



OFFICIAL REPORT
AITHISG OIFIGEIL

Culture, Tourism, Europe and External Affairs Committee

Wednesday 30 December 2020

Session 5



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CULTURE, TOURISM, EUROPE AND EXTERNAL AFFAIRS COMMITTEE
34th Meeting 2020, Session 5

CONVENER

*Joan McAlpine (South Scotland) (SNP)

DEPUTY CONVENER

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

COMMITTEE MEMBERS

*Kenneth Gibson (Cunninghame North) (SNP)
*Christine Grahame (Midlothian South, Tweeddale and Lauderdale) (SNP)
*Ross Greer (West Scotland) (Green)
*Jamie Halcro Johnston (Highlands and Islands) (Con)
*Dean Lockhart (Mid Scotland and Fife) (Con)
*Stewart Stevenson (Banffshire and Buchan Coast) (SNP)
*Beatrice Wishart (Shetland Islands) (LD)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Gerald Byrne (Scottish Government)
Graham Fisher (Scottish Government)
Mike Neilson (Scottish Government)
Michael Russell (Cabinet Secretary for the Constitution, Europe and External Affairs)

CLERK TO THE COMMITTEE

Stephen Herbert

LOCATION

Virtual Meeting

Scottish Parliament

Culture, Tourism, Europe and External Affairs Committee

Wednesday 30 December 2020

[The Convener opened the meeting at 10:00]

Interests

The Convener (Joan McAlpine): Good morning, and welcome to the Culture, Tourism, Europe and External Affairs Committee's 34th meeting in 2020.

The first item on our agenda is a declaration of interests. I welcome to the committee Jamie Halcro Johnston MSP and invite him to declare any registrable interests that are relevant to the committee's remit.

Jamie Halcro Johnston (Highlands and Islands) (Con): Thank you, convener. I have a couple of relevant interests to declare. I am a partner in an agricultural farming business, J Halcro-Johnston and Sons, and I own agricultural land and a croft in Orkney. Through my farming interests, I am a member of a number of farming and countryside-related groups such as NFU Scotland and Scottish Land & Estates.

The Convener: Thank you. That is noted.

European Union (Future Relationship) Bill

10:01

The Convener: Item 2 is evidence on the Scottish Government's legislative consent memorandum on the United Kingdom Government's European Union (Future Relationship) Bill, following the recent agreement between the European Commission and the UK Government and prior to the end of the transition period tomorrow.

I welcome Michael Russell MSP, the Cabinet Secretary for the Constitution, Europe and External Affairs, along with officials from the Scottish Government. Mike Neilson is the head of the European Union directorate; Gerald Byrne, is the team leader for constitution policy; and Graham Fisher, from the constitution and civil law division, is the interim deputy director of the legal directorate. I invite the cabinet secretary to make an opening statement.

The Cabinet Secretary for the Constitution, Europe and External Affairs (Michael Russell): Thank you for inviting me to appear before the committee today, convener; I wish that it were under different circumstances. In essence, the bill marks the end of our membership of the EU and the transition period—a situation that Scotland did not vote for and that is happening in almost the worst possible way.

I hope that members will have had a chance—just—to read the Scottish Government's legislative consent memorandum for the future relationship bill. I thank my officials, who have worked extraordinarily hard on the LCM, given that we saw the bill in draft form less than 48 hours ago.

On the basis of the bill and on two grounds that I shall outline, we recommend that consent be refused. First, the content of the deal between the EU and the UK, which the bill implements, is unacceptable. The Scottish Government's position on Brexit has been well rehearsed: we would rather that Brexit did not happen. Nevertheless, in order to address a scenario in which it must happen, the Scottish Government put forward balanced proposals that would have limited the damage to Scotland. However, the UK Government never gave those proposals any serious consideration; instead, it pursued an increasingly hard Brexit—which is, short of no deal, pretty much as hard as one could imagine. Our initial critique of the deal is set out in the memorandum, and I hope that our detailed analysis is helpful to members. Suffice it to say that Scotland will be much worse off than we were when the UK was an EU member state and that

the promises of those who championed Brexit have—alas, just as many of us predicted—been broken.

The second reason for withholding consent is the extraordinary lack of proper scrutiny that the bill will be given in the time available. The lack of time is a situation entirely of the UK Government's making—an extension to the transition period, which the Scottish Parliament supported, would have been perfectly possible. The bill, if it is passed, will implement a deal that runs to more than 1,200 pages. It will give wide-ranging powers to UK ministers and will affect every area of life in Scotland for years to come. A bill of such significance cannot be scrutinised between Christmas eve and Hogmanay—that is impossible.

I am happy to answer the committee's questions. However, I ask members to bear in mind that we, like everybody else, heard about the outcome of negotiations via the media on Christmas eve. As I said, we did not receive even an in-confidence version of the deal documentation until Christmas day, and we received the full copy of the bill in draft form for the first time only late in the evening before last. If there are questions that we cannot answer, therefore, we will try to answer them at a later date, but members should be aware that the responsibility for that situation lies squarely with Boris Johnson and his Government.

The Convener: I thank you, cabinet secretary, and congratulate your officials on turning around the LCM in record time. I had an opportunity to read it last night, but I agree that the time available for scrutiny is unacceptable.

I will highlight some of the aspects that you raise in your analysis in the LCM, starting with fishing. Just last month, the Scottish Fishermen's Federation submitted evidence to the committee in which it said:

"The SFF has welcomed the UK Government's position that getting the right deal on fishing is not a matter of expedience but a matter of principle."

The SFF has now made it clear just how disappointed it is in the deal. What principles do you think the UK Government applied to fishing in the deal?

Michael Russell: The only principle that the UK Government applied was the need to get a deal. That has been obvious for some time, and it is now borne out by the fact that, as we can see, the only way that Boris Johnson could, in the end, get a deal was to give up on some of his significant red lines. When the UK joined the old European Common Market, in 1973, it was Scottish fishermen who were sacrificed. Many of us feared that the Tories would do exactly the same this time round, but I do not think that any of us felt that

they would do so in such a bare-faced fashion. In order to get a deal, they had to give up on what they wanted on fishing and in a lot of other areas, and that is what they did.

In the past few days, I have spoken to friends in Brussels, all of whom are of the same opinion: the EU got everything that was in Michel Barnier's mandate and did very well out of the deal. The UK Government is spinning a line about how well it has done because it has, in fact, done very badly, particularly by Scotland's fishermen, who have been left in an utterly shocking position.

The Convener: When the UK was a member state, the Scottish ministers had a role in fishing talks with the EU. However, the governance framework for the new agreement does not include Scotland in any shape or form, in relation to fishing or any other devolved area. I understand that the framework for the operation of the agreement has at its head a partnership council that is co-chaired by a representative of the European Commission and a UK Government minister, with 19 subject committees and four working groups sitting beneath that, some of which will look at devolved areas.

What representation has the Scottish Government made in respect of those arrangements? Did you know that they would be put in place? How do they compare with the way in which Scotland might be represented in Europe as a full member state?

Michael Russell: A full member state is represented in a number of different ways, including in the European Parliament and the European Commission and by many people working in the EU.

We did not know what the new structure would be—we did not know what was in the deal. We have not been consulted on it, despite the fact that I am a member of the joint ministerial committee on European Union negotiations. The committee was, according to its remit, meant to have oversight of the negotiations, but that never happened.

Fortunately, however, we are on the ball. There was a joint ministerial committee meeting late yesterday afternoon, and I made the point forcibly—it was also made by Jeremy Miles for Wales and by Arlene Foster and Michelle O'Neill from Northern Ireland—that representation of the devolved Governments is needed across the entire structure, particularly where devolved responsibilities are involved.

Yesterday, I made a point that Michael Gove appeared to accept. That does not usually happen—it does not matter to him whether or not he accepts something. However, he appeared to accept my point that there is a read-across from

the structures that have been established to the intergovernmental review, which has been going on for two and a half years and is still incomplete. I do not believe that the intergovernmental review can be resolved unless there is an acknowledgement of the read-across to the structures in the agreement.

The foundation stone for that is the precedent of the presence of Scottish ministers at European Council meetings. When the UK was attending those meetings, we always sought to have a presence. That was arranged on a grace-and-favour basis, which was utterly wrong, but Scottish ministers did attend. I have attended meetings of the EU environment and education councils, and—probably since devolution, and certainly since we came into Government—a Scottish minister has always attended fishing talks.

We have not always been in the room, of course. It is absolutely disgraceful, but there have been sessions from which a Scottish minister representing 60 per cent or more of the fishing interests under discussion has been excluded.

We will have to continue to be involved in that way. I suspect that we will hear a commitment, but, in my view, given the experience of the past four years, the UK Government's commitments are worthless. The UK Government needs to be tied to a commitment, and we need to ensure that that happens, but it will be very hard.

The Convener: That is certainly a big change. I would like to ask you about many more things, but we have a full committee and everybody is keen to ask questions—if there is time, I will come back in with supplementary questions later. I will bring in Claire Baker now.

Claire Baker (Mid Scotland and Fife) (Lab): Cabinet secretary, I appreciate how hard your officials have worked in preparing the LCM and associated papers—last night, I believe—for the Scottish Parliament's consideration. Paragraph 23 of the memorandum explains that, with regard to the bill, it provides only an

"initial analysis of its provisions and the effects on devolved competence."

Again, I appreciate the timescale, but when do you think that officials will be able to prepare a more thorough analysis of the bill's impact?

We heard evidence from our advisers this morning that quite a bit of the deal is still unclear. We know that the part that relates to services is not as strong as it needs to be, and that there are questions outstanding. When do you think that we will be able to have a proper understanding of the impact?

Michael Russell: That is a good question, but it is difficult to answer, for the reasons that you have

given and for other reasons. This morning, when I was driving to the Parliament from a very cold Argyll, I heard Iain Duncan Smith on Radio 4 saying that, in his opinion, the deal restored sovereignty and that, although there were things in it that were problematic, they could be resolved later. I have no idea what he meant by that, but it is clear that there are things in the document that are not yet tied down. The implication was that he could see the Conservatives trying to change details of the deal, even though—as we understand it—the deal will be signed today.

It will take some time for the things that are not tied down to be tied down, and some might never be. For example, the mutual recognition of professional qualifications exists in the comprehensive economic and trade agreement, but it has never been, and might never be, actioned. Some things might never happen.

With regard to what is actually in the 1,200 pages of the agreement, I made the point to Michael Gove yesterday that briefing by officials to officials on all the complex details will be required for a long time to come. As that process goes on, we will publish what we have and our understanding of it. We will try to publish more detail reasonably soon, but that will require us to dig into the document in some depth.

Some elements are deliberately vague. For example, it has taken a group of real experts four days to reveal the awful nature of the fishing deal, and I fear that many other aspects of the deal will turn out to be pretty sour for those who have to experience them. We will do our best to go through the deal and provide information, but there are some things that we might never know and some things that might never happen.

Claire Baker: Another issue is that, although people might need time, businesses have to make changes from 1 January, when the deal will take effect. Does the deal answer some of the questions that businesses and sectors brought to the committee during its recent inquiries? What do you anticipate the situation will be like at the borders—in particular, at Cairnryan? How do you anticipate the border regime will operate from 1 January? Do businesses feel that they are ready to make the necessary changes?

Michael Russell: Michael Heseltine's remark about the nature of the deal was a good one—as he put it, the prisoner feels a sense of relief that he is no longer going to be hanged, even if he still gets life imprisonment. There is relief on the part of businesses, now that they know the awful truth, but whether they are prepared for the inevitable disruption that will take place is another matter. As the EU has said, such disruption is inevitable.

Michael Gove himself—on the front page of *The Times* yesterday, I think—talked about “bumpy moments”. He did not say how bumpy things would be, nor did he say how long that would last; we will have to wait and see. The disruption in Kent last week—which happened in just 24 hours—was an indication of how things could go badly wrong very quickly. The volume of traffic at the borders will be lower on Friday and into the weekend, and many companies will have taken the necessary steps, but some will not have done so, and others will not know what those steps are.

The Northern Ireland situation is fluid and the protocol takes precedence. In that regard, I heard yesterday of one mail order company that was not accepting orders from Northern Ireland because it did not think that it could deliver them. The Northern Ireland Executive and others are putting a lot of effort into telling people what they can and cannot do, but there is undoubtedly going to be confusion. The context is that it is all absolutely unnecessary. We did not vote for the new arrangement, and it will be worse than what we have now. That is the real point that we should hold on to: from Friday, what we will have will be significantly and permanently worse—at least, until we are able to rejoin—than what we have now. Anybody who negotiates such a situation should hang their head in shame.

Claire Baker: Are you having regular discussions with the ports and border agencies about how we mitigate and manage what will happen over the next week or so?

Michael Russell: We are having regular discussions with the ports where that is possible. We have been attending the EU exit operations—XO—committee, and that will continue. We are constantly seeking information, but, unfortunately, we are not constantly getting it. As members will know—I have reported to the chamber twice on this—we have set up our own concurrent risk structure. We are very much aware of what the risks could be, and we are sighted on those and prepared for them, but we cannot be prepared for everything.

Dean Lockhart (Mid Scotland and Fife) (Con): Good morning, cabinet secretary, and thank you for joining us. In recent weeks, you have said that any deal would be better than no deal, and the First Minister has said that no deal would be “catastrophic”. However, we have just heard from you that the Scottish National Party will, this evening, vote against the legislative consent motion and for a no-deal Brexit. To put that in context, our European friends, including the President of the European Commission, have said that the deal is a

“good, fair and balanced deal”,

and leading EU commentators have said that it is a “sensational” deal for the UK as it provides “full economic access” to the EU without tariffs or quotas. Can you explain why the SNP will make that extraordinary U-turn and vote against the deal, thereby becoming the party of a no-deal Brexit?

Michael Russell: It is probably not even worth my responding to that question, given the misrepresentation within it, but I will do my best. First, which leading economists have lauded the agreement as a wonderful deal? I would be interested to see a list of them. If I were the President of the European Commission, or Michel Barnier or anybody else in the EU, I would think that it was a great deal, because everything that was in Barnier’s mandate has been achieved. However, if it is a great deal for the EU, it is not a great deal for us.

Your question—which is not just flawed; you are guilty of making a deliberate misrepresentation—demonstrates a lack of knowledge of how treaties are made. As you are a lawyer and apparently once advised the UK Government in some form, I find it astonishing that you do not know, or are pretending not to know, that treaties are usually made under the prerogative. Boris Johnson could sign the deal this afternoon without even bothering to put it to the House of Commons, because it is an international agreement in international law: it will be signed by the President of the European Commission and by Johnson, and that is it.

No matter how people vote, therefore, it will—regrettably—happen. That is the anti-democratic society that the Conservatives have created, and it is pretty shameful that any elected politician would back that up. The reality is that your question is based on a number of false premises, and you really could do better.

Dean Lockhart: One premise of my question is that the deal is a win-win outcome for Scotland, the UK and the European Union, and a number of commentators across the UK and Scotland have—

Michael Russell: Which commentators?

Dean Lockhart: The Confederation of British Industry, the British Retail Consortium—

Michael Russell: Those are not independent commentators; they are business organisations. You need to get your definitions right.

Dean Lockhart: I would rather take their word than yours, cabinet secretary.

Michael Russell: Of course—[Inaudible.]

10:15

Dean Lockhart: I move on to my second question. The deal allows us to enter into free

trade agreements in future with third countries around the world. As you know, Scotland's trade with the rest of the UK represents 23 per cent of our overall trade, whereas our trade with the EU represents 16 per cent. The UK has recently entered into a number of new free trade agreements with other countries, including Japan, which is the fourth largest market for Scotch whisky, and Singapore, which is the third largest market for Scotch, as well as Canada and a number of others. However, the SNP has voted against, and failed to support, all those free trade agreements. Can you please explain why?

Michael Russell: For a start, your definitions continue to be rather strange; I can think only that you either do not understand the situation or are being deliberately misleading. The agreements that you mention are not new free trade arrangements but continuation arrangements. The agreement with Turkey, which was signed this weekend, is a continuation arrangement and could be signed only after a deal had been reached with the EU. The Japanese continuation agreement provides for very small increases in trade, which appear to be largely to do with Stilton cheese—if that is what they want to buy, that is great.

The SNP has not voted against trade deals. We have simply made it clear that we are leaving behind a far better set of deals. As the French ambassador to the United States has said, it is hardly a service to free trade to walk away from the biggest free trade bloc in the world. It is an utter perversion of the truth to argue that, because we are against giving up the benefits that we currently have, we are in some sense against free trade itself. That is the third time that you have put that ludicrous point to me, Mr Lockhart, and it is the third time that I am glad to call it ludicrous.

Dean Lockhart: I am simply asking for a factual answer. Did the SNP fail to support those free trade agreements—yes or no?

Michael Russell: I am not going to give you a yes or a no, because you are trying to make an unjustifiable argument. If you can argue for the benefits of the agreement to Scottish fishermen, the young people who will be badly affected and the businesses that will suffer, you should do so. If it is such a great deal, why are you so angry at the people who will vote against it? You would surely want to take ownership of it.

You know that it is an utterly rotten deal. It is an appalling deal—you are an apologist for an appalling deal that will damage Scottish business and damage Scotland, and you should hang your head in shame.

Dean Lockhart: As I said, cabinet secretary, I will follow the advice of leading business

organisations. My time is now up, so I hand back to the convener.

The Convener: Thank you, Mr Lockhart. I will bring in Ross Greer.

Ross Greer (West Scotland) (Green): Cabinet secretary, you have already answered what was going to be my first question, which was about the fact that it is not possible for anyone to vote for no deal at this stage. The UK Government is ratifying the agreement under its executive powers; Parliaments are voting only on enabling legislation and, in the Scottish Parliament's case, the effect that it has on devolved competencies.

With regard to the wider macroeconomic effects of the deal, my understanding from skim-reading the document is that it is relatively sufficient—not comprehensive, but sufficient—in respect of trade in goods, where the EU has a surplus of trade to the UK. What it does not cover is trade in services, where the UK and Scotland have a surplus to the EU. What are your thoughts on the overall effect on our economy of a deal that emphasises goods over services?

Michael Russell: I ask Mike Neilson to respond to that. He has spent an enormous amount of time over the festive season perusing the deal, and, as the head of our office in Brussels, he has excellent contacts who will have been able to inform him.

Mike Neilson (Scottish Government): It is probably accurate to say that the services provisions are worse than the goods provisions, which in themselves do not provide full economic access. There are four components of full economic access for goods. One is tariffs and quotas, which the deal covers. The other three are rules of origin, customs arrangements and regulatory rules. In each of those three areas, the outcomes are substantially worse than the existing arrangements under EU membership. On services, the arrangements are very limited and, although they ensure non-discrimination, they leave Scottish and UK businesses in a position where they must comply with the domestic rules of whichever country they are operating in rather than being able to work on the basis of their home country authorisations. Those are the overall outcomes.

Mr Greer is probably aware that the work that the Scottish Government has done suggests that a deal of that nature will push down economic growth by about 6 per cent by 2030, and the Office for Budget Responsibility suggests that, at a UK level, the deal will reduce economic growth by 4 per cent. That is better than the outcome would be under no deal, but it is still a substantial and permanent hit.

Ross Greer: I thank Mike Neilson for putting in the work on that between Christmas and the new

year. The Scottish Government's analysis was somewhat hypothetical, as it was based on a deal that roughly approximated the one that we have now, before we knew the detail.

Now that we know the detail of the deal, what impact assessments and economic scenario planning will the Government carry out to project the economic damage?

Michael Russell: That is a good point. We will want to return to publishing our analysis, to which Claire Baker alluded, once we understand a fair bit more about the deal. Now that we have the full awful text, it would be sensible for us to run the same type of analysis again.

We will do our best to provide some information, although I cannot give Mr Greer a timescale for that. It will depend on what information we get and how well informed we are.

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): Cabinet secretary, you referred to Iain Duncan Smith's suggestion that the deal might not be the end of the story and that the Tory Government in London might make further changes. The EU has described the deal as a "provisional agreement", whereas the UK Government appears to be trying to present it in a rather different light. To what extent does the UK Government recognise that the agreement is "provisional", to use the EU's term? Does the UK Government also view the deal as provisional, or does it see the bill that is before the Westminster Parliament today as the final word?

Michael Russell: The deal is not provisional as such—its application is provisional, which has been caused by difficulties in the timing. Many months ago, the European Parliament said that Halloween was its deadline for putting in place its own process, which is complex because the treaty must go to a variety of committees. A senior member of the European Parliament said to me on the phone that it could sort of stretch the deadline to 3 November. However, by the time that we got to Christmas eve, that was completely impossible.

At the start of that week, the European Parliament had said that it could not do even a quick job on the treaty—that was it. Therefore, in order for the treaty to take effect and to avoid a hiatus in which the transition period would end and there would, in essence, be no deal, the Commission will provisionally apply the terms. The Commission has made it very clear that that is a one-off and does not set a precedent. There is some unhappiness that the process has had to be like that—it is because of the way in which the UK has operated. However, as far as the UK is concerned, that is it. The bill will be passed. We will refuse our consent—I would like to think that that would be effective, but it will not; it will be

brushed aside. The Northern Irish and the Welsh are not voting on consent today. They might do so at some point in the future, but that will be irrelevant because of the timescale for the bill.

10:30

There is not even much of a grace period. There was a lot of discussion about whether there should be a period in which, although the deal was done, its provisions should, in effect, be disapplied to allow people to get used to the situation. The UK has said that, on customs, it is not planning to impose much regulation in the first three to six months. However, people are going to find that there are different applications in different places—it is a boorach, I am afraid.

Johnson thinks that he has his day in the sun. He will be grinning all day in the House of Commons and failing to answer questions, and those who support him in the Scottish Parliament will spin like mad to try to get over the message that they have won some great victory. Forgive me for saying this, Mr Stevenson, but you and I are both old enough to know what is going on. It is a bit like a budget in that, usually, when a budget is passed, some people say, "This is the most wonderful thing there has ever been—it is going to be magnificent for people", and then the truth begins to emerge. The truth about the deal is now beginning to emerge: it is awful—it is dreadful—in comparison with what we have. It is almost as bad as one could imagine, short of there being no deal.

Stewart Stevenson: One might imagine that Boris is rather like Icarus: if he flies too close to the sun, the wings will fall off and he will plummet to earth and political oblivion.

I will move on to a technical matter that is probably for the officials to deal with. With regard to the bill that is before Westminster today, I cannot quite understand what clauses 29, 31, 32 and 33 mean. My confusion is heightened by the consequential provision in schedule 6, which refers to inserting clauses—or rather sections, as they will become—31, 32 and 33 into the Scotland Act 1998.

I have read the bill only a couple of times, which is perhaps insufficient—it might require a couple of dozen readings—but, to be blunt, I am unclear about our understanding of how those bits of the bill relate to Scotland's legislative competence and, perhaps more to the point, what their practical effects will be. Perhaps you or your officials can address that, cabinet secretary.

Michael Russell: Fortunately, I have with me lawyers who are in a good position to address it. As I understand it, the effect of schedule 6 to the bill on schedule 5 to the Scotland Act 1998 is, in essence, to alter the powers of the Scottish

ministers to allow them to implement the agreement. However, let us hear from Graham Fisher or Gerald Byrne about the situation.

Graham Fisher (Scottish Government): I am happy to speak about that. The provision in schedule 6 to the bill to amend the Scotland Act 1998 makes a fairly straightforward technical amendment to ensure that the competence of the powers of the Scottish ministers is kept wide. I reassure the member that there is nothing untoward in there.

Broadly speaking, where the Scottish ministers are given the same powers as UK ministers, the bill's regulation-making powers provide for a scope of devolved competence that is broadly equivalent to that under the Scotland Act 1998. The provision simply makes a technical adjustment to the scope of the powers to make it clear that the Scottish ministers have powers in that area.

Gerald Byrne (Scottish Government): Some of our uncertainty about the effects of the bill on devolved competence—Mr Russell made some points earlier about how we will analyse those effects—arise from the clauses that Mr Stevenson highlights. In particular, with regard to clause 29, the delegated powers memorandum refers to the “gloss” that the bill creates, which means that it will have an effect on existing domestic law in ways that we will discover as we go. As the legislative consent memorandum highlights, there is a particular challenge in inviting the Scottish Parliament to consent to that clause when we do not know what its full effects will be.

Similarly, the powers in clauses 31 to 33 look ahead to the implementation of the provisions of the future relationship agreement after day 1, which is 1 January. Again, therefore, we will know how that plays out only as it happens. We have highlighted those areas of uncertainty with regard to the effect on the devolved competence of the Scottish Parliament.

Stewart Stevenson: If I get a chance, I will ask a supplementary question on the seed potato industry, which is an important and valuable industry in my constituency.

The Convener: We are clipping along at quite a pace, so I can allow you your supplementary question on seed potatoes now.

Stewart Stevenson: That is helpful, convener.

One of the farmers in my constituency has a multimillion-pound business in international seed potato exports—an area in which I have sought to assist constituents previously. Those exports go to the Philippines and Uruguay, in particular, but the European market is equally important. For climatic reasons, Scotland is a leader in seed potato production. To what extent was the exclusion of

seed potatoes from exports to the EU under the deal the subject of any discussion with the Scottish ministers?

Michael Russell: I have been raising the matter on occasion for at least 18 months, and perhaps longer—certainly since it became clear that there was a possible issue. That has happened a lot: issues have arisen, we have raised them with the JMC, a variety of UK ministers have sagely nodded and then nothing has happened. The seed potatoes issue is another example. I raised the issue again yesterday at the JMC but, to be frank, I expect that nothing will happen. It is extraordinary that a whole Scottish industry has essentially been cut out without a by-your-leave from the UK Government—it is utterly careless and utterly wrong. Mike Neilson might want to say a word or two on the detail.

Mike Neilson: The outcome on seed potatoes is a consequence of the UK Government's decision not to align with EU rules on plant health, with the consequence that the EU is no longer able to agree to imports. It is a consequence of the core UK Government approach to the deal.

Michael Russell: The decision on alignment on plant health is a result of the extraordinarily ideological view that sovereignty is expressed only if one does not accept anybody else's opinion, which is exactly where the UK Government has found itself. It is utterly bizarre.

Beatrice Wishart (Shetland Islands) (LD): Like others, I am concerned about the impact on young people of our leaving the EU. The UK will no longer be entitled to participate in EU programmes such as horizon Europe and Erasmus. However, the agreement makes provision for UK participation in horizon Europe during the 2021 to 2027 programme. In addition, it was announced the other day that the Irish Government would pay to facilitate continued Northern Irish participation in Erasmus.

What is the Scottish Government's view on the participation of Scottish organisations in the horizon programme? Participation in horizon 2020 fell sharply from 2017, once there was a realisation that the UK intended to leave the EU. What is the Scottish Government's view on the failure to reach an agreement on the UK's participation in Erasmus?

Michael Russell: With regard to horizon, it is not entirely clear to us what status the UK will have. One type of status would allow for fairly full participation; another would not, and participation would be fairly tangential. There is work still to be done. In addition, I understand that there is a difficulty in that the EU has not made the final arrangements for the next five-year period; therefore, it is not possible to say exactly how the

programme will work. However, we welcome the fact that there will be some access to horizon. Without a doubt, it will not be as good as being a member state, but it will provide an opportunity. I would be very surprised if we were to be a net beneficiary, as we have previously been—that is probably out of the question now. Nonetheless, there will be some access.

What has happened with Erasmus is absolute vandalism. We have not seen the value-for-money assessment that was done—I have asked for it on several occasions, and so have the Welsh, but we have never seen it. We took the same position as the Welsh—we have held that position for a long time—at the JMC this week. Participation in Erasmus for devolved Governments should have been negotiated even if the UK Government did not wish to participate in the scheme. Even at the start of December, our understanding was still that membership of the scheme was likely. We were given to understand that, and therefore the news was a surprise to us. The information was leaked to a Tory-supporting news body some weeks ago, and it became clear that something was going on.

Yesterday, I said to the UK Government—I am sure that it will be followed up in writing by Richard Lochhead shortly—that our position is clear: we now wish to have the money that the UK Government spent on Erasmus pro rata for Scotland. In fact, taking into account the fact that Scotland benefited more from what was put into the scheme, we should perhaps get a larger share of that money. We should then decide how it is to be spent and whether we wish to participate in the new programme.

It is extraordinary that Erasmus has been attacked for being elitist. From what we can see, the replacement Turing programme will be very elitist indeed, whereas Erasmus goes much wider than academic and higher education. Nevertheless, as those areas are devolved, we could decide how we spent that money. One option, if we could arrange it, would be to continue in some sort of association with Erasmus. It would be difficult for us to do that as a sub-state, but it would certainly be worth trying. However, we would need the money. I have therefore made it clear to the UK Government that we need to get the money, and then we will see what we can do.

Beatrice Wishart: I certainly do not think that Erasmus is elitist. I know several people in my constituency who have benefited from it, and the benefits are long term.

Michael Russell: It is—[Inaudible.]—Conservatives to attack anybody who criticises, as we have seen earlier today. It is an ad hominem attack on those who are critical of the deal and not in any sense a justification of the deal. There can

be no justification of the deal as far as Erasmus or any other part of it is concerned.

Beatrice Wishart: The situation with regard to the mutual recognition of qualifications has surprised quite a few people. We knew that the Conservatives wanted to end freedom of movement, but limiting the recognition of professional qualifications does not seem a sensible way to do that. In several sectors, including the health service and research, we should be concerned that people will find it more difficult to come to Scotland to do the work that we think is important. Has the Scottish Government assessed the potential impact on Scottish skills needs?

Michael Russell: I am unaware of any work on that—I think that everybody expected that mutual recognition of qualifications would have to be at the core of any agreement, given that it is such a normal part of our lives. It is another illustration of how things that we have taken for granted for half a century are just disappearing. There is provision in the agreement to take the issue further. However, as I said earlier in my response to Claire Baker, CETA makes provision for the recognition of qualifications, and nothing has happened with that as yet. We want to pursue the matter, but you are right to highlight that we should assess the likely impact now that we can see the unfortunate reality of the situation.

Christine Grahame (Midlothian South, Tweeddale and Lauderdale) (SNP): Most businesses in my constituency and across Scotland are small and medium-sized enterprises, and they have already been struggling and having a dreadful time of it in the face of the Covid pandemic. Given that there are no transitional arrangements in the trade agreement, which I understand is highly unusual, and that—as you have stated—British trading costs will increase substantially due to the additional paperwork and procedures, I suspect that many of those SMEs will not have the resources to analyse all the requirements. What impact will the undoubted increase in red tape have on SMEs?

If I may, I will tag on another question and do it all in a oner. My second question concerns not only SMEs but larger businesses. What will be the impact on supply lines for businesses, including those that sell fresh fruit and vegetables?

10:45

Michael Russell: There is undoubtedly a huge issue in that regard. Some businesses will have very limited connections with Europe and European trading while others will have detailed connections. Some will think that they do not have any connections and will then discover that they

do. I remember reading some time ago about a company that had responded to a Brexit survey. The managers said that the company had no engagement with Europe, but one of our officials looked at the form, which said that the firm's main business was selling Belgian chocolates. It was pointed out to the managers that the company, in fact, had a substantial engagement with Europe, but they said, "No, no—we buy the chocolates from somebody else." They had not thought through the implications of how their supply chain would be affected.

Although the right thing to do would have been not to embark on Brexit at all, the right thing to do in June specifically would have been to ask for an extension. The Covid crisis demanded such a response, and an extension would have allowed people more time to get used to the ideas, even the bad ones. However, the suggestion was rejected out of hand. Apparently, the fact that an extension did not take place is now a virtue, although I do not think that many businesses would take that view.

We must now redouble our efforts to ensure that businesses are informed and assisted, although the amount of assistance that we can provide will be limited—we cannot fill in the forms for them. The Scottish Enterprise website for businesses on preparing for Brexit has been much used—it has a range of analysis tools, which are still available. Scottish Enterprise and other organisations have been supporting companies—even smaller ones—to get ready and to understand what is required, and there is a range of information available online.

In the midst of the Covid pandemic, survival has become really difficult for companies. Adding in Brexit at this time and pretending that it is in some way beneficial is a particularly cruel pretence by the Tories. It is disgraceful of them to pretend that Brexit is somehow helping businesses.

Mike Neilson can say a word or two about the actual impact on business, as he has done some work on that.

Mike Neilson: I go back to the challenges for SMEs. As Mr Russell indicated, the competing challenge of Covid has made it hard for them to prepare for the changes that they knew about, which primarily concern potential customs arrangements. However, no business will have known before Christmas day what rules of origin would apply to its supply chain, nor what the regulatory requirements for its particular sector would be.

It is difficult to make an economic analysis sector by sector, but the overall impact of the level of agreement that has been reached is reflected in the various forecasts through to 2030. There will

be an enforced reshaping of supply chains for all businesses, and some will conclude that it is simply too complicated either to deal with the bureaucracy or to completely reshape their supply chain. All of that will squeeze growth in the medium term.

Michael Russell: If Christine Grahame is interested, I can point her towards a UK Government publication—although I am quite sure that she will not want to read it—that came out yesterday, which begins to examine the issues around accumulation and rules of origin. The rules are ferociously complicated, even on grated cheese, which is one area that has been considered; another area is dolls' eyes. One concept that Mike Neilson could explain much better than I could—although I will not ask him to do so—is diagonal accumulation, which is mind blowing.

Christine Grahame: It is a scary situation for most businesses in my constituency, and it is probably the same in all our constituencies. Whereas the international companies will probably get on top of things, one way or another, all the small businesses, which are the bedrock of the Scottish economy and are, as we know, already clinging to the rock face, will have to cope with the complexity of bespoke rules of origin. I do not think that they will manage it, and I do not think that time is on their side.

Michael Russell: It is not.

Christine Grahame: As those businesses try to survive and deal with everything that is happening, it may well be that, under all those pressures, some individuals, family businesses and so on will just give up the ghost. It may all be just too much for them to cope with.

Michael Russell: It is not impossible to deal with a massive increase in bureaucracy and forms—which is rather ironic, considering that Brexit was meant to be an exercise against bureaucracy—but it takes a lot more time, effort and money.

Not so long ago, I talked to people at a company the bulk of whose business was with the EU, although it also did some business with other countries. They told me that, when they were planning to send a shipment to a country outside the EU, they put it in the corner of the warehouse. Somebody eventually came and inspected it, and a lot of paperwork was filled in. The whole process took a long time and they had to plan for it.

As for the stuff that the company sent out within the EU, the person there told me that it did not matter whether a shipment was going to Wishaw or Warsaw—the paperwork was all the same and it was very simple. All that they had to do was arrange the transport. Now, unless a shipment is

going to Wishaw, for instance, everything going to the EU will become like that other consignment. The staff will have to wait for an inspection, and they will wait to fill in the paperwork—they will put it off, saying, “Gosh, this is going to be very difficult.” That does not mean to say that people cannot adapt, but you are right to highlight that it will be the last straw for quite a number of businesses.

Jamie Halcro Johnston: Good morning, cabinet secretary. I would like to turn to agriculture. I remind members that I am a partner in a farming business, which is a member of the NFUS.

The seed potato issue, which Stewart Stevenson raised earlier, is a matter of disappointment, although I understand that negotiations on it are continuing. However, the deal that was agreed between the EU and the UK avoids the imposition of damaging tariffs—on our sheep industry, in particular—and protects our vital markets. The deal also recognises UK protected geographical indications such as Orkney cheddar and Arbroath smokies. It has been welcomed by farmers and by the National Sheep Association, which said that we should “celebrate” the agreement. The NFUS said that it was “good news” that no deal had been averted. Why do you believe that they are wrong and you are right?

Michael Russell: I do not believe that they are wrong. It is good news that no deal has been averted, in the sense that it is a tiny little spark of good news among a great deal of bad news. I am sure that you were not trying to be partial, but the statement from the NFUS to which you referred also indicated the considerable difficulties that will exist with additional bureaucracy and paperwork.

Although there has been no indication that the EU will de-recognise UK geographical indications, the Government has not secured any legally binding protection on them. The status of those GIs will, therefore, be weaker on Friday morning than it was on Thursday night. The deal is not nearly as beneficial as what we and your business currently experience. The situation will change for the worse, permanently, tomorrow night at 11 o'clock. That is not a triumph—it is a disaster.

Jamie Halcro Johnston: I understand why the cabinet secretary wishes to compare two things that are incomparable—the situation that we currently have, or that we had previously as a member of the EU, and the situation looking forward—but the comparison is actually between the deal that has been negotiated and a no-deal Brexit. There should perhaps be more clarity on that.

I turn to the matter of preparedness among businesses, which was raised previously. There

have been a number of issues—you have raised them today—but the Federation of Small Businesses has said that the deal is “a huge relief”, and the CBI has said that a deal means that

“we can begin our new chapter”

outside the EU on a better foundation. The British Chambers of Commerce has said that we should “proceed speedily to ratification” to end the uncertainty.

There will obviously be issues, and the Scottish Government has—as we have seen—received £200 million for Brexit preparedness. Can you tell us how that money has been allocated? Has it all been allocated, and have you had any issues with using it?

Michael Russell: We have accounted for that money in statements that we have made. I am sure that Kate Forbes will be entirely willing to go through the Government accounts at this committee and at the Finance and Constitution Committee and explain how we have spent the money.

What I will not do is account for that money to the UK Government as if we had gone cap in hand to receive it. We should have received a great deal more money to cope with what we are having to cope with because of Brexit, and I hope that we will, but—

Jamie Halcro Johnston: I am sorry, cabinet secretary, but—

Michael Russell: I will move back just one step, if I can. You said at the beginning of your question that the comparison must be between no deal and the deal that we have, but that is not true. The comparison must be between the situation that we have now—today—which will stop tomorrow night at 11 o'clock, and what then takes place. I am sure that you do not mean to do this, but it is the merest sleight of hand to pretend that that is not happening. What is happening is that the good things that we have had as a result of our EU membership—and there are many of them—will disappear, and we did not vote for that. In fact, Orkney did not vote for that, as no local authority area in Scotland voted for it by a majority.

Jamie Halcro Johnston: It is interesting that you talk about sleight of hand. This is about a no-deal scenario and leaving the transition period. We have left the EU—Brexit has already happened.

Michael Russell: No—

Jamie Halcro Johnston: I am sorry, but are you suggesting that we have not left the EU?

Michael Russell: No—I am suggesting that we should not have left the EU, and we did not vote for it.

Jamie Halcro Johnston: I appreciate your position on that, which you have made very clear, but you and members of your Government have repeatedly stated that we should not be leaving under a no-deal scenario, as it would be disastrous, and that any deal is better than no deal. Yet here you are, in a position in which you are advocating for voting against the only deal that is on the table. Not only that—

Michael Russell: I am not—

Jamie Halcro Johnston: I am sorry, cabinet secretary—let me finish.

Michael Russell: Have you never heard of the prerogative?

Jamie Halcro Johnston: It is not just a UK deal; it is a UK-EU deal, which has been agreed between the two.

Michael Russell: The EU got a good deal.

Jamie Halcro Johnston: You are essentially—*[Inaudible.]*—us to vote against—

Michael Russell: The EU got a good deal.

Jamie Halcro Johnston: Cabinet secretary, it would help if you just listened. Then, once I have finished speaking, you can give your answer, as you are very much entitled to do.

Michael Russell: The EU got a good deal.

Jamie Halcro Johnston: You will vote against a deal that has been agreed between the UK and the EU.

Michael Russell: Yes.

Jamie Halcro Johnston: Why will you vote against it if the EU is part of the deal, too? Surely, you understand the implications of that.

Michael Russell: The EU got a very good deal. If I were sitting in Belgium, France, Finland or any one of the 27 member states, I would think that we had got a great deal. If you set down the deal on one side and Barnier's mandate on the other side, you will see that Barnier got exactly what he came for. The UK's negotiating position went nowhere.

You are from Orkney; I am in Argyll. It is an awful deal—it is an awful deal for fishermen, for Scottish young people and for agriculture—and it is a particularly bad deal in comparison with what we have now. That is the comparison, and—

Jamie Halcro Johnston: But that is a false comparison, as well you know.

Michael Russell: It is an awful deal.

Jamie Halcro Johnston: Is it an "awful deal" in comparison with no deal, which is what you are essentially advocating? There is a deal on the table.

Michael Russell: I have repeatedly said that I did not wish there to be no deal, and there will not be no deal because, under the prerogative—

Jamie Halcro Johnston: But you will vote for no deal this afternoon.

Michael Russell: If you have heard of the prerogative, you will realise that the deal will be signed no matter what happens. Even if every person in the House of Commons, including Boris Johnson, voted against the deal today, he could still trog round to Downing Street and sign it. The document for the deal will come by Royal Air Force aircraft, apparently, and it will be signed by him under the prerogative. The reality is that trying an ad hominem attack on everybody who is opposed to the deal is not a good way to go forward.

You should justify the deal according to what we have now—but that would, Mr Halcro Johnston, be an impossibility even for you.

Jamie Halcro Johnston: So, you are happy to be in a situation in which the NFUS, the National Sheep Association, the FSB, the CBI and the BCC are all wrong and you are right.

Michael Russell: No. They are absolutely right to say what they have said, and I have agreed with them. Gosh, we are just winding ourselves—

Jamie Halcro Johnston: Are you ignoring them? You agree with them, but you are ignoring them.

Michael Russell: We agree with them. I am glad that they have avoided having no deal, and it was foolishness on the part of the UK Government to get so close to it.

Jamie Halcro Johnston: Thank you for that, cabinet secretary. I have probably used up my time now.

Kenneth Gibson (Cunninghame North) (SNP): Good morning, cabinet secretary. I agree with you that we should not just sign up to any old rubbish that is put in front of us.

Although the deal addresses tariff barriers, it does not include any sort of agreement on non-tariff barriers. Exporters will have to produce goods that satisfy the requirements of importing countries and provide paperwork that shows that those requirements have been met, including on rules of origin, customs formalities and regulatory checks and controls for safety, health and other public policy purposes. What impact will that have on Scotland?

11:00

Michael Russell: It will have a very substantial impact. I will let Mike Neilson say a word or two

about the four issues within any trading arrangement. Tariffs are only one of them. Non-tariff barriers are very significant, and regulatory alignment is extremely important. That is why we could not be part of the single market—because we would not accept regulatory alignment. However, regulatory alignment is vital and it allows for the highest of standards. If Mike can talk you through the four areas, we will all benefit from that, as they are all vital—it is not just about tariffs and tariff barriers.

Mike Neilson: The starting point is that, for a business, the whole operating environment is critical. There is the overall effect of those Brexit factors, but there are a lot of other factors, including the enormous headwinds from Covid, that are affecting the same businesses.

Let us take three issues with regulatory barriers, in particular. First, there is the impact of having to comply twice rather than once. There is then the bureaucracy and delay involved in customs. Thirdly, going back to the point about rules of origin, there are 50 pages on that aspect in the agreement and it refers to 97 different sectors. It is the combination of those factors that makes the operating environment so much more challenging. That takes us back to the overall impact on viability and activity, which we have talked about previously.

I will make one further point about the EU perspective on the deal. The EU's mandate was based on the choices that were made by the UK Government regarding the European Court of Justice and complete freedom on regulatory alignment. The EU's mandate took into account the sort of relationship that would be possible if the UK imposed those red lines. As the cabinet secretary made clear, that mandate has been fulfilled.

When President von der Leyen announced the outcome of the deal, she did so from quite a solemn perspective. There is no doubt that, if the UK had wanted to participate in the single market and the customs union, the EU would have been delighted, and all of the four factors relating to full economic access would have been dealt with.

Kenneth Gibson: It is clear that Scotland's businesses will be at a competitive disadvantage.

I will move on to another aspect of the agreement. It does not include continued UK access to the Schengen information system—the EU's information-sharing system for security and border management, which is used by police and border guards to enter and consult alerts on persons or objects. What impact will that have on the fight against organised crime and people trafficking, for example?

Michael Russell: It will have a severe effect. I was astonished—in fact, I was not astonished, as I am not astonished by anything that UK Government ministers do. We should have been astonished, however, to hear Priti Patel claiming that the deal would improve security, as the opposite is true: it will weaken security, as access to real-time information under the Schengen information system has been very important to us.

Scotland has been a proactive contributor to the—[Inaudible.]—co-ordination of justice. We had an officer embedded in Europol, which was very helpful to us. All of that becomes—[Inaudible.] It is not that there are no alternatives—there are alternatives, but they are not as good. The European arrest warrant has been particularly effective for the Scottish administration of justice, but it will no longer be there for us. There is an alternative, but it is not as good.

That highlights the fallacy in the position that Jamie Halcro Johnston has taken up, that the comparison is with having no deal. The comparison is with what we had. The comparison, when it comes to law enforcement and our safety, is that, after 11 o'clock tomorrow night, we will be less safe than we were beforehand. That is simply a fact, as we will no longer have access to some of the tools that we have until 11 o'clock tomorrow night.

Kenneth Gibson: The agreement seeks to ensure that the UK and the EU have equal access to each other's public procurement markets. However, according to the UK Government:

"The Agreement ensures that the UK can maintain a separate and independent procurement regime and will enable the Government to enact reform of our system."

What is your understanding of how procurement will operate following the agreement?

Michael Russell: I have to say that I do not have an understanding of that. We still have some work to do in that area. Procurement has been a difficult issue during the past four and a bit years in which I have been involved in this process. Our view is that procurement is devolved, but the UK Government has increasingly tried to say that it is not devolved, so there are continued disputes about it. I do not know whether Mike Neilson has studied that section of the agreement and understands the issue or whether we will need to come back to it.

Mike Neilson: Procurement was a bit of a late entry to the overall deal, as part of the package at the end. It is true that there will be a distinct legal basis for UK procurement, which will not have to be dynamically aligned with that of the EU. The agreement gives both sides the capacity to compete for public sector procurement in some sectors, and it goes a little bit further than what

would be the case under World Trade Organization rules. In principle, it should not impinge on the devolved powers but, as the cabinet secretary said, it is an area in which there is some degree of internal dispute.

Kenneth Gibson: Financial services, which are critical to the Scottish economy, will no longer benefit from passporting, and they may have to follow the rules of each individual state. Equivalence does not cover the same range of financial services activities. The agreement excludes core banking services such as lending, payments and deposit taking, and it does not guarantee permanent access rights, so the EU can withdraw equivalence determinations with 30 days' notice.

Given the huge importance to Scotland of financial services and services more generally—Ross Greer touched on this—can the cabinet secretary advise us on what he believes the impact on financial services will be if an agreement in that area cannot be reached over the next few months?

Michael Russell: It will be hugely disadvantageous to Scotland if that cannot be agreed. There are difficulties in reaching such an agreement. For example, if there has been a period of negotiation and no agreement has been reached, will that be because there simply has not been enough time? In that case, what effect will there have been on the areas in which agreement has been reached? Will it be because there are fundamental problems in reaching an agreement? That is what we do not yet know.

Such services represent an area in which the jury will be out for some considerable time, as Claire Baker suggested, but there is already a disadvantage, as you indicated, in respect of passporting.

Kenneth Gibson: The UK Government has pooh-poohed the issue of migration, saying that other people can be trained to fulfil the jobs that migrants currently take up in Scotland even though, for example, 25 per cent of academics at our universities are EU citizens.

At paragraph 21 of the LCM, you state:

“The Expert Advisory Group on Migration and Population predicts that migration into Scotland will fall by up to 50% with severe consequences for key sectors ... such as distribution, hospitality, food processing, manufacturing and the public sector, including NHS Scotland and social care. Reduced EU migration will make Scotland poorer”.

How do we begin to tackle the gaps that those reductions in migration will create? It is clear that we face real issues, specifically in island and rural communities, in dealing with some of those matters.

Michael Russell: You are absolutely right. Of course, you represent some islands and I represent even more islands, so I, too, am familiar with those problems. There is also the horticulture industry to consider, as well as issues around highly skilled workers in academia, the national health service and a variety of other sectors.

We have seen two elements—a push factor and a pull factor—operating over a period of time. There is a push factor in that people are saying, “I’m not welcome here, I feel disadvantaged here and I don’t want to be here.” We do not want people to say that, and we will be reinforcing that point. Jenny Gilruth is taking on responsibility for migration, and we will reinforce the work that we do with EU citizens to try to persuade them to stay. The First Minister issued a powerful statement on that last week, and we are very keen that they stay.

There is also a pull factor. It is a pull away in that people start to wonder whether they can do better elsewhere. That applies in every sector of the economy. For example, it applies to people who pick strawberries in Angus—there is a widespread shortage of agricultural and horticultural labour, so they can get a job anywhere.

In academia, there is a problem at the highest levels. People will consider how their career will be affected by working here—for example, if they cannot take part in some of the really big collaborations. The UK is becoming more distant from the EU and from EU funding, so they might conclude that they would be better off working somewhere else. That is a huge problem, and it is not amenable to a short-term solution.

The longer-term solution for Scotland is to rejoin and re-enter a system with freedom of movement, which is immensely beneficial not just for people coming in but for all of us going elsewhere. We have not even touched on the issue of queues at airports, which are inevitable. We will not be able to use the electronic gates, so there will be bigger queues at airports. We have not touched on what will happen with travel insurance and driving licences, nor on the issue of whether mobile roaming will still be available, which is questionable. Those are all beneficial things stemming from freedom of movement that we and our children have experienced. We thought that people would go on experiencing them, but now they are going.

I return to Jamie Halcro Johnston’s idea that the comparison is between no deal and this deal. No: the comparison is with what we had, which was immensely beneficial for business and for individuals.

Kenneth Gibson: Thank you, cabinet secretary, and thank you for your indulgence, convener.

The Convener: We have a supplementary question from Christine Grahame, if she is still there.

Christine Grahame: I am here, convener.

The cabinet secretary has pre-empted my thoughts on the European arrest warrant. As we know, criminal law is devolved. I remind him of a high-profile case from some years ago in which a young woman was murdered in Scotland by a man from Poland, who then fled home. The European arrest warrant was so efficient that he was detained. It was a matter not so much of detaining the man as of managing to detain his clothing, as the DNA on it was crucial in convicting him of that horrendous crime. That action was swift, and it was key to the preservation of evidence. I am anxious, therefore, that we have lost the European arrest warrant and its capabilities. Was there any discussion between the UK Government and the Crown Office, Police Scotland or the Scottish Government about maintaining that very important legal device?

Michael Russell: The answer is no. It is important to understand the process. We have not influenced the negotiations. We have raised and discussed issues, emphasising that they are important to us. At the start of the JMC (EU) process, four and a bit years ago, there was meant to be a very structured approach to issues in that we would discuss different issues at each meeting. However, that went by the wayside and we got tied down with other matters. We were constantly saying, "Look—you need to remember this, and you need to remember that." In the run-up to the Chequers event in 2018, in particular, we pointed out the issues that the UK Government needed to bear in mind.

Most recently—when things were going badly or off the rails—we provided what was essentially a shopping list of what we thought were the most essential things that needed to be taken into account or what should be the most essential asks from the UK Government. However, there has been no systematic approach. We tried to make it clear that, where there was an area of devolved competence, the Scottish view had to be taken into account, but it has not been. The UK's view has been that the agreement is a matter of international negotiation and, therefore, "You can go hang."

Christine Grahame: You may not be able to answer this question, cabinet secretary—it may be one for the Cabinet Secretary for Justice. What will take the place of the European arrest warrant? Going back to the example that I gave, the key point was not so much that we got the person as

that we preserved the evidence, which could otherwise have been destroyed within hours. That evidence was key to the man's conviction. What will happen now? Will—[*Inaudible.*]

Michael Russell: I think that the justice secretary should provide you or the committee with a briefing. I was at a briefing by justice officials and others a couple of weeks ago, when the alternatives for how things would operate were being discussed. That was a somewhat depressing event, given what our vulnerabilities will now be. However, I think that the justice secretary should give you that information. The committee may wish to take evidence on that specific issue from the Cabinet Secretary for Justice and the Lord Advocate, who are both involved.

11:15

The Convener: We have a little bit of time left, cabinet secretary, although I imagine that you have quite a lot to do today. I want to ask you about a couple of issues that we have not yet covered. We are the culture committee, and you may be aware that, in recent days, actors, musicians and comedians have raised the alarm regarding freedom of movement. Although the agreement gives some professions visa-free travel, that does not extend to our creative industries. Something like 170,000 people have now signed a petition calling for a cultural visa that would allow travel and touring throughout Europe. Is that something that you are aware of? Have you had the opportunity to discuss it with the UK Government?

Michael Russell: We have not, as yet, discussed that with the UK Government, but I am very much aware of the issue. It seems to be yet another disadvantage, in comparison with what we have now, that there is no possibility of visa-free travel for people whose internationalism is part of their DNA, who require to go to other places and who come from other places, which enriches us all. Whether it is accidental or deliberate, that is a foolish omission.

The Convener: In the past, Michael Gove has said that Northern Ireland would be getting the "best of both worlds". You have previously called for Scotland to get a similar deal to that which Northern Ireland is getting. Now that you have seen the agreement, what is your view on the position of Scotland vis-à-vis Northern Ireland?

Michael Russell: Our position is very much weaker in plenty of respects. First, Northern Ireland will essentially have the benefits of being in the single market and the customs union, which is what, back in December 2016, we suggested should happen to Scotland. Although that would

not have been as good as full EU membership, it would have been a significant improvement—a vast improvement, in fact—on the actual deal.

There are issues around fisheries, agriculture and materials going backwards and forwards. There are also issues with Erasmus and a whole variety of other things. Northern Ireland is at a major advantage. In addition, it is a place where people will want to invest, because they will get the best of both worlds.

It is not an irony, because “irony” is too weak a word, but it is notable that, of the countries that voted against Brexit, Northern Ireland has special status—it should have; I do not object to that—while there is still no agreement on the Gibraltar situation, which is very worrying. Tomorrow night at 11 o’clock could be a very serious moment for Gibraltarians, although there is work being done. I understand that that work includes Gibraltar being in the Schengen area, which Gibraltarians have long sought and which will benefit them. The people who have had nothing at all will be those in Scotland.

Far from what we have heard from the Tories on the committee today, who seek to attack anybody who criticises the agreement, they must answer for their abject failure to secure anything at all for Scotland. Not only that—we have a minus quantity, taking note of what they promised for the one area of interest that they have talked about. Over the past four years, any Tory near a microphone has talked about fishing in Scotland. It is all that the Tories talked about—how they were going to protect fishing—but they have completely failed in that. As a number of people from the industry have now said, the deal is actually worse, in parts, than the common fisheries policy. The Tories must answer, and I hope that this afternoon’s debate in the chamber will be the start of that.

The Convener: Cabinet secretary, I thank you and your officials for attending the committee and giving evidence today. You have certainly given us a lot to think about.

The committee will now consider its response to the LCM in private, so that concludes the public part of our meeting.

11:19

Meeting continued in private until 12:07.

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