OFFICIAL REPORT
AITHISG OIFIGEIL

Constitution, Europe, External Affairs and Culture Committee

Thursday 2 December 2021

Session 6

The Scottish Parliament
Pàrlamaid na h-Alba

Thursday 2 December 2021

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CONSTITUTION, EUROPE, EXTERNAL AFFAIRS AND CULTURE COMMITTEE
12th Meeting 2021, Session 6

CONVENER

*Clare Adamson (Motherwell and Wishaw) (SNP)

DEPUTY CONVENER

*Donald Cameron (Highlands and Islands) (Con)

COMMITTEE MEMBERS

*Dr Alasdair Allan (Na h-Eileanan an Iar) (SNP)
*Sarah Boyack (Lothian) (Lab)
*Maurice Golden (North East Scotland) (Con)
*Jenni Minto (Argyll and Bute) (SNP)
*Mark Ruskell (Mid Scotland and Fife) (Green)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Professor Jo Hunt (Cardiff University)
Seamus Leheny (Logistics UK)
Professor Nicola McEwen (UK in a Changing Europe)
Dr Billy Melo Araujo (Queen's University Belfast)
Professor Stephen Weatherill (University of Oxford)

CLERK TO THE COMMITTEE

James Johnston

LOCATION

The Robert Burns Room (CR1)

Scottish Parliament

Constitution, Europe, External Affairs and Culture Committee

Thursday 2 December 2021

[The Convener opened the meeting at 09:00]

United Kingdom Internal Market

The Convener (Clare Adamson): Good morning and welcome to the 12th meeting of the Constitution, Europe, External Affairs and Culture Committee. The committee is currently conducting an inquiry into the United Kingdom internal market. The aim of the inquiry is to consider the implications of the UK internal market for Scotland, including how devolution will work going forward. We have two panels this morning. In our first panel, we will hear from Seamus Leheny, Northern Ireland policy manager, Logistics UK; and Billy Melo Araujo, senior lecturer, school of law, Queen's University Belfast. I welcome everyone to the meeting this morning.

We will move straight to questions and I have an opening question. Dr Melo Araujo, I will begin with your paper. You state that, even if Scotland continues to align with European Union law, it

"will not, however, remove regulatory barriers faced by Scottish business exporting to NI."

Can you explain to the committee what that would mean for the competitiveness of Scottish businesses wishing to trade in Northern Ireland?

Dr Billy Melo Araujo (Queen's University Belfast): Good morning. As I understand it, the Scottish Government has the policy that it wants to maintain alignment with European Union law to the greatest possible extent. The point that I was making in my evidence is that you can replicate EU legislation and you can interpret it and apply it in the way it is interpreted and applied by the European Court of Justice, but that will not remove the need to demonstrate that you comply with EU law when you are trading with the EU and exporting goods to the EU. That applies also to goods that are sold to Northern Ireland to the extent that Northern Ireland remains subject to the EU customs and regulatory regime.

As things stand, because we are at the early stages of the post-Brexit period, there is very limited regulatory divergence between Great Britain and Northern Ireland and between GB and the European Union. There is a very good paper that was written by one of my colleagues here at Queen's, Lisa Claire Whitten, in which she shows that so far there have been no substantive amendments to EU law listed in the annexes to the protocol. Most of the changes have been technical or cosmetic in nature, but of course, as time goes by, regulatory divergence is inevitable to the extent that Northern Ireland is tied into the EU regulatory framework.

The greater the regulatory divergence, theoretically the greater the competitive advantage Northern Ireland will have purely because of the dual market that it has thanks to the combined application of the market access principles of the United Kingdom Internal Market Act 2020 and the Northern Ireland protocol. Under the protocol, Northern Irish goods get unrestricted market access to the EU single market, which has hundreds of millions of consumers with unparalleled purchasing power, but Northern Irish goods also have unrestricted market access in the rest of the UK, or at least they benefit from the market access principles under the internal market act even though they may be subject to completely different laws from the rest of the UK.

I am happy to provide some examples to illustrate how that would work, but I am mindful not to spend too much time talking.

The Convener: We may come back to that. I do not want to take up the whole time. I will ask Mr Leheny a question. In your paper, you state:

"UK food produce is now treated as 3rd country status when entering the Single Market which has created a huge burden on GB exporters."

Can you expand on what the impact has been on food producers in Scotland?

Seamus Leheny (Logistics UK): Good morning. The impact is that food exporters in Scotland or elsewhere in GB have to comply with sanitary and phytosanitary legislation to export goods such as seafood, dairy produce or bread, whether to Northern Ireland or to anywhere in the EU. That means that they need export health certificates. At the moment, we have a grace period for chilled meats, so things such as sausage rolls can still enter Northern Ireland—technically, they should not, but we have a grace period for that at the moment, although there is quite a lot of paperwork. It requires veterinary sign-off and pre-notifications with the Department for Environment, Food and Rural Affairs system and for arrival into Northern Ireland.

Our environmental agency here is the Department of Agriculture, Environment and Rural Affairs, which is responsible for controlling the import of sanitary and phytosanitary products, such as food produce, into the three ports in Northern Ireland. That requires full checking of all paperwork, and a certain percentage of the goods coming into Northern Ireland may also require a physical inspection. At the moment, under third-

country status, without an agreement on food alignment there could be checks on up to 30 per cent of goods coming in.

That is not feasible for the number of lorries that arrive in Northern Ireland daily. We are talking about 1,200 lorries a day arriving in Northern Ireland, about half of which come in from the port of Cairnryan in Scotland. It would not be feasible to have that number of checks right now. Checks are done at about the 5 per cent level, but we definitely need some type of agreement on those coming in at the end of the grace period, because I think that we would struggle to comply with that. In conclusion, there is a lot more paperwork, so there are administration and staffing costs for exporters.

Dr Alasdair Allan (Na h-Eileanan an Iar) (SNP): Mr Leheny, you mentioned trade with Scotland. I am interested to know what the impacts of the current situation are and what any changes to that situation would be through article 16 and withdrawal and all the rest of it. I am interested to know about the trade that you have with the Republic of Ireland and how that fits into this jigsaw.

Seamus Leheny: If we look at trade first, we can see that there are positive and negative consequences of the protocol at the moment. Trade between Northern Ireland and the Republic of Ireland has been very healthy this year. We have the statistics from the Central Statistics Office in the Republic of Ireland that show that Northern Ireland exports for the first six months of this year grew by 77 per cent. That was an increase of nearly €800 million of new business. A lot of that new business going to the Republic of Ireland was probably southern Irish businesses sourcing goods that they may have sourced from elsewhere in the UK prior to 1 January this year. We have also seen a 43 per cent increase in imports from the Republic of Ireland into Northern Ireland in the first six months of this year. That shows the benefit of the dual market access for Northern Ireland.

Unfortunately, the Office for National Statistics does not have the stats for trade between GB and Northern Ireland yet. However, exports remain steady from Northern Ireland to GB. There are no barriers to that at the moment. It is difficult to say what the impact is on goods coming from GB to Northern Ireland without having the official statistics. Freight volumes going from Scotland to Northern Ireland through the port of Cairnryan are up 16.9 per cent for the first six months of this year. Cairnryan has seen quite an increase in freight volumes going through the port. That could be down to healthy imports coming from GB to Northern Ireland.

We have a lot more hauliers avoiding the ports of Dublin and Holyhead and coming through Cairnryan instead, because we have grace periods for goods coming into Northern Ireland. If you are moving goods into Dublin, you have full third-country status; you may as well be sending the goods to Calais. In Dublin, there has been a decrease of 21 per cent in volumes, but the worst hit of all has been the port of Holyhead in Wales. Its freight volumes have fallen by 33.3 per cent because it relied on the traffic from Holyhead to Dublin.

That shows what has happened with a lot of freight traffic that used to move between GB and Northern Ireland. The fastest route to market to London or even to continental Europe was via Holyhead to Dublin. A lot of hauliers are now avoiding that route and have moved north to either Belfast to Liverpool, or Belfast or Larne to Cairnryan.

Dr Allan: As an industry—I am not asking about anything that is commercially confidential—are you having to make contingency plans for what might happen if article 16 is triggered?

Seamus Leheny: No one in the industry wants article 16 to be used. We see that as more disruption. It would create a lot more instability and a lack of clarity for businesses in the long term and it would call into question the trade that we have with the EU. If you have a barrier from east to west—a trade barrier from Great Britain to Northern Ireland—that affects the consumer, because 75 per cent of the freight that arrives into Northern Ireland on the ferries from Scotland is destined for retail. It could be new cars, yoghurt or clothing—it could be anything. However, in our trade between Northern Ireland and the Republic of Ireland, 70 per cent of the freight that moves across the border is what we class as intermediate products, ingredients and components. If you put a trade barrier, which article 16 could do, that puts pressure on manufacturers and exporters in Northern Ireland. It is a lose-lose scenario.

We are focused on making sure that there is a negotiated outcome between the EU and the UK. We want article 16 to be avoided at all costs and we want the protocol to work. The protocol is certainly not perfect. We have said since January 2020, before its implementation, that it was not perfect; it needed refinement and mitigations agreed between the EU and the UK. We, along with other business organisations, engage quite heavily with the European Commission as well as the UK Government on reaching those agreed mitigations.

Dr Allan: Dr Melo Araujo, we have heard one view about article 16. Is it fair to say that there are mixed expectations about that issue in Northern Ireland? Are you able to say anything about the

range of opinion that exists about that and about the prospect of article 16 being triggered? I am thinking of public opinion.

Dr Melo Araujo: I should clarify that I am a law scholar and I am also Portuguese, so I am not sure that I am particularly qualified to speak about political preferences and opinions in Northern Ireland, and I am not sure that I would want to either.

That said, it is a very interesting question, because right now at Queen's we have an Economic and Social Research Council-funded project on Brexit governance, focusing on the application of the protocol. You may have seen a news item on this. There was some polling produced recently by Queen's on this issue that showed that, largely speaking, the Northern Ireland electorate is not particularly in favour of the triggering of article 16, for very much the reasons that Mr Leheny outlined in his previous answers. I do not know whether what article 16 would entail and what the potential retaliatory measures would be was part of your question, but I am happy to provide that.

Dr Allan: That is of interest too, yes.

Dr Melo Araujo: There is a lot of misconception in the media coverage about what article 16 entails in practice. You will find a lot of conversations about the suspension of the entirety of the protocol or of major components, such as the entire trade component. That is not an accurate representation of article 16. Article 16 is about suspending certain obligations under the protocol subject to fulfilment of certain conditions. The suspensions are limited in their scope in that they can be justified only in so far as they are intended to address a specific issue. It should be the least trade restrictive or the least restrictive measure possible and the one that least disturbs the functioning of the protocol.

We are not talking about full-blown suspension of the protocol or even whole trade-related obligations of the protocol. We are talking about very targeted measures and, of course, they have to be justified. You have to show that either there is evidence of trade diversion—I am aware that there is anecdotal evidence that this is happening, but that is not the same thing as evidence that the protocol is leading to trade diversion—or you have to show that the protocol has somehow led to difficulties of a serious economic, environmental or social nature.

09:15

It is always important to remember that there is a good-faith requirement enshrined in the withdrawal agreement, which means that you cannot use article 16 of the protocol as a pretext to avoid your obligations under the withdrawal agreement. The reasons for the suspension of the protocol have to be genuine, so it is unlikely that a minor trade diversion that can somehow be linked to the protocol would fall into the scope of article 16.

There is a whole procedure in place if the UK triggers article 16 of the protocol. The first thing to note is that the UK cannot trigger article 16 from one day to the next. It has to notify the EU if there is an intention to do so and that triggers a one-month consultation period. It is only after that one-month period that, if it is not possible to reach some sort of resolution agreement, the UK will be able to suspend a part of the protocol. The EU then has the option to take rebalancing measures, but those measures are not automatic. They are subject to a consultation period and limited in what they cover. They have to be limited to what is strictly necessary and they have to be applied in a proportionate manner.

There are other options. For example, if the EU thinks that the UK has unlawfully triggered article 16, it could initiate the dispute settlement mechanism that was established by the withdrawal agreement. Again, that would take time. You would have a consultation period, the arbitration and the possibility of preliminary questions to the European Court of Justice. Then you would have a ruling that, if the UK has triggered article 16 unlawfully, it would require the UK to remove that measure. If the UK does not then remove that measure within a reasonable period, the EU could request that the arbitration panel impose financial sanctions on the UK. If the UK does not pay the financial sanctions and does not remedy the situation, the EU could resort to retaliatory measures under the trade and co-operation agreement, which would essentially mean a reimposition of tariffs on the UK as a whole, but again those have to be proportionate.

The last thing that I will say, and I am aware that I have been talking for a while now, is that there has been talk about the possibility of suspending or terminating the TCA as a whole. That option is available in the TCA. The first option would be for the EU to notify its intention to suspend or terminate the TCA in its entirety, but that would require a 12-month period of notice. The other possibility is to argue that the unlawful triggering of article 16 of the protocol constitutes a substantial failure by the UK to uphold the rule of law, in which case there would be a one-month notice period for the potential suspension or termination of the TCA. That would be covered under the essential elements clause.

A wide range of measures can be put in place and all of them are subject to procedural requirements.

Sarah Boyack (Lothian) (Lab): How do people plan ahead? I am thinking of businesses, in particular. Dr Melo Araujo, several of the respondents to our questions said that there would be a "race to the bottom" in standards, but it is clear from your submission that Northern Ireland will align with EU standards, and the Scottish Government is committed to keeping pace with EU standards.

How will the issue of alignment with EU regulations have an impact on the wider UK internal market in the future, given that Northern Ireland will have that opportunity? How can we, as parliamentarians, have accountability or transparency, given that the Scottish Government and the Scottish Parliament are not involved in the transparency process through the meetings that take place between the UK Government and the EU? I realise that that is two questions.

Dr Melo Araujo: I will try to answer the second one and then maybe you can remind me of the first one.

The question of democratic accountability goes back to another question, which is about the democratic accountability of the protocol and the governance structures that are established there. A lot of criticisms have been levelled at the protocol in that regard. When a new EU act is adopted that could fall under the scope of the protocol, the procedure is that the EU has to inform the UK in the context of the joint committee, which is the main body in charge of implementing the protocol, but most of the work is done lower down in the joint consultative working group, which is a body that is composed of EU and UK representatives. That is where the technical discussions on laws take place. That applies to proposals to amend legislation that is already covered by the protocol and new EU acts.

Criticism has been levelled at the operation of the joint consultative working group, first because deliberations are confidential. There are also questions concerning the extent to which Northern Ireland representatives were involved. In particular, stakeholders were not involved in any way, which is very problematic when regulation is being developed. Technical expertise is needed so that the decision-making process can be shared.

The EU has tried to address some of those concerns in its recent proposals—the non-papers, which you may have seen. The EU has proposed lifting confidentiality, creating structural dialogues that include Northern Irish stakeholders and strengthening ties between the Northern Ireland Assembly and the European Parliament, but we are still some way off having the same influence as other third countries that pursue dynamic regulatory alignment with the EU. For example, we are some way off having the level of input and influence in the decision-making process that the European Economic Area states have. They have the right to be informed about any planned new EU legislation, and they have observer status in relevant European Commission comitology committees. There is an obligation on the European Commission to consult technical experts from the EEA in the same way that it does with the EU. There is a world of difference between those arrangements and what is proposed for Northern Ireland.

To go back to your question about bridging the gap in terms of Scotland having some sort of influence in the decision-making process to give a veneer of democratic legitimacy, it is difficult to see how that could be achieved, given that Northern Ireland, which, under the protocol, is subject to these laws, already has very limited influence. That could be done indirectly through diplomacy, by investing in Scotland's regional offices in Brussels, and through lobbying. Other than that, it would be a question of strengthening intergovernmental relations between Scotland and Northern Ireland, which I am aware are already very good, and interparliamentary relations, and seeing whether there is an opportunity to have regular discussions with UK and Northern Ireland representatives who are involved in the discussions in the context of existing intergovernmental co-operative formats or perhaps in the context of the common frameworks, which are fairly problematic at the moment.

Sarah Boyack: That was helpful—thank you.

My first question was about alignment with EU regulations, which triggered the question about transparency. There is alignment with EU regulations in Northern Ireland. Scotland is committed to doing that as well, but many of the commentators have explained the tensions that exist. How do we monitor what happens with divergence? People have said that the standards will go down, but Northern Ireland and Scotland want to stay aligned with EU standards. How will that impact on the rest of the UK market—the internal market that the legislation aspires to deliver?

Dr Melo Araujo: As far as the internal market act is concerned, in relation to Northern Ireland, it is necessary to establish a distinction between two types of trade flows. The Northern Irish goods that are sold in GB—for example, in Scotland—benefit from the internal market act and the market access principle, and have fairly unrestricted market access to GB. There are some restrictions, but as the next panel will undoubtedly discuss, those exceptions are fairly limited. Despite the fact that Northern Ireland is subject to the EU regulatory regime, it will have fairly unfettered, unrestricted market access to GB.

However, for goods that come into Northern Ireland from GB, the internal market act is, frankly, irrelevant. Their regulatory status is defined by the protocol, and because, under the protocol, as you know, Northern Ireland is subject to EU internal market rules and EU customs rules, they will be subject to obstacles to trade.

Irrespective of whether Scotland diverges from EU rules, there will be checks, customs declarations and procedures, including regulatory compliance checks. As I explained, the fact that you have the same rules does not mean that the regulatory compliance checks do not take place; it just means that the regulatory burden on Scottish traders is reduced, because they do not have to comply with two different sets of regulations to have access to the EU and Northern Ireland markets. They still have to prove that their goods are compliant with EU rules. There is also the potential application of EU tariffs, where goods that come from Scotland are deemed to be at risk of being moved on to the European Union.

The Convener: Mr Leheny, do you have any comments to make in response to Sarah Boyack's questions? For example, do you have anything to say about the uncertainty that has been created?

Seamus Leheny: At the moment, businesses here just want certainty. For the past two years, probably, there has been a lot of uncertainty. With a lot of foreign direct investment, people are cautiously waiting to see what happens with the protocol.

Two weeks ago, we had a major announcement in Northern Ireland. A large multinational business said that it would invest about £200 million and that it plans to build a new factory in Belfast. One of the reasons for that was dual market access. The company in question makes tins for the beverage industry. In its statement, it said that it would have the ability to export those goods to the rest of the UK and the European market.

In addition, a major pharmaceutical company announced that it would create around 1,000 new jobs in Northern Ireland. Under the Northern Ireland protocol, a pharmaceutical business in Northern Ireland has the ability to sign off medicines that can be sold in the UK and the European markets. That business—Almac—has said that that is a major selling point for it. If we can get more certainty and can get the protocol tied down, we hope that we would get more such announcements in the near future as a result of that agreement.

Jenni Minto (Argyll and Bute) (SNP): I have a question that follows on from those that Ms Boyack asked.

Dr Melo Araujo, in your submission, you talked about qualifying goods and the changes in the rules on those that were meant to be brought in in October 2021, but which have been delayed. Could you expand on that? Mr Leheny, you are also welcome to comment.

09:30

Dr Melo Araujo: I previously said that Northern Ireland goods that are moved on to GB have unrestricted market access, but there are limits. One of those limits is that, supposedly, only qualifying Northern Ireland goods would benefit from the market access principles. The UK defined what constitutes a qualifying Northern Ireland good last year. I hope that I have not forgotten this, but I think that it is any good that is in free circulation within Northern Ireland—in other words, that is not subject to any customs control—or any good that is subject to processing in Northern Ireland. Essentially, any good that is lawfully present in Northern Ireland can be considered to be a qualifying good.

There is an issue with that. If goods from the Republic of Ireland were exported to GB, they would be subject to the TCA regime, which is far more cumbersome and onerous—they would have to comply with rules of origin and would be subject to increased customs checks. It is fairly easy for goods from the Republic to be moved to Northern Ireland, to be stored or packaged there and then to be moved on to GB, piggybacking on the internal market and benefiting from the principle of mutual recognition that is enshrined in the internal market act.

Of course, the UK was aware that the very broad definition of Northern Ireland might lead to certain abuses, but it opted for it nonetheless, because, as with the grace periods that are in place currently and the suspension of customs checks on EU imports, the idea was to minimise trade disruption that resulted from Brexit from the end of the implementation period, so that rather than there being a very abrupt and sudden shock, the associated economic costs would be phased in. The plan was to tighten up the definition to ensure that only goods that genuinely have a link with Northern Ireland can benefit from the internal market act.

There was also the possibility of Northern Irish goods that were destined for the GB market, but which were routed via Dublin, being covered by the internal market act, but so far no narrow definition has been provided and there has been no explanation from the UK Government of how that would work in practice. We were expecting a definition and guidance in October this year, but the UK Government said that, because of the on-going protocol negotiations, it was going to wait for a while on that, so we have no clarity on the issue.

From a Scotland perspective, there is a potential risk there, in that it is possible that goods that do not truly originate from Northern Ireland could access their market through the back door—through the Northern Ireland protocol and the internal market act—rather than simply being traded under the terms of the TCA.

Jenni Minto: Thank you.

Mr Leheny, I suppose that the question ties in with your comments about risk versus knowledge of how to proceed. It also ties in with your point about the change in routes—the move away from Holyhead to Dublin.

Seamus Leheny: Yes, it does. What Billy Melo Araujo said covers the point very well, but it also raises a lot of questions. Each year, about 450,000 lorries transit between Northern Ireland and Cairnryan in Scotland. Billy alluded to the question that we have asked: how do we ensure that only Northern Ireland produce that is destined for the GB market has unfettered access to the GB market? How do we differentiate between Northern Ireland goods and Republic of Ireland goods? We need to know what will be required to prove Northern Ireland qualifying status. There are some concerns about that because, from 1 January, the border operating model will come into effect. Only customs controls will be in force at first. That is relatively straightforward.

However, things might become a bit more complicated next summer, when the UK starts to impose its sanitary and phytosanitary controls. There will be a requirement for the Government to have some type of infrastructure at Cairnryan or in that vicinity to occasionally check loads that come in, because not just Northern Irish goods but goods from the Republic of Ireland use that port. As Billy alluded to, there is the potential for goods that are not Northern Ireland qualifying to have their origin marked as Northern Ireland, so the UK Government—through DEFRA, Border Force and so on—will have to take responsibility for ensuring that that is not abused and that only goods from Northern Ireland take advantage of the unfettered access.

Mark Ruskell (Mid Scotland and Fife) (Green): I will stay with Mr Leheny. Looking forward, do you see trade barriers going up across Europe and Ireland and the UK, or do you see them going down? We had evidence that suggested that, for example, a common veterinary area might be created, which would help with transportation of animals across Europe and the regulations associated with that. That would be outside and inside the European Union. What picture do you see going forward?

Seamus Leheny: We would like greater alignment between the UK and the EU. A veterinary agreement would be ideal for us, because it would minimise a lot of the SPS controls. To put it in context, New Zealand has a veterinary agreement with the EU, which means that New Zealand lamb coming into the European Union is subject to a 1 per cent risk profile. For every 100 containers of New Zealand lamb that land, on average, one is inspected, which is pretty good for those producers, although that is because New Zealand has to comply with the standards on that.

For us, it goes back to the question about the TCA between the EU and the UK. If article 16 led to the breakdown of the TCA, it might take the European Union up to three or four months to introduce tariffs on GB or UK goods, but we would be concerned about the non-tariff barriers, which the EU could implement pretty much within a matter of days. Those are things such as a greater percentage of checks on UK goods arriving into the European Union and the requirement for export summary declarations for goods that are destined for the UK from the EU. At the moment, that requirement is not being enforced, but it could be pretty much enforced at Calais, Zeebrugge, Dublin and so on in the event of the TCA breaking down.

Like all businesses, we want an agreed outcome, and we hope that, over time, the TCA will become a bit firmer and the two will become more closely aligned.

Mark Ruskell: Do you see political will to remove trade barriers?

Seamus Leheny: I know from speaking to the Commission that there is an appetite to minimise barriers. We see barriers as simply an added cost for consumers. In Northern Ireland, we want minimal barriers, because consumers here have half the discretionary spend of consumers in GB. That comes down to what the Government wishes. If it thinks that there are trade deals elsewhere where we can get cheaper food, it may think that raising barriers in other places means cheaper food for consumers. We do not know yet. Ideally, we want agreements in place that minimise the data required for administration, customs and SPS purposes. If we walk away without an agreement, the UK will be treated as a third country, and food produce moving between the UK and the EU will be treated as food coming from outside the EU, which has the highest barriers to overcome.

Mark Ruskell: We are also concerned about the domestic regulatory agenda. We have the protocol on one side and the internal market act on the other. How is that affecting the discussion of domestic legislation at Stormont? Is there a nervousness about innovating? For example, we have had a discussion in Scotland about banning the sale of peat products. Is there a concern that

any kind of innovation from Stormont might be caught between alignment with the EU and potentially falling foul of the internal market act?

Seamus Leheny: Northern Ireland goods are in free circulation in the single market, so they will have to adhere to European standards. The onus will be on businesses here to ensure that, when they produce goods in Northern Ireland, they are licensed for sale not just in the EU but in the UK. That dual approval status for Northern Ireland goods is a concern.

Transport is fully devolved in Northern Ireland, as are agriculture and the environment. I know that Scotland is heavily involved in and well progressed with its emissions and clean air strategy. Northern Ireland has to consider the change to sustainable fuels for vehicles and so on, because we want to ensure that our vehicles can be driven legally in the EU, as we have the land border to comply with. It might be a little easier in GB—because it is an island, people typically do not send vehicles into the EU regularly. In Northern Ireland, it is common for vehicles to cross the border every day. We will have to keep pace with European legislation on some things, and especially on vehicle standards and emissions.

Mark Ruskell: Dr Melo Araujo, do you have any comments on that?

Dr Melo Araujo: I will add one point that I tried to explain in my written submission. The situation in Northern Ireland with the regulatory framework is extremely complex. Keeping up with all the amendments and changes at UK and EU level will be extremely difficult, because it involves dealing with not just UK law, but retained EU law, devolved legislation and EU law that is currently covered in the protocol or that may be added into the protocol. A colleague at Queen's, Professor Katy Hayward, has explained that as being like trying to keep multiple plates spinning. Part of the issue is about keeping on top of all those interconnected regulatory frameworks.

To go back to something that Seamus Leheny said in a different context, people want clarity and simplicity. We have an extremely complex system, and adding uncertainty on top of that makes life much more difficult for businesses and for the devolved authority.

Maurice Golden (North East Scotland) (Con): If we park for a moment the question of what might be acceptable to all parties, in your opinion, what could be put in place from a legal perspective to improve the Northern Ireland protocol?

Dr Melo Araujo: That is a good question. From the polling in Northern Ireland, it is clear that the preferred solutions would be of the type that Seamus Leheny has discussed: mutual recognition agreements, veterinary agreements on SPS and perhaps mutual recognition on batch testing for medicine. All those solutions would remove most of the current trade frictions and would have the added benefit of simplicity. The problem, of course, is that that would require regulatory alignment from the UK as a whole, which as we know the current Government is not particularly keen on.

09:45

You will have seen the proposals that the European Commission published on how to improve the protocol. They are practical proposals, in that they seek to address concerns that have been consistently voiced by industry in Northern Ireland, where there would be the complexity of the goods at risk regime, the SPS checks and the difficulty with sourcing medicines from alternative, non-GB, sources of supply. The proposals are practical in that sense, but they are also limited, in that, unlike mutual recognition agreements, they would not remove or obviate trade barriers, and they come with conditions. Although those proposals might reduce some barriers to trade, they do not have the benefit of simplicity or of providing truly unrestricted market access.

Maurice Golden: I will move on to Seamus Leheny. You can feel free to comment on that question, but I also want to ask you a more practical question. Aside from just having no checks, are there any technological improvements that can allow more frictionless trade? Is there anything, whether it be QR coding or open data sharing among logistics firms, that is ready to be deployed or is on the horizon?

Seamus Leheny: That is a good question. A couple of logistics businesses are voluntarily trialling some technology at the moment. You might remember the term "alternative arrangements", which was used a number of years ago. I was on the Government's alternative arrangements working group, on which different ideas were floated about how to make the Irish border work. Unfortunately, a lot of the technology relies on a central processing point for goods to arrive, which would be a port or airport. However, with the Irish border, there are several hundred road crossings in a small area, so the technology would not have completely done away with infrastructure along that border.

Last week, I had a meeting with the Canadian Government. The US-Canada border is around 8,000km long, but it has only 120 border crossings, and around 20 of them handle the vast majority of trade, so they are where the technology is used. The US and Canada have such technological solutions in place. They have a trusted trader scheme for the big movers of freight

across the border and, with the movement of parcels and so on, rather than multiple declarations, it is one per truck and so on.

On how we can make that work between GB and Northern Ireland, there are information technology systems that can certainly give integrity. The key thing is to give the EU confidence that the integrity of the single market is upheld. For example, with goods arriving into Belfast, the EU wants to see the origin, the journey and the final destination. That is all about minimising the at-risk profile of goods. If 20 tonnes of beef arrives into Belfast port from Cairnryan, the EU wants to make sure that that beef, which could have originated in Brazil, or the US under a future UK trade deal, does not end up in France the next day. We would like to use that technology involving an approved retailer or wholesaler to show the final destination of a product and that it is for sale in Northern Ireland.

Those proposals are being put to the EU and the UK Government, and they are aware of such systems. We hope that we get those mitigations of trusted trader schemes. Certainly, Maroš Šefčovič has been quoted as referring to the green-lane status of goods arriving into Northern Ireland, and the technology can play a big part in that.

Donald Cameron (Highlands and Islands) (Con): My question is for Mr Leheny. You commented on the ONS data, published earlier this week, which indicated that Northern Ireland was outperforming the rest of the UK and that that may be down to the benefits under the protocol. Do you agree with that? Does it reflect what you are seeing on the ground or is it simply too early to tell?

Seamus Leheny: It is too early to say. A lot was made of that data. It could be that Northern Ireland was starting from a lower point, so we had less ground to make up than other regions. For example, the West Midlands took the highest hit but, prior to the pandemic, it was performing very strongly, whereas the Northern Ireland economy has always been playing catch-up with a lot of the UK. Until we get the UK trade stats, which will probably be published in January or February, it will be very difficult to see how Northern Ireland is performing in the context of the internal market.

Our exports are holding up well, but the issue is what is coming in from the rest of GB. The picture on that is not 100 per cent clear yet. Produce that would traditionally have come in from GB is now harder to get, or restricted, and that has led to some substitution of products in shops in Northern Ireland. Where you might have seen particular GB products on the shelves, those products are now less frequently seen or not at all. Instead, you may see either locally produced products from Northern Ireland or the Republic of Ireland being substituted. The stats from the ONS in the new year will give us a clearer picture.

Donald Cameron: In your submission to the committee, you mentioned that the burdens fall on GB goods coming into Northern Ireland. You also say that that will have a knock-on effect for the consumer in Northern Ireland because added costs will add to the price of goods. Are you seeing that on the ground yet? Are those added costs having a practical effect?

Seamus Leheny: The rate of inflation is obviously affecting everyone at the moment. Retailers operate on such fine margins. If they are going to bring a product into Northern Ireland, where there are increased costs because of SPS controls and customs, they have to decide whether they carry on stocking that product at an increased price, or whether they look for an alternative, similar product for which they maintain the price point that they have. I have not seen anything yet, but you probably need to hear from the retail sector about those impacts. It is a bit too soon yet to give a clear answer on that.

The Convener: I have a couple of final questions. Mr Leheny, you talked about the freight companies increasingly choosing to use the port at Cairnryan as a route from GB and the impact that that is having elsewhere. Do you have any concerns about capacity? Neither road route from Cairnryan, either to the south or to the north on the A77, is particularly good, but what are the capacity issues at the port? Are you concerned about that?

Seamus Leheny: Anyone who is familiar with the port in Cairnryan knows that there is a lack of space and capacity there. Last year, there was a contingency plan to use Castle Kennedy airfield, just outside Stranraer, as a place where vehicles could be stacked and checked and so on. The UK begins inbound full controls in the middle of next year, and there are concerns from industry about the capacity to carry out those checks. That is something to consider and keep an eye on. We have not had any notification or information from Government, DEFRA or Her Majesty's Revenue and Customs about capacity at Cairnryan.

We have long campaigned for the upgrade of the A75. It was good to see the A75 highlighted in the union connectivity report that was published last week. If there is to be increased traffic, and we are seeing that, it would be good to see work on the A75 progressed.

Finally, on ferry capacity, the ferry companies will certainly say that there are not capacity issues on the routes from Cairnryan to Larne or Belfast. However, there is a problem with availability on the peak-hour sailings. More people now want to use that route, so trying to get space on an 8.00 pm or 10.00 pm sailing from Cairnryan to Northern

Ireland is becoming increasingly difficult. That could have an effect on people being able to get the sailings that they want and that retail requires. Retail wants to get those loads into Northern Ireland late at night or in the early hours of the morning to be on the shop shelves the next day. We do not want to see the prices going up on those routes, which will again affect the consumers here. It is about balance. People will tell you that there is not a capacity issue on the route. I would always drill down and look at the availability on the sailings that are key to retail.

The Convener: I will ask a final question of Dr Melo Araujo. You mentioned the notice period for withdrawing from the TCA. Mr Leheny said earlier that what business is looking for is stability and certainty about what is happening, but the proposal to perhaps invoke article 16 would lead to more uncertainty.

Ursula von der Leyen said that the EU has a ladder of sanctions up to withdrawal from the TCA. I am trying to understand whether there is any notice period for some of the sanctions that the EU might impose, or could businesses find themselves having to respond to changes in a matter of days?

Dr Melo Araujo: It all depends on the sanctions that are being considered. Earlier, I outlined all the sanctions that are available under either the withdrawal agreement or the TCA. There are other options. There are more immediate sanctions that would be more political moves. For example, there has been talk of holding back on adequate decisions on the transfer of personal data or blocking UK accession to the Horizon Europe research programme. Those would all be political moves that would be outside the context of the TCA or the withdrawal agreement, but which could be used to exert pressure on the UK in relation to article 16.

In terms of the sanctions that are covered by the withdrawal agreement and by the protocol, as I said, there are procedural requirements and, usually, consultation periods that are required, so none of them is immediate. For example, for the nuclear option, which is the termination of the contract, there is a 12-month notice period. If you planned to terminate on the basis of the essential elements clause, you would have at the very least a one-month consultation period. Those are, however, the worst-case scenarios. I suspect that they have been put out there in a media conversation in order to give the EU some leverage in the on-going negotiations and to make it clear that the EU is serious about this.

I mentioned the rebalancing measures that would operate under article 16. Again, the rebalancing measures have to be targeted; they have to be specific. We are not talking about major trade barriers. They could only—[*Inaudible*.]

—and in terms of the retaliatory measures, which would be covered in the TCA, you would have an entire dispute settlement mechanism that would be in place, so you would need to trigger that dispute settlement mechanism. You would need to have a one-month—[*Inaudible*.]

—in fact, you would have to have two arbitration procedures before you could adopt retaliatory measures in the shape of increased tariffs on the UK. None of them are immediate. All of them have deadlines and procedural requirements that have to be fulfilled before they can be applied.

The Convener: We had a couple of brief breaks in transmission during your response. I think that we have the gist of what you were saying, but you might want to come back and clarify. I think that we are okay in terms of understanding your point.

You mentioned some specific examples, which is always very helpful. There has been a lot of talk about farmers and seed potatoes in Scotland. That issue seems to be in a negotiation stage. Could you give us some specific examples of the types of products that may end up in this situation of uncertainty and, as things go forward, things that might happen to other goods?

Are you hearing us? That question was for Dr Melo Araujo.

I do not think that he can hear us. I am very sorry, but we are probably finished with our questions anyway.

I thank both our witnesses for their contribution and for the helpful briefings to the committee prior to the meeting. I will suspend the meeting for a brief break. Thank you.

10:01

Meeting suspended.

10:06

On resuming—

The Convener: The committee will now hear evidence from our second panel of witnesses on the United Kingdom Internal Market Act 2020. I welcome Professor Jo Hunt, professor of law at Cardiff University; Professor Nicola McEwen, senior fellow in the UK in a Changing Europe initiative; and Professor Stephen Weatherill, emeritus Jacques Delors professor of European law at the University of Oxford. Professor Weatherill might be a bit late onboarding. No—he is here, so everybody is here.

I move straight to an opening question for Professor Weatherill. In your paper, you state:

"the EU's internal market is designed to favour the claims of local regulatory autonomy over the claims of unimpeded trade significantly more than is the UK's internal market."

Professors Hunt and McEwen's paper states:

"Whereas devolution prioritized political autonomy and the ability to do things differently, the UK Internal Market Act prioritises unfettered market access."

Will you comment further on that?

Professor Stephen Weatherill (University of Oxford): We are all saying the same thing and telling the same story. Any internal market is based on a fundamental problem, which is that constituent elements of the internal market might regulate trade differently, and that leads to obstacles to trade within that internal market. There needs to be a way to manage the tension between unimpeded trade and regulatory autonomy that is exercised by the constituent elements within the internal market. The way that all internal markets manage that tension is to put to the test regulatory choices that are taken by constituent elements—is there a value in the local regulatory initiative that is sufficiently strong to override the interest in unimpeded trade in goods and services between the constituent elements of the internal market?

Putting the constituent elements' rules to the test is at the heart of internal market law. What is important is determining which factors can be advanced to justify local rules, even in circumstances in which they obstruct cross-border trade within the internal market. The core point is that the EU is more generous than the UK in accepting possible justification for local rules that obstruct trade. The EU internal market is more generous to local regulatory autonomy and more restrictive of trade within its internal market than is the UK's internal market.

The Convener: I ask Professor Hunt and then Professor McEwen to comment.

Professor Jo Hunt (Cardiff University): I reiterate Professor Weatherill's points. We have a system that has written across certain elements of the EU approach, but it has done so in quite an idiosyncratic way. The internal market act views devolution and the potential for divergence as an obstacle and a potential irritant to the economic integration of the UK, which is prioritised and privileged through the market access principles of the act.

There are similar free movement market access principles in the EU system, but they come with a much more developed set of grounds for justification as to why local choices might be able to be sustained within a wider market. There has been some write-across but not a full write-across of the EU rules. The internal market act comes from a different starting point to the common frameworks in terms of how managing divergence and devolution is seen—they take different approaches to the devolution settlement.

Professor Nicola McEwen (UK in a Changing Europe): I agree with everything that the other witnesses have said—I will not repeat it.

Perhaps we can understand the internal market act as an ideological project. There are the same ideological drivers that, when we had the initial debates around devolution, were sceptical about the effects of devolution creating divergences and creating barriers within the United Kingdom. We see the same thing here. It privileges the value—in and of itself—of unfettered access for businesses across the UK over the value of regulatory autonomy and the potential divergence that emerges from that.

Another difference between the UK and EU internal markets is that, in the EU context, the rules and regulations are co-determined by the EU institutions and the member states, which has clearly not been the case with respect to the United Kingdom Internal Market Act 2020. That was determined by the UK legislature, which has representatives from across the UK, but it was in the face—as you will be well aware—of considerable opposition from the devolved institutions that stand to be most affected by it.

The Convener: I move to questions from the committee.

Dr Allan: I have a question for Professor McEwen. The committee has heard about how, although trade might be a reserved area, the impact of trade policy is felt in devolved areas. Looking at the road ahead, what areas of devolved policy do you think we might have to be prepared for change in?

Professor McEwen: Do you mean from external trade agreements or in general?

Dr Allan: I mean from trade agreements.

Professor McEwen: I suppose that it depends on how extensive they are. In the case of the TCA, it is such a minimal trade agreement that, although it has some repercussions for devolved areas, there are not many. It depends on how ambitious and broad future trade agreements are.

Again, following on from the point that I made, in countries with more federal systems, territorial or provincial governments tend to be involved to some degree in preparations, negotiations and discussions about the mandate for trade negotiations, not least so that there is awareness of how trade agreements might affect their responsibilities when they are reached and might be implemented.

We do not have that to the same extent in the UK. There are intergovernmental forums, but I am not sure how much of a voice the devolved institutions have in those. That is one of the problems with the lack of transparency around such forums and negotiations.

Dr Allan: I will change tack back to the subject that I raised with the previous panel of witnesses about the implications of article 16 potentially being invoked—this question might be one for Professor McEwen or, possibly, for Professor Weatherill. I am thinking about the diplomatic implications, how unusually it would be regarded in terms of the UK's political relationship with the EU and what it might mean.

10:15

Professor McEwen: I will leave that to the other witnesses.

Professor Weatherill: I will make one or two brief comments. You had a good run through the content and implications of article 16 with the previous panel of witnesses. I claim no expertise with regard to the sensitivities that arise in Northern Ireland, but I cannot say that anybody feels that any good can come from the invocation of article 16. It adds greater uncertainty to a position that is already extremely uncertain.

I strongly underline what you already discussed with the first panel of witnesses, which is that article 16 is no general fix-it to the problems that are raised by the protocol. It is much more narrowly written than that. It is also written in an ambiguous way. It is far from clear, for example, what the diversion of trade criteria into its invocation entail. Article 16 is a way to add further confusion on top of a protocol that is already beset by confusion. You heard very powerfully from the first panel of witnesses about the damage that that is doing to business confidence.

Sarah Boyack: I am keen to follow up on questions about divergence and accountability. I thank the witnesses for their briefings. Professor Weatherill, you and others have given us submissions that identify pressures from the UK internal market to lower standards, but other evidence that we have received suggests that divergence could have a positive impact. For example, the Institute for Government suggested that divergence could enable the testing of the effectiveness of policy implementation, evaluate success and encourage collaborative learning, and Fidra talked about its potential environmental benefits. Will you give us a sense of the space for devolved governments to apply policy change within their competence? You have said that that is limited. What is the scope to resolve any disagreements on those issues?

Professor Weatherill: I am sure that Nicola McEwen and Jo Hunt will want to say something about this, too. In principle, the idea of having regulatory experimentation, regulatory learning and regulatory emulation within an internal market is attractive. If you allow different constituent elements to do different things, one constituent element might find the best way to solve a particular problem and that understanding can be shared directly or indirectly with the other constituent elements, which might follow suit. You might even get a regulatory dynamic independently of agreements being struck between the constituent elements.

The problem with the United Kingdom Internal Market Act 2020 is that, if one constituent element chooses to experiment with its regulations by introducing stricter rules for products than apply elsewhere, the stricter standards are undermined by imports from another constituent element of the UK that do not need to comply with the stricter rules of the experimenting constituent element, unless those rules happen to fall in one of the very small areas in which justification for local rules is allowed under the 2020 act.

There is a dynamic in the UK internal market that is antagonistic to regulatory learning, because the constituent element that chooses stricter rules might find them undermined by imports from another part of the UK in which producers do not need to comply with those rules, either in their own territory or that of the regulatory experimenting constituent element to which the goods are exported.

Sarah Boyack: That takes me to the second part of my question. What is the scope for such disagreements to be resolved? We can think of the example of changes in climate policy, which are not necessarily experimental but are definitely good practice. What is the scope for interaction between devolved and UK Governments to resolve those issues?

Professor Weatherill: Jo Hunt and Nicola McEwen should speak to that, as they know more about it than I do, and I have been talking too much. The common frameworks approach was understood to be the way in which that sort of political mediation could be pursued. However, the sense from the passage of the bill and subsequent to that is that the Government in London has far less enthusiasm for the common frameworks approach to solving such problems in the UK internal market than one might initially have expected and hoped for.

Sarah Boyack: I indeed intended to follow up this question with other witnesses. Professor McEwen, I will come to you next. You also suggested in your submission that there would be benefits to divergence. One of the things that you

highlighted was the difference between the production of goods and the use of goods. That potentially would relate to public procurement or planning requirements.

Could you say a little bit more about that and pick up the issues that you have mentioned about accountability in terms of intergovernmental and interparliamentary transparency, which has been emphasised by many of the other respondents we have had?

Professor McEwen: For clarification, the evidence that I submitted was written along with Professor Hunt, Professor Dougan and Professor McHarg. The latter two are not with us today, but Professor Hunt may want to come in on this as well.

On the principles of divergence, I do not think that any of us is in disagreement, including the people who wrote the other submissions that referred to. There are lots of potential benefits to divergence in principle. The point is that, although the internal market act and the scope of the market access principles do not prevent regulatory divergence, they potentially prevent it from having the same effect that it might have had in terms of achieving the policy goals were that legislation not in place. That potentially has a knock-on impact on the scope for learning, experimentation and seeing whether something works that we have had so far under devolution.

Where there is scope for permitting divergence to occur in ways that avoid those restrictions is through the frameworks process and in particular that additional element that came into the internal market act towards the end of its passage, where there is scope for common framework agreements to be excluded from those market access commitments. My understanding is that the Governments have been working towards an agreement on how that will happen. There are a couple of tests of that coming up. If the approaches to single-use plastics and the deposit return scheme can be agreed within a common frameworks process—the resources framework, which is not yet in the public domain—will that allow for those particular policies to be exempt from the internal market act and the market access principles so as to allow divergence and enable the policies to have effect throughout the territory, not just in relation to producers in Scotland?

Those real tests that are on the horizon will give us a better sense of quite how limiting and constraining the act is or whether the common frameworks agreement process can be married with it finally in a way that still permits the kinds of divergence that some may want to see.

Sarah Boyack: We are still waiting to find out whether there will be the capacity for divergence. You also mentioned in your evidence the need for more intergovernmental and interparliamentary transparency. Can you say a bit about the recommendations that you made in that regard, and how this committee should be following them?

Professor McEwen: There are lots of different issues in that regard. First of all, with respect to the frameworks, some of the frameworks will be very important quite soon. The resources and waste framework—I think that that is what it is called—is one of those. I do not know whether you have seen it; it is certainly not published even as a provisional framework just now. Making sure that you, as parliamentarians, have early access to those frameworks and access to the kinds of negotiations that would potentially lead to common framework agreements being exempt from the internal markets act. We just do not know how that process will work. It seems that the act gives a lot of executive authority to the secretary of state. The process all seems to be in a sort of political executive domain, which makes it difficult for Parliaments to scrutinise effectively.

Other things in the act empower the secretary of state to make changes to the scope of the act after consulting—but not necessarily heeding—devolved ministers, but there is no carved-out role for Parliament within that. You could perhaps agree with the Scottish Government that, when it is part of a consultation process, Parliament is very quickly also made part of that consultation process. That process takes place in a tight timeframe—around a month in some cases—so it will be difficult for Parliament to get a voice.

My suggestion was that you should engage with the other legislatures across the UK, because they will all be doing much the same as you. There was some interparliamentary engagement and networking around the Brexit process and Brexit negotiations. It would be good to see that being re-energised as we are looking at the domestic effects of Brexit, which the internal market legislation and frameworks process might be seen as being. You should connect with those other parliamentary committees to enhance and perhaps boost the limited capacity that you all have for scrutiny.

The Convener: Just to let you know, Professor McEwen, the interparliamentary forum has its first meeting next Thursday in London, and the deputy convener and I will be attending.

Sarah Boyack: That is useful information, convener, thank you.

Professor Hunt, could you comment about the action that is needed? I very much welcomed the submission that you were partly responsible for,

but we also had a submission from Scottish Environment LINK that raised the importance of parliamentary scrutiny and the issue of the importance of the accountability in Scotland of, for example, the Office for the Internal Market. To come back to the question that I asked Professor McEwen about parliamentary scrutiny, given that timescales are tight, how can we deliver better intergovernmental relations and also better scrutiny though interparliamentary liaison work? Could you say a little bit more about that, with reference to your submission?

Professor Hunt: Absolutely. I am speaking from Wales, where we have particularly acute capacity issues affecting our own Parliament and a need to expand to be able to effectively engage with the increasing amount of work that will be coming down the line to be scrutinised and to hold to account the actions of those who are operating under those frameworks.

There are certain phases within the five-step process of making the common frameworks, and there was some telescoping of those processes. We are now supposedly at stage 4 for most of them, so they are shared with Parliaments and with other stakeholders, but there are reports that that engagement process to date has been more limited than perhaps would have been ideal.

Of course when Parliaments are engaging with those frameworks, they are not looking at final policy decisions on particular issues; they are looking at the frameworks for managing decision making. Therefore, it is important to ensure that steps are built into how those frameworks work that enable the on-going oversight and engagement of Parliaments in that process—that is the challenge. It is not the case that the framework is a done deal and that provides an answer and a final output on a particular policy issue; rather, the framework should be an on-going, living constitutional document.

10:30

On the internal market act and the reporting that the Office for the Internal Market will be undertaking, we know that there will be regular reporting on the state of the internal market. However, we are less clear about whether, with regard to the requests for information and guidance that legislators might make to the office, that sort of intelligence will be shared more broadly in terms of reviewing whether particular policy choices might throw up problems from an internal market perspective. Others might have more insight into the issue than I do but I am not clear about whether those reports will be more generally shared in a transparent way or whether there will be a closed process.

Throughout the entire system, whether we are looking at the frameworks or the operation of the internal market act, which we know has built into it all sorts of opportunities for executive action to change the existing provisions, there are multiple points at which concerns arise about transparency and the scrutiny opportunities.

Sarah Boyack: That is a helpful answer. In particular, we might be interested in that issue about the closed process and to what extent there is any transparency on those issues from the Office for the Internal Market.

Could you finish by saying a bit about dispute resolutions? I mentioned that in relation to my first question to Professor Weatherill.

Professor Hunt: We are looking across the piece. We have this twin-track approach to managing the internal market through the common frameworks and through the internal market act. We do not yet fully know how that will play out in terms of the balance between those two tracks, and whether the common frameworks will come to be the general approach that is taken, with the internal market act as a fall-back.

The common frameworks do not all follow the same model. There are built-in processes for dispute resolution, but they do not necessarily follow the same dispute resolution approach. There is more of a co-owned co-operative approach to creating those structures that do not yet exist. We know that there are moves through the intergovernmental relations review to try to improve and upgrade what happens generally.

On dispute resolution, we still do not fully know how the internal market act will be enforced and applied. We know that the OIM does not have enforcement abilities. A lot of the enforcement will be dependent on local regulatory authorities deciding whether to prosecute traders for breaching local regulations. That seems to be the thrust of it. Those things might end up before the courts, which might bring in matters of potential constitutional principle. They might not have been approached as constitutional issues, but we do not know where those cases will end up, how high up the judicial hierarchy they will go or what potential consequences they might have for devolution. In recent years, the cases that have been brought before the Supreme Court on devolution issues have not been particularly accommodating to the claims of devolved Governments and devolved Parliaments in terms of the readings that they have given to devolved competence. I think there are concerns around the what could potentially happen if these things end up before the courts.

Jenni Minto: Thank you all for your submissions. I have questions about the ability of the Scottish Government to drive effective policy

reform and the ability of the Scottish Parliament to legislate effectively.

We have been talking about the internal market act and devolution. I am interested in your thoughts on the Subsidy Control Bill that is currently going through Westminster and how you think that it could be impacted by the current situation. Professor Hunt, as you are on screen just now, could you respond to that question?

Professor Hunt: The approach that is taken in that piece of Westminster legislation is not the collaborative output of the four Governments. We know that that was not the favoured approach of the devolved Parliaments and Governments. However, I should give way to others who that might have more detailed knowledge of the bill.

Professor McEwen: I do not have particular expertise on the contents of the bill but, as subsidy control was reserved within the internal market act, it will not be the case that the Scottish Parliament is required to consent to the legislation. However, it is one example where reserved policy, albeit newly reserved policy, will have an effect on the responsibilities of the Scottish Parliament.

There is a is lot to applaud in the frameworks process, and its collaborative nature has benefits, but one of the weaknesses of it is that it is solely focused on areas where retained EU law intersects with devolved competence, so it is all about devolved matters. There is no scope within that for engagement and collaboration on those areas of reserved policy that impact on devolved responsibilities, but there is potential for the broader intergovernmental process to allow for that kind of engagement.

Professor Hunt talked earlier about there being a twin-track approach involving internal market legislation and the frameworks process. I would say that there is a triple track, with the third one being the IGR review. Those processes, within the UK Government in particular, have been completely detached from each other with very different motivations and dynamics at play, and with different characteristics. However, they all connect. The IGR review, which has been going on since March 2018, looks like it might be coming to some sort of conclusion, probably not unlike the interim report that we saw earlier in the year, and that provides scope for the Scottish Government to at least potentially try to influence those types of processes in reserved policy areas, whether it is around subsidy control, trade, external relations or other areas that have an effect on devolved competence.

The challenge for you is to make sure that there is parliamentary engagement in the Scottish Government positions on those processes. I think that, in line with the agreement that has been reached, the Parliament has been good at reporting on its activities in the IGR space. Where there might be scope for development is in the enhancement of the role of Parliament in shaping the Scottish Government's approach to IGR, not just in hearing about it afterwards.

Jenni Minto: Thank you, Professor McEwen. I have a specific question on your joint submission at section 3.2:

> "Policy divergence can, however, produce effects that may be regarded as adverse. Divergence in public services generates distinctive rights and entitlements within the same country which some may consider unfair."

Can you expand on that? Clearly, our devolved Parliaments legislate a lot in that area.

Professor McEwen: That is not specific to the internal market act at all; it was in response to your general question about policy divergence.

I often ask my students a question about fairness, which is to do with whether it is fair that, given that they are from the same country—as in the UK—some of them are paying £9,000 a year and some of them are not. That is an illustrative example of policy divergence, which is perfectly legitimate in terms of the system of multilevel government that we have. It is within the competence of the different institutions to make their own choices on public policies, but what it means is that citizens of the same country have different rights, different entitlements and different obligations. That is simply a feature of multilevel government. In as much as that system is accepted by everybody, those divergences are presumably accepted as well, but it is one of the effects of multilevel government and people may have different views about how far they are willing to tolerate those divergences.

Jenni Minto: Thank you. Professor Weatherill, do you have any thoughts on my initial question about the Subsidy Control Bill?

Professor Weatherill: No.

Jenni Minto: In that case, I will throw back the final question that you asked in your submission. You asked:

> "What sort of 'United' Kingdom is this?"

I would like to hear your thoughts on that.

Professor Weatherill: That was a rather silly, throwaway remark, so I probably should apologise for it. All that I was trying to do was to bring out as vividly as I could that the arrangements for the United Kingdom Internal Market Act 2020 are idiosyncratic. I think that Jo Hunt said that. They are also asymmetric and, albeit that they bring about a lot of frictions and tensions, they bring about very different frictions and tensions.

The important point is that, if your political preference is to have a United Kingdom that is, as much as possible, governed according to Westminster's preferences, with minimal tolerance for divergence within the constituent elements of the UK, under the arrangements of the internal market act plus the protocol, you will be very distressed if you are in Northern Ireland, because the whole point of the protocol and possibly the internal market act is to place Northern Ireland in a regulatory jurisdiction in terms of the market for goods that is not set from London but by the European Union.

By contrast, if your preference is for a United Kingdom that is, as far as possible, dominated by the preferences of Westminster, you will be really rather cheerful if you are in Scotland or Wales, because the internal market act undermines in significant respects in substance, if not in form, the devolution settlement that has been in place for several decades now. That is because the result of the internal market act is that English producers do not need to comply with stricter Scottish or Welsh rules in so far as those stricter rules exclude them from Scottish and Welsh markets, unless the very limited range of justifications envisaged by the internal market act applies.

There is disappointment among some people in Northern Ireland and some people in Scotland and Wales, but the people who are disappointed have very different motivations and attitudes to the nature of the United Kingdom.

My answer to my admittedly rather silly throwaway question

"What sort of 'United' Kingdom is this?"

is that it is a very fragile one. It is being threatened by anxieties and dissent, but they are different kinds of anxieties and dissent in Northern Ireland, Scotland and Wales. In a sense, it is just about trade and the internal market, but it is also about a lot more than that, as all internal markets are, because any choice about how to design an internal market spills over into political questions about how far to pursue unimpeded trade at the expense of the preservation of local regulatory autonomy.

That is my rather long answer to the rather short question with which I finished my written evidence.

10:45

Maurice Golden: It is clear that the internal market act applies equally, but that brings up questions about what existing legislation was in place that brings new legislation into the scope of the act. For example, the legislation for the deposit return scheme was through in advance, so it should be able to be implemented without respect to the internal market act. However, in England and Wales, a deposit return scheme would need to be implemented with cognisance taken of the internal market act, which could lead to detrimental implications for England and advantages for Scotland, certainly from a business point of view.

It is clear that, in that example and many others, one solution is the integration of common frameworks to overlay the internal market act. What specific dispute resolution mechanisms can be put in place in advance for where that fails or where future Governments in any of the countries seek to dispute those common frameworks, to try to ensure that we comply with existing legislation and allow any of the devolved Administrations to improve regulations or make legislative changes as they see fit?

Professor Weatherill: If you look to the European Union for assistance—you really should do that, because the European Union has had the job of creating, maintaining and sustaining an internal market for a long time—you will find that the problems that arise there because of the potential adoption of rules, regulations and technical standards that might differ state by state and cause obstacles to interstate trade are managed through a process in which a state that proposes to introduce a new technical regulation that might impede trade must notify it to the European Commission in advance of bringing it into force. There is a defined standstill period within which the regulation must not be brought into force pending its examination by the European Commission, with the opportunity for views to be put forward by other member states so that an assessment can be made of whether the regulation should be treated as justified or not. If it is not justified, it should not be introduced. If it is justified, it might provoke political impetus towards harmonising rules. The consequence is that the rule will not be introduced until it has been reviewed in advance, and any harm that might arise will, ideally, have been prevented rather than occurring.

All that management system is missing from the internal market act, which assumes that a constituent element of the UK may introduce a rule and then find it challenged one way or another as an impediment to trade within the United Kingdom, and eventually—possibly years or maybe even decades later—the matter will come before a court, which will have to apply the internal market act and decide whether the rule is compatible with that. Damage will have been done to the market in the intervening period.

I have several suggestions about reforming the internal market act but, on the particular point that Maurice Golden raised about uncertainty about

what might happen, the system needs a better and firmer management system. Most of all, there should be a pre-notification system so that proposed new regulations that might impede trade within the United Kingdom can be considered and assessed for their worth in advance of their introduction.

Maurice Golden: Thank you, Professor Weatherill. That is very helpful. Would Professor Jo Hunt like to come in on that?

Professor Hunt: Absolutely. To reflect again on the choices that were made with the introduction of the internal market act, those processes and procedures were already in place, as Stephen Weatherill said. The technical specifications directive has been in place and has applied across the UK, and regulations were made in Wales, Scotland and Northern Ireland. Those notifications were made. That was part of the policy-making process. It is not the case that they are missing; things that were already part of the policy process are being removed. We knew how those things worked, and we had an appreciation of them. We are moving from an ex ante approach, which led to a greater degree of certainty about how the regulations would be applicable, and replacing that, as Stephen Weatherill has said, with an incredibly uncertain regime whose dimensions we are still trying to work out as well as the various ways in which the different elements interrelate.

Maurice Golden: Professor McEwen, do you have any comments or thoughts on that?

Professor McEwen: Yes. There are a couple of things. There is a glimmer of hope in the frameworks process in that common frameworks are supposed to establish ways of working that should allow for collaboration. However, a lot of that requires political will, which may or may not be present, and that is limited to the areas that are addressed within the narrowly defined frameworks themselves, so that will not capture the new regulations and the areas that do not connect to frameworks.

You are, of course, quite right that the internal market act applies to all the laws made by the UK's different legislatures, so it applies to UK laws as much as to devolved laws. The difference, of course, is that an asymmetry is built into the legislation, which made the internal market act a protected act within the devolution statutes. There is nothing that you and your colleagues can do about that in your law-making capacities to make any amendments. The Westminster Parliament is not constrained in the same way. If, in principle or in theory, it was found that that was a frustration for the UK Government's ability to pursue and fulfil its policy objectives, it could change that in a way that you cannot.

Yes, the internal market act applies equally, and it will create some challenges for DEFRA in particular, perhaps in doing things in the way that it wants to do them, but the effects in the end are not the same because of the asymmetries that are built into the legislation.

Donald Cameron: Professor Hunt and Professor McEwen, in paragraph 1.10 of your written submission, in relation to common frameworks, you say:

> "Depending on their scope and content ... common framework agreements could commit the Scottish Government to shared or minimal standards and rules, potentially limiting the scope for action of the Scottish Parliament."

What do you mean by that? I think that Professor McEwen referred to downsides to common frameworks. What do you mean by

"limiting the scope for action"

for Parliament?

Professor McEwen: I mean that, if there is agreement within the common frameworks process to maintain certain standards, to do things uniformly or whatever, and if that agreement is to do things in the same way across the UK so as to have a UK-wide system, in effect, that is signing up to do things as if they applied to the UK as a whole in an area of devolved competence. That agreement would minimise the potential for the Scottish Parliament to do something differently should it choose to do so. It would not have a legal constraint and Parliament would still have the autonomy to do what it wanted to do, but it would then detach itself from the framework.

The good thing about the frameworks process is that it is collaborative and intergovernmental, so it involves doing things by consent. Sometimes, that might be consent to do things in the same way. Sometimes, it might be consent to do things differently and potentially then having a connection with the exemptions in the UK internal market act as well. That is what we were trying to get across. Does that clarify?

Donald Cameron: Yes.

Professor Hunt, I ask you the same question. Also, will you comment on how the Welsh Parliament has dealt with common frameworks in your experience? In the previous session of Parliament, I sat on the Health and Sport Committee and we scrutinised a common framework for food hygiene and labelling. We heard evidence from the Scottish Government and from stakeholders. We were probably the first committee in this Parliament to do that. As a process, it seemed to work relatively well. Do you have any Welsh view, if I can put it like that, of how the process is working?

Professor Hunt: I reiterate that we have on-going capacity issues in our Parliament in Wales. An agreement has recently been made between Plaid Cymru and the Labour Government to work together to increase the size of the Parliament so that it is better able to manage such matters. As we said, scrutiny and transparency of the common frameworks will not be a one-shot process. There will need to be on-going engagement with and accountability to Parliaments for the decisions that are made under the frameworks.

As Nicola McEwen has forcefully outlined, we have this on-going move of powers to the executives throughout the process. The whole Brexit process has strengthened the role of the executives across the United Kingdom. There is a need to rebalance that by building in mechanisms for engagement by the Parliaments. A number of suggestions have been made to you on interparliamentary activity, and we also have the interparliamentary forum, which has been mentioned. It is about seeking to develop those routes.

Donald Cameron: I think that we all accept that we are at an early stage in the process but, gazing into the crystal ball and looking to the future, do you foresee that, in practice, common frameworks will be used in the vast majority of cases and that the internal market act will become a fallback when the frameworks process does not work? Alternatively, do you foresee something different? Perhaps Professor Weatherill will start off on that.

Professor Weatherill: I do not have any kind of crystal ball here. I can see the political incentives in Scotland and Wales to advance rules that are likely to be undermined by the UK internal market act. That might be politically useful in Edinburgh and Cardiff, because it would demonstrate the weaknesses of being tied to the Government in London. On the other hand, I can see incentives for the Government in London to use the common frameworks process sparingly in order to use the market access principles as a way to promote a more deregulatory United Kingdom than one might have expected to be in place as a result of the devolution settlement.

I feel that I am in danger of going beyond my brief and the reasons why you invited me here. That is very much political speculation, albeit that it is based on the legal structure that is put in place through the UK internal market act.

11:00

Professor McEwen: Academics generally do not like looking into crystal balls, but I will give it a go. The alternative to the legalistic and centralising approach of the UK internal market act is an intergovernmental approach. That of course has challenges for parliamentary scrutiny, but it is the most potentially devolution-friendly approach to managing the internal market and the economic union. Whether it actually works like that through the frameworks process, I have some doubts, partly because the frameworks are fairly narrowly defined and, as time moves on, we would expect more regulations that do not connect as easily to the frameworks or fall within their scope.

One alternative is to use an intergovernmental process alongside the frameworks to capture those other areas. That is the system that we see in many other countries that are similarly trying to manage diversions and autonomy along with economic union, which is a challenge for every multilevel system. However, in the current political context, I do not see that being the path ahead. We have not yet seen evidence of the political will to make such a system happen effectively. Indeed, over the past few years, we have seen a lot of dysfunction in intergovernmental relations. From this vantage point, it is difficult to see that changing in the near future.

It would require an awful lot of political will and a change of political culture for that to be the path ahead. Having said that, that path would help to stabilise the situation if it is to be stabilised at all. There is no question in my mind but that the approach that is taken in the internal market act has had a destabilising effect on the system of devolution and on the UK's territorial constitution.

Professor Hunt: My reading of the internal market act is that it was introduced very much as an insurance policy relating to what might be needed to manage international trade negotiations. If the potential for policy divergence across the UK that might exist under the common frameworks were to stand in the way of international trade agreements, the internal market act provides the tools to deal with that. There are other tools that would achieve the same purpose, but the act clearly provides the ability for the UK to negotiate international trade agreements, certainly on the basis of Great Britain.

A lot of that depends on where we are with international trade agreements and the read-across from those agreements to the governance tools. From a devolved perspective, it is about the significance and importance of proper engagement in the process of negotiating agreements, so that it feels like a collaborative approach rather than something that is imposed from the centre. It depends a lot on how that plays out.

Donald Cameron: Thank you very much.

Mark Ruskell: In many of the answers, our witnesses have touched on some of the questions that I was going to ask about interparliamentary

scrutiny. Is there anything that you would like to add on that? We have a written submission from the Institute for Government that suggests having policy-specific chairs forums to mirror interministerial groups. Could that work for the circular economy or other areas where there are frameworks? I do not know whether the panellists have any more thoughts on what that architecture of scrutiny might look like.

As it seems that Professor Hunt and Professor McEwen have nothing to add, I will move on.

Your written submissions make a strong point about the potential chilling effect on innovation in regulation and on new policies. Is there any evidence of that happening already? Some policies are in train. This week in the Scottish Parliament, we have dealt with single-use plastic regulations, which have come to a committee for the first time. Is there any sense of where policy development is being stifled?

Professor Weatherill: [*Inaudible*.]—thematic understanding of this. I have in front of me a cutting from *The Guardian* a couple of weeks ago, with an article entitled "Kicking the can down the road: new delay likely for deposit plan". It tells me that Scottish ministers are

"accused of giving in to lobbying from retailers and industry."

A deposit and return system, which would be introduced for good environmental reasons, would certainly be vulnerable to challenge because of its effect on goods originating in other parts of the United Kingdom under the UK internal market act. That might be an area in which one would look to find empirical evidence for a chilling effect of the act on Scottish regulatory activity, but I have only a cutting from *The Guardian*, and it is not always accurate. I have no more detail or inside information on the issue than that.

Professor McEwen: It is difficult for us from the outside to identify a chilling effect because, inevitably, that implies that things are not coming forward that might otherwise be. In your scrutiny of ministers, it would be good to probe that. Last week or the week before, the First Minister raised concerns about a constraining effect from the internal market act in relation to changes to minimum unit pricing. Minimum unit pricing, as a point-of-sale issue, would be subject to the non-discrimination elements of the act, rather than the mutual recognition elements, but it would still potentially be affected. There is a lot of uncertainty about the effect of the act, which might in itself be introducing delays in the policy-making process, if not putting things into a long-term chill. However, from the outside, it is difficult for us to identify that.

I actually wanted to come in on your previous question, which was on scrutiny. The IFG recommendation on shadowing interministerial groups is a good one, but it would potentially be an awful lot of work. It is not clear how transparent the interministerial forums will be in what they are doing, what are they discussing and how substantive the issues are. However, it potentially could aid Parliamentary scrutiny to match that approach and shadow it with your colleagues in other legislatures.

It might be worth probing consent a bit more. With consent as we understand it in the Sewel process, there is a clear role for the devolved legislatures. However, consent as it is written into the processes around the internal market act and potentially the common frameworks does not have a clear parliamentary role. An inquiry into not just Sewel consent and legislative consent but consent in general and the role of Parliament in any consenting process that is established by the internal market act and similar processes in legislation could add value. That could ensure that there is a role for Parliament in all those processes.

Professor Hunt: On the suggestion that there may be a chilling effect, as has been mentioned, we do not necessarily know what has not been happening. The Labour Government in Wales, along with Plaid Cymru, have recently issued a document that sets out a plan of proposed policy commitments as they work together over the next few years. I have been looking through that to see whether any of those could potentially be caught by the internal market act.

There is talk of a community food strategy

"to encourage the production and supply of locally-sourced food in Wales."

That proposal might be achievable under a public procurement common framework. I do not know the terms of such a framework or whether the proposal would survive under it. I do not know whether the proposal would be subject to the non-discrimination principle. Various exemptions from non-discrimination are available, but the proposal is suggestive of falling under potential discrimination. A measure can be justified if it is

"a necessary means of achieving a legitimate aim."

We do not know who will interpret the justification or how it will be interpreted. If there is a chilling effect, that is not surprising, given the uncertainty that is at play throughout the process.

Mark Ruskell: My final question is about our move away from EU policy development processes. I was struck by how involved various stakeholders—including industry bodies, unions and non-governmental organisations—were in the development of the registration, evaluation, authorisation and restriction of chemicals regulation. There has now been a shift; we are out

of Europe, and there is perhaps a different policy development process. Which voices will be heard in that process? Where do those voices come in? How should Parliaments engage with those stakeholders?

Professor Weatherill: I am not well informed enough to say anything about that. A lot will depend on the transparency of the processes and the extent to which the opportunities for input are structured. There is no particular reason why the UK would follow the EU's example, although it might choose to do so, but—[*Inaudible*.]—things could look very different very quickly.

Professor McEwen: I do not have anything in particular to add. The committee has lots of experience with stakeholder engagement. The Parliament has a strong track record in ensuring that it is not just the best-resourced stakeholders that have an opportunity to engage, so I think that there should be more of the same.

Professor Hunt: The European Union has a well-developed, systematic and transparent approach to stakeholder engagement; in some ways, it is very much a model to be followed and one that we perhaps do not yet see here.

Sarah Boyack: I will follow up on Mark Ruskell's question. It was said that the procurement process could be impacted. Your written submission says:

> "whereas regulations affecting the *production* or *sale* of goods are subject to the market access principles, regulations affecting the *use* of goods are not."

Does that mean that procurement or planning would not be covered by market access principles, because that is about how products are used through Government systems, not about whether products are made in a certain way? Could you draw out the difference? It is quite important that we have that on the record. I want to check that I have understood the representations that we have had.

11:15

Professor Hunt: We made that distinction in the evidence that we gave. We were recognising that the approach that the UK has taken is distinct from the approach in which EU law applies. As Stephen Weatherill said, the EU has 70-odd years of experience of working out how the rules operate and of closed categories in relation to determining the obstacles to trade. However, it became clear that selling arrangements and the rules on sale and on product regulation did not cover everything and that things such as product use fell outside of those rules. The EU regime has evolved and adapted to accommodate that wider range of measures.

We do not know how "product use" is being defined, because we have not yet seen the internal market act in action. If there has been an explicit statement to say that that falls outside of those rules, that would be different from the EU regime, because EU law covers situations in which something might be legitimately sold but cannot be lawfully used. We were addressing those sorts of issues in our evidence.

On how such matters play into issues of public procurement, as I said, we have a framework, but we do not yet know how that framework will cut across the internal market act.

The Convener: I will roll two issues into one question, because we are up against time. The internal market act did not receive consent from the Scottish Parliament, and I believe that a judicial review is on-going in Wales. How precarious is the situation, depending on the outcome of that court case?

We have talked a lot about the interparliamentary forum and ways of scrutinising. My understanding is that we have the power to scrutinise Scottish Government ministers' actions in these areas but, as soon as executive power is used in a devolved area, we are not able even to call a UK Government minister to appear before a scrutinising committee of the Scottish Parliament. Should arrangements relating to security and transparency in such areas be formalised, perhaps through a change in the law? Even the interparliamentary forum is not yet a formal arrangement between the Parliaments. How could arrangements be firmed up to ensure that there is absolute certainty that the devolved nations can scrutinise in such areas?

Professor Hunt: The judicial review challenge from the Welsh Government will be from the Counsel General and will be heard, I think, in January. As I said, in relation to what we might find from that judgment, we have had recent experience of court readings of devolved competence being perhaps quite unexpectedly narrow. We saw the reach of the Westminster Parliament's unqualified power to legislate in relation to the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill, for example.

Again, I have no crystal ball. I do not necessarily think that an awful lot of reliance should be placed on the Welsh judicial review in improving how the internal market act plays out for the devolved legislatures.

What was your second question?

The Convener: What advice can you give us, as a scrutinising committee of the Parliament, if an executive decision is made, with the frameworks and the devolved nations being bypassed? How

do we provide scrutiny? Do formal arrangements need to be put in place that would allow us to scrutinise the UK Government's decisions on such matters?

Professor Hunt: The struggle with that, of course, is that our system of devolution is one that, in general, has not progressed through formalised or regularised processes—there are very few statutory underpinnings. There would be a certain amount of working against the grain in getting such processes established. What would be the UK Government's interest in opening up such matters to formal processes? Although there is every reason why that mechanism for accountability should be sought, we can imagine the barriers along the way to building in such a mechanism.

Professor McEwen: A formal agreement is already in place whereby committees are entitled to be informed of the Scottish Government's participation in intergovernmental discussions and agreements. Before executive powers are used, the internal market act requires that some formal consultation process takes place at ministerial level. One option open to you would be to ensure that, within the relationship between the Scottish Government and the Scottish Parliament, a formal process is in place in which committees have a role to play, whatever that might be. The responsibility of the Scottish Parliament, as a legislature, is to hold the Scottish Government to account, but that does not prevent you from scrutinising the actions of other Administrations when they have an effect on your responsibilities.

Earlier, we talked about the Office for the Internal Market and its function in scrutinising the implementation of the internal market act and the market access principles, but, to my knowledge, nobody is tasked with scrutinising the impact of the act on devolution and regulatory autonomy. The committee, perhaps in collaboration with colleagues in other legislatures and with the academic community, might want to take that on board, because that is another important dimension.

The Convener: Does Professor Weatherill want to come in?

Professor Weatherill: What has been said is more helpful than anything that I could say.

The Convener: On that note, I bring the session to an end. I thank all the witnesses for their attendance and for their helpful submissions to the committee.

Meeting closed at 11:22.

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