



OFFICIAL REPORT
AITHISG OIFIGEIL

Constitution, Europe, External Affairs and Culture Committee

Thursday 29 June 2023

Session 6



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CONSTITUTION, EUROPE, EXTERNAL AFFAIRS AND CULTURE COMMITTEE
22nd 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)

*Neil Bibby (West Scotland) (Lab)

Maurice Golden (North East Scotland) (Con)

*Ben Macpherson (Edinburgh Northern and Leith) (SNP)

*Mark Ruskell (Mid Scotland and Fife) (Green)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Lisa Baird (Scottish Government)

Gerald Byrne (Scottish Government)

Euan Page (Scottish Government)

Angus Robertson (Cabinet Secretary for Constitution, External Affairs and Culture)

CLERK TO THE COMMITTEE

James Johnston

LOCATION

The Robert Burns Room (CR1)

Scottish Parliament

Constitution, Europe, External Affairs and Culture Committee

Thursday 29 June 2023

[The Convener opened the meeting at 09:00]

Devolution Post-EU

The Convener (Clare Adamson): Good morning and welcome to the 22nd meeting in 2023 of the Constitution, Europe, External Affairs and Culture Committee.

We have received apologies from Maurice Golden. I would like to express my thanks to him, Ben Macpherson and Dr Alasdair Allan, who are all moving on to new parliamentary duties, for having served on the committee. We wish you all well for the future and thank you for your incredible contribution to the work of the committee.

Our first agenda item is to look at how devolution is changing post-European Union. Our inquiry has been on-going and our final evidence session is with the cabinet secretary.

I welcome to the committee Angus Robertson MSP, Cabinet Secretary for Constitution, External Affairs and Culture, and, from the Scottish Government, Gerald Byrne, head of constitutional policy, and Euan Page, head of United Kingdom frameworks.

I invite the cabinet secretary to make an opening statement on the inquiry.

The Cabinet Secretary for Constitution, External Affairs and Culture (Angus Robertson): Thank you very much, convener. I echo your thanks to the committee members who are moving on. I also welcome the members who are joining the committee. I am a pretty regular attender, so I look forward to spending more time with the new committee members, and wish those who are departing the best of luck with their new responsibilities.

I thank the committee for the opportunity to join it today. I am also very grateful to the committee for its initiating this important inquiry. As the committee has been hearing, there are widespread concerns about the future of devolution, given the approach of the current UK Government.

I believe that anyone who supports devolution to this Parliament should be very worried about those developments. We as parliamentarians should be particularly alive to the threats to this institution. After all, we are here because the people of

Scotland voted for this Parliament. It is their democratic mandate that has given us democratic self-government in Scotland, and there is no mandate for the steady erosion of the devolution settlement that we have seen since the Brexit referendum.

Convener, you will have seen our paper that sets out how the UK Government has undermined the devolution settlement since 2016. In brief, Westminster has passed—without the Scottish Parliament's agreement—the United Kingdom Internal Market Act 2020, which reduces our effective powers and allows UK ministers to make further changes unilaterally.

The Sewel convention has, in the words of Mark Drakeford, the First Minister of Wales, “withered on the vine”. From there being no breaches between 1999 and 2018, the convention will have been breached 10 times when the Retained EU Law (Revocation and Reform) Bill receives royal assent.

The Secretary of State for Scotland and the UK Government have blocked legislation on devolved matters passed by the Scottish Parliament for the first time, using powers intended as a “last resort”—and they have done so without following any of the agreed processes intended to avoid such an action.

The UK Government is taking a direct role in devolved policy, including decisions on public spending on devolved matters, bypassing the Scottish Parliament. It has tried to redesign the Scottish deposit return scheme, changing the model agreed by this Parliament to fit its own plans. The levelling up fund has been used to pursue UK Government aims in areas of our responsibility—by “our”, I mean all of our responsibility, as a Parliament, and not just the Scottish Government's—instead of funding the priorities of this Parliament.

The Levelling-up and Regeneration Bill currently at Westminster will put on a statutory basis the UK Government's “levelling up missions”, which purport to set targets for Scotland and the rest of the UK for devolved matters, such as health, education and crime. Those matters—and any objectives and targets—are for this Parliament and this Government. The UK Government simply has no business setting such targets. To do so cuts at the very purpose of devolution; namely, to allow Scotland self-government and autonomy in areas of devolved responsibility. It is incumbent on us all as parliamentarians and supporters of devolution to recognise the threat that those actions pose to devolution and to take action to address them.

I very much look forward to hearing the committee's conclusions and recommendations, but I will finish with a few suggestions, if I may.

The pre-eminence of the Scottish Parliament to decide on devolved matters should be restated, although we still have to acknowledge Westminster's continued claim to sovereignty on all matters.

There should be a recognition that there is no hierarchy of Governments. Each has its own powers, and each has its own responsibilities. There should, therefore, be a commitment to working together with mutual respect and co-operation among the Governments of the UK, as equals. Flowing from that, the Governments should co-operate through negotiation and consensus using agreed intergovernmental processes such as common frameworks, instead of the UK Government centralising and imposing its views using the formal powers of the Westminster Parliament.

Furthermore, there should be a return to the previous constitutional norm that the Sewel convention is always followed, underpinned by proper legal duties on the UK Government.

Those are minimum necessary steps to restoring confidence in the devolution settlement. I recognise that other members will have their own ideas, and I look forward to discussing those with the committee.

The Convener: Thank you for your opening statement and for your letter in response to the committee's questions that arose from our inquiry on how devolution is changing now that we are outside the EU.

I have a topical question to ask. Yesterday, we heard news of the success of the Alcohol (Minimum Pricing) (Scotland) Act 2012, with a 13 per cent reduction in the number of alcohol deaths in Scotland. It has proved to be a policy that works in that area. There is a request that the minimum unit value be increased, which is one of the things that we have covered in the committee as being a potential grey area following the United Kingdom Internal Market Act 2020 and withdrawal from the EU due to Brexit. Is the Government considering that at the moment? Are you concerned about it?

Angus Robertson: The Government is always considering public health measures and how to ensure that we can, among other things, reduce harm. That is the intention of the minimum unit price for alcohol in Scotland. You are absolutely right to put on record the success of the measure that we introduced here. It is a policy divergence—it does not exist anywhere else in the UK.

I will reflect just for a second, as it is not unhelpful to do so, on the fact that the introduction of minimum unit alcohol pricing occurred when Scotland and the rest of the UK was part of the European Union and subject to the norms of the single European market. Notwithstanding that, a

devolved policy power in relation to health was able to be used to introduce minimum unit pricing for alcohol, and the Scottish Government of the time, confident that it was acting within its responsibilities and powers, legislated. We now have a public policy that is considered by other countries—and by our country—as a success. Given everything that we have seen since Brexit, I believe that the United Kingdom Government would have intervened by now to prevent its introduction. It has done that for other things; it would have done so for that measure.

The second thing that I will reflect on is that I spent 10 years, as some committee members know, on the European Scrutiny Committee of the UK Parliament. Week in, week out, I listened to anti-European, pro-Brexit members of that committee railing against article 308 of the European Community treaty, which relates to the efficient workings of the single European market. They argued that it was a Trojan horse against UK sovereign decision-making power in the European Union. However, notwithstanding article 308, we were able to legislate in Scotland at that time to have our policy on minimum unit pricing for alcohol. It was possible within the European Union, but it is becoming increasingly difficult within the United Kingdom when outside of the European Union.

My point is that we had flexibility while we were part of the EU. Now, the UK Government has sought not just to take back control from the EU but to take back control from Scotland, Wales and Northern Ireland, and it is doing so without a democratic mandate. I have no doubt that we will get into that, convener, so I will stop on this point: it is using a range of ways to intervene and undermine the devolved settlement and what is supposed to be a working arrangement between the Governments of the UK to avoid such circumstances. There is an ideological, anti-devolutionary, anti-self-government force at play within the Scotland Office of the UK Government, and the UK Government is perfectly happy to play along with that. That should concern all of us who support Scottish self-government, regardless of what party we are in.

Donald Cameron (Highlands and Islands) (Con): The title of the inquiry is "How is Devolution Changing post-EU?"; it is not "What is the State of Devolution at Present?"

I know your general views on this well, cabinet secretary, but you mentioned some aspects, such as the use of section 35 of the Scotland Act 1998, and the UK Government funding in devolved areas, none of which could be argued is against the devolution settlement. Some might say that it is intrinsic to the devolution settlement. To what

extent do you think that Brexit has been the catalyst for changes to attitudes, or not?

Angus Robertson: That is a good question. In my previous answer, I tried to explain some of the difference between the pre-Brexit reality of devolved, divergent policy making in Scotland within the context of the EU and the single market, and the post-Brexit reality as a by-product of the legislation that has been passed, in relation to conventions—we will come back to the Sewel convention—and, in particular, in relation to the evolution of the common frameworks as the first attempt to find a way for Governments to work together, given the fact that there are different Governments and that we have to make sure that different pieces of legislation can operate side by side, based on an understanding of how we work together, on how we work through problems, on mutual respect and on all that kind of stuff.

That was supposed to be the primary driver, but it was overtaken by the passage of the United Kingdom Internal Market Act 2020, which is, to my mind, a Trojan horse that has been driven into the devolution settlement. Why do I think that? The 2020 act allows the UK Government to use its narrow parameters to argue that pretty much anything that it does not like the look of is not permissible, and the UK Government alone is the arbiter of that.

Mr Cameron suggests that some of the post-devolution changes, such as UK Government spending in devolved areas and its use of different sections and so on, should not necessarily be a matter of concern. Well, if we believe that the Scottish Parliament and the Scottish Government that answers to it has responsibility in areas of devolved policy-making, that means that we can hold ministers to account for what they decide, but suddenly we cannot do that in relation to decisions that are being made in devolved areas by UK ministers.

09:15

I could make the political point that that is by a party that has not won a single national election in this country for 68 years, since 1955, and that it is using a number of methods to get round the Scottish Parliament, elected by the people, and the Government that answers to that Parliament. In effect, it is a subversion of the devolution settlement as we understand it, so it should concern all members who take seriously their responsibilities—as I know you do—to hold the Government to account and ensure that we do what we were elected to do.

Since Brexit, we have had the ending of our involvement in European legal frameworks and European decision making—incidentally, that

included co-decision involving member states and members of the European Parliament, as well as direct discussions and negotiations between the Scottish Government and European institutions. That has now been overtaken by a UK Government that is working on another legal basis—I acknowledge that changes were necessary to the legal frameworks post-Brexit, whether we wanted it or not. Of course, we did not vote for Brexit in this country but, nevertheless, new laws and frameworks were necessary. However, as a by-product of that, even where one comes up with arrangements to try to work one's way through policy divergence, difference of views and so on, the UK Government then disregards the rules that one has agreed.

For the first years after Brexit, we observed things such as breaches of the Sewel convention, which have been happening for some time—we will perhaps come back to that issue. For some people, there was a sense that that was kind of dry and they thought, "What does it really matter to people here?" However, we have now come to a point at which people are realising that, when you add together what the UK Government is doing across the piece in relation to the devolution settlement, it amounts to something profoundly bad—that is, the undermining of our democracy and our democratic institutions. We need to understand that that is what is happening. It is a wake-up call, and we need to call out what is happening.

Mark Ruskell (Mid Scotland and Fife) (Green): You talked about the need to return to a constitutional norm. The evidence that we had from retired former civil servants suggested that the situation that we are in right now is anything but normal. What does that path look like practically? Going forward, what does a renegotiation or a new basis or understanding look like, and how would you get to that point?

Angus Robertson: I could give a sort of structural and legalistic answer about how this or that change might be worth while. There are different ideas out there, and we might come back to those. However, to an extent, there is a more profound problem with all this. We are dealing with a Government that says openly that the Government of Scotland, elected by the people, is a "hostile government", and that antagonistic attitude infuses all the intergovernmental work that is undertaken, from top to bottom. I underline to colleagues who sometimes might be tempted for political reasons to describe the dysfunctionality around devolution as two Governments not being prepared to work together that that is a total fiction. I say that as somebody who is in the boiler room of trying to make this work.

On Mr Ruskell's question, the most important thing to make intergovernmental relations work and to make governance operate as it should is a state of mind in the UK Government that is respectful of devolution and a UK Government that is prepared to work with the Government and the Parliament of Scotland. At present, we do not have that. We could see changes in Government, but that does not guarantee that there will be a change in attitude.

We could see changes in structures, which we might come back to later. We could see the Sewel convention put on a statutory footing, for example. However, it really needs to be done on that kind of macro level, rather than shunting it off to the House of Lords to play a role in adjudicating over our own democracy, which seems a profoundly odd suggestion to get us out of the situation in which we find ourselves.

There are changes that can be made. Changing the Sewel convention to put it on a much more solid footing would be a significant change, and other changes can be made.

At the heart of things, there needs to be an understanding that devolution is about being able to make different policy choices. It is about divergence. That does not need to be a bad thing. That was possible in the European Union, but it is now increasingly not possible in the United Kingdom with an activist, ideologically driven UK Government that takes a confrontational attitude and describes a partner Government in the UK as a "hostile government".

Incidentally, I should say that our views are shared by Welsh colleagues in a Government that is led by the Labour Party. The idea that there is simply bad blood between a Scottish National Party-led Scottish Government and a Tory-led UK Government is for the birds. The concerns that I am outlining could equally be outlined by Mark Drakeford, Mick Antoniw and other colleagues in the Welsh Government, with whom we have an excellent working relationship. Both Governments agree about exactly what is happening at the present time, and we share concerns, although we have different visions of where Scotland and Wales should be going constitutionally.

We are in the boiler room of trying to make devolution work, and we see the way in which this UK Government in particular works. That was not always so. Even the Conservative Party in government at the UK level did not always take a confrontational approach, but it most certainly is now.

To answer Mr Ruskell's question, the most important thing is that we need a change of attitude in the UK Government. We can go into the details of what changes one might think about to

make the common frameworks work better and to help the UK Government to rethink its approach to the United Kingdom Internal Market Act 2020 and so on, but a different attitude that is respectful of devolution is needed.

Mark Ruskell: Yes. Political will is a precondition, and that does not exist.

I will pick up on a couple of specific issues. On the deposit return scheme, you say in your response to the committee that

"the Scottish Government was following the agreed and published process to obtain an exclusion to the Internal Market Act ... when UK Ministers intervened and created new procedural steps that are not part of that process".

Can you go into a little more detail on that?

Angus Robertson: Sure. I will give my colleagues to my left and right the opportunity to come in, if they want to add anything.

I think that most members of the committee are aware that the UK Government's specific objections to the inclusion of glass in the deposit return scheme appeared very much at the 11th hour. We know that there had not been an objection to the Welsh Government's inclusion of glass in its approach. That UK Government view came up in the rear-view mirror. Incidentally, I note that the UK Government is run by a party that had previously advocated glass being part of the deposit return scheme. At the 11th hour, towards the end of the process, the UK Government came in and used the United Kingdom Internal Market Act 2020 as a way to stymie introduction of the policy. Of course, an exemption from that act would have been needed to allow Scotland to proceed with a deposit return scheme, but the UK Government sat on that request; it did not process it as it should have and then, basically, it pulled the rug out from under the scheme. That is the long and short of what happened.

My colleagues might want to add to that.

Mark Ruskell: I am interested in the detail of how the additional procedural steps were brought in, because I do not think that that has been examined.

Euan Page (Scottish Government): I will give some context, which might be useful in setting out some of the process issues that we faced with the DRS. The many concerns that the Scottish Government had with the United Kingdom Internal Market Bill, as it was when it was going through its parliamentary process in 2020, were not just about its general effect on the operation of the devolution settlement. It was also very hard to reconcile the approach that the bill took with the approach that had been endorsed through common frameworks and the agreed joint ministerial committee statement of principles on how common

frameworks should operate, which was agreed by all the Governments in October 2017.

Very late in the bill's passage, in the second half of December 2020, through pressure from parliamentarians in both houses at Westminster, a workaround—I suppose that that is the best way to describe it—was introduced to the bill, whereby UK ministers could use their delegated powers under the act to give effect to an exclusion where agreement on policy divergence had been reached through a common framework. A ministerial statement was laid in the Parliament to that effect a year later, following work to agree a process to give effect to that commitment.

We used the process successfully, after some teething problems—that is understandable when new processes are introduced—to give effect to an exclusion for single-use plastics, which was the first successful use of the process. Initially, we proposed that the exclusion would be wide enough to cover other types of resource and waste issues, including the DRS, so that we could avoid having to go through the same process again. We felt that we were agreeing, in principle, that there was virtue in pursuing divergent policy, even if it carried a market impact, because of the wider social and environmental benefits. We felt that that principle had been established, so it made sense to have a wider exclusion. However, we ended up with UK ministers determining the scope of the exclusion very tightly around the devolved Environmental Protection (Single-use Plastic Products) (Scotland) Regulations 2021.

With that learning in mind, although we had been discussing with the UK Government and the other devolved Administrations the need for a DRS exclusion since the summer of 2021, in autumn last year we embarked on a bespoke process to secure an exclusion for the DRS, on the basis that that gave us plenty of time to work through the issues using the common framework, and to consider the evidence, including direct and indirect market impacts. That was with a view to agreement being reached and the necessary regulations being laid in Westminster to allow the Scottish regs to proceed as planned.

Our experience was that there was a lot of delay and that information that we thought had been provided had to be reprovided. We were surprised by the repeated reference to a formal ministerial request process as part of the exclusions process, when no such requirement exists. My observation is that, far from lessons having been learned from the first SUP episode, there was amplification of delays and misunderstandings about how the process operates.

That is where we are. I think that the next steps will take us back to discussing, at official level, how we can revisit the process to remove the

scope for the sort of misinterpretation that we have seen with the DRS, and to provide clarity about what the steps are and the respective roles of our Governments in giving effect to an exclusion.

Mark Ruskell: I will move on to another issue that the committee has looked at—the Retained EU Law (Revocation and Reform) Bill. Cabinet secretary, you have previously voiced to the committee your concerns about the laws in schedule 1 to the bill that might be thrown off the cliff edge. One of them concerns air quality. When the Cabinet Secretary for Transport, Net Zero and Just Transition spoke to the Net Zero, Energy and Transport Committee this week, she said that a director general had declined a request to remove from the schedule the relevant laws in relation to air quality, and that she would be seeking to escalate a further request to her ministerial counterparts. She pointed to the fact that you will be leading the work on that. Can you give us a sense of what the process now is? You have made a request to retain the important laws that you do not want to be removed through schedule 1 of that bill. Where do you go now that you have had a flat refusal to retain those laws? What does that process look like?

09:30

Angus Robertson: For the non-aficionados who are watching, I will first give the context for what we are discussing. It is worth my while to briefly explain the process that we are involved in. The Retained EU Law (Revocation and Reform) Bill has evolved dramatically and differently from the way that was originally intended. The UK Government wanted to change the status of law that was inherited in the UK statute book as a result of our being part of the European Union. The UK Government originally wanted everything to fall off a cliff edge, unless it legislated to retain laws before the proposed date at the end of this year. There was then a realisation in Whitehall that there were all kinds of risks involved in that: there were capacity issues about managing the bill; the approach was not sensible in the first place; the devolved Governments said that it was not the right way to go about things; and there was significant opposition in the House of Lords.

The UK Government therefore changed its approach to the process. Instead of allowing everything to fall off a cliff edge, it decided to identify, in a schedule, specific measures that were to be legislated out of existence. The Scottish Government was not consulted on the content of that schedule, prior to the UK Government's amendments being tabled. We carried out a rapid assessment to inform the supplementary legislative consent memorandum, which was lodged on 24 May 2023 and debated in

the Scottish Parliament. A number of members of the committee took part in that debate.

It is fair to say that, in our view, the vast majority of the laws in the schedule are no longer operable, in that they are deemed to have served their function—they are spent—and that a proportion of the statutory instruments apply in England only. However, Mr Ruskell has brought up one particular measure, which is an issue of concern and has an impact in Scotland.

At present, we are trying to go through formal processes. I remember listening very closely, in the debate that I mentioned, to Mr Cameron's suggestion that there is a process and that the process does not preclude items being withdrawn from the schedule. We are seeking to do that, so let us see. We are working with the UK Government to see whether it is, indeed, prepared to listen to the views of devolved Governments in relation to the schedule.

Mark Ruskell: What is the process? We have just heard that the process for the deposit return scheme was, in effect, being made up as we went along—not by the Scottish Government, but by the UK Government. Is there any certainty as to what the process is now? Is it about repeated meetings between ministerial counterparts who are all trying to win the argument? Is there a point at which things can be escalated, and to whom would they be escalated? Who leads on that? It feels as though we are running out of time with the bill. September is the real deadline, is it not?

Angus Robertson: Indeed. That goes to the heart of the concern about intergovernmental relations. There are common frameworks and interministerial groups—those groups are the third of the three levels of IGR interaction between devolved Administrations and the UK Government. Things are communicated at that level, and civil servants are in regular discussion with one another, so those points are discussed.

My sense is that the issue will go to the lead minister who is dealing with the bill, and that a political decision will be made. That will determine whether the views of the Scottish Government and, by extension, the Parliament are taken into account. That is wholly unsatisfactory, of course, but it is the reality of how things are currently proceeding. For its own reasons, the UK Government will take a view that the legislation needs to go through quickly, and it will then, no doubt, suggest that it is up to the Scottish Parliament and the Scottish Government to use powers that will be conferred on us to deal with the issue. However, we are back to the same problems of things happening to us that we have not agreed to, and of disregarding of the Sewel convention, again. That would be for the 10th time.

Donald Cameron: I have two questions—one on Sewel and one on IGR. I will look at IGR first.

There is a dispute mechanism in the current IGR system, and there was a consensus among witnesses who have come before the committee that that remains untried. I do not think that the Scottish Government has sought to trigger the process, although you will correct me if I am wrong. What are your views on the efficacy of the IGR system, both at ministerial and official levels?

Angus Robertson: That is a very good question. We have talked about the deposit return scheme and the last-minute nature of the UK Government's intervention. Now we are talking about the REUL bill, and things again happening at the 11th hour. We are trying to work through a process of talking to the UK Government on that. With the deposit return scheme, all kinds of communications were going back and forth, with us trying to explain the objective and what we were trying to do; then, at the 11th hour, the rug was pulled out from under the scheme. How is a dispute resolution process supposed to work at two minutes to midnight, when we are presented with a *fait accompli*? I do not know how that is supposed to work.

Donald Cameron: Is it your view, and the Scottish Government's view, that that is not even worth trying?

Angus Robertson: I hope that Mr Cameron knows that I am very pragmatic when it comes to such things. As I have said previously to the committee in evidence, one of the first things that I did in taking on my current role was to try—with Chloe Smith, who was then a minister at the Cabinet Office—to kick-start the common frameworks process. We both agreed that that was worth doing. We both agreed that it needed a shove, and we instructed officials to make progress on that. That worked. Without the 11th-hour time constraints around specific issues, in general, and with good people and good will, it was possible to deal with some issues pragmatically and to move forward.

What I am not sure about—this is why the process is untested—is what the dispute resolution process would resolve, if the UK Government's approach is to go through the formal processes but then, right at the end, to put down its trump card and say that it is invoking this or that measure in order to stop something. The UK Government has simply ruled that something is not happening. Maybe there will be circumstances in which my example—involving Chloe Smith and the Cabinet Office—would show that, in dealing with something unsatisfactory where there is not tremendous time pressure, things might be escalated in that way.

I am sure that Mr Cameron knows that, in the updated intergovernmental relationship, there are three tiers of interaction, such as between the First Minister and the Prime Minister and so on. I had a meeting this week on European Union business. That was the fourth meeting that had taken place between the UK Government and the Scottish Government based on the new intergovernmental relations, and it was the third of the four meetings that involved last-minute notice that the meeting would take place and last-minute notification of the subject. The attitude was very much “Let’s get on with this and get through the thing.”

The formal process suggests that there are ways to meet and ways to seek resolution if there is a dispute; things can be escalated. We have a process that is supposed to operate day in, day out and week in, week out. To try to put it pithily, I will say that, on a formal level, there are ways in which one should be able to avoid examples such as those that we have talked about so far. However, the problem is that, if the UK Government—which has the whip hand because of the nature of the legislation, the nature of Westminster parliamentary sovereignty and so on—is exercised, it does not really matter what frameworks and structures are in place. If one is prepared to go round them, as the UK Government has, a dispute resolution process will not solve things.

Do colleagues want to add anything to that?

Gerald Byrne (Scottish Government): The section 35 order on the Gender Recognition Reform (Scotland) Bill also came right at the end of the process. We have set out that the memorandum of understanding on use of that power was perhaps not followed in a way that we would expect for the first use of that power. That is another example that we have set out in the letter to the committee. Obviously, we cannot say much about that because there is litigation, but that matter is certainly in a similar space to what the minister has described.

Angus Robertson: I am trying to convey to colleagues on the committee that it is, obviously, easier for a Scottish Government minister to say that, because we take part in the meetings and observe how things work—in their observance and their breach—and we see the attitudes and the approach that are taken. I appreciate that it is not straightforward to think oneself into a process in order to understand how it actually works, as opposed to thinking about the formal process with the common frameworks and how they are supposed to work, and the Sewel convention and how it is supposed to work. I am in the boiler room on those things, and am trying to convey to colleagues on the committee that, because of the people involved and their ideological approach to

devolution, things are not working as they are supposed to. Even with the agreements, systems and safeguards that are in place they are not working.

I make the point again that that is not just our view; it is the view of the Welsh Government, too. It is being subjected to exactly the same approach by the UK Government, and it is instructive to see what has happened to it in relation to the deposit return scheme. From its point of view, there had been no objection to glass being included, but it is now suddenly facing the same approach as we faced from the UK Government.

Donald Cameron: Thank you.

I would like to touch on the Sewel convention, as it overlaps with some of what we have just been discussing. The committee has taken the unanimous view that the Sewel convention is under strain. There have been some very high-profile examples post-Brexit of the Scottish Parliament not consenting to legislation, but there have also been several examples of the Scottish Parliament consenting to legislation post-Brexit in areas such as fisheries and farming. For example, in 2021, the Scottish Parliament gave consent to eight UK bills. Only last night, we voted on an LCM on the Economic Crime and Corporate Transparency Bill. Your Government’s legislative consent memorandum to that bill said:

“The Scottish Government remains supportive of the intent of the Bill and believes that engagement has been good overall between officials.”

There are clearly tensions and strains in the use of the Sewel convention, but do you agree that this is about politics and personalities and that, at the official level, day to day, the Sewel convention still works?

09:45

Angus Robertson: One of the great joys of ministerial responsibility is my total admiration for the civil service, its neutrality and the advice that it gives. I assume that there are people out there who do not appreciate that there is a singular civil service in Great Britain. There is not a Scottish civil service, per se, and there is not an English or English and Welsh civil service; there is a civil service that works across Great Britain—there is a Northern Irish civil service, which is different. One of the benefits of that is that officials are able to work together, often very well at a technical level, but it presupposes a number of things.

Of course, civil servants work to ministerial guidance on things. If ministerial guidance is such that, in relation to the Sewel convention, one is prepared to make legislative proposals that require a legislative consent motion, and that is communicated on a Friday, but the next Monday,

which is less than one working day after that, the pursuit of that legislative consent motion is disregarded—that is what happened only a few short weeks ago—it shows how bad things can be. That is the case regardless of whether civil servants are working well together.

Donald Cameron is absolutely right to identify that there are good examples. There is no doubt that there is legislation on which there is co-operation and there are areas in which it makes sense to use legislative consent motions, including—to be pragmatic—where that serves public administration and best policy making.

Donald Cameron used the formulation that the Sewel convention is under strain. Mark Drakeford, the First Minister of Wales, described the Sewel convention as withering on the vine, because there has been an acceleration in the disregard of it. That is the thing that the committee should take particular cognisance of. What we are seeing is a UK Government that is prepared to disregard—increasingly and at an accelerated pace—the likes of the Sewel convention.

I know that the committee knows this, but I will say it so that it is on the record. The disregard of legislative consent motions started with the European Union (Withdrawal) Act 2018, then it continued with the European Union (Withdrawal Agreement) Act 2020, the European Union (Future Relationship) Act 2020, the United Kingdom Internal Market Act 2020, the Professional Qualifications Act 2022, the Subsidy Control Act 2022, the Nationality and Borders Act 2022, the Trade (Australia and New Zealand) Act 2023 and the Genetic Technology (Precision Breeding) Act 2023. Have a look at those dates. Do you see what is happening? It is happening in plain sight.

What is happening is that the UK Government is increasingly choosing to disregard the convention. Many—including, perhaps, Mr Cameron himself—have taken the view in the past that simply having a convention that can be disregarded is something that should be of concern. It is increasingly of concern, because what is happening here is a fact.

I know that the Secretary of State for Scotland has difficulty when he is confronted with the facts about what he and his Government are doing in relation to Sewell. These are not minor pieces of legislation; some of them are extremely important—for example, the internal market act is a profoundly important piece of legislation. The Scottish Parliament voted not to give legislative consent to the internal market act, and the UK Government disregarded that.

To Donald Cameron's point, regardless of the willingness of civil servants to work with one another—they often do so very well—if UK

Government ministers choose to disregard the devolution settlement, they will do so, and that is exactly what they are doing.

The Convener: Mr Bibby, do you have a supplementary question in that area?

Neil Bibby (West Scotland) (Lab): Yes; I do. Good morning, cabinet secretary. I share many of your concerns. I agree that the UK Government's approach has been unacceptable, and it does not align with our views on devolution.

We have a new IGR model, but I am disappointed to hear from the cabinet secretary that there has been no meaningful change. I heard his frustration earlier about the two Governments not co-operating and his refuting of the suggestion that they were. I also acknowledge what he said about the Welsh Government and Mark Drakeford's comments.

Notwithstanding the challenges that the Government faces in this area, does the cabinet secretary agree that it is notoriously difficult for the Parliament, let alone the public, to fully understand and appreciate how IGR meetings go and how the common frameworks discussions are going? Does he accept that we need more transparency? How would we achieve that? Do we need more reporting? Does that reporting need to come from UK Government ministers or Scottish Government ministers?

If the public sees the two Governments arguing all the time, unless there is greater transparency and more information in the public domain about the discussions, they might come to the conclusion that the cabinet secretary has suggested.

Angus Robertson: Some people amplify that particular perspective incorrectly. Neil Bibby's question is very good. There is tension between intergovernmental relations and transparency, which I think is understood by committee members.

The Governments are not supposed to provide a running commentary on the issues that are discussed at meetings. I might characterise my unhappiness about the general approach, but I have not provided a running commentary on the substance of what was discussed at meetings. It is important for there to be trust between Governments about how one proceeds with different policy areas; I understand and respect that.

For parliamentarians and committees that have the responsibility to hold Government and Government ministers to account, how can we best report back in a way that you can take a view on? I have given evidence to the committee a number of times, and I say again on record that I

am extremely keen that my officials work with the committee clerks to find the best way in which we can report back to the committee on retained EU law, Scottish Government alignment with European Union legislation and policies and intergovernmental relations. That is a work in progress, and discussions are taking place on how that happens in relation to retained EU law and European Union alignment.

On intergovernmental relations, we need to think about how we make clear how things work and how things do not work. If it is not already in the public realm, it is not unhelpful for people to be aware that it is a matter of record; the Scottish Government keeps records on intergovernmental relations. We try to have an institutional memory of those experiences, whether they are good, bad or indifferent.

I find it curious that a lot of this revolves around the extent to which UK Government ministers and departments understand devolution and, if they do, the extent to which they are prepared to have a pragmatic relationship, or whether they see the process as a tick-box exercise. I get the feeling quite a lot that meetings are held to simply say that consultation took place and that there was discussion on the issue, as opposed to genuinely taking something away and saying, "Right—I wasn't aware of that," or, "That's a good suggestion," or, "No, I don't think we're likely to agree with that, but let's find a pragmatic way forward."

There is a public interest in understanding how things are not working. I agree with Mr Bibby on that point, and I will definitely take away and consider how we can help committee members and the wider Scottish Parliament—and through that the public—to understand how things are not working, because it is pretty stark.

Neil Bibby: You mentioned the state of mind and the need for a different approach and culture. We have also heard about personalities and the people taking the decisions at UK Government level not wanting things to work. You mentioned that the Sewel convention has been breached 10 times since 2018 but, of course, from 1999 to 2010, when there was a Labour UK Government, it was not breached at all. Do you agree that there is an opportunity to change the mindset and the approach with a change of Government, and with a Labour Government coming in?

Angus Robertson: I am by nature a glass-half-full person. Regardless of whether there is a new Government, ministers come and go, and things might get better with some new ministers in departments, whether that is under the current Government or a future one. My political answer to Mr Bibby's question is that the ultimate solution to the problem is to not have another Government

elsewhere making decisions about this country. It will then simply be ministers here who are responsible to the committee and the Parliament. Should we really leave it to chance that, once every few years, there might be somebody who is a bit better? Why not get it right all the time in terms of the process that is at play?

I have looked closely at the suggestions that have been made by former Prime Minister Gordon Brown in relation to devolution, and I have to say that they are pretty underwhelming, given the scale of the problem that I have outlined and that has been outlined by others, including academics. No doubt, the committee will consider that matter when it comes to publish its report. When measuring against the problems that are there for all to see, I do not see how the suggestions that have been made change any of that.

With new people in post, there might be changes, but the temptation will still be there for a UK Government that retains the view that the Westminster Parliament is ultimately sovereign in everything—that is the position of the UK Labour Party as well—to take a certain approach to get away from the sort of problem that we have found ourselves in. The mindset is that there is a hierarchy of Parliaments in the UK and that one is more senior to others, and that is also the view of the Labour Party.

Changes of Governments, like changes of ministers, might bring some short-term relief, but they do not solve the problem at the heart of this. I want to encourage people to think great thoughts. If Mr Brown, or Mr Bibby's party more generally, wanted to go away and think of measures that might obviate the problems, I would very much welcome that.

The Convener: Mr Macpherson has a supplementary question in this area as well.

10:00

Ben Macpherson (Edinburgh Northern and Leith) (SNP): Going back a bit, with regard to intergovernmental relations, I reflect on my experience in Government dealing with UK ministers in different portfolio areas. I endorse what you said about how reliant the functioning of that system is on having UK ministers who understand and care about devolution. You mentioned Chloe Smith, and I would say that she is somebody who understands devolution and cares about it. I just want to give you the opportunity to reflect more on the importance of the personality of the minister in the UK Government, whatever the policy area is, in terms of intergovernmental relations. Without that, you get the experience, as you have set out, of its just being a tick-box exercise that is badly informed

and certainly not meaningful for the Scottish Government or the Welsh Government.

Angus Robertson: The characterisation is correct. The process is significantly personality driven and it is about UK ministers who do not really understand devolution or where other Governments—whether it is the Scottish Government, the Welsh Government or, when it is up and running again, the Northern Ireland Executive—might have different views. Because so many of the meetings take place so late in the day, you cannot meaningfully influence anything. That goes back to the tick-box nature of things, and that problem exists right across Government.

One definitely gets the sense that Michael Gove is viewed within the UK Government as someone who gets devolution, so he is sent out to bat on these sorts of issues. I just observe in passing that, in relation to fora where different levels of Government get together, in the British-Irish context, it is interesting how often you see that the Irish Taoiseach is present but the UK Prime Minister is not. That makes my point that such issues are not taken that seriously by the Prime Minister.

Obviously, the current Prime Minister is an improvement on the previous one, who could not even be bothered to meet the head of Government in Scotland. One of the first things that the new Prime Minister did when coming into office was to meet. That is an improvement on something that was really not good. However, unless leadership in the UK Government takes this sort of problem seriously, I do not think that things will change much. The view very much is, “Michael Gove can deal with it—he gets the nuances,” and the rest of the Cabinet see it as something that needs to be managed so that the box is ticked.

Another dimension, which no doubt some constitutional academic will write about in time, is the difference between UK Government departments, some of which have better understandings of devolution. For example, the Department for Environment, Food and Rural Affairs understands devolution better than quite a lot of other Government departments, in the same way as “Farming Today” on Radio 4 is one of the programmes on the BBC network that gets devolution better than many others, because it has to.

As well as the personality dimension, there is a departmental dimension to all this. At some point, people will delve into the different departmental views on, for example, the deposit return scheme. I am not sure that every UK Government department opposed Scotland proceeding with that; it was the Scotland Office in particular, and it did so for political reasons—it certainly was not for environmental reasons.

Alasdair Allan (Na h-Eileanan an Iar) (SNP): You began by listing what essentially amount to new systems of veto, subtle though they might be, and new ways of encroaching on the Scottish Parliament’s budget, activities and powers. Obviously, at the heart of all that, as Mr Ruskell has alluded to, is the fact that one party in the conversation—the UK Government—ultimately has the power, if it chooses to legislate, to make up the rules as it goes along. The UK Government never really talks about this very much, but is there any way through this, as long as the doctrine of Westminster sovereignty prevails? Does that have a toxic effect?

Angus Robertson: That attitude certainly infuses Westminster politics, and it is agreed by both of the main UK parties. There is no proposal from the Conservative Party or the UK Labour Party to change the nature of Westminster sovereignty, and there are no plans for a UK constitution that would ensure that everything was clearly understood and recognised.

I will digress somewhat. We should not lose sight of the fact that the UK is a multinational state in which more than 80 per cent of the population live in one part of it. That also infuses people’s mindsets about decision making, democracy and democratic institutions.

In Westminster politics—colleagues in the committee will know that I spent 16 years at Westminster, so I have a pretty good idea of how it works—there is very much a view, even among those who have a more benign view of devolution, that the UK Parliament and the UK Government are still responsible for the important stuff and the restless natives, whether they be in Scotland, Wales or Northern Ireland, deal with lesser matters. The Foreign Office guidance—encouraged by the UK Government’s Scotland Office—on external affairs that are conducted by the UK Government is a very good recent example of that phenomenon. The UK Government says, “Sit on the naughty step. Don’t get above yourself,” even though the rules about what the various Governments can do are very clear, and there is nothing to preclude the Scottish Government from holding views on absolutely anything and sharing those with others. That is a good reflection of the Westminster mindset, which is that Westminster is sovereign, that it can decide on whatever it wants, and that it will order devolved Governments around however it likes.

That is an utterly foreign concept to me. If the committee was to meet German parliamentarians or German Government ministers, or people from any other country, you would see that they have constitutionally ordered and guaranteed systems. The UK’s unwritten constitution is a licence for the UK Government to do whatever it likes.

Alasdair Allan: I hope that the convener will indulge me on my last day on the committee.

How wide an understanding do you think there is, politically and publicly, of what can be done to improve the debate on how abnormal the situation is, in international terms? Israel and, arguably, New Zealand do not have constitutions, but I think that there are no other examples of countries in the world that do not have a basic law that one can point to. We always talk about that as a problem that can be solved at some other time. Does that debate even take place in the Westminster political world?

Angus Robertson: No—not at all. Even though there is a forthcoming UK general election, I see absolutely zero debate involving the two main UK political parties about significant constitutional reform such as Alasdair Allan has outlined. Tinkering—changing this or that around the edges—might improve some things, but there is no ambition to approach things at the level that Dr Allan outlined.

Even here, in the debate this week about Scotland potentially having a constitution, the parties that oppose Scottish independence—we understand that some parties, quite legitimately, do not want Scotland to be an independent country—found it impossible, unlike others, to think about the circumstances if independence were to happen. As I mentioned in the debate, Baroness Helena Kennedy, who is one of the country's foremost constitutional lawyers and thinkers, was perfectly able to say that she is not in favour of Scottish independence but that, if it were to happen, that would be a good process to go through and a good thing to do.

There is always the view that the Government should be getting on with dealing with all the other serious issues of the day, so we should not bother with constitutional issues. Incidentally, in the 1970s, that argument was used by the Conservatives against devolution, and I heard the same argument this week in relation to Scotland's future and its having a constitution. I know that this is a dry subject for some people, but how we are governed, how our rights are safeguarded, how we hold the Government to account and so on are things that matter as much as health, education, justice, transport, the environment and all the other issues that the Government needs to address. Surely we should all aspire to the position being as good as it can be.

In the context of this specific inquiry, we are dealing with an opposite number that regards the democratically elected Scottish Government as a hostile Government, which tells you everything that you need to know about why things are as dysfunctional as they are. They are dysfunctional because the UK Government—and, foremost

within it, the Scotland Office—has so little else to do that it spends its time finding ways to undermine devolution.

Alasdair Allan: Thank you.

Donald Cameron: On Alasdair Allan's question about Westminster sovereignty, we all know one another's constitutional positions but, ultimately, devolution is what it says it is: it is not the surrender of power but the devolution of power. Intrinsic to the 1998 settlement is the understanding that the UK Government can still legislate in devolved areas. Ultimately, however much some people might dislike it and might want Scotland to be independent, devolution entails some reservation of power. As it is set up, that is just the nature of the beast—there is a reserving, or a withholding, of power.

Angus Robertson: I understand that; that is a statement of fact by Mr Cameron. That is why I think that the best form of government for Scotland is ultimate self-government, which means Scotland being a sovereign state.

On the situation short of that, I listened to a briefing by David Rogers, who is one of the most experienced civil servants in the Scottish Government. He is just about to retire, so I will take this opportunity to put on the record my personal appreciation for his long service, and the appreciation of other Scottish ministers, including the First Minister, which was shared with him directly when he spoke to the Scottish Government Cabinet last week. He is experienced enough to have been involved in such matters since right back to before devolution. The debate at that time was about the purpose of certain policies being devolved and others being reserved. That was then legislated for, and UK Governments approached the matter in a certain spirit. The context was that the Governments should be viewed as being as important as one another and that they would have different responsibilities, depending on whether areas were devolved or reserved.

10:15

The idea that 23 years later we would have the impact of Brexit—which is the context for the inquiry, of course—and the UK Government using that context as a way to involve itself directly in devolved areas while the Scottish Parliament had no democratic oversight, was definitely not foreseen as the norm of devolution and of how devolution would work. I cannot think of a single politician or academic who, at the outset of devolution, painted a picture in which this is how things could or should work.

We will shortly go on to the next evidence session, when I will replace this hat with my

culture hat to talk about how we approach culture, which is a devolved policy area. However, the UK Government, which is not answerable to this Parliament, does not consult the Government that was elected to make decisions about things relating to culture in Scotland, which is devolved. At best, that is not joined up. At worst, it subverts members' ability to hold UK ministers to account. Do they come here? Do they explain how they do all that? More often than not, they do not.

Mr Cameron wants to come back.

Donald Cameron: I am sorry, convener—I know that you are anxious to draw this to a close.

Section 35 was legislated for, as was the Government equivalent, which I think is section 48. Someone in the Labour Government, at that point, thought that there was a need to enshrine that in legislation. I am sure that there has been a change of views and practice and so on in the past 24 years, but at that point in time, someone believed that.

Angus Robertson: That is understood; Mr Cameron is making my point about the approach of the then Labour Government, which is now shared by the UK Conservative Party. It reflects their attitude that ultimate sovereignty is with the Westminster Parliament, and that Westminster has the ability to intervene in areas of devolution.

Such measures were supposed to be last resorts, but now they are not last resorts; they are being used increasingly. I acknowledge that some of those measures are in legislation but were not used. However, they are now being used in the post-Brexit context in ways that subvert the role of this Parliament in holding to account ministers who have been elected to make decisions in those policy areas, and those decisions are being made by a Government and a Parliament that are not answerable to the people who have been elected to make those decisions. That is not appropriate working of devolution or a normal understanding of a self-governing country, whether it is devolved or independent.

The Convener: We have run slightly over where I had hoped to be, cabinet secretary, but I think that we have exhausted questions on that area. Thank you. We will suspend briefly while officials change over.

10:18

Meeting suspended.

10:23

On resuming—

Culture in Communities

The Convener: Our second agenda item is our—hopefully pleasant—inquiry into culture in communities. We welcome back Angus Robertson, the Cabinet Secretary for Constitution, External Affairs and Culture, who is joined by Lisa Baird, deputy director of cultural access organisations in the Scottish Government. I invite the cabinet secretary to make an opening statement.

Angus Robertson: I am delighted to be back, convener. Thanks for your invitation to contribute to the committee's inquiry on culture in communities and for the opportunity to make some opening comments.

I am delighted that this inquiry is giving voice to the talented individuals and inspiring organisations that make up our distinctive cultures in communities across Scotland. One of the Scottish Government's ambitions is to meet communities' economic, physical and social needs, ensuring sustainability and supporting wellbeing. Culture and creativity are central to that, and our culture strategy sets out our ambition for everyone to experience the transformative potential of culture.

It is no secret that we are operating in a challenging fiscal context as a result of sustained high inflation that has been caused by the economic shocks that Scotland has faced, including the pandemic, the war in Ukraine and the on-going cost of living crisis. In light of that challenging context, we have been reviewing the actions that support our culture strategy. Although we recognise that the aims and ambitions of the strategy are still relevant, we will publish a refreshed action plan later this year setting out what we will do to respond to those challenges, and that plan will include actions on how we will support culture and creativity in our communities. I should say that I very much look forward to your inquiry being able to inform that updated approach.

Notwithstanding the challenging financial picture, we are proud that our culture funding reaches grass-roots, local, regional, national and international communities, and we do that through our support for initiatives such as the Culture Collective, Sistema Scotland and the youth music initiative, through the funding of our national public bodies for independent museums, and through our support for the national performing companies, the Edinburgh International Festival and many others. That support demonstrates the value that we place on cultural and creative organisations and their

contribution to the wellbeing of the country, promoting the arts, providing employment and working with communities across Scotland.

Members have heard of the incredible work that our national bodies and local authorities do in support of our communities. I look forward to hearing the committee's reflections on the extent to which cultural need and good place-based cultural policy exist across Scotland. As Creative Scotland says, good place-based cultural policy recognises the individual needs of people, communities and places, recognises the unique culture and heritage of individuals and communities, and responds to the ambition, need and challenges of each place. That aligns well with the ambitions of our culture strategy, and we remain fully committed to delivering at that standard for everyone in Scotland.

I will put on record something that I have not had the opportunity to say before. I want to give my huge thanks to the Scottish Parliament's information centre. Like you, I have read the briefing that was prepared for today's session. I found it extremely helpful and I want to put on record my appreciation to colleagues in SPICe for the work that they put into that.

The Convener: The committee has visited many areas of Scotland in the process of our inquiry and we have found the community-based or place-based aspect of what is going on to be important. Key to the evidence that we have taken on all those visits has been the input of the Culture Collective and how successful and well received that has been. Therefore, I am interested in your thinking about the future of that model.

Elite artists and national performing companies are in a different bracket from what might be delivered on the ground in local communities. It has been suggested that the model for culture should be like the sportscotland one, with elite activities funded in one way and grass-roots activities funded at a different level, on a local basis. Have you given any thought to that dynamic? How well do you think that the model is working at the moment?

Angus Robertson: The first thing that I would say is that the funding and support of culture in Scotland operates on different levels. You understand that very well and you have heard some excellent evidence that explains how that works. For me, an important dimension to all this is that it is not Government that decides what cultural requirements there should be for individual communities. Rather, it is for people in communities to decide together what it is that they want to see in the places where they live and work.

The fact that we operate on different levels might be confusing, but it is in fact a pretty common approach. The Scottish Government has an arm's-length organisation—Creative Scotland—to deliver funding and support to cultural organisations. Creative Scotland works hard to ensure that it understands and takes into account different cultural perspectives, needs, interests, concerns and expectations throughout the country. Of course, local government plays an important role with regard to its responsibility for cultural provision, and then there are the self-starting, self-funding, artistic or cultural organisations that plug into local government, Creative Scotland and, in some cases, the Scottish Government. The model is supposed to work in both directions.

10:30

I know that you visited a place that I have visited in Wester Hailes: the WHALE Arts community project, which has been absolutely transformational for people who live in that community. I cannot praise it highly enough.

The committee has a locus of interest in making sure that communities are able to self-define their cultural ambitions: what they want to see in or close to their communities, and how they want to organise that with the support of local government, Creative Scotland and the Scottish Government. That is a priority for all of us, as partners. The final view that we will take on delivering that—forgive me but, for reasons that will be obvious, I cannot give you a sneak peek at this—will be in the updated strategy that we will be publishing. As the convener and colleagues will know, I will be the first to come here to update the committee on that and say how all that will work.

I want to highlight that there is a genuine effort by everybody involved to make sure that we are working with one another, whether that is Scottish Government ministers meeting local government colleagues, whether that is with the Convention of Scottish Local Authorities, or whether that is through those who have responsibilities for culture—I know that Christina McKelvie is having one of those meetings in the near future. On-going dialogue takes place with Creative Scotland and there are round-table events, which we did a lot of during the lockdown and which we continue to do. We are a small, manageable-sized country of 5 million people, and all of that contributes to us trying to make sure that we are delivering the best for culture, right across Scotland.

The Convener: I invite questions from members, starting with Mr Ruskell.

Mark Ruskell: I am glad that you mentioned WHALE Arts, cabinet secretary, because one of

the themes that have come through in the inquiry is the power of such community creative organisations, which are driving and developing community and are hitting a lot of objectives around regeneration, education and inclusion. Those objectives would sit well within community planning partnerships, but another aspect of the inquiry is that we have found that there is a bit of a mismatch there. Cultural organisations and the cultural and creative sector are not always represented in the CPP structure. Do you recognise that? If you see creative organisations as being critical to the delivery of community in place and those wider objectives, how do we embed what the creative sector does much more into the planning structure, where discussions about funding, outcomes and partnership working can be taken at more of a strategic level?

Angus Robertson: There is a lot in Mr Ruskell's question. It is fair to say that there are good examples of decision making that involve culture and the arts as a mainstreamed and valued part of community planning, such as in local place plans. However, the evidence that you have received has mentioned a disconnect in certain parts of the country. We know that that has been the case in some parts of Scotland.

I remember well that in Moray, for example, when arts development officer posts, which had been funded by Moray Council, were ended, the locality lost the interlocutor—the go-to person—who knew what was happening in certain communities and certain bits of the arts and culture scene. That role was lost from the council and, by extension, national organisations.

I am aware that sometimes culture and the arts are not afforded the prominence that they should have in terms of planning. I am also aware that decisions have been made in localities that relegate the importance of culture and the arts in decision making and delivery. We then open up a wider conversation, no doubt, given the very strong theme around the empowerment of local government to make decisions about local priorities.

At the same time, I acknowledge the concern from some that that might lead to culture and the arts being less supported in some parts of the country. If one is prepared to get rid of arts development officers in certain places, one might not give priority to what is a responsibility for local government in some parts of the country. That will depend on people's priorities.

I acknowledge all that, but there is co-responsibility for delivering in culture and the arts space. I would prefer to take the approach—as I have said in previous evidence sessions—of being a glass-half-full minister in this area and work with colleagues and other decision makers to underline

the importance of mainstreaming culture and arts priorities in local decision making and local plans. When one does that—the Wester Hailes example is a really good one—the wider benefits that it brings to communities, particularly socially and economically excluded communities, cross areas of responsibility of local government and national Government, such as health and education, and are absolutely profound. I look forward to working with colleagues in local government to make sure that we are doing everything that we can.

Is there more that we could and should be thinking about to protect the vital offering that culture has? Yes. I can look at recent examples in certain areas, such as decisions that have been made about Sistema Scotland, as a warning sign that certain parts of the cultural offering that are very important are being questioned. We all need to work together to make sure that no part of the cultural and arts offering that we want communities to have is lost in any part of the country.

Mark Ruskell: Local autonomy and partnership working are obviously critical. However, as a principle, should creative and cultural organisations have a voice in community planning partnerships? Should that be the rule, in terms of individual decisions about what programmes run locally and how funding streams are developed? Should cultural organisations be baked into community planning partnerships?

Angus Robertson: That would be an entirely sensible approach. There are obviously some parts of the country that are better than others. As I have shared with colleagues before, this is an area where I might be encroaching on others' territory. Intellectually, it is difficult to say that, on the one hand, I am in favour of local autonomy and decision making but that, on the other hand, I want to tell local authorities that they must do this, must do that and must work in this way. There is a tension in there that I am sure that we all recognise, but I would hope that this truth is self-evident: if we can include cultural and arts consideration in planning, including place planning, that will be of benefit to all.

In some ways, that is happening already, but maybe some of it is more ad hoc. Last week, Willie Rennie, the MSP for North East Fife, asked me whether the Scottish Government would become involved in cultural provision in Fife. In principle, I am all in favour of arts and culture in Fife, but I had to say that I want the local authority, Fife Council, to work directly with the agency that is responsible for that, which is Creative Scotland, and that if I can be helpful and supportive, I will be. I am trying to respectfully say to the committee and to partners out there that I want us to work in

partnership. Mr Ruskell's point about making sure that people are included is entirely sensible.

Mark Ruskell: You mentioned arts development officers, which might be called different things in different places. It seems that Creative Scotland has had to step in to provide some of the development work on the ground, with the Culture Collective being an example of that. Where does that balance sit now? Do you see more of a role for national organisations to provide the glue and the link between opportunities and what exists on the ground? Alternatively, should local authorities or partners at a local level be funding and supporting that?

Angus Robertson: Local authorities have a responsibility—

Mark Ruskell: Is there a balance there, and have we got it right?

Angus Robertson: Yes, there is a balance. Local authorities have responsibility for local cultural provision, libraries and so on, but no doubt Mr Ruskell and others could point to certain parts of the country where there has been a diminution of that. If there is a diminution of what is delivered by local government, there is potential for displacement and for the costs needing to be borne by others, whether that is Creative Scotland or the Scottish Government directly.

I suppose that I am signalling to the committee that I am very alive to that as a current issue, and I am keen to work with our partners in local government to ensure that there is not a sense that, because we have a lot of other priorities, the first thing that we will economise on, given the financial constraints that we are all having to live under, is culture and the arts. There is a balance to be struck, and no doubt this area will always come under pressure. However, by making more of the importance of local government in the delivery of cultural provision and working in partnership with cultural organisations, agencies and the Scottish Government, we can get to the best place.

The Convener: Mr Bibby has a supplementary.

Neil Bibby: You touched on local community planning; I want to ask a follow-on question about Scottish Government planning at the national level. The themes of the inquiry have been very cross-cutting, and many of the issues that we have considered do not sit in your portfolio. For example, local government budgets and funding have a huge impact, as does public transport availability, which has been raised on a number of occasions. In particular, young people in Dumfries raised the importance of getting around and accessing cultural opportunities. How do you and your department engage with other ministers and departments to address the issues, so that there is

joined-up thinking not just at local community level but at national level?

Angus Robertson: I give Lisa Baird advance warning that, after I have said what I have to say, if she wants to add anything, she can do so.

In Government or any other public administration, there is always a danger of silo thinking. However, I know that there is, in the Scottish Government, a very keen interest in trying to ensure that culture and other areas are taken seriously across the Government.

10:45

That issue was the subject of Cabinet discussion and agreement. I presented a paper on the subject, which was to underline the point that Mr Bibby has made about other Government departments having a responsibility to think about how their work interrelates with culture. However, they also have a responsibility to think about that in the other direction—to think about the opportunity that culture offers them to deliver on their aims, whether they are health outcomes or something else. No doubt that could take us back to the issue of social prescribing, for example, but that is not the subject of this inquiry, so I will not speak at length about it.

Are we there yet? No, we are not. There is an understanding across Government that the right thing to do is to think about culture, the arts and social prescribing in a wider governmental sense.

Do we have all the mechanisms in place? No, we do not, yet. Do we have a unitary model that it is likely to be rolled out? No, we do not. It is a work in progress.

However—this speaks to Mr Bibby's point—we cannot just think of culture in the sense of it being the responsibility of the director in the culture and major events directorate in the Scottish Government, and what the directorate does cannot be in isolation from what it means in various communities and parts of Scotland.

Is there more that can be done on that? Of that, there is no doubt. Am I alive to it? Absolutely. If there are issues that committee members have, or that the committee as a whole has, I would be very welcoming in hearing all that. That is why I said before, convener, that this particular inquiry is timeous, given what we will be publishing shortly; it will certainly influence my thinking and that of my department colleagues about all this.

Neil Bibby: There are two more issues that I would like to highlight. One is childcare, which has come up as being a barrier to participation. We have heard from academics about the importance of getting people to participate in culture from a young age. If the Scottish Government has plans

to extend childcare—in particular, out-of-school childcare—it must not only provide that but provide opportunities for people to have cultural and sporting tasters.

The other issue is the impact of church closures, which we have heard about quite a few times. I know that the Government does not make those closure decisions—churches make them. However, we have heard a number of witnesses express concerns about church closures. They are unique facilities, with unique acoustics, and they provide cultural activities. There might be a need to support groups and organisations to take over churches in the future.

Do you have any reflections on those two issues?

Angus Robertson: I speak as the father of a four-year-old and a two-year-old, so Mr Bibby will appreciate that issues relating to childcare are very much at the forefront of my mind. Is there more that needs to be done? Absolutely—and for a number of reasons.

Self-evidently, if mums, dads and carers are not able to access childcare when they want to participate in cultural events, that is not a good thing. Similarly, it is important to think about the offer to children.

There is no doubt that some countries in the world are further down the road than we are. Are there specific proposals? I will have to defer to my ministerial colleagues who have responsibility for that area.

Is there much more that we need to do? I reflect that we are in a Parliament that has just managed to reopen its crèche, which I think is available for four hours a day, but members work a lot more than four hours in a working day.

All of us who have parental responsibilities of one form or another understand that there is more that needs to be done. Therefore, I give an unambiguous “Yes”, in response to Mr Bibby’s question.

I also reflect that, from our festivals to our museums to our built heritage, there are many cultural offerings in Scotland that are tremendous for young people, kids and even very young children. A lot of thought goes into access for the different age groups. Yes—there is more to be done, but there is a great offering. I say to anyone who is watching these proceedings from elsewhere that they should avail themselves of Scotland’s cultural attractions, because there is much for children to enjoy here.

On the question about church closures, one of the most significant contributions that local government makes to local culture is its offering of access to school buildings for cultural groups after

teaching times. We need to understand that different levels of government can provide different kinds of support for culture and arts organisations. I put on the record our appreciation of the fact that a lot of local facilities are part of the local government offering.

Mr Bibby is right to highlight the fact that, as churches reduce their historical estate, church halls and churches themselves often become no longer available. I know that the committee has received evidence on that. That underlines the importance of local government making facilities available to cultural and arts organisations. In places where those facilities do not exist, thought must be given at the local level to what alternatives might exist.

I acknowledge that church closures are a problem in some parts of the country. In part, that is a reflection of church attendance and the nature of how we live now compared to how people lived in the past. However, it is in everybody’s interests to make sure that facilities are available everywhere in the country for people to use in order to pursue their cultural interests, whatever they might be.

Donald Cameron: I want to pick up on the point that Mr Bibby made about there being a lack of public transport. Some members of the committee travelled to Dumfries to meet various cultural organisations there. The Stove Network—which is a tremendous organisation that is based in the centre of Dumfries—raised the issue of the difficulty that people in the countryside face in getting a bus into Dumfries to attend events that the organisation holds. What can the Government do to drive change so that we can remove that barrier to cultural participation, which is a particular issue in rural areas?

Angus Robertson: There are a number of ways of looking at that issue. On a macro level—no doubt the committee has looked at this—a lot of Scotland’s cultural organisations and performers go on tour to various parts of the country for the very particular reason that people across the country should have access to everything from performances by the Scottish Chamber Orchestra to shows by individual performers, and everything in between. I note that, just by happenstance, Creative Scotland today launched its latest application round for £2 million-worth of funding for theatre and dance companies to go on tour. If there any performers out there who wish to go on the road around Scotland to get to communities in Dumfries or elsewhere, that funding is a way of addressing some transport issues.

Another way in which those issues can be obviated is local cultural institutions going out into communities. Having spent quite a lot of time living

in the north of Scotland, I know just how much, for example, Eden Court theatre in Inverness does to reach out throughout the Highlands and Islands by offering performances and the opportunity to participate in cultural events across the region. However, that does not solve the problem for everybody, because buses do not run everywhere or all the time. That is part of the challenge of ensuring that we have the proper transport infrastructure in place. I used to live in a village where a bus came only two or three times a day, if you were lucky, so I am very alive to the challenges.

We want people in rural and more remote parts of the country to have as many opportunities as possible to access culture and the arts, so we must work with our local authority partners and people who are involved in transportation in order to ensure that we offer the best possible service. At the same time, we need to encourage people to make the most of services when they are in place. Together with other measures, that will ensure that we are able to provide the level of cultural offering that people want right across Scotland.

There are many things that work well. Is there more that can be done? Absolutely. Should we work in partnership with others to ensure that we deliver that? Yes—most certainly.

Donald Cameron: As has been touched on, many cultural venues are under threat. Many have closed, and there are lots of reasons for that. We have heard from community groups that feel under pressure to save their local church hall or community building. There are difficulties in that regard, but there are also difficulties in running and maintaining community assets; it would be fair to say that it is a great challenge for many community groups. What is the Scottish Government doing to assist community groups that have taken on assets in keeping them open for communities?

Angus Robertson: I will ask Lisa Baird to add to what I will say.

I absolutely recognise the pressures that venues face. Those pressures existed before Covid, but they were exacerbated during the pandemic. More often than not, venues have spent reserves on trying to maintain bricks and mortar at a time when fuel bills are such as they are, so facilities—some very much in the public realm, and some less so—have been closing.

All kinds of efforts are made to try to maintain facilities; asset transfer is one of them. I think that I am right in saying that asset transfer is not specifically the responsibility of the Scottish Government, but I will make a general point. Those responsibilities often fall on very small groups of people who are particularly community

oriented. We all know that, in smaller places, the people who are on the community council are often also involved in other committees or groups. As Mr Cameron alluded to, those are big undertakings and big responsibilities. There is the added challenge that, although people might be in place now, they might not be there in one year, two years or five years. I am not sure that I have an answer, but there is definitely a question about how people can be best advised on the likes of asset transfer.

Lisa—would you like to say anything about that?

Lisa Baird (Scottish Government): We have talked about planning legislation. The Planning (Scotland) Act 2019 includes a new power for local authorities to produce local place plans, which was enacted earlier this year. That is an opportunity for local people to set out what they want for their places and how they should be developed. That has to be taken into account in planning, so it might be a way for local people to have a voice in maintaining treasured places.

11:00

Donald Cameron: Thank you for that. I am sure that that is correct, but the issue is more immediate for people. People might have a village hall that they are trying to keep going, and they will need advice, assistance and support. However, I appreciate what has been said.

Angus Robertson: The committee has taken evidence on that, and there are examples of how the system does and does not work. I would certainly be interested in understanding all that and the extent to which we have a role, working with local decision makers. I go back to the point that I have made a number of times about not wanting to take responsibility from local decision makers. However, if the committee has identified a gap, given the current pressures that we know exist and the current threats to the viability of venues and facilities, I definitely want to understand that better. Therefore, I would be happy to receive any information that the committee has on the matter.

The Convener: I want to ask a supplementary question about the issues that Mr Cameron has asked about.

A theme that has arisen is that a lot of organisations that work in the cultural sector felt that during Covid they all of a sudden became trusted organisations by Creative Scotland and other funders. They could no longer deliver projects that had been funded and planned, but they were given the freedom to do something appropriate for communities, and they felt really trusted. Organisations have felt that they are on a treadmill in respect of the overheads that are

involved in applying for funding from Creative Scotland, local authorities and other funders, such as the Big Lottery Fund.

In Wester Hailes, we heard about doughnut funding and that the core costs for organisations are never funded. When something is project based, a project adviser might come on for a certain amount of time, and maybe organisations get members of staff. However, it is really hard to get funding for all the fundamental core costs of getting places cleaned and swept and the administration of bookings, for example. Is that something that you have been made aware of? Is the Scottish Government considering the matter?

Angus Robertson: We are certainly aware of that issue. That goes to the heart of why a multi-annual approach to funding of cultural organisations is seen as being so important by those organisations, and why—although it will not solve all the issues—it is also a priority for the Government and Creative Scotland. It is about understanding exactly the point that you have made about giving people the ability to get on with doing what they are supposed to do.

It is only fair to point out that there is a responsibility on those of us who help to apportion taxpayers' money that the money goes to support, through a process, what it is supposed to support. That is why safeguards are in place and why there is administration and hoops that need to be jumped through. They are there for very good reasons. However, I acknowledge that, if something has to be done every year, a significant amount of time, especially in smaller organisations, is spent on dealing with all that, as opposed to being spent on the rest of what they do.

We cannot get away from the fact that there is also a balance to be struck in relation to organisations that offer something that is valued by the public and that people support. If we help organisations that offer something popular to raise funds, there is a question about dependency and freedom in relation to funding, and there is a balance to be struck in that. Is that balance always correct? No. Does it work better for some than for others? No doubt it does, but it is right that there is encouragement of the culture and arts scene to try to get funding from the public—from the people who attend performances, events and so on.

We need to put on record our appreciation for the people who support cultural and arts organisations through philanthropic support. That is really important in Scotland, and I encourage it as much as possible. At the same time, the Scottish Government, through Creative Scotland, has a very important role, as do others such as the National Lottery, the Postcode Lottery and other organisations that provide funding.

I am very keen to support Creative Scotland as it moves towards a new funding model that will, I hope, obviate some of the issues around annual applications for funding. That will make a big difference because of our experience during Covid with organisations being trusted—notwithstanding the tragedy of the pandemic. Safeguards were in place to make sure that finances were spent on the wider cultural and arts purposes that they were intended for, but we can reflect on what that says about our cultural and arts organisations. That is exactly what they did, and they should be very proud of it, and we should be very proud of them.

The Convener: I absolutely agree, cabinet secretary.

Ben Macpherson: I will build on some points that have been raised. With reference to the cross-governmental benefits of culture and the enriching nature of culture across society, we all know how challenging the public finances are, and the effect of that has come up in evidence that the committee has heard.

One of the interesting proposals that we heard in Dumfries was the idea of a percentage of various departmental budgets going on culture, given the positive benefit that culture has for the economy, health and the environment. I wanted to relay that proposal to you, cabinet secretary, as you continue to consider across Government how to meet the challenge of the pressure on the public finances while supporting culture as an enriching part of our society and a social benefit.

Angus Robertson: Thank you for the encouragement. That point is being heard right across the Government. It would be remiss of me not to observe that, at a time of particular financial constraint, embracing such a paradigm shift in approach to governmental decision making might be measurable only in five, 10 or 15 years, particularly when we are dealing with intangibles. Those timeframes are way beyond the normal timeframes in which Government decision makers think, which tends to be in much shorter electoral cycles.

To give a concrete example, I note that there is widespread understanding of why Sistema is such an important offering in communities in various parts of Scotland. It is literally transformational for kids from those communities to learn music. It brings a range of other benefits that relate to education, many of which are intangible, and it leads to divergence from other perhaps less positive paths that would be taken, were Sistema not there.

How does one measure something such as that? If we are to do so, I suspect that we will be able to do so only a number of years down the road. That necessitates colleagues in Government

accepting that something is a good thing to do and embracing funding of it. We are pretty much at the beginning of that process, and it goes hand in hand with the likes of social prescribing.

Before Mr Macpherson joined the committee I sat here with the then health secretary and now, fortunately, new First Minister, who talked to the committee about why he and colleagues in healthcare very well understood the benefits that culture and the arts have to offer. The good news is that for individual ministers, the First Minister and the Cabinet—which agreed that this is the case—culture is agreed to be a priority across Government, because of what it can offer to the outcomes for which various Government departments are responsible. It is not seen simply as a responsibility for me, colleagues in the culture directorate and Government agencies that deal with culture and the arts, including Creative Scotland.

As I say, we are still in the foothills of making that process work. Will some areas be quicker than others in making that work? Yes—but there is definitely a willingness to make it work. I very much welcome the input of the committee to keep us on the right track and make sure that we do all that.

The Convener: Does anyone have more questions or comments for the cabinet secretary?

Members *indicated disagreement.*

The Convener: We have exhausted our time with you this morning, cabinet secretary. I thank you very much again for your attendance.

I have a few closing remarks to make. I again thank the members for whom this is their last time at committee. I wish them all the best in their new roles. This is the final meeting before the summer recess, so I thank all members, the clerks, the officials and advisers to the committee for their hard work during what has been a very busy time, as is evidenced by the fact that two inquiries have been discussed this morning.

I hope that everyone manages to have a well-earned rest, and I look forward to seeing you all again in September.

Meeting closed at 11:13.

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