



OFFICIAL REPORT
AITHISG OIFIGEIL

Constitution, Europe, External Affairs and Culture Committee

Thursday 16 March 2023

Session 6



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CONSTITUTION, EUROPE, EXTERNAL AFFAIRS AND CULTURE COMMITTEE
9th Meeting 2023, Session 6

CONVENER

*Clare Adamson (Motherwell and Wishaw) (SNP)

DEPUTY CONVENER

*Donald Cameron (Highlands and Islands) (Con)

COMMITTEE MEMBERS

*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 John Denham (University of Southampton)

Professor Nicola McEwen (University of Edinburgh)

Akash Paun (Institute for Government)

CLERK TO THE COMMITTEE

James Johnston

LOCATION

The Robert Burns Room (CR1)

Scottish Parliament

Constitution, Europe, External Affairs and Culture Committee

Thursday 16 March 2023

[The Convener opened the meeting at 09:30]

Decision on Taking Business in Private

The Convener (Clare Adamson): Good morning, and welcome to the ninth meeting in 2023 of the Constitution, Europe, External Affairs and Culture Committee. Under agenda item 1, is the committee content to take item 3 in private?

Members *indicated agreement.*

Devolution Post-EU

09:30

The Convener: Under item 2, we will continue to take evidence in our inquiry into how devolution is changing post-European Union and how devolution should evolve to respond to the challenges and opportunities of the new constitutional landscape.

We are joined virtually by our colleague Mark Ruskell.

I warmly welcome our panel: Professor Nicola McEwen, professor of territorial politics at the University of Edinburgh; Akash Paun, senior fellow at the Institute for Government; and Professor John Denham, professorial research fellow in the department of politics and international relations at the University of Southampton and director of the centre for English identity and politics. We have received apologies from Professor Jo Hunt, professor of law at Cardiff University.

Over the past few months, our inquiry has identified fundamental concerns that need to be addressed in relation to how devolution is working post the UK's exit from the European Union. We have seen tensions around the Sewel convention, the balance of power, where decision making now lies, and scrutiny. Will you give your general observations on those areas? We will begin with Professor McEwen.

Professor Nicola McEwen (University of Edinburgh): Thank you for inviting me to the meeting. Devolution may be at a turning point, although, as is always the case with turning points, we will not really know that until much later and further down the line. Changes were already afoot before Brexit came along, with the new devolution settlement making things a lot more complex and interdependent given the split between devolved and reserved powers. That was already in train, but Brexit clearly exacerbated it, creating a completely new constitutional landscape within which devolution is framed.

We have seen a variety of legislative and intergovernmental processes to try to adapt to the UK being moved away from the EU regulatory umbrella. In some of those processes, Governments have worked together; in others, they have been in competition. We are also seeing competitive nationalisms, with the UK Government perhaps flexing its muscle for a variety of reasons, pushing back at the boundaries of devolution from the outside as the Scottish Government has sometimes pushed to extend them from the inside. The cumulative effect of all of that suggests to me that we are at some sort of turning point.

Akash Paun (Institute for Government): Good morning, and thank you for the invitation to take part in the committee's inquiry. I was hoping to be with you in Edinburgh, but I am afraid that the train strike put paid to that. Happily, I can take part virtually.

I agree with a lot of what Nicola McEwen has just said. Many aspects of devolution and the territorial constitution have been made uncertain. It feels as if things are in flux in various respects. I will highlight some specific points.

What we have seen post-Brexit, to some extent, is that the wider UK Government narrative around taking back control to Westminster—initially, the phrase “Take back control” was about Brexit and taking power back from Brussels—has been part of a wider constitutional perspective that many people in the Government at Westminster hold, which is rooted in a traditional view of parliamentary sovereignty and has led to greater willingness to take back powers from other institutions.

Examples include the relationship between Westminster and the courts, but also the relationship between Westminster and the devolved institutions, given the willingness that we have seen on a number of occasions for it to legislate without consent. That was largely unknown before 2016. The Sewel convention was always a convention and it was known—or assumed—to be legally unenforceable, but it was taken to be a much more binding political rule that Governments would abide by than it has now been revealed to be. That is one big area: how devolution can be protected or potentially entrenched is a big area of debate.

As Nicola McEwen alluded to, we have been left with a big zone of regulatory uncertainty because of the withdrawal of EU law, which has created a new need for greater co-operation between the Governments, new institutions and, to be frank, a new culture of shared governance. The UK as a whole and the UK Government in particular are stumbling towards a new set of approaches for dealing with those issues.

Those are the two big issues, but there are others, including the relationship between executive and legislative power, which the committee has taken an interest in. That has been destabilised somewhat and there has been a growing reliance on delegated powers and so on, which raises issues of scrutiny. I am sure that John Denham will speak about the place of England within the union, which Brexit has shone a spotlight on to a greater extent than previously.

You are addressing a big set of issues in your inquiry and I look forward to diving into some of them in more detail.

Professor John Denham (University of Southampton): As somebody whose work is largely about the politics and governance of England and its position in the union, it is a privilege for me to take part in this session, so I thank you for the invitation.

I will make two broad points. First, Brexit ought to make us consider that the United Kingdom that joined the common market in the 1970s was entirely different from the United Kingdom that left the EU in 2020. The role of the state changed, we had national devolution, and British politics fought across the island of Britain was replaced by different national political configurations. Before the common market decision, Kilbrandon was worried about England being too dominant in the union, but we now have a Government of the UK with a majority that relies almost entirely on England, where its majority is 156, giving it a UK majority of 80.

Furthermore, as Akash Paun mentioned, our ideas of parliamentary sovereignty have changed in relation to not just the nations, but the role of referenda. For example, with the current EU legislation, parliamentary sovereignty is now seen as an enabler of executive power in a way that would have been inconceivable even when I was an MP back in 2015. All those changes have taken place.

Secondly, we can now say very clearly that, if a United Kingdom Government had attempted to do Scottish and Welsh devolution at the turn of the century in a UK that was outside the EU, nobody would ever have heard of the Sewel convention. The idea that the Sewel convention would have been adequate to resolve differences of competence is unbelievable. However, we were in the EU and vast areas of potentially contested domestic policy were off the agenda, so Sewel looked adequate. It is no surprise that it is since then that the problems have come to light.

As a thought experiment, we can imagine a situation where we wanted to do devolution in that way at the end of the previous century. I am sure that the pressures would have existed to do it. We would have had to confront all the issues about what a union might look like in the 21st century that have been pushed under the carpet. At the moment, however, people are still very reluctant to have that debate about what a 21st century union might look like.

I will give an example. In a United Kingdom outside the European Union, the question of whether we can happily conflate the Government of England with the Government of the UK would have had to be addressed explicitly. It is the source of many of the difficulties that we have at the moment and, from an English point of view, it is one of the reasons why England is so badly

governed. It raises issues for the union, but it is also a problem for England, and we would have had to confront those things.

I suppose that I want to say to your timely inquiry that we have to have that discussion about a union in the 21st century. The idea that some adjustments to intragovernmental relations will resolve the quite fundamental problems seems to me to be optimistic in the extreme.

The Convener: Thank you. We will move on to question from committee members, starting with Mr Cameron.

Donald Cameron (Highlands and Islands) (Con): I welcome the panel. Professor Denham, I will start by picking up a point that you have just made. I also thank you for your written submission, which is welcome. I do not think that we in Scotland think enough about the English aspect of devolution. I was struck by your comments about your belief that tensions in the union stem from the conflation of the Government of England and the Government of the union, and that there has been a failure to delineate between the two.

With regard to intergovernmental relations, which is a major part of what we are looking at, what sort of system would you like to see in place? What system would be beneficial in mediating and leading to agreements between the component parts of the union in this day and age?

Professor Denham: It is important to separate out the governance structures of the UK and of England. If we look at England, for example, there is no civil service structure that co-ordinates the development and implementation of policy in England. English governmental policy is fragmented across union departments, some of which are for England only, some of which are for England and Wales and some of which are UK-wide, but in an unco-ordinated fashion. In practice, the UK Treasury dictates much of English domestic policy, as we saw in the budget yesterday.

The first step is to create a machinery of government for England that focuses on how England's domestic policy is governed. As we do that, we can then become more explicit about what is an issue for England and where there are union-wide areas of concern. If we have a structure that does that, we will be able—when we talk about intragovernmental relations on most issues of domestic policy, but also things such as the internal market—to identify explicitly the English issues and the union-wide issues. Where we can see that there is an English issue that is distinct from a Scottish issue, we should have a union structure that enables us to say how we are

going to negotiate the best resolution to that difference of interest.

At the moment, that process does not take place. This is not just about the formal structures of Whitehall; it is really about the mindset of ministers and civil servants whose day job is, in effect, about delivery for England, but who imagine that that is the same as being a UK minister. That is the mindset that they bring to it. They govern as an English/UK minister, and what Wales, Scotland or Northern Ireland might want is a secondary consideration that they somehow have to build into their processes. If we separated the two things out, that would lead to better governance for England, but it also would lead to a much more explicit discussion with the devolved nations and Governments about potential conflicts of interest.

09:45

Donald Cameron: Thank you for that. I ask the other panellists to give their thoughts on the system that should be in place for intergovernmental relations and how we can improve them. May I turn to you first, Nicola?

Professor McEwen: I want to follow up on John Denham's answer, which was really interesting. What we tend to see in Whitehall is that there will be a small team in a subject area, portfolio or department that deals with devolution, and the rest of the people there deal with what they think of as a UK issue. It is potentially really interesting to flip that on its head in the way that John suggests. It would serve intergovernmental relations as well, because it would make it easier to know when the UK Government was acting for England—in its capacity as, in effect, a Government for England—and when it was acting as the UK Government, or acting for the union, as it were.

Those Whitehall machinery aspects are key to reforming and improving the way that intergovernmental relations take place. We have had a big reform of the machinery of intergovernmental relations, but it has not yet been fully implemented. There has been quite a bit of political volatility since that reform was introduced, which has affected its introduction. The Senedd carried out a review of how it is being implemented, and it seems to be a little patchy. The interministerial groups that are meeting regularly are groups of officials and ministers that would have met regularly anyway. They are in spaces such as the Department for Environment, Food and Rural Affairs, where there were already very good working relationships. It appears that others are not yet up and running.

There is still a long way to go with the process. I said at the time that the process has potential, and I still believe that. However, it is also about the

culture, practice and attitudes that ministers from all the Administrations bring, and the extent to which there is willingness to genuinely work together.

Donald Cameron: Last week, interestingly, we heard evidence from civil servants who talked about the interrelationship between the system that we set up and the culture. There is a view that, if we put the system in place, the culture will follow. I do not know whether you agree with that. I want to bring in Akash Paun as well, but do you have a comment on the culture, Nicola?

Professor McEwen: Absolutely. I have done lots of research and research interviews on this subject and I have lost count of the number of times that I have heard the phrase, "It's the culture that matters." However, that is not unrelated to process. Before, a lot of it was done in an ad hoc way and the people involved did not meet. We would hope that, if we have a system that institutionalises regular interaction, the ministers and officials will get to know one other and get used to working together.

One of the innovations of the new system is that it is designed to be less hierarchical. There is more equality in the relationships at the portfolio and intermediary levels, which should in time, we hope, rebuild some of the trust that has been eroded over recent years.

Donald Cameron: Akash, do you have any comments on that or on the wider question of intergovernmental relations?

Akash Paun: I agree that the conflation of English and UK functions in Westminster and Whitehall is the source of some of these problems. I am less convinced than John Denham is that there is an easy solution to a state that has evolved over many centuries being, at its heart, a conflation of UK and English matters. It is quite hard to fix that with big structural solutions, but I agree with the analysis of the problem.

The way that that bleeds through into a suboptimal IGR system is that, as both the other witnesses have referred to, the UK Government finds it difficult to differentiate between when it is engaging with the devolved Administrations as the Government of the UK—such as when the Treasury engages with the devolved Administrations about spending allocations or the Department of Trade and Industry involves devolved Administrations in feeding into international trade negotiations—in which case a hierarchical relationship and attitude are probably, in some sense, appropriate, and when it is engaging on matters that are fully devolved. In the first situation, we are talking about a UK Government that is consulting and taking into account the views of subnational entities. In areas

where functions are fully devolved, however, the four Governments should come together more on the basis of being equals. I think that the UK Government finds it hard to make that adjustment because it does not formally differentiate between its English and UK functions.

It varies quite a bit across departments. For example, there has been some good progress around the development of common frameworks, which are supposed to operate and be agreed on the basis of consensus between the four nations. As Nicola said, however, the operation of the intergovernmental relations machinery still tends to be quite patchy and dependent on the extent to which individual ministers and secretaries of state prioritise engagement with the devolved bodies. You can see that when you look at which interministerial groups have been meeting. The DEFRA interministerial group, the Department for Digital, Culture, Media and Sport interministerial group, the interministerial group for education and the sports cabinet that DCMS runs have been meeting. In other areas, it seems that there has been no progress at all. For example, as far as I can see, interministerial groups have not even been established for health, welfare or justice. Progress has been made, but there is certainly further to go.

Donald Cameron: Thank you.

Mark Ruskell (Mid Scotland and Fife) (Green): I want to follow up on the points around the culture. The issue was raised during last week's committee meeting. We have been quite focused in this inquiry on looking at the formal consent mechanisms of the Sewel convention. We noticed that there are references in the evidence that you submitted to consultation entering legislation. To what extent are there good examples of Governments going beyond formal consent mechanisms and consultation—whatever form that might take—and working together in areas where there may be or has been co-design? I am not sure who would like to start. Akash, you are on my screen, so maybe you could start, and then we can work backwards.

Akash Paun: Yes, sure. You ask an important question. It is easy to become focused on process, machinery and so on, but the question is whether there are practical examples of good joint working. I think that there are some examples, even amidst relatively poor relationships at the high political level. There are now much more regular reports on intergovernmental relations. That is one of the ways in which things have improved following the intergovernmental relations review, and to some extent even before then.

We now have quarterly IGR reports and annual reports that contain some quite interesting case studies. I noticed from some of the recent reports

that the UK and Welsh Governments have worked together on the establishment of a freeport in Wales, and that progress is being made with green freeports in Scotland. I believe that progress has been a bit slower in Scotland, but that is quite an interesting area. Some of the city and growth deals have been essentially co-designed and co-funded, which represents good practice. There has been collaboration around the settlement of refugees from Ukraine through the homes for Ukraine scheme, and there was a lot of good joint working during Covid. You can find a few such areas that one could, I hope, build on.

On the other hand, there has been less good practice around funding for levelling up. The UK Government rolled out the levelling up fund and the shared prosperity fund in a way that bypassed the devolved Administrations, which was not ideal and has led to the unhelpful duplication of functions between central and devolved Governments. However, the picture is not all bleak, in my view.

Professor Denham: The examples that Akash Paun gave were all, with the possible exception of that of the refugees from Ukraine, examples of where the UK Government had decided on a priority that it wished to work on with a devolved Administration. I do not think that freeports were ever suggested by the Welsh or Scottish Governments. The desire to invest in city deals explicitly came from a UK Government view that it should not respect the boundaries of the devolution settlement. The areas where there has been co-operation should largely be understood as those where the UK Government wishes to extend its remit but needs, in practice, the engagement of the devolved Administrations. You can argue about whether that is a good thing or a bad thing, but it is quite different from the normal practice of co-design that might cross boundaries in different ways.

Covid is one obvious area where lots of these problems were revealed, through the issue of different public health strategies in different nations. It took a long time for people to really understand the different powers that existed in the different nations, let alone why people were taking different approaches.

While I agree that there are signs of possible good working relationships, there is a difference between areas that are essentially top down from the UK Government—areas where it engages with the devolved Administrations—and areas where people running England, Wales and Scotland get together and say, “We have a common problem. Let us discuss the different strategies by which we can approach it.” That is where the culture, in practice, is more difficult. Without the Whitehall reforms that I talked about—I happen to believe

that they are much easier than people think—you do not have a set of civil servants who think of themselves as being responsible for England and who can sit down with their colleagues from Wales and Scotland and say, “What is our joint interest here?”

Mark Ruskell: Would you say that what Akash is describing is more akin to how the UK Government would work with an English region—be that a mayoral set-up, a county council or a regional body—in selecting a priority and seeking involvement in that policy?

Professor Denham: Yes. Almost certainly the devolved Administrations have more say than an English region would, because you have significant constitutional authority and therefore the UK Government has to engage with it. In England, there has been very little engagement with the local authority view of freeports. Local authorities put in bids, but, as far as I can see, there has been much less negotiation about the nature of freeports in England. England suffers from a different type of centralisation. Akash gave examples of engagement on the nature of freeports with the Scottish and Welsh Governments, and that engagement was of a much higher quality than happened internally in England.

10:00

Professor McEwen: I agree with a lot of what John Denham has said. A lot of the examples—this goes back to my original point—reflect the fact that the UK Government is perhaps more willing to engage on areas that are devolved. It sees itself not only as a UK Government acting on reserved matters but legitimately as a Government acting for the whole of the UK on all matters, recognising the need to work with the devolved institutions on that.

You asked about co-design. That comes a bit later—it is more at the stage of implementation and roll-out rather than at the original idea’s generation. We are not really seeing co-design, with the exception of common frameworks. The frameworks programme was a positive example of co-design. It was very much a four-Administration project and was led by officials rather than ministers. However, even there, there was no a priori reason why common frameworks had to be in areas of devolved competence only. There are lots of examples of repatriated EU law in reserved areas that intersect with devolved responsibilities. Common frameworks and common approaches could have been developed in those areas too, but that did not happen. A decision was taken at the beginning that that was to be about devolved areas. That goes to the point about a different approach to devolution perhaps being created, in part, by the challenges of Brexit.

May I make one additional point? Akash Paun mentioned increased transparency, and that is right—I agree with him on that. One of the positives is that we have seen, particularly from the UK Government and the Welsh Government, an increase in the reporting of what takes place in the intergovernmental arena. However, although the quarterly reports are interesting, they are a bit glossy; you could be forgiven for thinking that everything is hunky-dory if you just took them at face value. They mask some of the underlying issues.

The Scottish Government's agreement with the Scottish Parliament was pioneering in the sense that it pushed the issue of transparency up the agenda. That seems to have fallen away a bit in the Scottish Government. I have not seen an annual report for a number of years, so it is not really an annual report and I am not quite sure where the scrutiny relationship is with the Parliament.

Mark Ruskell: That was very useful, and it brings me on to the next topic, which is your impression of how the common frameworks are working. This week in Parliament there was some scrutiny of the resources and waste common framework. I listened with interest to a Scottish Government civil servant, who explained that the approach is very evidence based. I would not say that it is completely politics-free, but it feels like an iterative framework that considers evidence on issues such as exemptions around the deposit return scheme or single-use plastics. What are your overall impressions of common frameworks right now? Is there enough transparency? Will common frameworks be put under pressure by individual issues that are coming out of the United Kingdom Internal Market Act 2020 or, indeed, the Retained EU Law (Revocation and Reform) Bill?

Akash Paun: There has been a lot of positive progress on common frameworks development. Over 30, I think, have been published. I note that a lot of them are still listed as provisional, so they have not been fully finalised and implemented. However, because they are quite technical, civil service-driven frameworks, they are serving to facilitate a lot of interaction in a slightly more structured way between officials working in these technical, regulatory areas where there is a need for an information-sharing and evidence-gathering analysis of whether rules brought in in one part of the UK might have negative effects elsewhere. Those are complex questions that will require a lot of on-going attention, and it is not entirely clear yet how they will interact with the United Kingdom Internal Market Act 2020.

As we have discussed, the idea of common frameworks was that, through agreement and consensus, divergence would be managed and

common approaches would, it was hoped, be the default. However, by agreement and notification, the four nations might take different approaches over time. The internal market act cut across the whole common frameworks programme in creating the market access principles that limit the scope for effective divergence—if a product or service is able to be provided to consumers in one part of the UK, all other parts of the UK have to accept it within their markets. That is the kind of hard law that has been brought in that cuts across the common frameworks programme.

We have seen one exclusion agreed so far to the internal market act, on single-use plastics. There is potential for that mechanism to be used more often. Again, that comes down to political will and the willingness of central Government and ministers at Westminster to allow greater divergence following agreement through the common frameworks process.

Professor McEwen: The interesting thing about the frameworks was the importance that the devolved Governments attached to the principles that underlay the frameworks programme and, in particular, to the principle of acknowledging policy divergence while enabling the functioning of the UK internal market. I always thought that the principles were sufficiently ambiguous to get the players to work together but that they were going to be difficult to operate in practice.

We are probably starting to see that now. It is difficult to tell because although there is transparency around what the frameworks are, it is much more difficult to see how they are operating in practice. They have evolved. At the outset there was an expectation that they would lead to common regulatory approaches in a sense, whereas they are not doing that now. In the main, they are more about ways of working and engagement. As Akash Paun said, there has been an attempt to depoliticise them and make them quite technical, but the technical can very quickly become very political.

The single-use plastics exemption was interesting. It revealed that a process had developed for agreeing to exemptions that could protect the authority of the devolved institutions to make public policy that had the same scope as it would have had prior to the internal market act. However, it slowed the process, so even where that mechanism works, it slows the pace of policy development and implementation. That has an effect on devolution. We are hearing now of the probability that a similar exemption may not be permitted around the deposit return scheme. It is not clear how much that mechanism will be utilised or permitted. There is a dispute resolution process within each framework, but, again, policy

development and implementation will take time. The transparency issue is key here.

Mark Ruskell: Does John Denham have any reflections on that?

Professor Denham: Nicola McEwen and Akash Paun know far more about the current operation than I do. However, I will go back to my thought experiment on doing devolution if you were starting from scratch with the UK outside the EU.

The differences that we might see would include, first, a more strategic approach to identifying the issues that need to be dealt with through a common framework in a way that has political buy-in. Secondly, there would be a four-nations discussion about issues on which England has its distinct voice. Thirdly, there would be some sort of UK-wide dispute resolution procedure for where it was not possible to agree, which would probably be operated in a way that incentivised people to find an agreement rather than to find a disagreement. In other words, it would be about avoiding a UK Government trump card always being played at the end of the discussions.

You could see how some of the discussions might work. However, if you were trying to do that 20 years ago knowing that all the areas that had been in the EU would now be disputed, the approach would be much more open, politically bought in and strategic than it seems to be at the moment.

Maurice Golden (North East Scotland) (Con): I will start with Professor Nicola McEwen, but the question is for the entire panel. To what extent is the Scottish Parliament's legislative and scrutiny function being underutilised as a result of the powers retained by the Scottish ministers in a post-Brexit environment? To what extent is the Scottish Parliament's role evolving or not evolving in a post-Brexit environment in its interactions with the Scottish ministers?

Professor McEwen: If I have understood the question correctly, I think that the Scottish ministers and ministers in all the Administrations have been given, mostly through UK legislation, enormous powers to act in secondary legislation to do things at pace. We have seen that in previous legislation, and we see it now with the Retained EU Law (Revocation and Reform) Bill. I am sure that we will come on to talk about that, because it has the potential to have an enormous impact on devolution and regulatory standards. That is another example of where things are being done at pace, but probably without sufficient scrutiny. That is not a criticism of the scrutiny mechanisms in the Scottish Parliament; it is a feature of time, the process and the tools that you are equipped with to engage in scrutiny sufficiently. That is an issue.

The continuity legislation that originated in the Scottish Parliament has also given the Scottish ministers a lot of power that is not subject to the usual scrutiny processes. I am not yet sure how that is being exercised, but it is clear that there are capacity issues in the Scottish Parliament that might hamper its ability to scrutinise those processes effectively. There are also capacity issues in the Scottish Government that might inhibit its ability to do the things that it is empowered to do.

Maurice Golden: Thank you for that. That is very helpful.

To pick up on your last point, do you think that that is largely down to capacity issues, or might institutional mechanism reform be helpful in that regard, in addition to increasing capacity?

10:15

Professor McEwen: That is a really good question. It is probably a matter of a bit of both. I think that there should be more MSPs, because you are all stretched very thinly, but that will probably not fly. I am not an advocate of a revising chamber in the Scottish Parliament, if that is what you were hinting at. I am not deeply opposed to that either; I simply think that there are other ways that are perhaps more democratically accountable. I would like to see an enhanced committee system. A lot of it is about resource, but you do a very good job.

Maurice Golden: Thanks. I am sure that that comment was for the committee as a whole.

I cannot see whether anyone else on the panel wants to say something. Are there any other comments?

Professor Denham: I will not comment on how well the Scottish Parliament works. That is way outside my expertise.

Akash Paun: Likewise, I will not comment on how the Scottish Parliament does scrutiny, but I will add that there is clearly a growing reliance on delegated legislation in many of the areas that Nicola McEwen mentioned. I do not think that the UK Parliament, even with its much greater capacity and greater number of members across two houses, necessarily does a particularly forensic job of scrutinising all of it. It is not just about capacity; it is also about whether such legislation, which is often very technical but within which there may be some important regulatory changes, is the likely focus of attention for parliamentarians. The issues involved are often not politically salient or the kind that get press coverage for members of Parliament, so a lot of delegated legislation sails under the radar, so to speak. Of course, there are committees in

Westminster that try to flag statutory instruments and other legislation of particular constitutional significance—the House of Lords Delegated Powers and Regulatory Reform Committee does a good job in that respect—but there is a huge mass of legislation to which insufficient attention is paid in any part of the UK, in my view.

Alasdair Allan (Na h-Eileanan an Iar) (SNP): It is interesting to hear your views. Professor Denham, I do not want to put words in your mouth, but I think that you talked about how adjustment to the mechanisms for communications between the various Governments may not be enough to solve some of the problems.

Last week, we heard from former civil servants, who commented on some of the causes of tension at the moment. We heard from Professor Jim Gallagher, who is a former director general for devolution at the Cabinet Office. He told us that the United Kingdom Internal Market Act 2020 was

“a breach of the Sewel convention”.—[*Official Report, Constitution, Europe, External Affairs and Culture Committee*, 9 March 2023; c 5.]

Does any of you have a view on whether we should worry about that or on whether the Sewel convention is still real and functioning?

Professor Denham: I will chip in and briefly repeat what I said earlier.

We are talking about devolution outside the EU. Had we attempted to do devolution when the UK was already outside the EU, nobody would have invented the Sewel convention, because nobody would have believed that something as inadequate, flexible or ambiguous as the Sewel convention would have been adequate for resolving the disputes that necessarily would arise in UK domestic policy outside the EU. In that sense, unless somebody thinks that I am wrong and everybody says, “No, that would be fine,” I do not believe that we would have invented the Sewel convention.

The idea that we can now make the Sewel convention work in the context that we are in is mistaken. That does not mean that you cannot make it better, but you have to go back and say, “Let’s suppose that we had done the whole devolution thing when we were already outside the EU. We would not have invented the Sewel convention.” We would have had to address the different national interests that exist in the United Kingdom and the nature of the United Kingdom itself.

We have done things the other way around—we have come out of the EU, but we have inherited an old devolution settlement—so the temptation is to say, “Well, surely we can just make the devolution settlement work a bit better.” That seems to me to be illogical, but that is the natural political

response. People shy away for all sorts of reasons from the more fundamental nature of the debates about a 21st century union but, ultimately, we have to confront that question. It is not necessarily true that the union will fall apart if we do not—all sorts of issues are involved in that—but, if we want the union to be a happy and successful place in which we have the right powers at the right level to tackle the many problems that we face, we have to have those more fundamental discussions about the future of the union. That is absolutely what I believe.

Professor McEwen: The Sewel convention was the way to combine devolution with Westminster parliamentary sovereignty. It was Westminster’s self-denying ordinance. The Westminster Parliament remained the sovereign Parliament, but it would not act in that way in devolved areas without the consent of the devolved legislatures. That clearly holds and works only so long as the practice is maintained. As we have seen in the past few years, in Brexit-related legislation at least, it has not been maintained. After the first time, it became easier to set aside the withholding of consent from the devolved institutions, and we have now seen that on a number of occasions. That erodes the authority of the devolved legislatures.

I read the excellent paper that your adviser, Chris McCorkindale, provided for you that set out very clearly the bewildering array of consent mechanisms that we have in place now. That is a problem and a challenge.

Sometimes there is ambiguity around what consent means now. Is it something that looks more like consultation or seeking to get consent, or—more strongly—is it something that expects to secure consent before acting? None of those, even when the Sewel convention was working in practice, amounts to the kind of veto power that might be seen in a federation. None of them gives constitutional protection to devolution and devolved authority. To do that, parliamentary sovereignty would have to be addressed.

The Brown commission report is interesting. There is a recognition of the problem and an attempt to resolve it. It does not go as far as proposing changing parliamentary sovereignty, but my reading of it is that it relies heavily on the much bigger reform of changing the House of Lords and making it the protector of the devolution settlements in the UK Parliament. I am not sure whether such a big change will happen any time soon, so, short of that, there might need to be other ways to offer at least some procedural protections, if not constitutional ones.

Akash Paun: I think that the UK Government would argue that it still respects and wants to preserve the Sewel convention, that the areas in

which it has legislated without consent have all been linked to Brexit, which is a not normal situation, and that the Sewel convention was always framed in terms of what should normally happen. That is the line that has been taken, but that is quite a tenuous argument. That argument perhaps made some sense for the original European Union (Withdrawal Agreement) Act 2018 and the European Union (Withdrawal Agreement) Act 2020, when there was a need to pass the legislation to, for example, avoid a no-deal Brexit at the end of the process and the Government felt that it had no alternative. Certainly, with some of the other legislation that we have seen passed without consent—most egregiously, I would argue, the United Kingdom Internal Market Act 2020—there has really just been a policy decision to push through legislation without consent. The establishment of UK ministers' spending powers and the financial assistance powers in the United Kingdom Internal Market Act 2020 was not necessitated by Brexit; that was just a decision that the UK Government took. I think that there has been a weakening of the protection to devolved autonomy that the Sewel convention provides, and that has led to lots of different proposals for what one might do about it.

We have produced a report at the Institute for Government that I think the committee has seen. It makes some suggestions for procedural reforms to at least give the consent process more visibility and more transparency to hold ministers more to account for decisions that they take to proceed without consent. Obviously, there are options to go further than that in respect of trying to give the Sewel convention some form of legal entrenchment. That is, of course, very difficult to do within a framework of parliamentary sovereignty, but it is good that that conversation is being had in Scotland. The Independent Commission on the Constitutional Future of Wales is concerned about the issue as well, as the Welsh Government has been for several years. It is an important issue for the committee to consider.

Alasdair Allan: One of the many other strains that came to the fore in our evidence last week was the issue of the Retained EU Law (Revocation and Reform) Bill. Philip Rycroft, who is a former permanent secretary at the Department for Exiting the European Union, said of that bill:

“Frankly, words almost fail me in respect of the bill. It is seeking to do the impossible.”

He said that it is

“an extraordinary piece of legislation, and one in which I see very little benefit.”—[*Official Report, Constitution, Europe, External Affairs and Culture Committee*, 9 March 2023; c 15.]

Can you comment on how you feel going forward in a world with a REUL bill where the relationship has changed? What can be done to overcome some of the problems that some witnesses have identified?

Professor McEwen: I have not read the evidence that was given last week yet, but I will read it with interest, and I expect that I will share many of the sentiments.

It is really interesting that all the other things that we have talked about—the common frameworks and the United Kingdom Internal Market Act 2020, for example—were driven by the same concern to ensure that leaving the European Union did not inadvertently create barriers to trade and mobility within the United Kingdom. To some extent, all the Governments supported that principle, if not always its operation.

The REUL bill is motivated by completely different concerns. It is motivated by sovereignty, and it is about ending the status and supremacy of retained EU law. However, it will potentially have enormous implications for devolution and regulatory standards. A deregulatory assumption is built into the bill in that burdens cannot increase—they can stay the same, or they can decrease. There are enormous challenges for the devolved institutions, and there are enormous challenges for Whitehall. Almost 4,000 pieces of legislation have been identified so far on the REUL dashboard. I think that around half of those are in DEFRA-type space, which is heavily devolved. We can expect that there will be at least hundreds of pieces of legislation that are devolved.

10:30

It is complex because sometimes you get bits of bills that are devolved and bits that are not. How much say will the Scottish Government, let alone the Scottish Parliament, have over what happens to those regulations when everyone is having to act at pace to get this done by the end of this year? There is no sunset for the devolved institutions. Things may fall accidentally.

It is creating a lot of uncertainty and a lot of concern. The Law Society of Scotland and the Faculty of Advocates presented evidence to the committee of lots of concerns among the legal community. It is difficult to know what to do about that other than to continue to raise the issues and continue to raise the devolution dimension, because there is not the capacity even to identify all the pieces of legislation, let alone know what to do with them, in the time that is available. It has the potential to cut across a lot of the other things that we have already been talking about.

Professor Denham: The bill illustrates the difficulty with talking about Westminster

sovereignty as a given—as something that we understand and which is there—because Westminster sovereignty always relied on practice as well as the doctrine of sovereignty. That required a respect for Parliament and its processes. There is no model of Westminster sovereignty in modern history that provides ministers with the rights in effect to scrap or rewrite legislation without it going before Parliament. This is an unprecedented situation. It illustrates the extent to which a simple understanding of Westminster sovereignty is now being interpreted by a particular Government as the right to remove Parliament from the process of making the laws under which we are governed. Even if we did not have the capacity issues and devolution issues that Nicola McEwen mentioned, it is quite impossible to justify that approach to undertaking legislation.

In the wider constitution debate, it highlights the fact that there is no common and shared understanding of what Westminster sovereignty means. What follows from that is that we do not have to keep blocking our thoughts about constitutional change by saying that we cannot do that because of the sovereignty of Westminster. All sorts of models of sovereignty are available to us that would be democratic and would enable the union to function. In a sense, this appalling piece of legislation illustrates why we cannot simply go on saying, “But we have Westminster sovereignty, and we cannot do anything about it”. We can reimagine it if we wish to do so.

The Convener: Mr Paun?

Akash Paun: I do not have anything to add on that issue.

The Convener: Thank you.

Jenni Minto (Argyll and Bute) (SNP): Thank you, panel. This has been very informative. Professor Denham, I read with great interest your paper on setting up an English Parliament, because I always reflect back to the West Lothian question, and I appreciate that you were in government when Scotland achieved its devolution. I am interested in your thoughts, based on your paper, of the improvements that an English Parliament could mean for the currently devolved nations.

Professor Denham: Thank you. What I hope is reasonably clear from the paper is that my proposal was not initially for a separate English Parliament but for a form of English votes for English laws in Westminster, partly because I do not think that the English would vote to set up another set of politicians at any time in the conceivable future.

Jenni Minto: You have pre-empted my next question.

Professor Denham: The practical effect of requiring MPs in England to look at English domestic legislation as a national question, rather than as a sort of subset of UK policy, if accompanied by the establishment of the sort of machinery of English national government at civil service level and the proper reflection of that in ministerial responsibilities, would start the process of disaggregating English domestic issues from the union as a whole and would therefore enable political and governmental debate across the United Kingdom to focus on those issues that we share in common and where we would wish to work together.

It is a process of unpicking the conflation of England and the UK, which would be very valuable. Historically, there is—you are aware of it, I am sure—what many people, including me, call Anglocentric British unionism, which is a long-standing English view of the union in which the union is really England writ large. There has always been an asymmetry whereby Scotland and Wales had different views of what the union was about and Northern Ireland had another one again. Part of the political challenge is to challenge that lazy, Anglocentric view of the union that is all too common in the conduct of politics and government, the media and academia in England. The big benefit is that, by having a clearer focus on England and making a clearer distinction between English and union-wide interests, we would get better union-wide policy that is more respectful of the different interests of different nations, and England would come out with a clearer sense of its interests and good governance.

Jenni Minto: Would anyone else on the panel like to comment on that?

Akash Paun: I agree that there is not much desire among the English public for a fully separate English Parliament and Administration. We will certainly not end up with any federal settlement in the near or medium term. There is a case, as John Denham has laid out, for resurrecting some form of English votes for English laws. It was tried in a fairly low-key, watered-down form that did not make much difference and was barely noticed inside or outside Westminster. If we end up with a Parliament in which the majority in England is different from that in the UK as a whole, the West Lothian question could become relevant again, and some version of what John has suggested might well make sense, along with a reflection in the Government on which functions are England-only and which are UK wide.

I agree with quite a lot of that, but the primary problem facing England is less that English interests are subsumed into the UK state and

more that England is overcentralised and that that leads to poor governance, poor policy decisions and a centre that is overburdened, trying to do too much and doing it poorly as a result. I know that John would agree with that. My primary concern is this: if one were to end up with a separate English Government and Parliament, would that be more or less likely to solve the problem of overcentralisation in England? My view is that it might worsen the problem, because the new England-wide institutions would be inclined to hoard power at the expense of regions, mayors and local government. John would probably take a different view on that.

Professor Denham: We have not come here to talk about devolution within England but, briefly, it is the absence of coherent machinery of government for England that makes devolution within England so difficult, because there is no joining up between Government departments at Whitehall level. All we see of devolution is tightly controlled by the Treasury and does not join up government departments. Akash Paun and I just take a different view of the dynamics of this: I see coherent English government as good for the union and essential to unlocking devolution within England. We shall see what happens in the years ahead.

Jenni Minto: We took evidence, two weeks ago, from the House of Lords Constitution Committee. One of the issues that were brought up was the use of secondary legislation, which was touched on in Mr Golden's question. I am interested to hear your thoughts on Baroness Drake's statement that

"it is constitutionally dubious to use secondary legislation more and more to intervene in ... devolved legislation".

She went on to say that

"where secondary legislation is used, consent should still be sought."—[*Official Report, Constitution, Europe, External Affairs and Culture Committee*, 2 March 2023; c 3.]

We have already had a bit of a discussion about consent and what that means. I would like to hear the panel's views on that.

Professor McEwen: I agree with Baroness Drake. I have not read her evidence to your committee, but I will do so with interest. From the extract that you read out, I think that she is absolutely right. Even when the Sewel convention was working, there was always ambiguity about whether it extended in Scotland to secondary legislation. It did not in Wales, but the position in Scotland was ambiguous. The committee might consider it to be worth highlighting that and pushing on it.

Whether there should be this much secondary legislation anyway is an issue; I do not think that

there should be, but there is. Given that context, it may be worth the committee pushing to ensure that Sewel, or a version of it, and a version of consent that works for you are part of that process. Absolutely, it should be subject to scrutiny. I think that that is in the REUL bill process. It may well be the case that the UK Government takes a lot of this on, on behalf of the devolved institutions, because of the capacity issues and given the time constraints. There is a lot of intergovernmental working on this, but whether the Governments consent is one issue and whether the Parliaments get a role in that is a whole other issue. I think that they absolutely should get a role in that for the purposes of democratic accountability.

Jenni Minto: That is very helpful—thank you. Would anyone else like to comment?

Akash Paun: In principle, it is hard to argue with the idea that consent should be the expectation for secondary legislation at least as much as for primary legislation where UK Government ministers are taking decisions that relate to devolved competences. The point has been well made by witnesses today and in some of the papers produced for the committee that we have a growth of different kinds of consent and consult mechanisms established in law. Some are by convention, others are binding consent requirements, and others state, "You must seek consent", and then, within a month, the Government at Westminster can proceed regardless. It is definitely not ideal to have this important constitutional principle interpreted in such different ways in different legislation. Anything that can be done to bring a bit more consistency and clarity to it would be helpful.

Sarah Boyack (Lothian) (Lab): I want to reflect on the conversation that we have had today about the top-down versus co-design way of government and the need to change post-Brexit, because what was a convention is now being swept under the carpet. What are the short-term and long-term solutions to change that? I am interested because, underpinning that, there is a centralisation issue that came out in some of the evidence that we have had.

Professor Denham, you talked about ministerial accountability in an English context. Is there not also an interesting issue to do with centralisation? When you look at the House of Lords, you see that the majority of lords are London based. We have similar tensions in Scotland on centralisation. Is there an issue that it is to do with moving from what we have now, which Professor Jim Gallagher nicely summed up as "constitutional carelessness" last week, and refreshing how accountability works in the UK and in the House of Commons? What are your short-term and longer-term priorities? I

will kick off with you, Professor Denham, and work round the other witnesses.

10:45

Professor Denham: That is a good question. My short-term measures—in the first term of a Westminster Parliament—would, undoubtedly, be to begin the process of delineating the government of England from the government structures of the United Kingdom and begin to move towards more of a four-nation approach to collaboration on union-wide issues and, maybe, begin to institute some of the changes in the House of Commons that I have outlined, and, at the same time—Akash Paun and I agree on this—bring about a very significant devolution of power within England. One thing that I think is important is that local government assume its own constitutional autonomy and protection, certainly in the way in which England is governed.

There is an interesting question, and it is probably the sort of thing that should be discussed across the union: if you wanted to give a tier of local government in England constitutional autonomy and protection in looking at how it is resourced and its rights to raise finance, for example, would that be a principle for England, or would it be one that you wanted to see across the United Kingdom? We could not legislate for it across the United Kingdom without undoing the devolution settlement, but it seems to me that that is a useful constitutional debate that ought to be had across the United Kingdom, rather than simply having a debate in which we say, “We’re interested in only one place.” Doing something about it might require voluntarism on behalf of the devolved nations—it might happen at different stages—but I highlight that as the sort of issue that, in the longer term, we should discuss. It is an important one.

You are absolutely right that the state has become very centralised. That is particularly true in England. The biggest devolution deals in England that were announced yesterday are nowhere near the powers of the Hampshire County Council that I was elected to in 1981. There has been an extraordinary centralisation of power and a removal of whole areas of service provision from democratic accountability. That debate is a devolved issue but, in a working United Kingdom where we want to make sure that we have power at the right level, it is the sort of debate that we should also have on a union-wide level.

Sarah Boyack: Akash, do you have a view on how we can embed a more decentralist approach, moving decision making out of Whitehall and towards local communities, as well as to our devolved Parliaments and institutions?

Akash Paun: Yes, as I said a few minutes ago, overcentralisation is perhaps the central problem facing England. It leads to poorer governance, it contributes to continued regional inequality and it means that we do not get the benefits of devolution in terms of scope for tailoring policy to local needs and testing out new approaches in a sort of policy laboratory. You end up with a central Government trying to do too much that it is not best placed to do.

Some progress towards decentralisation has been made in England. It does not yet go as far as I would like it to, but yesterday’s announcements for Greater Manchester and the West Midlands are, potentially, a transformational step in freeing those regions to control public spending on important areas in their regions. I would like to see a continuation and extension of that process in England. Devolution to cities, city regions and county councils is something that both parties are committed to, and I expect that that process will continue.

In Scotland, it is, of course, a matter for the Scottish Parliament. There have been some attempts by the UK Government to bypass the devolved institutions and negotiate funding arrangements directly with councils in Scotland, Wales and Northern Ireland, which, frankly, is not constitutionally appropriate. In the case of Scotland, it is a matter for the Scottish Parliament and Scottish Government. However, my impression is that Scotland has become too centralised, which does not lead to the best policy outcomes. I would like to see future Scottish Governments decentralising powers to local councils.

Sarah Boyack: What you said about revenue raising at the local level and what powers councils have is really interesting.

I was also thinking about the cross-UK issues. If you look at energy production, for example, you see that there are intergovernmental issues that are not being addressed. The UK Government sets the legislative framework and the management framework for the national grid. The Scottish Parliament and other devolved Parliaments have significant powers over renewables, but, at the local level, the councils have to get on and do the heavy lifting. There are interesting issues about intergovernmental work that should not just be seen as being parliamentary.

On your earlier comments, Nicola McEwen, do you have short-term and longer-term views of what needs to be fixed? You mentioned Sewel a lot, which is a subject that has come up in a lot of our evidence. What are your priorities for the short-term fix? What longer-term issues need to be addressed?

Professor McEwen: Sewel is one of them. Some things can be done in the short term, and, to echo John Denham's point, some things require much bigger, longer-term reforms and restructuring of the union state.

Building on the exchange that you just had with Akash Paun, one thing that I want to note is the idea of shared rule. We have talked a lot about that idea over the past few years, but it is sometimes misunderstood, because it has come to mean setting up systems and processes over areas that are devolved. However, in political science terms it means having mechanisms in place for when, let us say, devolved Governments can help to shape and influence areas such as energy policy where they do not necessarily have the competence but are affected by them. Shared rule is at the intersection of what is devolved and what is reserved, and we just do not have that—or we do not have it much. We have it a little bit in some of the interministerial groups around trade, for example, but I would like to see a lot more of that in the areas that are reserved but affect things that are devolved. I would like to see more joint working in that space in the way that there has been focus on joint working in devolved areas.

That is at the UK devolved intergovernmental space, but there is a lot to be done also in the Scottish local government intergovernmental space. In the relationships between the Scottish Government and local government in Scotland, you see some dynamics that are similar to the dissatisfaction and grievances that the devolved Governments and the Scottish Government have in their relationship with the UK Government.

That is an area that I would like to see the Scottish Parliament and Government addressing in the years to come. It is about empowering local authorities. The fiscal capacity issues that you mentioned are important. That is not something that requires action on the part of the UK Government; it is something that can be done in Scotland.

Sarah Boyack: I picked up on that in the Welsh constitutional work that is going on, which is not just about more powers for the Welsh Government and changing the Parliament but about relationships with local government. It feels like the centralisation agenda, which John Denham picked up on, is quite powerful in terms how governments work. The people at the centre have that view of the world, rather than a more consultative approach.

That was really helpful. Thank you very much.

Professor Denham: The question of energy is fascinating because it illustrates the extent to which we have often separated the debate about devolution, in terms of powers and autonomy, from

the debate about effective public policy. Energy is clearly an issue where, from a UK point of view, we need powers to be operated coherently and collaboratively at numerous different levels: by the UK Government internationally, at the level of UK nations and at the level of localities. Unless the right powers are at the right levels and we have ways of collaborating on their operations, we will never have the optimum output.

Over the past 20 years, it has been striking how the debate about devolution of powers has become separated from the debate about the achievement of effective government outcomes. Energy is a very good example, and the same approach could be extended to a number of other major policy areas.

Sarah Boyack: That is very helpful. I am thinking about things like community wealth building, municipal ownership of energy and how the national grid works. There is something about best practice, and there is potentially something about whether the actual framework suits different parts of the UK in not only a subnational sense but geographically, in terms of different opportunities. It does not feel like there is political support for a more cross-Government approach—at not just the UK devolved nations level, but the local level—to tackling the climate emergency that could make the big difference that we really need.

Professor Denham: Absolutely. That is where the combination of culture and practice comes in, because collaboration is partly about how people work together, as well as the formal powers for which they are responsible. If you do not get that right, the formal distribution of powers will not produce the outcomes that we want.

The Convener: Are there any further questions from the committee? I want to ask a final question in relation to some of the aspects of what we talked about on the importance of intergovernmental relationships and the direction of government in Westminster. We have not been able to find a single voice in favour of the REUL bill or anyone who thinks that it is a good idea, except for a small cohort in the ruling Government in Westminster.

Obviously, there are genuine constitutional concerns out there, and we do not know what impact the new Windsor agreement will have on the relationships with Northern Ireland, which, again, is in a completely different position from Scotland and Wales at the moment. Where will the pressure come from to make a change to that? Is it absolutely about personalities and relationships? Will it take a change of Government? Is there a mechanism for change, given John McFall's concerns that we are possibly sleepwalking into executive power in the UK? Where will the political

and civic pressure come from as these tensions continue over time?

Professor Denham: The civic pressure, if it comes, will come largely around environmental and labour standards and protections being removed. There is already a very big movement of concern about the dumping of sewage in rivers and seas. It has become a major public issue, including in what would be regarded as a whole swathe of marginal constituencies. That is largely taking place outside formal party politics and is very much about grass-roots mobilisation. You can see that if the REUL bill leads to clear indications that standards are being affected in other areas—the current issue is happening under the existing regulations—it could become politically very difficult for the Government between now and the general election.

We have a Government that now, following some turmoil, seems anxious to close down as many areas of civic contention as possible. That is where the issue is likely to come to a head. As somebody who is interested in constitutional issues, I would love to say that it was about the principle of Henry VIII clauses and executive rule, but I am not sure that it will directly come up in that way. You are likely to see a reaction as people become aware of the potential practical consequences. That is my perspective here in England, at least.

11:00

Akash Paun: I agree. The retained EU law bill has the symbolic importance to the Government and to a certain section of the Conservative Party of being seen to sweep away the last vestiges of EU law from the UK statute book. It has that kind of symbolic sense of finishing the job, and yet, as the convener said, it is hard to find many people pointing to the specific practical benefits that the bill will bring about. There is a wing of the Conservative Party and its coalition support that would probably favour radical deregulation of environmental and labour standards and other things, but I do not think that that is where the majority of its support lies, and I do not think that that is why most people voted for Brexit in England.

I suspect that, if the REUL bill leads to the watering down of some of those important standards in ways that people were not expecting, we will start to see the resistance that John Denham spoke about. In the meantime, it will just be a time-consuming and complex process for the UK Government and the Governments of the rest of the UK, and I am not entirely sure for what benefit.

Professor McEwen: I agree with all of that. If the REUL bill is purely about symbolism and keeps everything the same, it is, at worst, a drain on resources and a swallowing-up of time that could have been spent on other things. It might not change regulatory standards in the end. The risk, of course, is that without sufficient scrutiny, it changes standards, or that it changes standards by accident because there is not the time necessary nor awareness of the regulations that are in place to take the actions that the REUL bill allows. I fear the latter.

The situation is so complex and it is changing so much, however, that it is difficult to politicise it in a way that raises awareness. It will take a political party or a movement to channel that awareness and turn sewage in the waters and regulatory change in Westminster or wherever into a bigger political issue. I am not sure that we are connecting the dots yet.

The Convener: I thank all the panel members for their evidence, which will indeed help us in our inquiry. I am minded of somebody asking for directions and being told, “Well, I wouldn’t start from here.” I think that that is what we all feel about this at the moment.

Thank you very much for your attendance. I will move the meeting into private session for our final agenda items.

11:04

Meeting continued in private until 11:20.

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