving evidence this morning.

I suspend the meeting for about five minutes to ensure that our next panel of witnesses is ready.

10:44

*Meeting suspended.*

10:49

*On resuming—*

## **Pre-Budget Scrutiny 2021-22**

**The Convener:** Our next item is our first pre-budget 2021-22 scrutiny session, which focuses on the impact of Covid-19 on the public finances. We will hear from the Scottish Fiscal Commission about its fiscal update, which was published last week. I welcome our new adviser on fiscal matters, David Phillips, and thank him for his helpful briefing paper. I also record our thanks to David Eiser, our previous adviser, for all his hard work.

I welcome our witnesses from the SFC: Dame Susan Rice, who is the chair; Professor Alasdair Smith, who is one of the commissioners; and Claire Murdoch, who is the head of social security and public funding.

Before we move to questions from members, I invite Dame Susan to make some opening remarks. I remind members to direct their initial questions to Dame Susan.

**Dame Susan Rice (Scottish Fiscal Commission):** Good morning, and thank you for asking us to give evidence. I will start with a few comments about the five publications that we released in the past week and a half. Do not worry: in the words of Henry VIII to each of his wives, I will not keep you long. You will need time for questions.

I will speak first about our fiscal update report. As you will be well aware, the coronavirus pandemic has had a profound effect on the fiscal and economic outlook in Scotland and the United Kingdom. In our second fiscal update last week, we set out the latest position of the Scottish budget, we discussed the potential variations in the budget that the Government will have to manage this year and we considered the effects of Covid-19 on the economy. I will say something about each of those three areas.

The Scottish budget has increased by £3 billion since the Scottish Government presented its summer budget revision in May. The budget now includes £6.5 billion of guaranteed funding from the UK Government for spending related to Covid 19. That funding largely addresses one of the concerns that we raised in our previous fiscal update in April, when we highlighted that uncertainty about the level of funding from the UK Government could make it difficult for the Scottish Government to balance its budget.

Although the guarantee, along with the fixed funding for income tax for the year, provides greater certainty, there are still elements of the budget in which the Government continues to

have uncertainty. Land and buildings transaction tax, landfill tax revenues and devolved social security spending vary in-year, although we expect variations largely to be offset by changes in the block grant adjustments. We do not yet know what those will be, but when we get to the Scottish budget—probably in December—we will have updated forecasts of Scottish revenues and spending and updated forecasts from the Office for Budget Responsibility to inform the BGAs. At that point, we will have a clearer picture of the Scottish budget.

Our report also sets out our initial expectations for the Scottish economy. The latest data suggest that the economy shrank by almost a quarter between February and April. Since then, we have seen a gradual resumption of economic activity and we expect gross domestic product to rise rapidly as economic activity resumes more fully.

However, we anticipate that GDP will remain below its pre-crisis level until 2023. That is because, over that period, unemployment is likely to be elevated and earnings will be lower for many people. We expect some permanent damage to the Scottish economy: it is probably fair to say that the economic and fiscal effects of the crisis will be felt for years to come.

Our report highlights the large increase in UK Government borrowing to fund the UK-wide response to the crisis. We note how, at some point, that will need to be repaid, which will potentially also affect the Scottish budget.

Our report also noted that, next year, the Scottish Government will need to manage the income tax reconciliation relating to 2018-19. The relevant outturn data will be published on 23 September and we will publish an evaluation of the data on 5 October.

That is enough about our fiscal update. I turn to our annual forecast evaluation report for 2019-20, which mainly covers the period before the impact of Covid-19. Although there is individual variability, our forecasts of devolved tax revenues and of social security spending, taken collectively, were within two per cent of the outturn.

In the world of forecasting, that is pretty good, although the technical way of saying so is that that outcome would be considered reasonable. However, we know that Covid-19 will significantly alter the world, and the forecast errors for the current financial year are likely to be greater.

The third publication is our “Statement of Data Needs”, which sets out the areas in which we believe that improved information would support our work. Relevant to the fiscal update that I have just spoken about, we highlight how our work on the Scottish budget has developed, and describe a variety of ways in which it would be improved

through better or more timely provision of data or information.

Alongside those three publications, in the past 10 days we have published two policy costings to accompany Scottish Government legislation relating to social security. The first is for the child winter heating assistance scheme and the second is for the Scottish child payment. Our forecasts take account of the large increases that we have seen in universal credit claims since March.

With that, I hand over to you, convener, for the question-and-answer session.

**The Convener:** Thank you, Dame Susan. I will start the questioning. As a result of the Covid-19 pandemic, there will be risks to the Scottish budget. I am interested in what the differential effect might be on Scotland in terms of the impact on the Scottish economy and on public expenditure, including devolved social security benefits, relative to the rest of the UK. As we all know, the fiscal framework is very much about relativity. What consideration has the SFC given to any potential differential effect and what that might mean?

**Dame Susan Rice:** That is a good question. In looking at the economic impact, we have initially looked at the change to our economic activity and to GDP in comparison with what is happening across the UK. So far, we have seen that our changes have been roughly in parallel with what we see in the rest of the country. That does not mean that that will continue forever, but we have not seen a big divergence.

Obviously, lockdown has, in some respects, been handled differently in Scotland and in England; indeed, the four nations are all showing differences in how they respond to lockdown. In Scotland, the cessation of work in the construction sector was wider and longer than it was elsewhere. We may also see differences in the timing of recovery, because those activities have to come on board and work has to begin to have an impact. Those are a few areas in which we have considered what the differences might be.

Perhaps Professor Alasdair Smith or Claire Murdoch would like to augment my comments.

**Professor Alasdair Smith (Scottish Fiscal Commission):** I am happy to come in, although I do not have much to add. As Susan Rice said, when we have looked at the differential effects, they have not turned out to be significant so far. Nonetheless, we have recognised that there is a risk, and we will need to keep a close eye on it, given the limited powers that the Scottish Government has to borrow in order to meet particular needs, in the event that those needs should differ from those that are funded through UK Government funding.

**Claire Murdoch (Scottish Fiscal Commission):** On the fiscal side of things, you are exactly right, convener—the effect of the Scottish budget depends on the performance of Scotland relative to the rest of the UK.

We are still pretty early on in this period, in terms of the data that we have on tax and social security. I turn to tax first. The taxes that affect the budget this year are the land and buildings transaction tax and the Scottish landfill tax, which have a direct effect in-year.

On LBTT, we have some evidence that transactions in Scotland took slightly longer to return to higher levels than they did in England, because the housing market took slightly longer to reopen. On what that means for tax revenues over the year, we will need to see how that plays out. It is still pretty early in the year, and a month's difference in the opening of the housing market might not make a huge difference over the whole year.

11:00

On social security, the largest benefits are administered by the Department for Work and Pensions. Those are on pretty much the same rules as the UK Government ones, so we expect the changes that happen there to be broadly similar in Scotland and the rest of the UK. It is the smaller benefits, which are administered by Social Security Scotland, where we might expect there to be a differential impact, and those benefits do not have block grant adjustments.

An example is the best start grant, which is paid to families who are on low-income benefits—they may be on universal credit, for example. We do not have the data yet, but we expect that, as Scotland has a higher number of families receiving universal credit, more people will be paid that benefit. However, it is still quite early to see that in the data.

We will have more information by the time we get to our next forecast. We will update our forecast and the OBR will update its forecast, and we will have a better picture of what is happening in Scotland and in the rest of the UK, and the effect on the Scottish budget. You are absolutely right to say that that relative performance will affect the Scottish budget.

**The Convener:** I have concerns about the £6.5 billion guarantee—not about the amount, but about how the Parliament and, indeed, the Scottish Fiscal Commission will be able to scrutinise exactly what is going on there. In particular, any additional funding for England will not generate additional funding for the Scottish Government until the Barnett formula implies that the total amount received should be greater than

£6.5 billion. According to our adviser, that implies that just over £8 billion can be announced in England before the Barnett formula will apply such that the Scottish Government receives more than the £6.5 billion funding guarantee.

There is potential for lots of announcements creating confusion, because the UK Government might announce new money that would not apply to Scotland until that figure of £8 billion of new money had been reached, in which case we would be over the £6.5 billion mark in Scotland. How will the Scottish Fiscal Commission go about scrutinising that, and the amount that comes into the Scottish budget, or otherwise? What advice would you give the committee on that?

**Dame Susan Rice:** Thank you for putting that challenging question. I remind everyone that the offer of guaranteed funding in relation to actions around the pandemic followed a request that came out of discussions between the Scottish and UK Governments. As we all know, the Scottish Government has to have a balanced budget, and the complete uncertainty around all the extra funding was beyond anything that was reasonable, so the guaranteed funding was welcomed.

The understanding is that, if the UK Government spends less, the £6.5 billion to the Scottish Government will not be reduced, but if the UK Government spends more, more will come to Scotland. The timing of that is a political matter and not something that we could speak to.

What matters to the Scottish Government is the budget for each year. I know that you asked about scrutiny, but I think that it is helpful to understand the framework around this. If the UK Government said that it was going to spend a lot more, more would go to Scotland. However, if it did so towards the end of this year and the money came next year, that might cause some issues as well. It is a matter of understanding the mechanism as well as the actual amounts.

I do not want to lean on Claire Murdoch too much, but I ask her to comment as she has quite a keen understanding of this space.

**Claire Murdoch:** The amount that the Treasury has guaranteed the Scottish Government so far will not go down, but if the UK Government makes further announcements, the Scottish Government will receive extra funding. You are absolutely right, convener. If announcements continue to be made, no new funding will come out of that at first, but, after a certain point, more funding will come to the Scottish Government. That could potentially happen quite late in the financial year. When the supplementary estimates are presented to the UK Parliament—normally in February—there could be revisions to the figure. That is quite late in the financial year for the Scottish Government to deal

with. That is why the UK Government made the offer to guarantee the funding—that would provide a minimum level of certainty. However, if there are further announcements involving higher spending in England, the Scottish Government might receive extra funding quite late in the financial year. If it cannot spend it in that financial year, it can put it in the reserve and manage it that way.

**Murdo Fraser:** On the £6.5 billion, is the point not just that that gives the Scottish Government some certainty in terms of budget planning, so that it is not relying on rolling announcements of Barnett consequentials, it knows what the overall envelope will be in this financial year and it has an assurance that that will not go down? Is that not the key issue?

**Dame Susan Rice:** Yes, the £6.5 billion that has been given to the Scottish Government will not decrease. I also point out that certainty comes from having fixed revenues or expenditure, so, in addition to knowing that £6.5 billion is available, income tax is a fixed number for the budget year. Obviously, it becomes reconciled a couple of years later, but that means that quite a big chunk of the Scottish budget for the financial year is also fixed.

There are variables, which involve something moving in-year, such as housing transactions—the revenue from LBTT comes at the point of each transaction, so it is sporadic and periodic. Furthermore, social security expenditure also happens in-year and can change in-year. However, because the payments are monthly, the situation is a little more certain. The Scottish Government is not relieved of all uncertainty, but the combination of the certainty around the £6.5 billion and around income tax, which is nearly double that amount, gives it a fair amount to work with.

**The Convener:** Sorry to interrupt, Murdo, but, before we move off that point, I would like to ask a question in order to get absolute clarity. I welcome the guarantee—it is a good thing to have—but, currently, the maximum Barnett room that the Scottish Government has is £5.7 billion. We will not necessarily reach that guaranteed amount; it is just there if we need it. Am I right about that? If so, I want to ensure that that is on the record, just so we are all clear on that point.

**Dame Susan Rice:** I believe that you are, but you can perhaps speak for the Parliament and the Government, whereas the Fiscal Commission cannot tell you exactly what you have spent. However, my understanding is that the £6.5 billion has not all been allocated yet.

**Murdo Fraser:** I have a couple of questions that lead on from the convener's question about differential impacts.

We know that levels of public spending per capita in Scotland are much higher than the UK average, which means that the public sector is a larger part of the economy in Scotland than it is in the UK as a whole. Is that factored into your assessments of any likely differential impact of Covid on Scotland and the economic consequences of that?

**Dame Susan Rice:** Again, that is a good question to ask. With regard to the devolved areas that we deal with, some of the social security benefits that have gone live under the Scottish Government's jurisdiction—most of them have, at this point—have been changed in terms of eligibility and the ease of applying, and the child payment is a new payment.

The Scottish Government is making more available to its population under the social security heading. It is correct to say that we are aware of that. The Government's job is to know what it is spending and to balance the budget. We have said in past evidence sessions with this committee that, if the Government needs or wants to spend more on one area, it might have to spend a little less somewhere else. I do not know whether that exactly answers your question, but we are certainly aware of some of those differences and consider them—[Inaudible.]—in what we do.

**Murdo Fraser:** I have one more question. Your Scottish Fiscal Commission "Fiscal Update" paper talks about the prospects of what is called, rather dramatically, a "Scotland-specific economic shock", stating that the likelihood of that

"being triggered is greater than in a typical year".

Of course, that would trigger additional borrowing powers for the Scottish Government, which I am sure it would welcome. Do you have any sense of the likelihood of our getting into that territory?

**Dame Susan Rice:** I can turn to either of my colleagues on that question, but my response is that we have not forecast or predict the likelihood of getting there. We are in extraordinary times this year, and we just do not know how the rest of the year will play out with the pandemic—nobody knows that at this stage. It is possible that that specific economic shock might happen, but, so far, we have not seen indices that say that we are on the verge of it. Alasdair Smith might want to add something to that.

**Professor Smith:** Yes. There are two conditions that would trigger a Scotland-specific economic shock, one of which is the growth of Scottish GDP being less than 1 per cent. Sadly, that condition will clearly be met, as there will be negative growth this year. The second condition is growth in Scotland being more than 1 per cent less than growth in the UK. Growth in the UK fell by about 25 per cent in the first quarter of the

financial year, and growth in Scotland fell by approximately the same. Not much divergence is needed in big numbers like that to get a 1 per cent difference between them. As Susan Rice said, there has not been a 1 per cent divergence so far, but it is easy to imagine that relatively small differences in the performances of the Scottish and UK economies could trigger a Scotland-specific economic shock. However, it would be unwise of the Scottish Government to assume that that shock will be triggered and that it will get access to the additional £300 million of borrowing, as we just do not know at this stage.

**Murdo Fraser:** Thank you.

**George Adam:** Good morning, Dame Susan. I want to follow up on what you just said about the extraordinary times that we live in with regard to Covid-19. The Scottish Government is funded in a retrospective way through the Barnett formula and other funding promises, so there is less flexibility there. I note that section 13 on page 4 of your "Fiscal Update" states:

"Before the COVID-19 crisis, the Scottish Budget had already increased in size and complexity".

It then goes on to talk about the Scottish Government's responsibilities, including the social security commitments and things like that. The great philosopher Stan Lee said in the 1960s, "With great power comes great responsibility." However, the Scottish Government appears to have all the responsibility but very little of the powers to make the difference that it needs to make. Is there a better way of funding, so that the Scottish Government could be more flexible? We have talked about the Scottish Government's borrowing powers previously. Is that the way forward? Or is there a better way for the Scottish Government to be able to act, so that, in dealing with this incredible crisis—this worldwide pandemic—it can deal with everything itself? I am just looking for some form of solution that allows us to deliver to the people of Scotland.

11:15

**Dame Susan Rice:** I very much appreciate the sentiment behind your question, and I would answer it in several different ways. First, the question that you are asking would, to some extent, require a response on the political side, not from an independent fiscal body. We could not say that there is a better way to borrow or for the two Governments to interact.

There is power in Scotland, to some extent, because the devolved powers give Scotland the ability to collect some taxes and revenues in-year, and to keep those going, and to decide how it wants to spend on a number of social security

programmes and benefits. There is power and the ability to make decisions in that sphere.

In these extraordinary times of Covid, even if both Governments were to decide that they wanted to have a conversation about shifting the way that things are working, my personal view is that this is not the moment to start making fundamental changes in how we do things. All of us, in our nations and collectively across the UK, have to get through this period as well as we can.

The guaranteed funding, which was one of the requests made by the Scottish Government to the UK Government, was granted, and it has helped quite a bit. I do not know whether either of my colleagues wishes to add anything to that.

**Professor Smith:** The Covid experience is an interesting test of devolution powers. For perfectly understandable economic reasons, as endorsed by the OBR, the UK Government's Covid response has largely been funded by borrowing, which is a reserved power at the UK Government level. One of the questions that ought to be asked in the near future is whether, looking back over this experience, a response to Covid that was largely funded by UK borrowing has been sufficiently responsive to the needs of Scotland.

As Susan Rice said, our feeling in the commission is that the time to consider that is when the fiscal framework comes up for review. At that point, it will be very interesting to look back at the Covid experience and ascertain whether the needs of Scotland and the needs of the rest of the UK were similar and whether the Scottish Government's desired policy response was sufficiently close to the UK Government's desired policy response that the fiscal framework worked well, or whether, alternatively, the fiscal framework did not give the Scottish Government enough control over its own response to the Covid pandemic. Those are questions for the Governments to consider when they review the fiscal framework in 2021-22.

**George Adam:** Thank you, Professor Smith. That is extremely interesting, and I will keep that in mind as we move forward.

Dame Susan, I am in no way trying to get you involved in a political rammy; I am just trying to find a practical way of getting delivery for the people of Scotland. Even in your own paper, in paragraph 16 on page 4, you write:

"The Scottish Government's borrowing powers were not designed to manage fiscal stabilisation which is the responsibility of the UK Government, who borrow on behalf of the UK and either allocate spending for reserved areas or transfer proportional funding to the Scottish Government for devolved areas. The Scottish Government is not able to borrow to fund proportionally greater spending on its COVID-19 response than the rest of the UK."

Having read that, I would ask whether that is not part of the problem. Is that not part of the issue that we face? We constantly hear about political bickering between Governments, but if the powers were there, we would be able to deal properly with the issue. We still seem to have most of the responsibility yet none of the powers.

**Dame Susan Rice:** I am not sure how to give you a different response to that question. I understand your concern and why you ask the question in that way, but it is not within our capability to give you an answer. Quite honestly, as I and Alasdair Smith have said, trying to analyse this and come up with a solution in the middle of a crisis is not the way to get a good answer to the question that you are raising, because we need to see the denouement and how things play out. Soon—not too far into the future—if we look back, we will be able to come up with a much better view of what has and has not worked. That is the best response that I can give you. It is a personal view as to when one goes in to pull up the paving stones and look at what is underneath. Claire Murdoch may be able to give a more specific response.

**Claire Murdoch:** The only thing that I can add is that the work that we are doing on how the Scottish budget is funded is explaining and trying to add transparency to how the budget works under the current arrangements. It is for others to talk about whether the current arrangements are suitable or should be changed. Our focus is on trying to improve people's understanding of how the Scottish Government is funded, because it is not super easy to understand. It is not a simple process, especially as we add in all the new tax and social security devolution, which, as we highlight in our report, has added further complexity to the Scottish budget. That is our intention.

That might not address the question that George Adam asked, but I hope that it explains where we are coming from.

**George Adam:** I and others feel frustration because we are living in extraordinary times—this is a worldwide pandemic and health situation in which people are dying. I understand your point that we need to look at it at a later date, to get all the facts and figures together, but, for me, the concern is how we deal with it in the here and now, because it is about life and death. It is not just an academic study; we need to deal with it here and now.

**Dame Susan Rice:** Two strands are coming out of your comment, one of which is the health strand. This is a pandemic and a matter of health around the globe. Ultimately, I believe that science will get us there and that we will have the mechanisms, such as super-fast, easy and cheap

testing and vaccinations, to see us out. We are in a tunnel but, at some point, we will come out of it.

The other strand to what you are asking about is the impact that the pandemic is having on economic factors now. Although I cannot comment politically, I understand that many businesses have benefited from the broad schemes such as the furlough scheme and the loan guarantee scheme for small businesses. More recently, the Scottish Government has offered support to the arts and culture sector. People sometimes think of that as a side issue, but that sector is essential to having thriving cities in Scotland. Therefore, the Scottish Government has found places where it can focus and create some of its own programmes as well. I do not know what else we could say to you—within the limitations and constraints of our remit—that would take the conversation further. I am sorry about that.

**Professor Smith:** Of course, when we are talking about issues of life and death, we must remember that health responsibilities are devolved and that the Scottish Government has had responsibility for many aspects of the response to the Covid pandemic in Scotland, such as lockdown policies and so on. The question for the Fiscal Commission, and perhaps the issue behind Mr Adam's question, is whether the Scottish Government gets adequate funding to support its devolved responsibilities. As Susan Rice said in her introduction, so far, the indications are that the available funding has matched in a reasonable way the Scottish Government's programmes. However, that can be reviewed at the end of the year, when we will have a better overall picture.

**Jackie Baillie (Dumbarton) (Lab):** There is no doubt that we are likely heading for a position of falling tax receipts and increasing spending. I want to focus on social security, because I am conscious that the reconciliations for social security happen in-year, and therefore there is an immediate impact on the budget. I understand that disability benefits account for the main element of social security spending. Can you give us an order of magnitude for that? Can you also comment on what you expect might happen as a consequence of the coronavirus restrictions? Will the budget go up? If so, by how much? That is the million-dollar question.

**Dame Susan Rice:** If we knew the answers to all questions like that, we would be in a different place. In my opening comments, I talked about the small response that we made recently on costings. We have factored in the increase in uptake of universal credit compared to March. Universal credit is a trigger for some social security benefits and, as we know, there has been an increase in uptake across the UK, and certainly in Scotland. That will potentially lead to greater eligibility for

some of the specific benefits or social security programmes in Scotland.

I will turn to Claire Murdoch, because her remit, as one of the most senior people in the commission, is on the public policy side and on social security, so she knows that area inside out. Perhaps she can give a more specific response.

**Claire Murdoch:** In our report, we talk about a number of the ways in which we think social security spending could be affected. Jackie Baillie is absolutely right that disability benefits account for the bulk of the £3.5 billion of devolved social security. The main change that we think is going to happen on that is through the changes that the Department for Work and Pensions has made in how it administers benefits. Because of the Covid crisis, the DWP has suspended face-to-face assessments, paused some reviews and made other changes to the administration. We think that those changes will potentially lead to increases in spending in Scotland and the rest of the UK.

We do not fully know what the effects of Covid will be on people's health, but we could see increases in demand for benefits if people's health is affected. Sadly, the majority of people who have died from the virus have been older people, who are more likely to have been in receipt of attendance allowance, so there might be an effect that potentially reduces spending.

We will take all those factors into account when we produce our next forecast, in December. Most of the effects will be across Scotland and the rest of the UK, so when the OBR produces its updated forecasts, we will get an update of the block grant adjustment position, which we think should largely offset that.

Obviously, that applies to the majority of spending, which at present is administered by the DWP, but there are also the benefits that are administered in Scotland, and there are several changes that we will factor into our forecast in that regard. The first one is that universal credit applications have increased a lot, which we think will push up spending on the low-income means-tested benefits that are administered by Social Security Scotland.

Yesterday, we published a costing of the new Scottish child payment. The Scottish Government originally planned to launch the child payment before Christmas, but it will now make the first payments in February. In producing that forecast, we took account of the increase in universal credit claims, which pushes up spending across our whole forecast horizon. We also made the assumption that take-up will increase because more people are aware of the support that is available to them. All those factors will affect

spending; the majority will push up spending slightly while some will dampen spending.

It is still very early for us to make a forecast. At the moment, we are just making comments on what we think the effect will be. At the time of the Scottish budget, we will have a much better estimate of the position in-year for the Scottish Government. We will also have a better estimate of the forecasts across the next five years and how spending will evolve over that period. I hope that that answers your question.

11:30

**Jackie Baillie:** It does answer my question and is very helpful. I am very conscious that we are coming up to an autumn budget revision and I am sure that the majority of this will not be reflected in that revision, but will happen towards the end of the year. However, I am concerned that as the job retention scheme starts to unwind we will see massive spikes in unemployment and a consequent impact on a range of devolved benefits, from the best start grant that Claire Murdoch referred to earlier to council tax reductions, the statistics for which were published yesterday. Are you saying that it is too early to get an order of magnitude and that I need to wait until December?

**Claire Murdoch:** I am afraid so. In December we will have to make forecasts, even if we do not have much more information. At that point we will be able to present you with a better picture than we are able to produce at the current time.

**Jackie Baillie:** That is helpful.

**Dean Lockhart:** I want to ask the SFC about the fiscal trends highlighted in the most recent "Government Expenditure and Revenue Scotland" figures, which show a gap between revenue and expenditure in Scotland of more than £15 billion, which is an increase of £2 billion from the previous year. On the expenditure side, the GERS figures reflect only a few weeks of the additional expenditure from the UK Government on the Covid response, which may be part of the reason for the increasing deficit, but are there other reasons on the revenue side to explain that? For example, are we seeing a decline in the income tax base or in revenues from the income tax base in Scotland and is less revenue being generated from other devolved taxes?

**Dame Susan Rice:** I begin by reminding everybody that GERS takes a snapshot, or estimates the value of, all public spending and public revenue in and on behalf of Scotland, which covers local government, the Scottish Government and the UK Government. It goes beyond the envelope of devolved taxes and benefits. For example, it includes UK-wide expenditure on

defence, and local government expenditure where different decisions may be made in different bodies around the UK. I just wanted to remind everyone of that point. When Mr Lockhart talks about the differential, given the numbers that he referred to, I am not sure whether he is referring to overall GERS values or simply to that part of the bigger picture that relates to devolved taxes and benefits.

**Dean Lockhart:** I am looking at the role of the revenue generated from devolved taxes in the overall component of the deficit. I appreciate that the SFC does not look at UK Government spend in Scotland. I am interested in the role of the revenue arising from devolved taxes in that overall increasing fiscal gap.

**Dame Susan Rice:** Thank you for the clarification, Mr Lockhart. Alasdair Smith is probably ready with the response on that.

**Professor Smith:** The most important devolved tax is income tax, which accounts for about £11 billion of annual revenue to the Scottish Government. Therefore, that is the area where one might have the greatest concern about whether the amount of tax that is being raised within Scotland is falling behind the UK.

As Susan Rice said in her opening remarks, we will get an update on the 2018-19 outturn later this month—on 23 September—and we will produce a report at the beginning of October, after which some of our colleagues will appear before the committee. We will look more closely at whether the income tax base in Scotland is or is not diverging from the UK tax base and, at that point, we will be in a position to answer your question more fully.

**Dean Lockhart:** In anticipation of next month's outturn figures, perhaps you could provide a summary of the main trends in previous outturn figures; I am thinking, in particular, of the overestimation of the number of Scottish taxpayers at different bands. Could you give us the highlights of those trends and say what impact that overestimation has had on Scotland's public finances?

**Professor Smith:** We had a discussion about that the last time that we appeared before the committee, and the committee produced a very interesting paper on it. There is some evidence that the expected divergence in 2018-19 is a result of unexpectedly rapid growth of the tax base among the highest taxpayers in the rest of the UK—frankly, we are probably talking about the highest taxpayers in London and the south-east. We and the committee will certainly want to look more closely at that issue when we have the 2018-19 figures and the 2021-22 reconciliation later this month.

The headline question is to what extent income distribution changes have led to divergence in income tax. We will probably not be able to provide a full answer on that in October, but we will do some initial work on it, and we will probably all want to come back to it subsequently.

**Dean Lockhart:** That was helpful—thank you.

I have a final supplementary question. Do you have anecdotal or other evidence of the impact that Covid might be having on behavioural change or on the mobility or movement of the higher-rate taxpayers within the UK market?

**Dame Susan Rice:** I think that I am correct in saying—oh, sorry, Alasdair; go ahead.

**Professor Smith:** I am sorry to cut across you, Susan.

At this point, we simply do not know enough about that. There is evidence that people with higher incomes have done better during the Covid crisis than people with lower incomes, because their jobs have been more secure, they have had a greater opportunity to work from home and, as a result, they have been less exposed to the risk of unemployment.

In considering what might have happened to the tax base of the rest of the UK, we need to look at what has happened right up at the very top of the income distribution, and we simply do not know—I should not say, “We”; I certainly do not know anything about how the Covid crisis has affected the very highest earners in the UK. That information is not available now, and it will not be available next month, either.

**The Convener:** Do you have anything to add, Dame Susan?

**Dame Susan Rice:** No—Alasdair said what I was going to say, probably much more elegantly.

**Alexander Burnett (Aberdeenshire West) (Con):** I direct members to my entry in the register of members' interests.

To start with one of the many levers that are under Scottish Government control, namely LBTT, we can see that it accounts for the majority of the shortfall in the devolved taxes. However, in the introduction to the update, you point out that the majority of that shortfall cannot be attributed to Covid. What are the fundamental reasons why that tax is not raising as much as it should be?

**Dame Susan Rice:** I will ask Claire Murdoch to talk about that. There has been a lot of variability in our forecasts in the past couple of years. We overpredicted LBTT revenues by about 3 per cent, mainly because we overestimated how many transactions there would be in the top two bands, which is where the largest amount of receivables comes in. It is not just the overall number of



transactions that matters; it is where they fall in the various bands.

**Claire Murdoch:** As Dame Susan has just highlighted, we had a forecast error on residential transactions. I should say that we are not saying what revenues should have been raised; we are saying what was raised compared with what we thought would be raised. We overpredicted residential LBTT revenues by 3 per cent, which is £9 million, but our largest forecast error was on the non-residential side. That is because non-residential revenues are highly concentrated on extremely high-value transactions. If you have slightly fewer of those extremely high-value transactions, you raise quite a lot less revenue. You do not have to get it very wrong to end up with a revenue forecast error that is slightly larger.

We forecast that there would be 550 transactions that were worth more than £2 million in the past financial year but, in fact, there were 506. That accounts for a big chunk of that forecast error. Obviously, we will take account of that when we produce our next set of forecasts. Of course, what happened last year will not be a perfect predictor of what will happen this year or next year, given that quite a big crisis has happened since then. I hope that that answers your question.

**Alexander Burnett:** Yes; sensitivity in certain bands can have a major impact.

Paragraph 3.21 says that you have underestimated the number of transactions and, therefore, your forecast should have been higher. Are you also saying, therefore, that the shortfall is also higher, so the situation is worse than the figures show?

**Claire Murdoch:** I will need to find the exact figures but I think that, on the residential side, we underestimated the number of transactions but we slightly overestimated the price assumption—prices were not quite as high as we thought that they would be. When you take those two things into account, those forecast errors on the residential side slightly offset themselves.

**Alexander Burnett:** The OBR has not formally updated its forecast, but it has produced updated scenarios—optimistic, central and pessimistic—for tax revenues and spending, which go on to inform its other costings. Why have you not produced any fiscal scenarios along those lines? Is it a resource issue? Do you have any expectation that there might be higher transaction volumes towards the end of the year?

**Claire Murdoch:** I think that Susan is going to answer that.

**Dame Susan Rice:** Sorry—perhaps the convener can tell us who should answer.

**The Convener:** Claire Murdoch was on the ball there, so we will let her keep going. If you want to come in after that, Dame Susan, let me know.

**Claire Murdoch:** Alexander Burnett asked why we have not produced updated scenarios. We set out what we think is happening broadly in the Scottish economy, given that context. With regard to the Scottish budget, what really matters for the budget position is not just what we think is happening to Scottish tax revenues but what is happening to Scottish tax revenues relative to the rest of the UK. The OBR scenarios are helpful with regard to giving that broad indication of what is going to happen. However, the OBR has not produced forecasts that can be used to calculate the block grant adjustments.

If we produce a forecast that says, for example, that LBTT revenues are going to fall, and then present that in the Scottish budget, it would make the position look pretty bad. However, once the updated block-grant adjustment figures are known, we will be able to see both those figures together, so we will know the funding position and the revenue position.

At that point, we will have a much better estimate of what is happening to the Scottish budget. We will be doing that alongside the Scottish budget, which is now expected to be in December.

11:45

**Dame Susan Rice:** I would simply add that the OBR has done its scenarios and, I believe that the Fraser of Allander institute has done scenarios as well. In terms of informing thinking more generally, there are other scenarios available.

**Alexander Burnett:** Dame Susan, you mention transparency in the data needs paper, and the issue of the Scottish Government not making information public, which unfortunately seems to be a recurring theme at the moment. Are you making any progress on that?

**Dame Susan Rice:** We noted in the report that there has been a lot of progress. We believe that we have a very good dialogue with the Scottish Government about data needs, and those discussions have improved over time. We are simply adding each year what would be even more helpful.

Because of our commitment to transparency, and because we try in our forecasts to enable anyone who looks at our work to understand what lies underneath it, we want to use public data to the fullest extent possible. Sometimes Governments—this one or other ones—want, for various reasons, to hold back data before they ultimately make it public. That might be because

they are not certain about it and are waiting to check it when it comes in. It is just that we have a timetable, so we are looking at how to match our needs for our analysis with the Government's needs for handling its data. Overall, there has been some progress there.

**Tom Arthur:** For simplicity, I will ask Dame Susan my first question and she can decide whether to delegate it to one of her colleagues.

The question concerns the sustainability of UK debt. I raise that issue with reference to paragraph 21 of the fiscal update report, which refers to the possibility that the UK Government may wish to rebalance its fiscal policy by increasing devolved taxes, which would have a knock-on impact on Scotland.

I appreciate that your remit is fiscal policy in Scotland, but given that intimate connection, can you perhaps sketch out what an objective definition of sustainable debt would be? Is the UK Government's current position vis-à-vis its debt sustainable, or would it necessitate intervention through the use of fiscal levers such as increasing income tax at a UK level?

**Dame Susan Rice:** That is a big question. We would not be in a position to comment on the last part of it, on the sustainability of the UK's approach to its debt. Alasdair Smith has put his virtual hand up. Alasdair, I wonder whether you want to respond more specifically.

**Professor Smith:** Yes, I am happy to do so. As you said, Susan, the Scottish Fiscal Commission has no responsibility for commenting on the fiscal sustainability of the UK Government's policy, and it is at the UK level that fiscal sustainability arises as an issue because, as we discussed earlier, borrowing is a power reserved to the UK Government.

Turning to what the OBR has said, I would not want to put words in the OBR's mouth, but my interpretation would be that it is relatively relaxed about the growth of UK Government borrowing in the short run in the context of the Covid crisis. The OBR seems to be quite relaxed about additional borrowing of £130 billion or £150 billion at a time when interest rates are very low.

It is right to assume that borrowing eventually has to be repaid, and it is quite right that when the UK Government seeks to bring its borrowing back down, it will need to raise taxes or cut expenditure. Cutting expenditure or raising taxes in devolved areas will have a direct impact on the Scottish Government's budget in the future. That is partly the way in which Scotland's share of the borrowing that is being done at the UK level, by the UK Government, gets repaid in the long run—through the impact on Scottish taxes and Scottish expenditure.

**Tom Arthur:** Can you clarify something, please? You can correct me if I have misunderstood, but I think—if I understand you correctly—that you are suggesting that there will ultimately be a choice between, or a combination of, public expenditure cuts and increases in taxation.

I presume that, given the gravity of the economic crisis that we are facing, you think that there is no possibility that the UK's fiscal position will become sustainable simply through economic growth. I ask that as an objective question of economic analysis. You are saying that it is simply beyond the realms of possibility that the UK economy as a whole would grow to such a level as to generate revenues that could bring public finances on to a sustainable footing, and therefore a fiscal intervention is required.

**Professor Smith:** It would be a very happy future—well, not very happy, but certainly optimistic—if rates of economic growth were high relative to rates of interest on the debt. To the extent that—[*Inaudible.*—]—one can be relaxed about the debt burden. Nonetheless, it is probably prudent to assume that when the Government takes on a large amount of additional debt, as the UK Government is doing this year, not all of it will be repaid as a result of economic growth.

I do not disagree with the assumption that underlies your question. If we could be very optimistic about economic growth, we could be less worried about the burden of future debt—that is absolutely right.

**Tom Arthur:** My second question is a process question, which we often come back to in exchanges with you in committee. The SFC is a relatively young organisation. With the new social security spending coming online this year, it may take a period of time—as has been acknowledged in previous exchanges—for the commission to build up sufficient knowledge in order to make its predictions as accurate as possible.

What has been the effect of the disruptive impact that Covid has had, and the significant financial interventions that there have been, on the robustness of your forecasts looking forward over three years? Will it delay you in getting to the point at which you will be confident that you can accrue that early learning to enhance the accuracy of your forecasts?

**Dame Susan Rice:** You describe the SFC as a relatively young organisation. We are young—and finely formed, I would say on behalf of the whole team in the organisation.

Back in January and February, the SFC responded wisely and quickly to what we saw was likely to be coming. We equipped all our teams to be able to work effectively, and in a collegiate way,

from their home bases. You talked about process—we have the capability, equipment and all the rest of it to enable us to do our work, and we have not missed a beat. That is really important.

On the accuracy of forecasts, I offer a small reminder that forecasts are never right, as we know. We always try to get them closer and closer, and we try to understand each year why the outturn or the actual figures varied from the forecasts.

To get back to the process question, some of that relates not only to our work. We continue to refine our models—that is an example of the work that we have carried out over this period, as well as doing whatever else we do. As the models mature, and as we understand things better, that should help with accuracy.

You mentioned social security benefits specifically. With regard to some of the newer benefits coming on stream, and our forecasting accuracy in general, our forecasts for the benefits that came in first were in a very good range. For the benefits that came in more recently, our forecasts were not as good, sometimes because of the nature of the way in which they were introduced, and sometimes because of the timing of when they were introduced, which sometimes changes for eligibility reasons.

When we have a new benefit coming online—I suppose that this would also apply to a new tax that comes in at any point—there will always be greater uncertainty. We all—those who collect and administer, as well as the SFC—can learn from an analysis of that.

Alasdair Smith may want to add to that.

**Professor Smith:** First, I add my compliments to those from Susan Rice to the staff of the Scottish Fiscal Commission, who have worked tremendously well over the past few months in these very changed circumstances.

On the substance of the question, yes, forecasting is going to be difficult over the next year or so, because information about what is going on in the economy is coming in only gradually. There are very unusual circumstances, and it is harder to speculate about how things might evolve over the next year or two; there are many more unknowns.

Nonetheless, we will produce forecasts to accompany the Scottish Government budget, which we expect to be issued in December. We are limbering up to do that. Those forecasts will be subject to much greater uncertainties than our forecasts in the past. We will all be astonished if our forecast evaluation report on our 2021

forecasts turns out to be as good as our report for this year.

It is perhaps most important to reiterate—as Claire Murdoch has reminded us a couple of times—that one of the big uncertainties for the Scottish Government budget concerns the differences between UK and Scottish revenues and expenditures. Large parts of the budget are set on the basis of forecasts from us and from the Office for Budget Responsibility, and both organisations will be doing their best in December to produce the most accurate forecasts possible.

However, with the best will in the world, divergences between the outturns and our forecasts, and between UK outturns and the OBR forecasts, will be greater than normal. In the context of what we have learned about Covid and the fiscal framework, we have to consider whether the framework makes enough provision for adjustments arising from forecast error in circumstances in which—with the best will in the world, as I said—there are likely to be much larger forecast errors than there have been in the past.

**Dame Susan Rice:** I will add a footnote to the discussion. We were previously asked about data and data availability. In a process sense, that is essential to the efficacy of our forecasting ability. As you will know, we are part of an international Organisation for Economic Co-operation and Development network of independent fiscal institutions. A couple of months back, Claire Murdoch and I joined a virtual meeting. A number of other countries were saying that, during the pandemic, in the early months in particular, they were simply not able at all to get the data that they would normally get, and the fiscal institutions in those countries were saying that that was a great worry.

It is fair to say that we have done quite well in Scotland—and in the UK, I think, although I have looked specifically at the bodies in Scotland that give us data. They have done a good job of keeping us pretty much up to date through all this, which has been very helpful.

**Tom Arthur:** Thank you. As much as I would like to continue this exchange, I am conscious of time, so I will conclude there.

**The Convener:** Before we go to Alex Rowley, I want to continue that exchange. Alasdair Smith said something pretty important about the impact of Covid on the economy—the uncertainty, the destabilising effect of that and the turbulence that is effectively created—and we need to pick up on that.

You are signalling that a significant danger point is potentially coming in relation to understandable forecast errors—because we simply do not know what the Covid situation will throw up—and the

potential for significant divergence between what the OBR and the SFC believe. I am not saying that that will happen, but the potential is there. Does that not signal a danger point in relation to the potential impact on the Scottish budget, which we need to be very aware of?

12:00

**Professor Smith:** It is not so much an immediate danger point for the Scottish budget as a risk around how the forecasts that go into the Scottish budget turn out. I am sorry—there is inevitable difficulty in talking about two forecasts and two divergences from the forecast.

What Bruce Crawford called “turbulence”—which was not my word—arises not so much from the fact that the budget depends on our forecast and the OBR forecast and that, if they diverge, it has budget effects. The bigger risk is that our forecast errors might diverge from the OBR’s forecast errors when we see the outcome. As such, although our forecasts might have been quite close together, if it turns out that the Scottish outturn is different from our forecast in one direction and the UK outcome is different from the OBR forecast in the other direction, reconciliations would be required, which might tax or put strain on the Scottish Government’s borrowing powers.

**The Convener:** Although I recognise that it is not an immediate danger point, we need to be aware of it for future purposes.

**Alex Rowley:** I will ask a question about capital. Before I do, however, I go back to the point that Tom Arthur made. In your update, you quote the OBR fiscal sustainability report of July of this year, which said:

“It seems likely that there will be a need to raise tax revenues and/or reduce spending (as a share of national income) to put the public finances on a sustainable path”.

Are we clear that that would be a political choice, just as austerity was a political choice as we came out of the last economic downturn? The options are there for Government; that is simply one of them. Are we clear on that?

**Dame Susan Rice:** I am sorry—were you addressing that question to Claire Murdoch or to the panel generally?

**Alex Rowley:** Yes.

**Dame Susan Rice:** A great deal has been borrowed, because it is in the hands of the UK Government to borrow for a crisis like this one. The assumption is that, at some point, the borrowing needs to be redressed or paid back—whatever term one wants to give it.

There are choices as to how that happens and, I assume, as to when that would happen. You

asked whether those are primarily political decisions; I think that those choices would be political decisions.

**Alex Rowley:** Some commentators have talked about the post-war consensus and the Keynesian approach of driving the economy and growing our way out of debt, rather than trying to cut our way out of debt. That is what I was trying to refer to—that austerity is a political choice.

On capital expenditure in Scotland, do you have any idea of the current position on capital programmes? Is there underspend and, if so, what is the scale of that underspend? You speak about flexibility, and the precedent of the Scottish Government being able to borrow more capital—to exceed the capital limits—is there. Looking forward, is that a possibility for us if we took the political choice to grow the economy to pay back the debt?

**Dame Susan Rice:** There are two parts to that question. The first part is about whether things have slowed down in relation to capital investment. The second part—which is a good question—is about whether the capital can be used in some way to help grow the economy.

I do not have numbers to hand, but I suspect that my colleague, Claire Murdoch, will. Nonetheless, the fact that construction ceased—that everything ceased—in the early part of lockdown means that things will have slowed down; there is no question about that. Although a lot has started up again, there was certainly a very big hiccup at that point. Claire Murdoch perhaps has some more specific numbers with which to respond to the question.

**Claire Murdoch:** In our report, we set out the level of funding that the Scottish Government currently has for capital spending. We also highlight that the OBR, in its report, expects underspends across departments this year, particularly on capital. It is likely that the UK Government will spend less.

The question of whether capital underspends are expected this year in Scotland is more for the Scottish Government when it presents its autumn budget revision. We will obviously pick that up in our December report, alongside the Scottish budget, at which point we will know more.

Alex Rowley talked about capital borrowing. The Scottish Government can borrow £450 million a year for capital spending. It planned to borrow the maximum this year, but we will see whether that happens. He also talked a bit about the flexibilities. In the past, Treasury has allowed the Scottish Government to draw down more from its capital reserve, because it received very late negative consequential from the UK Government in the financial year. Treasury allowed it to fund that gap

by drawing down from its reserve. Obviously, it has used money in the reserve; if it has underspends this year, it can put it back into the reserve and use it in another financial year. Those options are available to the Scottish Government.

**The Convener:** I thank our witnesses—Dame Susan Rice, Professor Alasdair Smith and Claire Murdoch—very much for their evidence today. That concludes our business for today. Thank you, colleagues.

*Meeting closed at 12:07.*



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

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