



OFFICIAL REPORT
AITHISG OIFIGEIL

Culture, Tourism, Europe and External Affairs Committee

Thursday 18 June 2020

Session 5



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CULTURE, TOURISM, EUROPE AND EXTERNAL AFFAIRS COMMITTEE
15th Meeting 2020, Session 5

CONVENER

*Joan McAlpine (South Scotland) (SNP)

DEPUTY CONVENER

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

COMMITTEE MEMBERS

*Annabelle Ewing (Cowdenbeath) (SNP)

*Kenneth Gibson (Cunninghame North) (SNP)

Ross Greer (West Scotland) (Green)

*Gordon Lindhurst (Lothian) (Con)

*Stuart McMillan (Greenock and Inverclyde) (SNP)

*Oliver Mundell (Dumfriesshire) (Con)

*Beatrice Wishart (Shetland Islands) (LD)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Patrick Harvie (Glasgow) (Green) (Committee Substitute)

Fiona Hyslop (Cabinet Secretary for Economy, Fair Work and Culture)

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

CLERK TO THE COMMITTEE

Stephen Herbert

LOCATION

Virtual Meeting

Scottish Parliament

Culture, Tourism, Europe and External Affairs Committee

Thursday 18 June 2020

[The Convener opened the meeting at 09:00]

Subordinate Legislation

UEFA European Championship (Scotland) Act 2020 (Ticket Touting Offence) (Exceptions for Use of Internet etc) (Scotland) Regulations 2020 [Draft]

The Convener (Joan McAlpine):

Temporary loss of sound.

I welcome Fiona Hyslop, Cabinet Secretary for Economy, Fair Work and Culture; Lucy Carmichael, bill team leader; and Ninian Christie, solicitor with the Scottish Government. The cabinet secretary will make a brief opening statement, after which we will move to questions. If any member wishes to ask a question, they should type “R” in the chat box, and I will bring them in.

The Cabinet Secretary for Economy, Fair Work and Culture (Fiona Hyslop): Thank you for the opportunity to speak to the committee.

As members may recall, the committee was due to meet on 26 March to consider the ticket touting regulations that were to be associated with the UEFA European Championship (Scotland) Act 2020. However, the regulations were withdrawn following the announcement by the Union of European Football Associations on 17 March that, as a result of the coronavirus pandemic, the championship would be postponed until June and July 2021. Since then, event partners in Scotland have worked together to complete the process of reconfirming Glasgow’s host city status for 2021. Yesterday, following an executive committee meeting, UEFA announced that all twelve cities have re-committed to hosting.

In light of the rescheduling of the championship, my letter of 11 May to the committee set out details of the primary legislation that was required to amend the UEFA European Championship (Scotland) Act 2020, which will ultimately ensure appropriate commercial rights protection for UEFA and its sponsors, in order to meet the requirements for hosting matches in Glasgow.

The Coronavirus (No 2) (Scotland) Act 2020 has subsequently allowed for the necessary amendments to be made. It changed the dates of

the championship period, the definition of “championship”, and the repeal date. It also corrected a European convention on human rights compliance issue, by creating an exception to the ticket touting offence for auctions of match tickets from which proceeds are given to charity. As the committee is aware, work to correct that issue had been under way earlier this year, in the form of a remedial order, but that too was disrupted by the coronavirus outbreak and the postponement of the championship to 2021.

UEFA has announced that tickets that it has already sold will remain valid for the rescheduled event. For that reason, we felt that it was particularly urgent to make the changes through the coronavirus legislation, in order to be able to bring the ticket touting offence into force as swiftly as possible.

The ticket touting regulations, which were laid on 1 June, are consistent with the illustrative regulations that were shared with the committee in October 2019; there are only minor changes, to improve consistency or clarity. The regulations are also consistent with those which were prepared under the Glasgow Commonwealth Games Act 2008.

Subject to Parliamentary approval, the regulations specify circumstances in which the act of making facilities available in connection with electronic communications or the storage of data is, or is not, capable of constituting the touting offence. In particular, the regulations set out that providing mere conduit, caching or hosting mechanisms, which are used by internet providers for online services and the temporary display and storage of information, will not constitute the offence.

The regulations also set out conditions that must be met before enforcement action can be taken against a person who is based in another European Economic Area state and who provides internet-type services.

Scottish Government officials have worked closely with event partners on the proposals for the regulations, and we are determined to support fair access to tickets so that as many fans as possible can enjoy the matches as part of the championship.

Demand for tickets, both in Glasgow and in other host cities, is expected to exceed the number of tickets that will be available. It is anticipated that prohibiting the touting of match tickets will act as a deterrent to touts who would seek to profit, potentially significantly, from the resale of tickets. The regulations will provide a basis for both preventative and—in the event of any breach—punitive action.

As the committee is aware, the championship presents a significant economic opportunity for Scotland and I believe that it will be an important step in our recovery from the current pandemic. Hosting a major international event will provide a great opportunity for Scotland to demonstrate that we are open for business and will further enhance our reputation as a world-class host of major events.

The Convener: Thank you, cabinet secretary. The championships are certainly something that we can all look forward to.

Have information companies expressed any concern to Scottish ministers that they could fall foul of the touting offence through hosting or storing information related to an act that is in breach of the touting offence?

Fiona Hyslop: We have not received comments in relation to the illustrative ticket touting regulations that we shared with the Parliament in October 2019. The regulations follow the precedent that was set by ticket touting regulations that were made for the Glasgow Commonwealth games in 2014. Those regulations operated well in practice, and were also subject to public consultation.

Enforcement of the ticket touting offence in the 2020 act is an operational matter for Glasgow City Council and Police Scotland, but we want to continue to raise awareness of the issues as part of our engagement alongside event partners.

In answer to your question about whether any concerns have been raised by those information companies, no, none have been raised.

The Convener: Thank you. Claire Baker has the next question.

Claire Baker (Mid Scotland and Fife) (Lab): Does the cabinet secretary have any views about the concern that the process might be quite cumbersome and whether it would be an effective deterrent? The co-operation precondition that relates to the way that we have to interact with European Economic Area states if there is an issue has led to some concerns that the process is cumbersome and slow. Has anything been done to counter that concern?

Fiona Hyslop: Scottish ministers are required to include the conditions affecting enforcement action to ensure compliance with European Union law, specifically article 3 of the electronic commerce directive of 2000. I think that the member is alluding to the point that the requirements mean that the hosts and indeed member states have to pursue an issue before it can be referred under that directive.

We do not think the process is too slow to act as a deterrent. Providers will be made aware that

action can and will be taken where appropriate—certainly, there will be initial Scottish enforcement action, but action will also be taken by the host EEA state. I have indicated that it will be Glasgow trading standards and Police Scotland who would be the enforcers. Because this is an important issue, and we have dealt with it previously in relation to the Commonwealth Games, we do not think that there should be any issue with enforcement. As you know, the fine will be £5,000.

I want to reassure the committee that, although the UEFA European Championship (Scotland) Act 2020 will be repealed on 31 December 2022, the operation of section 17 of the Interpretation and Legislative Reform (Scotland) Act 2010 means that the repeal will not affect a liability to a penalty for a championship offence under the bill that has been committed before the repeal. Again, in looking at what is required, we have tried to make sure that everything is in place in anticipation of where we will be next year.

In answer to your question about whether the process will be slow, our intention is that it will not be, but we have to follow the procedures.

The Convener: Thank you. No other member has indicated that they wish to ask a question at this stage. We now move on to the next item of business, which is consideration of motion S5M-21917, in the name of the cabinet secretary, on the approval of UEFA European Championship (Scotland) Act 2020 (Ticket Touting Offence) (Exceptions for Use of Internet etc.) (Scotland) Regulations 2020.

I invite the cabinet secretary to speak to and move the motion. If any member wishes to make a contribution, please type R into the chat box and I will bring you in.

Fiona Hyslop: As we have indicated, the UEFA championships will be a great opportunity for us to bounce back, and it is important that they demonstrate Scotland at its best. We are a welcoming nation, and we want to be open to the world. As members know, football can unite the world in lots of different ways. Hosting part of the championships in Glasgow will be a fantastic opportunity but, obviously, we have to get our technical regulations in place.

Motion moved,

That the Culture, Tourism, Europe and External Affairs Committee recommends that the UEFA European Championship (Scotland) Act 2020 (Ticket Touting Offence) (Exceptions for Use of Internet etc.) (Scotland) Regulations 2020 [draft] be approved.—[*Fiona Hyslop*]

The Convener: No member has indicated that they wish to make any comments.

The question is, that motion S5M-21917, in the name of the cabinet secretary, be agreed to. If any

member disagrees, please type N in the chat box and we will then move to a vote.

No member has indicated that they oppose the motion.

Motion agreed to.

The Convener: The committee will shortly report to Parliament on the instrument. I ask members to indicate in the chat box if they are not content to delegate signing off the final report to the deputy convener and me.

No member has indicated that they are unhappy with that approach. Thank you.

Negotiation of the Future Relationship between the European Union and the United Kingdom Government

09:13

The Convener: The next item of business is an evidence session on the negotiation of the future relationship between the European Union and the United Kingdom Government. I welcome the Cabinet Secretary for the Constitution, Europe and External Affairs, Michael Russell MSP. He is joined by David Barnes, deputy director, EU exit strategy and negotiations in the Scottish Government.

As always, I would be grateful if questions and answers could be kept as succinct as possible. I remind people to give broadcasting staff a few seconds to operate their microphones before they begin to ask a question or provide an answer.

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

The Cabinet Secretary for the Constitution, Europe and External Affairs (Michael Russell): Thank you for the invitation to be here.

Given the UK Government's continuing refusal to seek an extension to the Brexit transition period and the absolute impossibility of preparing for an as yet unknown new relationship at the end of the year, I am deeply worried, as we all should be, about the implications for Scotland in the period that we are now entering.

The fourth round of negotiations finished on 5 June, and it is fair to say that both sides agreed that no progress had been made. That is not just because of the pressures of a ridiculous deadline that was set a long time ago in different circumstances; it is also because the negotiations are blocked on fundamental issues—on governance, the level playing field, fisheries and a number of other issues. There is no way that technical finessing will deal with that.

On Monday this week, the Prime Minister met the European Commission President, the European Council President and the European Parliament President. All that could be announced thereafter was the continuation of talks into August and intensification—that word was, of course, used for the discussions with the Scottish Government and the Welsh Government as long ago as January 2017.

09:15

There simply is not time to negotiate, ratify and implement a new agreement. At the same time, discussions are continuing on the implementation of the withdrawal agreement, with considerable doubt as to whether the UK is moving in the right direction at the right pace. The UK-EU joint committee, the role of which is to oversee the process, met for the second time on 12 June. The Commission vice-president who is the co-chair of the joint committee said that the UK must meet all requirements of the Northern Ireland protocol “rigorously and effectively”—those were his words—including the implementation of all checks and controls on goods entering Northern Ireland from Great Britain.

Despite the importance of the joint committee’s decisions for implementation in Scotland, including in devolved areas, the Scottish Government is not sighted on those discussions. Neither the Scottish Government nor the other devolved Governments have been provided with anything like a meaningful opportunity to influence discussions on the protocol or any other matter. Scotland’s interests have scarcely been considered at all by the UK Government.

The joint ministerial committee on EU negotiations is supposed, under its terms of reference, to oversee the negotiations. However, since January, the JMC(EN) has met only once, on 21 May, which was a virtual meeting. On 19 May, the UK Government published its draft legal texts for the negotiations, which were shared with the Scottish Government less than 24 hours before publication, with no opportunity to amend. That attitude of the UK Government, which has deteriorated even further with the new Administration that came into power in December, is what led, last Friday, to the Scottish and Welsh ministers declining to take part in a scheduled video conference with UK ministers.

In those circumstances, it is very difficult—indeed, it is next to impossible—to ensure that Scotland’s voice is heard in what are the most important constitutional negotiations for decades.

I am happy to answer questions on that, and I am sorry that I cannot be more cheerful.

The Convener: Thank you, cabinet secretary. You mentioned that you cannot be more cheerful. I mean no personal offence, but you are not often cheerful when you come before the committee to talk about Brexit, so that is perhaps no surprise.

Given the comments that you have made in the past about lack of engagement with the devolved Administrations, why was it last week that you boycotted the conference with the UK? What was the trigger, given that you have grown used to

such behaviour from the UK? What was exceptional this time?

Michael Russell: There were two issues. One was the circumstances of Friday, when the First Ministers of Wales and Scotland wrote to the Prime Minister saying, “Please do not rule out an extension,” and saying that it was absolutely vital. That is agreed by Wales, Scotland and the Northern Ireland Assembly—the Northern Ireland Administration does not have a position, because of a difference between the major players, although Michelle O’Neill, who was present at the joint committee meeting on Friday, was absolutely unequivocal in her condemnation of the decision not to seek an extension.

At the same time, Michael Gove, knowing that there was a meeting later that day, deliberately and definitively ruled out any possibility of an extension. To Jeremy Miles and me, that seemed to confirm that it did not matter what the Scottish or Welsh Governments, the Scottish Parliament, the Welsh Assembly or the Northern Ireland Assembly said—it would simply be ignored. We were due to have one of a series of occasional meetings with the Paymaster General, who I have to say has tried to behave as well as possible during these matters, but she has an impossible task. She has to take away requests from the devolved Administrations to the Chancellor of the Duchy of Lancaster, Michael Gove, and then bring back what are usually dusty answers. On Friday, we felt that we had to show that we were not prepared to go on with that charade any longer.

The second issue, as we said in the letter that we sent to Michael Gove on Friday, is that, at the very minimum, there has to be a resetting of the discussions and a complete review of how they are going forward. Because we try to be constructive, even though we disagree profoundly with what is taking place, we put to Michael Gove a list of changes that he needs to put in place in order to have any chance of meaningful negotiations. We started with the honouring of the actual remit of the joint ministerial committee on European Union negotiations. If you will permit me, convener, I want to tell the committee what that is, because it is important. It was agreed between all the Governments in 2016 and it was the basis on which we entered into discussions, accepting that we did not want Brexit.

The JMC(EN) is meant to

“discuss each government’s requirements of the future relationship with the EU; seek to agree a UK approach to, and objectives for, Article 50 negotiations”—

that did not happen—

“provide oversight of negotiations with the EU, to ensure, as far as possible, that outcomes agreed by all four governments are secured from these negotiations; and, discuss issues stemming from the negotiation process

which may impact upon or have consequences for the UK Government, the Scottish Government, the Welsh Government or the Northern Ireland Executive.”

That is clear. However, that is not happening and has not happened for some considerable time. That point has been raised at almost every meeting. It has to be recognised that that is what we are there for.

The JMC(EN) must be given precedence again and must meet regularly—we have said weekly—while the negotiations are going on. The meetings should be slotted in in a way that ensures that we can talk about, and have oversight of, the negotiations. There should be a meaningful way in which task force Europe, which is headed by David Frost, comes and discusses things. It should not be done in a pro forma way or by telling us things that we have already read in the newspapers, which is what happens. Yesterday, we had a ministerial briefing from the Paymaster General and the report from task force Europe had nothing in it that we had not already read in the newspapers. What I have asked for has to happen.

We have to ensure that the agendas for the meetings give real information and involve us in the discussions, and there has to be an intention to try to do some of the things that need to happen. For example, the Scottish, Welsh and Northern Ireland Governments have all said that, if the UK Government does not wish to participate in the horizon Europe programme and the Erasmus+ scheme, it must bring to the table the arrangements for, and requests from, the devolved Administrations to take part in those schemes, if we so wish. That issue has been evaded meeting after meeting. That is not happening. Task force Europe knows that that is what it would have to do in order to find a way in which the devolved Administrations could continue to take part in those schemes. It is not doing that, and I do not think that it has any intention of doing that. It certainly will not answer questions on that issue.

We need to get back to a situation in which there is actual discussion, actual oversight and actual action.

The Convener: Thank you for that briefing on your letter. Will your letter be published?

Michael Russell: I am quite happy to publish it. The letter was sent jointly with Jeremy Miles yesterday. As I said, there was a ministerial discussion yesterday afternoon. We received no answer to our letter but, to be fair to her, Penny Mordaunt said that she would discuss it with Michael Gove.

The Convener: We have obviously reached an impasse. You talked about not seeing the legal texts until 24 hours before they were published. If

you had had the opportunity to feed into those legal texts, how would you have changed them?

Michael Russell: The one text on which there was any discussion was the one on justice and security. It was necessary to involve the Lord Advocate, because he has an independent position as a prosecutor. He was able to point out that Scots law says certain things. He said that, in his independent role, he is responsible for a great deal of the law and, for example, the administration of extradition.

In each of the areas, we could say, “Actually, we think that this should happen.” We could go through them by giving the committee a briefing. We disagree entirely with what is said in some areas. The texts should be operating what I call the three-room model—I have discussed that with the committee previously, so I will not go into great detail. The first stage is that we should have been allowed to have a discussion about what should be in the texts. Once there was agreement on what should be in the texts, those texts should be the basis of the negotiation position. If we could agree on that position, we should be involved in, if not the actual negotiations, the supporting negotiations. Instead, the texts have been delivered as finished items—sometimes with errors in them—and those are simply what are to be used for the negotiations.

We have experts in each area who could have influenced the texts, but that has not happened. That is the issue. We have put forward ideas in each area and have tried to discuss them, but we do not get anywhere. There is a question about what details we would like to be included, we say what details we would like and then nothing happens.

Claire Baker: The need for an extension is one of the big issues. It would be a pragmatic decision to agree to an extension, given that the UK and Europe are in the grip of the Covid crisis. However, in previous evidence sessions, Philip Rycroft and Professor Hall expressed the view that a deal can be reached in the timescale, and they are optimistic about a deal being reached by October. Could a deal be reached this year? If so, what kind of deal would it be?

Michael Russell: That is a very good question. The UK is asking for a low deal, which is far away from anything that we envisaged that it would settle for a year ago. In essence, it is looking for the most rudimentary and basic free trade agreement, with the UK being able to do anything that it likes with no restrictions. It is unrealistic to think that the EU will sign up to that.

However, if there were changes on both sides, there could be a really unsatisfactory low deal, which would be almost as damaging as no deal.

Even if we could get that, it would still need to be implemented.

We have to look at the consequences and the sequencing. The consequences of such a deal would be damaging and bad for every sector of the Scottish economy, including the fisheries sector. Fisheries is the only area that the UK Government talks about in relation to Scotland, but that deal would even be unsatisfactory from the Scottish fishing perspective, let alone from any other perspective. Even if we could get that deal, a huge amount of work would need to be put in place to implement it.

For the sake of argument, let us assume that the intensification of work was to produce the outline of a deal by the end of August, which the UK Government has hinted that it thinks can be achieved. I am sceptical, as are people in Europe, that that can happen without a huge change on the UK's part, but let us assume that that is the case. That would leave four months to ratify and implement all the changes. For example, to get all the new customs officers that the UK Government has admitted would be required, it has set up, I think, the biggest customs training school in the world. I think that there will be more customs officers than there are employees of the European Union, which should give us pause for thought. Even in those circumstances, the UK would not have time to do what is required well or properly.

Moreover, the consequences of a low deal would continue to be poor for every year thereafter. The complete flimflam that we hear about trade deals with New Zealand and Australia would be exposed for what it is. I notice that *The Independent* today published the UK Government's assessment of the economic impact of the trade deal that it wants with New Zealand. It would be close to zero. Indeed, in some scenarios, the trade deal would diminish gross domestic product. For example, in Scotland, the trade in lamb will be a huge issue.

If a deal can be agreed, it will be a terrible deal. If a deal cannot be agreed, there will be a no-deal Brexit, which will be even worse, but both scenarios are not good. I also do not consider that a deal can be implemented.

Let us now consider scrutiny, because there are not only capability issues in relation to delivery. A problem that lies in the difficulties between the four nations of the UK is not just the deliberate policy of the UK Government, but the massive impact and pressure on all Governments as a result of Covid and trying to juggle that along with Brexit.

In those circumstances, there are issues of capability and scrutiny. What scrutiny opportunities would there be if a deal was reached at the end of August or at the beginning of September? It would

take a long time—certainly a couple of months—to ratify. How could that deal be properly investigated and scrutinised, particularly given the pressure on Parliaments as a result of the circumstances that we are in? It makes no sense. Such a deal is being pushed only because of the UK Government's ideological obsession and to favour a very small number of people, some of whom will make money out of it. That is a democratic disgrace. It is a disgrace that we are being pushed in that direction.

Claire Baker: Last week, we also heard evidence from Allie Renison from the Institute of Directors. Although she did not give a view on what type of deal could be reached by the end of the year, she stressed that, if a deal was reached and a new phase was to start on 1 January, there would need to be, and businesses are asking for, an implementation phase or an adjustment period. If the reality is that a deal will be reached by the end of the year, what discussions are the Scottish Government engaging in with businesses in Scotland about the implications of that and how the situation could be managed during the implementation phase?

09:30

Michael Russell: One of the real problems—I do not need to tell you this—is that business is focused on Covid and Covid recovery. Many businesses are fighting for their lives. They are doing so and surviving with Government help of various types. Their bandwidth is not wide enough to consider the implications of Brexit. I have heard that from a wide range of businesses, which are worried about the impact of Brexit but cannot think carefully or constructively about it because of the Covid difficulties that they have.

Carolyn Fairbairn, the outgoing director general of the Confederation of British Industry, made the point two weeks ago in a piece for Politico that a huge burden is being added to an absolutely massive burden. The precise figures are not clear, but if we accept that this is the worst recession of our lives, and possibly, as a *Financial Times* headline said, the worst one for 300 years, what type of insanity would lead someone to propose piling on an additional hit to GDP? The only reason for doing that would either be because they are ideologically fixated by Brexit, or because they think that they will be able to hide the damage of Brexit under worse damage being done by something else. Both of those are possible explanations; perhaps both of them are true.

Stuart McMillan (Greenock and Inverclyde) (SNP): You have already mentioned the intergovernmental relations that exist or do not exist. Those relations have been a long-running problem in these islands. One of the big

challenges, which you have just mentioned, is the economic situation that we are all facing due to Covid and that we might all face due to a potential a no-deal Brexit. You also mentioned that the Scottish Government received a report on the UK Government's negotiating position only 24 hours before it was published. Are you indicating that the Scottish Government, and potentially the other devolved nations, has had no opportunity to contribute to the UK Government's negotiating position with the EU?

Michael Russell: I am indicating that there has been no meaningful opportunity to do so. Lip service has been paid to involving the devolved Administrations, but there has been no meaningful attempt to involve or listen to us, and there is certainly no evidence that whatever we have said has made any difference at all.

Stuart McMillan: Do you think that the JMC process—I am thinking of the JMC(EN), but there are other JMCs, too—is fit for purpose? Can it work? Is there any way for it to exist meaningfully?

Michael Russell: There has been no JMC(Plenary), which is the only other part still operating, since Boris Johnson came to power. In fact, I think that the last JMC(P) was in December 2018. I would need to check that, but I am pretty sure that there was a Christmas one in December 2018, in which case, there has been no JMC(P) for the best part of a year and a half. There was a longer period without one after 2014.

Nobody who has studied the JMC process considers it to be fit for purpose. No academic or parliamentary committee here or at Westminster, Wales or Ireland has considered for a long time that it is fit for purpose. As you know, one of the ways to deal with that was to have an intergovernmental review, which the JMC accepted. That would have been at a JMC(P) meeting, so it could have been May 2018—two years ago—or even earlier than that. The review has not yet produced anything; the gestation period has been longer than that of an elephant and nothing has happened.

We believed that, up until the day of the JMC(EN) meeting held in Cardiff on, I think, 29 January—so, before lockdown—we would receive proposals that would move things on from the UK Government that had been drawn up by Michael Gove and which were going through the process of being signed off by his colleagues, but nothing happened. For some reason—I presume that some Government department objected to the proposals—we did not get them. I raised the matter in the JMC(EN) in May, and there was an agreement that the four countries would sit down and talk about restarting the process. However, I think that we simply have to accept that nothing will happen on that.

We have brought lots of ideas to the table. I want independence—what I am describing to the committee illustrates why independence is essential—but we have not failed to bring ideas to the table to move things on. The process has been long. Some time in 2019, I think—although it might have been in 2018—Mark Drakeford, my then counterpart but who is now the First Minister of Wales, and I gave substantive lectures to the Institute for Government in London in which we talked about how intergovernmental relations had to change. We and the Welsh Government disagree on the constitutional destination, but we have been able to work together to move forward and bring ideas to the table. The Welsh Government considers, and has made it clear, that sovereignty should be held by each of the nations and willingly shared. That should be what happens, but there is the fiction of sovereignty in Parliament.

We have brought ideas to the table, published them and talked about them, but we have had zilch from the UK Government. No matter what it has said, there is no commitment to change and there will not be, because there is, I believe, a deep-rooted hostility to devolution and a view of the supremacy of Westminster, which cannot be challenged. That is the core issue, and those two elements are incompatible.

As far as I can see, the UK Government will not bring anything meaningful to the table, because that would contradict the position that it holds. Members can draw their own conclusions from that.

Patrick Harvie (Glasgow) (Green): My first question follows on quite smoothly from the discussions about the JMC. After the first gap in intergovernmental relations, the JMC(P) and the JMC(EN) were established. A new mechanism was therefore created to deal with the situation. The JMC(EN) was supposed to

“seek to agree a UK approach to”

and

“provide oversight of negotiations with the EU”.

Two weeks ago, Philip Rycroft said in relation to the remit of the JMC(EN):

“It is probably fair to say that that has not operated entirely to the satisfaction of all those around that table.”—*[Official Report, Culture, Tourism, Europe and External Affairs Committee, 4 June 2020; c 11.]*

That was delicately put.

Has the JMC(EN) achieved any aspect of its remit? I am sure that the cabinet secretary has a long list of areas in which he would have liked it to have done more or to have been more effective. Has there been any aspect of the process at all in which Scotland's voice has been heard, or the

voices of the others around the table have been heard, and had an influence and changed the UK Government's negotiating position? Has the JMC(EN) achieved its remit to any extent, even on a single issue?

Michael Russell: That is an entirely fair question. I would like to think that there was a purpose to it, particularly in its earlier incarnations. We are talking about the difficulty of squaring a circle. I think that there was a greater attempt to square the circle in the early days, particularly with the involvement of Damian Green, who was constructive and stripped away a lot of the difficulties that existed.

Philip Rycroft's comment was very civil service. We know that the four points of the remit of the JMC(EN) include to

"discuss each government's requirements of the future relationship with the EU".

We could say that it has done that, because there has been endless discussion.

On outcomes, it seeks

"to agree a UK approach to, and objectives for, Article 50 negotiations".

The JMC(EN) Committee never saw the UK Government's article 50 letter and never discussed the approach that was taken. There was a lot of discussion but, again, at the end of the day, it had no effect.

The third part of the JMC(EN)'s remit is to

"provide oversight of negotiations with the EU, to ensure, as far as possible, that outcomes agreed by all four governments are secured from these negotiations".

There has been no oversight. I do not think that David Frost would regard himself as being overseen by the JMC(EN), and there has certainly been no meaningful reporting.

It would be an interesting question to put to David Frost, but I think we would get a civil service answer and I am absolutely certain that he would reject that oversight. Interestingly, and constitutionally, the only oversight of David Frost would be from the Prime Minister. David Frost therefore stands in a very strange position. One of the questions that needs to be asked is why an official is operating in that way and why he is using the language that he is using, as it is language to which we should take exception.

The final part of the remit is to

"discuss issues stemming from the negotiation process which may impact upon or have consequences for the UK Government".

That is the heart of the matter. We should not get to that point because, at part three, we should be changing the things that would cause damage.

There was the potential for a positive outcome, because we went into the process, and the Welsh certainly went into it, with the view that we could compromise on issues such as the single market and customs union access, which would allow the UK to get what it wanted and allow us to get a compromise on the terms of Brexit. As the UK's position became more extreme, from Davis and May to the present real extremists, that has become completely impossible. They do not want there to be anything other than their type of very hard Brexit.

In hindsight, we can see that May was pushed into that position by the right-wing extremists. When her time was done and they could not get any more out of her, they put even harder-line people in place to do it. Johnson is being pushed, or probably being willingly driven, into the most extreme position.

The potential was there; it was never exercised.

Patrick Harvie: The question that follows on from that is about whether a shred of potential still exists. It is all well and good talking about how the intergovernmental relationship was in the past, and people will have their own analysis of that, but we are where we are and we need to think about what will happen.

You began your opening remarks by saying that there is a complete deadlock and mismatch between the positions of the UK and EU. Is that also the case with the Scottish position and the UK position? If there was a change of attitude from the UK Government and a change in their willingness to talk, is there any potential for overlap between the positions being taken by the two Governments? Are you offering us a counsel of despair and simply saying that this is being done to us and there is nothing that can be done between the two Government positions?

Michael Russell: The implication is that we need to continue, and intensify—there is that word again—the work that we have been doing on independence because, clearly, the UK has not moved in any meaningful way or in any way at all towards the compromise that we sought. Indeed, when we suspended our work on independence to face the Covid crisis, there was no quid pro quo but there was an understanding that the UK Government was also fully focused on Covid.

One of the big impacts that we could have on the economy without risking anything to do with the R number would be to accept an extension. The fact that the UK Government has refused to do so indicates to me that the compromise that we made to ensure that all our resources were focused on Covid will need to be revisited. That is hard to do because the Covid crisis is far from over and we need to focus on saving people's

lives, but I would be wrong not to indicate that we are undoubtedly in deadlock with the UK, just as there is deadlock between the UK and the EU. If there was change to be had, we might be able to find some means of continuing to discuss the issues, and Jeremy Miles and I have written to Michael Gove with the minimum proposals that might achieve that. Do I expect the UK to change? No, I do not. Therefore, I think we are moving inexorably towards renewing and accelerating the work that we have been doing.

09:45

Gordon Lindhurst (Lothian) (Con): I want to ask about the discussions on a possible extension. What proposals were put on the table by the Scottish Government with regard to financial provision in the event of an extension being sought or entered into?

Michael Russell: That issue is already dealt with in the withdrawal agreement, as you no doubt know. The withdrawal agreement indicates that an extension can be sought on the basis of an agreed financial contribution. The EU has made it clear that the agreed financial contribution would be the continuation of the current position. Michael Gove has given ludicrous figures on what an extension would cost. The reality is that an extension would be an extension and that we would continue to pay the costs that we pay now, which would be many times cheaper than the cost of the financial disaster that we would be entering into otherwise. If I remember correctly, Alister Jack—it might have been someone else—raised that issue at the last JMC meeting. He clearly had not read the withdrawal agreement, but I am sure that you have.

Gordon Lindhurst: Your comments about financial disaster are speculation. We know that the EU has now set its budget. Germany will need to pay a 42 per cent increase in its contribution, which is an increase of €13 billion a year to a total of €30 billion. That is just one country's contribution, and it is not just because we are leaving the EU. It is perhaps fairer to look at the net figure, which is €8 billion to €8.5 billion a year.

Last September, Dominic Raab said that an extension would cost the UK about £1 billion a month. The BBC's self-styled "reality check" said that the net figure would be about £744 million a month, and 8 per cent of that is £60 million a month. Did you say to the UK Government that you would be quite happy for £60 million a month, or some other figure, to be taken out of the Scottish budget to enable an extension to be granted?

Michael Russell: I go back to the withdrawal agreement, which, as a binding international

treaty, sets out what we need to do. The withdrawal agreement indicates that there should be negotiation on that issue, and the presumption is that contributions would be based on what is already being paid.

Let us look at what any increase would be about. A substantial part of any increase would be about the costs of Covid. I do not expect the Scottish budget to be reduced in order to meet the costs of Covid. If that is what Gordon Lindhurst is suggesting, that would be a very interesting position for the Scottish Conservatives to take. Additional money is having to be sourced, borrowed and raised by bonds in order to meet the couple of hundred billion pounds costs—I would have to check the figures—of responding to Covid across the UK.

The question is whether it would be better to spend a very small part of that overall cost—even if it were, as you indicated, £1 billion a month—in working with others to take advantage of a much bigger pot in order to help to meet the costs of Covid. For example, there is to be a new €14 billion health fund that will be devoted to the type of research on Covid that we desperately need. Would it be better to participate in that way, or would it be better to go on borrowing without that participation? That judgment needs to be reached.

I would not accept for a moment that any budget should be reduced. The question is about effective spending. If such a discussion was to take place, the outcomes would be substantially better than those of going it alone.

Let us look back at the fiasco of the UK refusing, for ideological reasons, to take part in the joint procurement of personal protective equipment. We have seen how foolish that was. I am sure that you are not suggesting that the UK Government should choose, for ideological reasons, not to spend money wisely to get the best return from it.

Annabelle Ewing (Cowdenbeath) (SNP): I return to one of the key issues around the intergovernmental aspects. In the most recent UK/EU negotiation round, did the Scottish Government receive any briefing or debriefing on the negotiations? When is the next round? Has any information been forthcoming on what is going to happen at the next round of talks and what the UK's position is? What is happening? Why is Scotland being locked out completely?

Michael Russell: There were several questions there, so let me deal with them in turn.

We know what the next rounds are to be. The information was published before we received it but we know what they will involve. There will be what is called a restricted round, in the format of a meeting between chief negotiators in specialised sessions between 29 June and 3 July in Brussels.

The meetings have all been given locations because there is an attempt to move on from videoconferencing to face-to-face discussions. However, there is a caveat at the end of the paper for prevailing health conditions.

The meeting during the week of 6 July is in London, with chief negotiators, teams and specialised sessions. The same happens again in the week of 13 July in Brussels and in the week of 20 July. There will be a wind-up during the week of 27 July in London, and round 6 will take place between 17 August and 21 August.

That is the series of meetings that is planned. We presume that they will go across the tables, as they are called, and the details of the tables are published.

In answer to another of Annabelle Ewing's questions, the problem is that the Scottish, Welsh and Northern Irish Governments are being treated as though they are stakeholders; they are not being treated as though they are the Governments of three of the four countries of the UK. That is very obvious from some of the language that is being used. There does not seem to be any recognition that the devolved Governments are responsible for items that are being discussed. If there is any such recognition, it is essentially being trumped by the UK's view that international relations are reserved and therefore it has total control. As we know, that is a bit of a grey area. Although international relations are reserved, some of the work that is done within international relations is devolved.

A sensible and mature approach from the very beginning would have been to say, "We will never agree on Brexit, but we should seek a compromise solution." May should have done that in 2016-17. She might have been able to do it when the agreement and what it should look like was being discussed. We should remember that access to the single market and customs union was not excluded until the Mansion house speech, so there were six months in which membership of both was being discussed. If May had put that in place, we would have been able to put in place a structure that allowed the devolved Administrations to be part of the discussions in areas of devolved competence.

None of us would have ended up with everything we wanted, but we would all have ended up with something. What is happening now is that a very small group of people is determined to get everything that they want and they do not want anybody to have anything else. That is the bottom line.

Annabelle Ewing: I take it, therefore, that the same approach is being taken and the devolved settlement is being disregarded in the on-going

bilateral trade talks with, for example, the US, Australia and New Zealand. Perhaps the cabinet secretary could comment on that.

What happened to the respect agenda? Should this not be called the disrespect agenda? We should recall that, in 2014, those who advocated a no vote told us that we should not leave the UK; we should lead it. How does what is happening now as a matter of practical daily business sit with that proclamation?

Michael Russell: Of course you are right. There is no respect agenda; that is long gone. Lead not leave is not even a joke now; the people who said that are just a distant memory. I presume that they meant it at the time, but there is no evidence of it happening now—quite the reverse.

I would not dwell on that, frankly, because it is in the past, but people should understand that promises that were made to them have not been honoured. Promises that were made in 2016 have not been honoured. There were leaflets with Michael Gove's face and Boris Johnson's face on them that talked about the way in which the Scottish Parliament would have its powers enhanced, and the opposite has happened. That is not for debate; that is actually true. Regrettably, we need to say that we cannot trust the people we have been dealing with. We just have to be honest about that.

Annabelle Ewing made an interesting point about the Trade Bill. There has been a lot of overblown hype about it. For example, the New Zealand situation has zero impact on GDP. I will not use the exact words that the former Australian Prime Minister used—the Australians tend to use more robust parliamentary language than we do—but it is quite clear that it is foolish. Yesterday, we saw the Prime Minister waving a packet of Australian chocolate biscuits that I believe are called Tim Tams and saying what a huge advantage it would be to be able to buy them. Words should fail us—they really should. However, that is where we are; that is the stock in trade of the current Prime Minister.

There are however very interesting and important issues in the Trade Bill. We cannot accept a trade bill, which will be underpinning legislation, that does not recognise the legitimate rights of the Scottish Parliament and the Welsh Assembly in relation to how such matters are dealt with. We also need a modern approach to trade negotiations. At the moment, there is a race to the bottom, but what we need is a recognition that trade negotiations are about raising standards, not lowering them. That is what is happening globally, with responsible nations saying that they need to recognise the issues around the environment, climate change and non-discrimination and that

those issues need to be put into the system. That is not what is happening here.

I am very sceptical about whether we can support in any way what is happening with the Trade Bill. That will be a matter to discuss with the trade minister; I am sure that the committee will want to do that.

Beatrice Wishart (Shetland Islands) (LD): You have mentioned in your evidence that you are under the impression that the UK is asking for a low deal—you referred to it as a “rudimentary” deal. Obviously, we have had warnings about what a no deal would mean. What is the Scottish Government doing to prepare for a no deal? Given all that has happened with businesses and Governments over the past six months, are there any areas that might be more vulnerable now than they were six months ago? I am thinking of supply chains.

Michael Russell: That is a very good question. To some extent, the pandemic has meant that we have had to test in extreme conditions some of the assumptions we were making about supply chains and how they would operate. We have learnt from that and therefore the Government and retailers will have more experience going into Brexit.

I do not know about the situation in Shetland, but I know that in my constituency of Argyll and Bute, there were issues about some parts of the end of the supply chain not delivering to remote communities. I think that we have learned some things about that.

I have made it clear in recent days, especially in my statement to the chamber two weeks ago, that we will be standing up our no-deal arrangements again. We have to do that. That will be very hard given our focus on Covid, but we have to do it. We will then have to move forward with those arrangements.

We will also need to revisit the continuity legislation, and we will shortly publish a revised continuity bill that will allow us to ensure that we are able to keep pace with European law in areas where we wish to do so. The things that we were putting in place for no deal, which we stood down when a deal was reached, will have to be stood up again. Some of them will be applicable to a low deal.

If there are tariffs, that will have a significant effect. Last week’s announcement that there would be a light touch on imports was showmanship again. The policy is full of holes; many in Brussels think that it is a distraction, and it will lead to greater problems. Those things will have to be factored in, if that is what takes place.

We are starting to work on our no-deal preparations again; that is a real problem, given

that we are still in the midst of the pandemic, but, regrettably, we will have to do so.

10:00

Beatrice Wishart: It is difficult to believe that the work on leaving the EU and on managing Covid can continue without one issue affecting the other. Based on your experience, do you think that it is possible that the two issues can be handled simultaneously with no detriment to either outcome?

Michael Russell: We will do our very best to make sure that that is the case. Beatrice Wishart is absolutely right: the only rational approach would have been for the UK Government to say, “Look, we have to take the pressure out of the system somehow, and here is a way in which we can do it.” That would have done something for the economy—at least, it would have removed a threat to the economy without impacting on the R number. It is reckless and wrong for the UK Government to have done what it has done; there is no reason for it except, as I said, an ideological reason—or because some people stand to gain from it. In the circumstances, we will have to do what we need to do, but I admit that I worry about that. I think that we all worry about it, because it is not what we should be doing.

Oliver Mundell (Dumfriesshire) (Con): I welcome the cabinet secretary’s relentless positivity on this occasion, because he has let the cat out of the bag in stating that he does believe that a deal is possible—just not a deal that he would like. If we are all interested in being honest, would it not be better to admit that we have a UK position as far as is possible, which is that the UK Government won a mandate in a UK-wide general election to deliver a meaningful Brexit to the millions of people—not a small group—across the United Kingdom who want to get out of the EU?

Michael Russell: I fear that there can be no meeting of minds between me and Oliver Mundell. I will start with the basic destination of mandate: those Conservatives who stood in Scotland stood on a clear mandate, which resulted in the loss of all but a handful of Tory seats. My party, which stood on the policy of no Brexit, won an overwhelming number of seats. The reality is that there is hardly any difference at all between a low deal and no deal. I am pointing to an action that can be taken that would continue Brexit, regrettably, but that takes a sensible and pragmatic view of what has happened with regard to Covid.

Oliver Mundell needs to look around him at businesses in his constituency, as I look at businesses in my constituency, and ask what can be done to help. We are working flat out to assist

and to bring hope of recovery, but what can we do to assist more? One thing we could do is not add an additional burden over the next four to five months and not add an additional depression to GDP; we could pause and be sensible. I do not expect us to agree on that, because I am trying to struggle with the practical outcomes of a set of decisions that are wrong; I am not trying to defend an ideological position that is deeply damaging and for which Scotland did not vote in the majority, as we know.

Oliver Mundell: I am confident about going back to my voters in the 2021 election. I can state confidently that I have done everything that I can to deliver a Brexit that works for the whole of the United Kingdom. Those same businesses and individuals in my community would be alarmed to hear the cabinet secretary's answer to Patrick Harvie, when he talked about ramping up and restarting a campaign for independence that would do them an incredible amount of damage. It is better to be honest and admit that there are fundamental political differences between the UK Government and the Scottish Government and to not try to find any axes to grind as a result.

The Scottish Government's position is well known, and it has been listened to, but it is impossible to compromise if it is thought that the compromise is suboptimal. I would be interested to know what the cabinet secretary feels is to be gained from an extension if we are simply going to continue on the basis that there is a clear impasse not just between the UK Government and the EU, but between the Scottish Government and the UK Government. What is there to be gained from continuing this circus any longer?

Michael Russell: Mr Mundell said that he is looking forward to going back to his constituency and talking to his voters—I tend to work with all my constituents, not just those who voted for me. I am interested in him going back and saying to them the immortal words from, I think, "Citizen Smith": "Good news, comrade, the butter ration has been cut." Good news, voters, the rest of the UK is going to be fine. I simply think that that is nonsense, and it is nonsense that the rest of the UK will be fine.

There is no doubt that what will happen will be damaging. As I have said, it is likely that the UK Government is trying to hide the damage of Brexit under the extraordinary damage of Covid, which is absolutely dishonest and really appalling.

The choice is whether we simply accept that that is an inevitability and that impoverishment, further economic damage and isolation will all be an acceptable price for saying that the rest of the UK voted for that. It did not, of course. It is interesting that opinion polls have shown for more than a year, I think, that, if the referendum were

rerun, people would vote against Brexit now that they have got wise to the ideological nonsense.

All that I am saying is that, in these circumstances, that is a debate that we can continue to have. By insisting on refusing the extension that is available, damage will be added to damage, recklessness will be added to recklessness, and bankruptcy will be added to bankruptcy. That will be on the heads of those who have not stood back and said, "In the name of God, don't be stupid."

Kenneth Gibson (Cunninghame North) (SNP): Good morning, cabinet secretary. It is quite clear from the discussion this morning that Scotland has been treated very shabbily. I was quite astonished to hear Oliver Mundell talking about axes to grind. It is clear that the cabinet secretary is doing all that he can to represent Scotland's best interests.

In his letter of 26 May to the committee, the cabinet secretary said:

"it is inevitable that the end of transition ... will come when the economy is still reeling from the impact of the COVID-19 crisis. I believe it is reckless to knowingly inflict this damage on an already fragile economic recovery, when it can easily be avoided."

We have discussed that today.

Last year, Gary Gillespie advised the committee, before any pandemic was known about, that the impact of Brexit would be 8 per cent to 2030. Conservatives thought that that was scaremongering, until the Treasury said that it would be 8.1 per cent.

What assessment has been carried out on the back on Covid? I realise that things are very much in flux, but what additional damage does the Scottish Government anticipate will be done to the Scottish economy, and what does that mean for real lives, people's jobs and communities in Scotland?

Michael Russell: As Kenneth Gibson will be aware, last week we published a paper that looked at the cumulative damage that will take place when Covid and Brexit are put together, and how that will run forward. We also looked at some of the sectors that were likely to be worst affected and indicated what we thought the outcomes would be. We took as conservative—I use a small c—a stance as we possibly could. We want to be accurate about that.

I will allow the paper to speak for itself, but it is clear that the overall outcome is that, if we add Brexit to Covid, the recovery from Covid will be very much slower and very much less complete. In those circumstances, we cannot fully mitigate the outcome of the Covid recession, but we can avoid adding to it a further 1 to 2 per cent fall in GDP.

What does that mean? Mr Gibson and I have substantial tourism industries in our constituencies, which are really going through the mill. There are redundancies in large-scale enterprises, and small-scale enterprises are struggling to survive. The situation will become harder for them. People will have less available money to spend in those establishments and it is likely that fewer people will travel. In essence, some businesses that might have got through Covid, with substantial help, just will not do so, because the Brexit recession will be the final straw.

The situation for manufacturing and exporting businesses will become progressively more difficult. I go back to the announcement that Michael Gove made last week about imports. Imports are not really the issue. Making imports easier might well make the task of business harder, and it makes fraud more likely. In all those circumstances, nothing that I have heard that is being proposed for Brexit makes the position of business any easier, and all of it makes it more difficult.

Kenneth Gibson: I agree that making imports easier does not do us a lot of good if we do not make exports easier, because then we do not have a balance or a level playing field.

You mentioned certain sectors, as did Beatrice Wishart, and you talked about how our constituencies will be hit. Only yesterday, in my constituency, the Seamill Hydro hotel, which has been there since 1880, announced that it is going out to consultation on 200 redundancies. How will Scotland be particularly hit geographically by Brexit, in addition to the impact on tourism and agriculture? Are there any geographical areas that the Scottish Government is particularly concerned about? What, if anything, can the Scottish Government do to mitigate the impact?

Michael Russell: It is about mitigating the effects of a particular deal or no deal. We have to estimate the effects of a low deal or a no deal—Beatrice Wishart asked me specifically about no deal—and then consider what we can do to keep supplies flowing, to deal with issues of medicine and so on. Those are mitigating actions.

A lot of work has been done on places that are most likely to be damaged, although admittedly it was before the Covid epidemic. Some work has been done on the worst-affected cities. There is of course a correlation with poverty, as the poorest will undoubtedly suffer the most damage. We should not set aside tourism or agriculture and fisheries, because other sectors will suffer particularly, too.

We then have to add in some specific additional issues. At the beginning of the meeting, I raised

the issue of involvement in programmes. If, for example, the UK is not going to be a full participating member of horizon Europe, there will be substantial implications for higher education and research. We know that higher education is already taking a substantial hit from Covid. The latest indication from the UK Government on horizon is that it is perhaps too expensive, and the UK Government is quibbling about issues to do with being a third country. In those circumstances, that sector would be badly affected.

If we look at each geographical part of Scotland, we can see difficulties in rural areas and in cities. Generally, poverty and affluence are factors in that regard. With sectors, we can get an indication of where the most damage will be. Nobody would be left unscathed by a no deal or a low deal, and the effects would be felt for a long period. Brexit is a walking away from an arrangement that has helped to guarantee peace and prosperity in our continent for the past 50 or 60 years—certainly, we have been members for almost 50 years.

We cannot walk away from that without impact, and we know that, because there was an impact when we joined. Interestingly, we can see the effect from the figures when the UK joined the old European Community. There was an improvement in GDP, and we saw growth over a period of time in the standard of living. If we leave, that will be reversed, and no amount of dissembling about trade deals with Australia or New Zealand will make any difference.

Kenneth Gibson: Finally—with your indulgence, convener—I will move on to one other area, but I first want to say that, with Brexit coming up, there will be real concerns about confidence in the economy, which will impact on consumption, demand and employment. However, I want to ask about the social impacts of the European Union in relation to security, which the cabinet secretary mentioned. Has the Scottish Government been advised on where we are in ensuring that security and police co-operation will continue? Organised crime is a major issue across Europe, and there is concern that work in that area will be damaged if a deal is not agreed.

10:15

Michael Russell: There are a number of means of co-operation and of organisations through which we co-operate with EU countries. We use particular tools, such as the European arrest warrant, that have been very valuable to Scottish law enforcement, but the question of our involvement in that scheme remains up in the air. It is a truism of any negotiation to say that nothing is agreed until all is agreed. There is no agreement. If we do not have access to databases, such as the Schengen database, we

will have a huge set of issues in relation to law enforcement, which, inevitably, will be more difficult. International law enforcement and extradition will be more difficult.

The real problem is that there is no reason why that should be the case. Even if there was an acceptance that we should not have EU membership—I do not accept that—membership of the single market and the customs union was open to the UK, and arrangements through the European Free Trade Association and the EEA could have guaranteed a closer relationship with, but not membership of, the EU. There is an ideological obsession, which has been interpreted by Oliver Mundell in this discussion as an absolutist position, with those who voted for Brexit voting for the hardest, harshest, most complete and most utter break. That is what the UK Government is pursuing, so it is inevitable that, on a range of important issues, including the vital issue of policing and security, we will be in a worse position.

The Convener: We have a little time in hand for supplementary questions. If members type “R” in the chat function, I will be happy to bring them in.

At the beginning of March—which seems like a long time ago now—Alister Jack, the Secretary of State for Scotland, was in front of the committee. I pressed him at some length about whether the UK Government had done any modelling on the economic impact of the deal that it was pursuing in the talks. Of course, it had not. There was only the Treasury modelling and analysis that had been done some time ago, which showed that a Canada-style deal would result in a 6.2 per cent fall in GDP. He said that, at that time, no modelling was being done, but his official Nick Leake said that the UK Government would

“invite contributions via a public consultation on the economic implications of the future relationship from a ... variety of stakeholders.”—[*Official Report, Culture, Tourism, Europe and External Affairs Committee*, 5 March; c 33.]

Are you aware of any public consultation being organised by the UK Government?

Michael Russell: I am afraid that I am not; I have heard nothing about it. I will not say definitively that no such consultation exists, but I know nothing about it. It is like the supposed consultation on the shared prosperity fund, which has been much discussed but I have never seen it.

The point about lots of consultation and discussion being promised is at the root of the problem that we are talking about today. There is a constant mantra from UK ministers that they are listening to and consulting devolved Administrations. There might be a lot of verbiage,

but there is nothing meaningful and nothing that will produce an outcome or a result. The same probably applies to the consultation that you mention.

The Convener: Oliver Mundell’s point about the political differences between the UK and Scottish Governments was also made by Mr Rycroft when he gave evidence to the committee a couple of weeks ago. The joint statement and letter to which the cabinet secretary referred is from him and the Welsh Labour Government, which represents a country that voted for Brexit. How much of the difference is political, and how much is structural in relation to how the UK works? Have you been able to get any impression from the Northern Ireland Executive, since it has been back up and running, of how it views the structure of intergovernmental relations?

Michael Russell: It is quite clear that the Northern Irish and Welsh Governments can and will speak for themselves—I cannot speak for them, but I can talk about my own experience. At the end of the day, it comes down to having an agenda of respect for the Governments, the countries and their voters.

Oliver Mundell raised the issue of a mandate. At the first joint ministerial committee that was held after the election last December, I made it very clear to Michael Gove that I recognised the mandate that the UK Government got to leave the EU. However, I asked for mutual recognition of the mandate that the Scottish Government had to pursue the issue of a referendum. I thought that that was fair; it seems, in democratic theory, absolutely unexceptional to recognise those mandates.

The UK Government recognises its own mandate and insists upon it. However, it rejects any mandate from anybody else with regard to how these matters should go forward. In the end, that position cannot stand, because it is profoundly undemocratic. It does not matter whether it is espoused by an academic, the Secretary of State for Scotland, the Chancellor of the Duchy of Lancaster or a minister—it is simply a democratic outrage to recognise only your own mandate and refuse to recognise anybody else’s.

I recognise the mandate of the Government of Wales. I have had a lot of productive and sensible discussions with the current First Minister and with my present counterpart, Jeremy Miles. We do not agree on a destination, but we do agree that people have the right to choose, and that is the basis of the Welsh Government’s published position on what the UK should do.

To summarise a view that Mark Drakeford has expressed regularly, he believes in the United Kingdom because he believes that there are

advantages for each side. If that were not the case, he would not believe it. I believe that, at present, there are no such advantages, as the current position illustrates, and I see nothing that contradicts that. We have come to a different conclusion. That is an honest position, but we have been able to work on it with the Welsh Government because we have seen closely, at first hand, how the UK Government has treated both of us, which is very clear.

The Convener: A number of members wish to ask supplementary questions. I will bring in Annabelle Ewing, followed by Oliver Mundell.

Annabelle Ewing: One issue that we have not touched on this week, but which we spent quite a bit of time discussing at last week's meeting and in previous weeks, concerns the fishing industry. Last week, I put questions to Elspeth Macdonald of the Scottish Fishermen's Federation. She reminded us that, on our way into the European Economic Community, as it then was, our fishing industry was sold down the river, according to Whitehall papers that show that it was deemed to be expendable. She indicated that SFF members have "long memories", and that they will not be assured on this point

"until they see the ink dry"—[*Official Report, Culture, Tourism, Europe and External Affairs Committee*, 11 June 2020; c 8.]

on any deal. It has been suggested by some in Brussels that the UK will once again seek to trade away Scottish fishing interests for a deal on some other issues. Can the cabinet secretary comment on that?

Michael Russell: We should not fall into the error—I am sure that Annabelle Ewing would not do so, given her particular knowledge in this area—of thinking that there is only one fishing industry in Scotland. There are various parts to our fishing industry, and they have different views.

For example, in my area, there is a substantial fear that exporting will be severely hit by the imposition of any tariffs and/or the imposition of a phytosanitary inspection requirement, which will be very difficult to cope with in respect of any volume of export. There are worries and issues in that regard.

However, we are beginning to see some of the bones of where the argument on the fisheries issue lies. It must be worrying for the Scottish fishing industry, because it is—as I have said previously—the only part of the argument to which the Tory Government ever refers in talking about Scotland. I disagree with the UK Government's position, but I also disagree with some of the things that the EU is saying. We want to move the discussion to a better place.

There are some essentials. The position of Scottish fishing must not be worse than it is now—that sounds axiomatic, but we have to ensure that it happens. People in the fishing industry are right to say that they remember being made many promises and finding themselves, if I may use this phrase, sold down the water pretty quickly thereafter. They absolutely must not be in a worse position.

There has to be a recognition of historical rights, but all history has to be revisited from time to time, and there has to be a recognition of the change that is taking place. That is absolutely essential. The devolved Administrations—especially Scotland—have a dominant interest, but that has not been given sufficient recognition. That needs to happen. Compliance needs to be built in, and we all need to be happy with the way in which the science is applied and with the shared responsibility that we have. The primary responsibility should be with the devolved nations and there should be wider responsibility in these islands.

There are issues that we can see being resolved, but the UK must accept that rights for Scotland and other countries have to be baked into the approach. A resolution is possible, but I do not think that the UK will get one unless it recognises the special rights of Scotland, and that it must not sell out Scotland again, as its tendency has been.

Oliver Mundell: Scottish fishermen and members of the SFF will have a long memory when it comes to seeing their Government in Scotland push to keep them trapped in the common fisheries policy beyond January next year. The cabinet secretary talks a lot about respect, but is he willing to admit that he does not respect the fact that the UK Government has a responsibility to all citizens of the United Kingdom and that, in these matters, it acts on behalf of the whole of the United Kingdom? Does he think that his language today about David Frost suggests that the Scottish Government has any respect for the UK's lead negotiator?

Michael Russell: Two of those three points misrepresent what I said, and one is democratically flawed, but I will deal with them all.

First, on David Frost, I have known him for a long time, and I said to him at the most recent JMC that while I disagreed with the United Kingdom Government on the issues of Brexit, I deplored the language of his letter to Michel Barnier. I said that publicly, and I am saying it again now. I deplore that language and I disassociate myself from it. I do not think that it helps the situation. There are democratic issues to do with accountability that are tied up with the Brexit process and the lack of scrutiny. I am not

saying anything that I have not said elsewhere. I have chatted to David Frost over the years, and I have no objection to him, but I have the very strongest objection to the structure that has been established and to the way in which that letter was written—I think that it was wrong.

Oliver Mundell: That is not exactly giving him your fullest support at a difficult point in the negotiations.

Michael Russell: I do not give him my fullest support; I give him my honest opinion. That is what I am there to do and it is what I am trying to do on behalf of Scotland. That is a basic point in my position and in that of any negotiator.

Secondly, Mr Mundell is wrong to say that I am pushing to keep the fishermen of Scotland in the common fisheries policy. If there is negotiation, I am trying to get a sensible outcome from it. There is a serious risk that the Conservative Government in the UK will sell out the Scottish fishermen, as it has done in the past. It does not help anybody if the only issue on which the Scottish Conservatives and the Conservatives wish to argue the issue is that of fisheries. That perhaps indicates that, on every other issue, they realise that they are on a hiding to nothing.

The third point is, frankly, a basic question. Oliver Mundell and I disagree on it, but let us be straight about the disagreement. I do not believe that the people of Scotland should be disadvantaged and impoverished simply to allow the UK Government to say, “We have done this on behalf of the whole of the UK.” I believe that there should be mutual recognition of mandates—if there was, we would not be having this disagreement and argument. We would be in the basic democratic position that is the norm elsewhere, where there is one mandate and another mandate. I see Mr Mundell shaking his head. The fact that a Conservative MSP can shake his head at that makes me worried about Scottish conservatism, because it does not appear to be grounded in basic democracy.

10:30

Stuart McMillan: Cabinet secretary, you wrote to the committee on 26 May. Part of your letter focused on the new protocol with Northern Ireland and the Republic of Ireland. It is clear that that protocol will create additional costs, which will affect the Scottish Government’s budget. Has the UK Government given you any confirmation that it will give the Scottish Government additional resources to deal with those costs?

Michael Russell: The convener asked for short answers, so I will give you a very short one: no—not at all.

Stuart McMillan: Okay. Thank you.

Kenneth Gibson: It seems that the result of the 2016 EU referendum was not cast in stone. A survey by focaldata that was published today suggests that 83 per cent of people in Scotland and 77 per cent of those in the UK want the transition period to be extended. Does the cabinet secretary agree that the UK Government should recognise that?

In addition, the International Monetary Fund has said that GDP in the UK will be cut by 3.5 per cent through Brexit, and the Confederation of British Industry is of the view that it will block economic recovery.

Lastly, what does the cabinet secretary think about the UK Government’s £4.5 million “shock and awe” advertising campaign to promote Brexit, which it plans to launch as the transition period ends?

Michael Russell: I saw the report on the advertising campaign last night, and further details of it are coming out today. I am not surprised, but it is utterly distasteful for the UK Government to use such appalling language of military strength to describe how it would influence its fellow citizens to do something that is positively harming to them. It is just revolting to think that that is taking place.

The Tories insist that the outcomes of the 2014 and 2016 referenda are the guiding stars of whatever we do. They seem to be unable to recognise that, as times change, things change, too. There are a number of famous quotations on that. If the evidence proves us wrong, we should accept that and consider what it tells us now. The evidence tells us that, on independence, people want to have a chance to choose from a very different set of options, because in 2014 they were not told the truth about membership of the EU. There is also no status quo now—that has gone. The choice is clearly between the type of low-deal or no-deal Brexit Britain that we see emerging before us and independent membership of the EU. People looking at the 2016 result recognise that they were sold a pig in a poke, and they want to revisit that.

As a democrat, I can see things around me changing. As all members do, I talk to people, and I think that we need to recognise that they deserve, and have asked for, the right to choose.

As for the figures, I do not think that anyone could dispute the harm that will come out of Brexit. If we are honest about that, that will dictate what we should do next.

The Convener: I thank the cabinet secretary for attending today.

An area that we have not touched on in any depth is that of the Northern Ireland protocol. The

committee has had an in-depth look at that and has visited south-west Scotland to talk to people there about its impact. Are you able to give us any indication of the nature of your engagement with the UK Government on the implications of the protocol and what its economic effects might be for Scotland, and for the south-west of the country in particular?

Michael Russell: I know that the committee has looked closely at the issue. We must be engaged on a variety of issues on the protocol: the rules to determine which goods enter Northern Ireland and whether they will be subject to tariffs; the administrative and infrastructure requirements on the Scottish side; fisheries arrangements; and agriculture and VAT issues. We need to talk about a range of matters.

That was recognised very clearly by the Northern Ireland Administration when it rejoined the JMC process at the beginning of this year. Indeed, it proposed at the JMC meeting that was held in Cardiff at the end of January that a new workstream be established in the JMC(EN) that brings together all the devolved Administrations with the UK Government to discuss that. That was accepted, but it has not happened. I think that the issue was raised again in a meeting between officials this week, and we think that that might get started. However, we will have to look at all those things together and discuss how they will affect all of us.

A fear remains in the EU and elsewhere that the UK is doing its best to avoid implementing things. I do not think that there is the slightest doubt that, if that were to be the case in the end, that would mean that no deal was possible. I have many conversations with people in Europe and elsewhere, and I am always struck by the fact that the real touchstone is that, if the UK were to renege on an agreement, particularly one to do with Northern Ireland, it could not expect to have any deal of any description.

The Convener: That is very worrying.

I noticed that *The Spectator*, which has quite close channels with number 10, speculated that the UK Government really wanted no deal and that Covid provided a cover for that to happen. Do you think that it is correct?

Michael Russell: There are various issues that Covid could be a cover for. I am looking for something that tends to raise a great deal of suspicion—let me see whether I can find it.

There are genuine fears—to be fair to the UK Government, they are being denied at the moment—that there will be a continual weakening of the position on the withdrawal agreement and the protocol because there is resentment about them.

The issue of the EU office in Northern Ireland was interesting. That should be utterly non-controversial. There was absolutely no reason why that should not happen, but it became a cause célèbre for the UK Government and allowed it to play to a gallery.

I draw the committee's attention to a headline on the front page of the *Sunday Express* two weeks ago:

"Boris Wants To Fix Unfair Brexit Deal".

That was one of those rampages that we get from time to time and which people find out about across Europe. They raise alarm bells. The "Unfair Brexit Deal" is, of course, the deal that Boris Johnson did. It was described as "oven ready", "the best deal", and the deal that he was going to implement.

The *Express* is close to the Tories. If it really is the case—we have heard this from others—that, in some way, the withdrawal agreement and the protocol are unfair, I presume that any attempt to undo them would be popular with the ideologues who are steering the present ship towards the rocks. If that is where they were to go, that would make a deal of any sort with the EU impossible to do. That is not just my view; it is the view of almost everybody who knows about this.

The Convener: Thank you, cabinet secretary. I am afraid that you have kept up your record in having a rather depressing session with the committee.

Michael Russell: I am sorry.

The Convener: The facts are the facts. Thank you for coming to share your views with us. We will now move into private session.

10:39

Meeting continued in private until 10:57.

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