



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Finance and Constitution Committee

**Wednesday 30 September 2020**

**Session 5**



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**FINANCE AND CONSTITUTION COMMITTEE**

**23<sup>rd</sup> Meeting 2020, Session 5**

**CONVENER**

\*Bruce Crawford (Stirling) (SNP)

**DEPUTY CONVENER**

\*Murdo Fraser (Mid Scotland and Fife) (Con)

**COMMITTEE MEMBERS**

\*George Adam (Paisley) (SNP)

\*Tom Arthur (Renfrewshire South) (SNP)

\*Jackie Baillie (Dumbarton) (Lab)

\*Alexander Burnett (Aberdeenshire West) (Con)

\*Angela Constance (Almond Valley) (SNP)

\*Patrick Harvie (Glasgow) (Green)

\*Dean Lockhart (Mid Scotland and Fife) (Con)

\*John Mason (Glasgow Shettleston) (SNP)

\*Alex Rowley (Mid Scotland and Fife) (Lab)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

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

**CLERK TO THE COMMITTEE**

James Johnston

**LOCATION**

Virtual Meeting



# Scottish Parliament

## Finance and Constitution Committee

*Wednesday 30 September 2020*

*[The Convener opened the meeting at 09:30]*

### United Kingdom Internal Market Bill

**The Convener (Bruce Crawford):** Good morning and welcome to the 23rd meeting in 2020 of the Finance and Constitution Committee.

Our first agenda item is to take evidence from the Cabinet Secretary for Constitution, Europe and External Affairs, Michael Russell, on the Scottish Government's legislative consent memorandum on the United Kingdom Internal Market Bill. The cabinet secretary is supported by his officials Euan Page, head of the Scottish Government's UK frameworks unit, and Graham Fisher, from the Scottish Government's legal directorate.

I warmly welcome Mr Russell to the meeting, and invite him to make a short opening statement if he so wishes.

**The Cabinet Secretary for the Constitution, Europe and External Affairs (Michael Russell):** Thank you for the invitation to be back giving evidence on the bill. I would much rather not be doing so, because the bill represents an assault on devolution the likes of which we have never experienced since the Scottish Parliament was established. I think that it is the duty of every MSP to oppose it at every turn.

The bill will open the door to a race to the bottom on food standards and environmental standards, and will endanger key public health policies such as minimum unit pricing for alcohol. It will deliver a hammer blow to the Scottish economy by making it harder for the United Kingdom Government to conclude free trade agreements if other countries think that the UK will not meet its obligations. It is damaging to businesses and consumers in Scotland and more widely across the UK. It is predicated on leaving the European Union single market of 450 million people. It also means losing the benefits of variations in approach to reflect consumer preferences and health and environmental considerations in Scotland and the advantages of high-quality regulation of food and other products.

We already know that the bill would take a wrecking ball to devolution. However, using it to renege on parts of the withdrawal agreement is

extraordinary. Not only will it alienate the EU, as it has done, it will increase the likelihood of a low-deal or no-deal exit, and will damage—and is damaging—the UK's international standing and future relationships.

Moreover, the lack of adequate time to properly scrutinise the proposals suggests that the UK Government itself has little confidence in them. It is looking to push the bill through Westminster as rapidly as possible, in order to avoid proper scrutiny.

As has been backed up by the views of stakeholders across Scotland in recent weeks, the Scottish Government is absolutely clear that the correct and proportionate means of dealing with such issues is through the common frameworks process, which, despite the parties' differences over EU exit, has been able to make significant progress over the past several years.

The Scottish Government cannot recommend consent to a bill that undermines devolution in this way and breaks international law. The LCM that we have published makes that crystal clear. We will invite the Scottish Parliament to reject the bill.

**The Convener:** I start with a question on the common frameworks. The Scottish Government's LCM states that the internal market bill

"is not necessary"

and

"undermines both the devolution settlement and agreed processes that are already established to agree common frameworks and ways of working across the UK following EU exit."

However, the UK Government states that

"without a substitute framework for the EU governance there is the risk of new regulatory barriers being erected that could bring significant disruption not just to the wider UK economy, but also to businesses in England, Scotland, Wales and Northern Ireland individually."

Is that risk real? What is the Scottish Government's view?

**Michael Russell:** The risk is not real. In the past four years, there has never been an indication of any issue over which there would be that difficulty. It is a set of solutions in search of a problem. The UK Government's line on that is changing constantly.

At the outset, convener, I want to make a very strong point. This morning, I listened with astonishment to a man called Paul Scully on "Good Morning Scotland"—to the best of my knowledge, I have never met him—who is, apparently, the UK's small business minister. I want to quote what he said during his interview because it is absolutely untrue, but also because it indicates the changing story.

Speaking about the bill, Paul Scully said:

“Part of the reason that we are in this place in the first place”

is that

“we were dealing with common frameworks to try and build things to consensus”—

I agree with that so far.

“But the Scottish Government pulled out of that some time ago, and we need to get them back to the table to make sure that we can build that consensus, because this is good for Scottish business.”

Later on, he said:

“The reason that we’re legislating in the first place is ... because the Scottish Government walked away from some of the common frameworks discussions that we were having last year.”

That is categorically untrue. We have been working solidly on the frameworks with the UK Government. I said to the committee the last time that I appeared in front of it that we wish to complete that process, that we wish the frameworks to be negotiated and agreed, and that we will operate those as if they are all in place from 1 January 2021—the day after transition.

There is no danger at all of a difficulty with the single market. The common frameworks were designed to deal with that matter. Unfortunately, it is the UK that is now walking away from the common frameworks, because it wants to force all the devolved Administrations to accept really bad trade deals and much lower standards.

I ask Mr Scully to withdraw his remarks, which are absolutely untrue. I presume that they are made out of ignorance. If they are not, the situation is even more serious than we think.

**The Convener:** Again on the theme of the common frameworks, the legislative consent memorandum states:

“The common frameworks approach provides all of the claimed objectives of the Bill in guaranteeing market access across the UK”.

However, the UK Government states that,

“as Frameworks are limited to a specific number of policy areas, they ... will not be able to provide a comprehensive safety net for businesses and consumers.”

Do you agree that the frameworks

“are limited to a specific number of policy areas”?

What is the Scottish Government’s view? Where have things got to with the common frameworks, given the comments by Paul Scully that you cited?

**Michael Russell:** I do not agree that the frameworks are limited. They cover a wide range of areas. Indeed, they cover those areas specifically because all the other 156 areas that we looked at did not need common frameworks,

as arrangements were already in place that would more than adequately deal with the relationships between the four nations.

However, if any of the four nations consider that there is a weakness or a gap, they have only to say so, and we can work hard to get that framework in place. I heard Michael Gove say that some weeks ago. I made it absolutely clear to him at the time that, if he can identify an area in which he does not think the common frameworks are effective, or an area that is not covered by them, we will quickly deal with that by negotiation.

We have a number of common frameworks ready to go. We can accelerate that process. However, we can also operate as if they are in place, because we know what they cover.

I have in front of me two of the consultation documents on the common framework on food and feed safety and hygiene. That framework gives complete coverage of the issues and what should take place. Moreover, it says that there can be dispute resolution within it and there can be agreement on how it operates. That is exactly what the frameworks are meant to do; that is the way in which we should work together. That was agreed. We agreed the principles and how to progress matters.

Even at this late stage, I ask the UK Government to come back from the brink and work on the common frameworks. It will find that the three Administrations with which it is in dispute—Wales and Northern Ireland have also voted against the UK Government’s approach—want to do that. I ask the UK Government to come back to the table and we can get the common frameworks to work well.

**The Convener:** Finally, you mentioned a consultation process. We have had some expressions of frustration from stakeholders about not being able to see any common frameworks. Can you tell us a bit more about what the consultation is about and when it might take place?

**Michael Russell:** If you will allow me, I will provide the committee with the consultations on two of the common frameworks that are ready to go. Quite clearly, things have been held back by the pandemic, but we are committed to putting the frameworks into place.

We also know what the frameworks should look like. We can say without any doubt at all that we will operate as if they are in place while they are being scrutinised and looked at, so that they can come into place. We have also got a commitment to scrutiny across the four Administrations. That would seem to be a sensible, grown-up way in which to deal with how we will interact after an act that we do not agree with—that is, not just leaving

the European Union, but coming out of the transition period. It is all there; it is all ready.

The way in which the process is now being treated by the UK appears to be designed to undermine the common frameworks, despite all the work that has gone into them, in order to give it a justification—a *casus belli*—for putting a disastrous wrong bill into operation.

**The Convener:** Alexander Burnett has questions in the same area.

**Alexander Burnett (Aberdeenshire West) (Con):** Yes, I will stay on common frameworks and consensus.

The latest quarterly update shows that there has been progress on common frameworks, but it is clear that not all of them will be concluded by the end of the year. I want to ask a more fundamental question. Do you not understand that people find it incredible that, although you are calling for the frameworks to be completed, you are spending your time plotting out fantasy scenarios of separation, which have the ironic objective of ending the UK single market? How can you say one thing but actively pursue another?

**Michael Russell:** I can do it quite easily by saying that we have to make the best of a bad set of circumstances after a vote to leave the EU, which the Scottish people, including your constituents, did not back. We have been immensely reasonable in trying to negotiate the common frameworks so that there is no friction, because I do not want friction; there is no need for it. That is why we agreed to take part.

When David Lidington was in place in the previous Tory Administration—I never thought that I would look back on it with fondness—we all agreed that we could work on the frameworks and get them to work. Unfortunately, since then, there has been a deliberate attempt to undermine the devolved Administrations. What Mr Scully has said this morning is utterly disgraceful, and I hope that you will distance yourself from it, because he is endeavouring to blame the Scottish Government for the disastrous decision that the UK Government has made on the bill.

**Alexander Burnett:** People such as Sir Tom Hunter have clearly lost trust in your ability to prioritise correctly. More relevantly, the Environment, Climate Change and Land Reform Committee has just published its latest report, in which it specifically draws to this committee's attention the Scottish Government's failure to engage with stakeholders in relation to common frameworks. You are getting quite a reputation for failing to engage. How is that attitude in Scotland's interests?

**Michael Russell:** I am not getting a reputation for anything other than painstaking work to try to ensure that we have a reasonable relationship in these islands. Unfortunately, that is being disrupted by the Government that, regrettably, you support.

You should not call out people as supporting you without reading what they say. I read the Tom Hunter contribution, and I thought that it was entirely reasonable.

On engagement with the common frameworks, I have explained the difficulty that existed during the pandemic, which I would have thought you would have realised. I have also set out the commitment that I have made, which I give to you again now absolutely to your face: we will operate as if the common frameworks are in place, and we make a commitment to do so from 1 January at the end of transition.

The time that you are spending on criticising the Scottish Government should be spent on criticising the UK Government for pursuing a ridiculous Brexit in the most damaging way possible. Thank goodness that we have responsible Administrations in the other areas of the UK that are endeavouring to get a reasonable set of compromises.

**Murdo Fraser (Mid Scotland and Fife) (Con):** I want to pick up on one comment that you made in response to the convener's questioning. Is it not the case that, in the spring of 2019, the Scottish Government disengaged from discussions with the UK Government on the UK internal market?

**Michael Russell:** No. On what Mr Scully said, let us deal with this once and for all and then—

**Murdo Fraser:** I am not asking about Mr Scully. I am asking a direct question.

**Michael Russell:** I am addressing the point that you are making. Mr Scully said that the UK Government is

“using the frameworks to try and build consensus”,

and that it has to get us

“back to the table to make sure we can build that consensus that is good for Scottish business.”

He went on:

“The reason we are legislating in the first place is because the Scottish Government walked away from some of the common frameworks discussions.”

That did not happen. We refused to enter into discussions on the internal market because the internal market proposals were going to lead to where we are now.

Rather interestingly, the experience of the Welsh Government on that is illustrative of the problem that we predicted. My Welsh counterpart

made the point clearly to a Westminster committee. In his letter, Jeremy Miles said:

“As it was agreed that this”—

the work on the internal market—

“would be a joint piece of work, it is wholly unacceptable that we now seem to be faced with a solely UK Government generated proposal ... this is a missed opportunity to show we can work collaboratively.”

From the beginning, I believed that that would happen, and it is happening. Every MSP should be defending the Scottish Parliament and the work that we do for the Scottish people. They should not, unfortunately, be supporting the biggest power grab of devolved powers that we have ever seen, which will affect every one of our constituents, including Murdo Fraser’s.

09:45

**Murdo Fraser:** You have very helpfully clarified that the Scottish Government walked away from discussions on the UK internal market.

**Michael Russell:** I have not clarified that at all, but I am glad that you are satisfied with my answer.

**Murdo Fraser:** The committee has heard from various business representative organisations and trade bodies about the need for the bill, how they value the UK internal market and how that market needs to continue to operate after the end of this year. We know that the UK internal market is worth to Scottish businesses three times what the EU single market is worth to them. Does the Scottish Government recognise the value of the UK internal market and, therefore, recognise that the bill is necessary?

**Michael Russell:** Those two things are not synonymous. I recognise the need to continue the trading that takes place. I want that to continue, and that can happen through the common frameworks. Indeed, the bill will damage that process substantially.

Let us be straight about what stakeholders have said. Whom should we start with? Should we perhaps start with NFU Scotland? It said:

“it is the clear view of NFU Scotland, and the other farming unions of the UK, that the proposals pose a significant threat to the development of Common Frameworks and to devolution.”

The Scottish Council for Development and Industry said:

“SCDI is not convinced that the legislative approach proposed in the White Paper is the right priority. We believe that for mutual recognition to work in practice and maintain support, common frameworks, agreed through inter-governmental negotiations ... should be the foundation of the UK internal market.”

The General Teaching Council for Scotland, recently expressed severe concerns; we could also go to the Royal Incorporation of Architects in Scotland and the Law Society of Scotland.

I think that Murdo Fraser will find that any attempt to say that there is a unanimous view that the bill is wanted is deeply flawed. That is probably why the UK Government will not publish all the submissions.

**Murdo Fraser:** I am sure that we could trade quotes all morning, but I will ask a final question.

We are doing this process in parallel with the work on the UK Withdrawal from the European Union (Continuity) (Scotland) Bill, which the committee will look at later in its meeting. Is the Scottish Government, in effect, making the wrong choice in trying to align the Scottish economy and the requirements of Scottish business with the EU, as opposed to aligning with the rest of the UK? In the event of there being a conflict between the two, is it not overwhelmingly in the interests of Scottish business and the Scottish economy that our alignment be with the rest of the UK, given that the UK internal market is worth to Scottish business three times what the EU market is worth?

**Michael Russell:** The EU is the UK’s biggest single market. Therefore, the UK is endeavouring to do exactly what you are saying: to have the best of both worlds. Having the best of both worlds is what I am trying to secure for Scotland, too, at this stage. I believe profoundly that my constituents and the people in your region voted to stay in the EU because they realised how important that is.

I am trying to ensure that we get as many benefits as we can from the appalling situation that your UK Tory Government has put us in. That is my obligation. For example, I am trying to ensure that we keep high standards. I am also trying to ensure that, in the common frameworks, we have the tools, if they are needed, to work against any barriers, although I do not believe that such barriers exist. I am doing precisely what I should be doing against the headwind of the UK Tory Government, which, regrettably, you support in its actions.

**Alex Rowley (Mid Scotland and Fife) (Lab):** Can the cabinet secretary confirm that the Scottish Government has been working on the common frameworks, and that the UK minister’s claim this morning that the need for the bill is down to the Scottish Government is an absolute lie? Let us call things what they are.

Yesterday, Mr Gove said that common frameworks were a big part of the approach to the internal market but could not deliver on their own. However, he could not say in what areas they would not work. Will the cabinet secretary



comment on that? Is it the Scottish Government's view that common frameworks will be able to resolve the internal market issues that could come with Brexit?

**Michael Russell:** I start with your point about Mr Scully. If he said that the UK Government is legislating because the Scottish Government walked away from common framework discussions last year, either he does not know the truth or he is not telling it. I cannot say which applies, but I hope that, if it is the latter, he will apologise, and if it is the former, he will get himself informed pretty quickly, as a business minister should.

When I look at my team of people who have been working on the common frameworks for a very long time, I see that they have put in an enormous amount of hard work to make this work. From day 1, we have committed ourselves to the common frameworks; it was the UK that dragged its feet for a whole period, as it always does. We and the Welsh have worked hard to pick up the work again after the difficulty of the coronavirus and take it to a conclusion.

I feel angry enough about Mr Scully, but my officials feel even angrier, because an attempt is being made to rewrite history. That is utterly unacceptable. There must be a substantial level of honesty in politics, and what he said falls well short of that. I will assert the truth today.

**Patrick Harvie (Glasgow) (Green):** I will pick up the debate about common frameworks. The cabinet secretary said that a level of honesty is needed, but trust is also needed, because the common frameworks approach relies largely on trust—in both directions—between the two Governments. What basis for trust is there when the UK Government is willing to publish a bill that breaches international law? If it is willing to break its promises to its international partners, what basis for trust is there in reaching common frameworks with its partners in the UK?

**Michael Russell:** That is a good question. I have spent four years negotiating with the UK Government in what I can only describe as deteriorating circumstances. I would like to think that the work that we have put in on common frameworks has not been wasted and that, if the UK Government saw sense on the internal market bill, we could over time get workable arrangements. I and the Scottish Government are prepared for that.

The UK Government has severely underestimated the impact of what it has done in relation to international law. It does not realise how difficult that has made things in the current EU negotiations, and that does not relate just to coming to a conclusion, as there might be a low

deal of some sort. What will be the long-term damage when people do not trust a Government to keep its word? The Law Society of Scotland draws attention to that in its submission to the committee, as members are well aware.

I am still optimistic—although I have no reasons to be so—that we can get the frameworks to work, and I think that the other devolved Administrations want to achieve that, too, but the UK Government will have to turn over a new leaf. It will have to do that anyway, given the position that the EU has taken. Monday's statement from one of the co-chairs of the EU-UK joint committee makes it absolutely clear that there is a long way to go before—[*Inaudible.*]

**Patrick Harvie:** I will move on and ask you about the evidence session that we had yesterday with Michael Gove. On a number of occasions, he made an attempt—shall we say?—to set out reasons why there were issues that were incapable of resolution through common frameworks and, therefore, required this bill. His response to a number of the objections that have been raised not just by members but by expert evidence was to wish them away and say that they were not issues. When faced with examples of areas that are devolved but, under the provisions of the bill, would be within the scope of UK centralised control, he seemed unwilling to engage and simply asked for more examples.

Was there anything in Michael Gove's evidence yesterday that you found unexpected or new or which represented acknowledgement of the concerns that have been raised by a number of distinguished expert witnesses during this inquiry?

**Michael Russell:** Regrettably, there was nothing new in content or style, although either would have been welcome.

There were certain things that could be challenged, such as the constant implication that the EU is more prescriptive and constraining than the bill, which is entirely wrong. Mr Gove ignores the profound differences between the bill that he has brought forward and the way in which the EU operates. The development of the European internal market has been based on equality, co-operation, co-decision, subsidiarity and consent, but none of those are part of the United Kingdom Internal Market Bill. It is as if the largest member of the EU, Germany, simply sets the terms, so that there can be no departure from or debate about them, and the German conditions will always apply. Anyone who knows anything about the EU single market knows that that is a total perversion of the truth. The European single market rules also allow for policy objectives alongside pure market considerations, such as the health benefits of minimum unit pricing. The small amendments to the bill make no difference on that

issue, because it is still possible for ministers—particularly Department for Business, Energy and Industrial Strategy ministers—to overrule the Scottish Parliament. As we saw today with Mr Scully, BEIS ministers appear to be, at best, woefully ill informed about reality.

**Patrick Harvie:** That leads me to my final question. Realistically, there was no chance yesterday that Michael Gove and I were suddenly going to agree on the nature of the bill, and there is little chance that you and Michael Gove will agree on the nature or the need for the bill. However, here we are: not only do we have a bill that threatens to overrule devolved competence in devolved areas, we have a Government that is clearly and explicitly willing to pass the bill against the explicit refusal of consent. What does the Scottish Government intend to do about that fundamental assault, which is entirely out of keeping with the Scotland Act 2016?

These are normal circumstances for a devolved competence. The Scottish Parliament is operating normally, not in abeyance, as the Northern Ireland Assembly was a while ago. If the UK passes this bill against the refusal of consent, it will be a breach of the Scotland Act 2016. That question should be tested. If the UK Government does that against the refusal of consent, the exercise of the powers that the bill gives would be wholly illegitimate. What action does the Scottish Government propose to take in those circumstances?

**Michael Russell:** We must move step by step as the steps appear in front of us. However, at the end of those steps, I do not rule out further action that has not been taken before. Patrick Harvie has raised with me before the question of the Scotland Act 2016. That is one of the legal issues, but other legal issues need to be considered.

I hope that the committee will agree that the bill should not be supported; the next step is the debate on the legislative consent motion in the Scottish Parliament next week. The bill still has to go to the House of Lords, and we will continue to brief members of the House of Lords about it. If the bill were to leave the House of Lords and succeed, at that stage we would look at legal action. It is difficult to take legal action against something that is not law, as there is nothing unlawful about the House of Commons or any other Parliament preparing a bill. It is a thoroughly offensive, bad bill that should never have come to the House of Commons, but that is not the same as it being illegal.

The question is whether, once the bill is on the statute book, it will conform with a variety of pieces of legislation, starting with the Acts of Union 1707 and no doubt going all the way to the Scotland Act 2016. I am fully mindful of that fact. I would not go

any further than that, but I do not intend to cease arguing and working against and endeavouring to defeat what is a major power grab.

10:00

**Tom Arthur (Renfrewshire South) (SNP):** Part 1 of schedule 2, as amended, lists services that are exempt from mutual recognition. One of those services is healthcare and the examples that are given in the schedule are

“healthcare services provided in hospitals, other healthcare facilities or at other places, xenotransplantation, human genetics, human fertilisation, embryology, services in connection with surrogacy”.

In the committee yesterday, I asked Mr Gove why healthcare services were included in the schedule. In reply, he said:

“because we want to be absolutely and unambiguously clear that our NHS is not for sale.”—[*Official Report, Finance and Constitution Committee, 29 September 2020; c 16.*]

Naturally, that prompts the question: what would be the consequences of healthcare services not being included in schedule 2, which exempts services from the mutual recognition principle? Does the Scottish Government have a view on what those consequences would be?

**Michael Russell:** I have two points on that. More generally, the exemptions in the bill can be overridden. There is sufficient wriggle room for, say, American healthcare companies to use the bill and the courts to force the health service into this, which is the point that Martin Callanan—Lord Callanan, the UK Government BEIS minister—made in the House of Lords when the consultation was on-going. I do not believe that there is a total exemption.

I do not want the bill at all. In a sense, exempting things accepts that the bill should exist and I do not accept that it should exist. The frameworks are what we need and are how we should operate. It is perfectly possible that the bill will be used in issues of, for example, procurement in the health service, where independent healthcare companies will be able to force themselves into the Scottish health service because they are recognised and able to do so in the health service south of the border.

I go back to the core purpose of the bill, which is to ensure that the devolved Administrations cannot interfere with trade relationship outcomes. Health will be part of some of those FTAs. We have drawn attention to the fact that, in the Japanese FTA, which the UK Government is proudly crowing about, there is a weakening on antimicrobial resistance.

There are issues in the bill that are deeply damaging and I do not accept the word of any UK minister that that could not happen.

**Tom Arthur:** That is useful. If I understand you correctly, you are suggesting that the bill, even with the exemption from mutual recognition for healthcare services, is anything but watertight.

You will be aware that clause 17 of the amended bill confers a power on the secretary of state to make changes to the schedule through the affirmative procedure, including removing listed items. Further, clause 17(4) allows the made affirmative procedure to be used during the first three months after the law comes into force. If the purpose of healthcare services being listed is to avoid any suspicion that the national health service might be up for sale, why would the UK Government want to reserve that power for itself? Why would the UK Government want to give itself the power to remove, without parliamentary approval, that safeguard, as it would describe it?

**Michael Russell:** The made affirmative procedure is for things—[*Inaudible.*] It was used for the coronavirus regulations. If the UK Government is allowing itself to do that in the first three months, it will want to do some pretty dramatic things as quickly as possible with as little scrutiny as possible, which is typical of the Government.

**Tom Arthur:** Finally, I have tried to get an understanding of the UK Government's position. Mr Gove was dismissive of concerns that the national health service might be under threat. He dismissed that as a conspiracy theory, or words to that effect. Is it the view of the Scottish Government that the bill represents a clear and present danger and a threat to the Scottish NHS?

**Michael Russell:** Yes, and that applies not only to the NHS. Michael Gove dismissed criticism of the bill as "for the birds". The bird in question is a chlorinated chicken. Yes, absolutely, in all likelihood, standards will be lowered, no matter what is said, and those lower standards will be forced on Scotland. That is what the bill is about, that is why the bill exists and that is what will happen. It will happen not only on serious matters such as foodstuffs and environmental standards, but on other areas.

Among the more incredible—[*Inaudible.*]—teaching qualifications and building standards. When it comes to teaching qualifications, we have a register, which they do not have south of the border. We have a compulsory qualification for headship now, which they do not have south of the border. However, that is still in play here, as the General Teaching Council Scotland has been forced to say. The Royal Incorporation of Architects in Scotland has been very clear about

the issue. There have been separate and different building regulations in Scotland since time immemorial. That is nothing to do with devolution, so why would you try to do anything about that, unless you were trying to create the circumstances in which standards could be lowered and those lower standards could get you trade deals? It seems absolutely obvious to me. Mr Scully's smokescreen today shows that they are trying to find another excuse for the bill. They should be harassed mercilessly on that until they tell the truth about it.

**Tom Arthur:** Thank you, cabinet secretary. I have no further questions, convener.

**The Convener:** Thanks, Tom. Alex Rowley, do you still wish to come in on that area? You indicated your interest earlier.

**Alex Rowley:** No, I am fine.

**The Convener:** Thank you. Dean Lockhart is next.

**Dean Lockhart (Mid Scotland and Fife) (Con):** Thanks, convener. Yesterday, the committee heard evidence from Michael Gove that the UK internal market proposals will deliver additional spending in Scotland by the UK Government and that the additional spending will be over and above Barnett consequentials. Does the cabinet secretary welcome the additional spending and investment by the UK Government?

**Michael Russell:** I always welcome expenditure in Scotland. I would like to see Scotland with full control of its resources, spending money as required. Solving the old "Highland problem" by applying the resources of the Highlands to the problems of the Highlands is an approach that should be taken at a Scotland level. However, I am sceptical about additional funding for the devolved Administrations, because I really doubt that that will happen.

In addition, we must be careful about the conflicts that could arise in the process of spending money. To take a transportation issue as an example, we might say—and it would not be unwise to do so—that we ought to have reservations, at least, about endless road building. That is not the position of the UK Government. Therefore, it might say, "We're going to do this," and we would say, "Actually, we are trying to reduce car use." To give another example, on privatisation of the health service, the UK Government could say that it was going to build a set of private clinics, and we would say that that is not the policy of the public health service. We need co-ordination.

These moneys are meant to replace the moneys from European funds, including the regional fund and the social fund. The quantum will be the

same. At present, those funds are spent in a consultative way, but there is no commitment to that approach. Therefore, until I see not just the colour of the money but the arrangement and the safeguards, I am sceptical.

**Dean Lockhart:** I am glad that you welcome the proposal for additional money to be spent by the UK Government in Scotland. In the same way, “Government Expenditure and Revenue Scotland” figures show that UK Government expenditure in Scotland means that we can, per head of population, spend much higher sums of money on public services in Scotland than would otherwise be the case.

Let me come back to your point about existing EU structural funds. It seems that you prefer EU institutions deciding on spending in Scotland to those decisions being made on a collaborative basis with the UK Government. Is it not better that investment and spending in Scotland should be made on that basis? One example thereof is the city deals, which involved joint agreement on spending in Scotland between both the UK Government and the Scottish Government—and, more importantly, joint working with local authorities and other community organisations. Is that model not the best way to agree collaborative spending in Scotland, as well as additional spending by the UK Government?

**Michael Russell:** You make a number of points; let me address them all. First, I thank you for mentioning GERS, because it is always important to point out the woefully incompetent management of public finances by the UK in Scotland over the long term and the fact that we need independence in order to move on from that. I thank you for helping me to make that point.

Secondly—I notice that Alok Sharma did the same thing to Ian Blackford yesterday—I do not share your implacable hostility to the EU, and nor do the Scottish people, who voted 62 to 38 per cent against leaving it. Figures would indicate that the majority is even bigger now. Scottish people saw the EU not as some monolith that made distant decisions but as a collaborative venture.

The UK Government has now put itself outside the pale on international law; its rhetoric against working with others is appalling—*[Interruption.]* I am endeavouring to answer all the questions—I am happy to do so. It would be useful if I did, because we could move on. The reality is that I am not hostile to the EU. I do not want it to make all the decisions; I want to make decisions collaboratively.

With regard to what lies ahead, had Michael Gove come forward yesterday with clear structures to be put in place in relation to spending that money, we would be able to discuss those

sensibly. He did not do so but made a series of big generalisations instead.

I would welcome clear structures that would, for example, build on the city deals, were Dean Lockhart in a position to present them. Otherwise, I want to consider the clear structures that we had in the collaborative spending of EU funds, which involved the widest range of people, including local authorities, showing that that money was well spent. I hope that the UK Government intends that to happen—I doubt it, however.

**John Mason (Glasgow Shettleston) (SNP):** The cabinet secretary has already mentioned teachers and professional qualifications. I tried to ask Mr Gove about the matter yesterday, but he ignored my question and just said that the UK did not plan to interfere in Scottish education. I am interested in Mr Russell’s angle on Mr Gove’s ignoring of the question. Is the cabinet secretary concerned that we could see teachers come to Scotland who do not have the normal qualifications?

**Michael Russell:** Mr Gove and I go back a long way: he is a former education secretary, as I am—that is how we first chatted with each other, so to speak. He is a strong opponent of compulsory registration and of a national register, and he has been a proponent of people teaching in schools, who do not hold a professional qualification. That is not the situation in Scotland, and I hope that nobody believes that such a situation should prevail here.

I know the General Teaching Council for Scotland to be a totally independent body—not part of the Government—because I gave it its independence, which was enacted in Parliament. The GTCS has made it absolutely clear that it is worried about the matter of teaching qualifications because it believes that the new legislation, which the UK Government has not amended so far to address the issue, will create circumstances in which its procedures are at risk.

The GTCS is responsible for a procedure for those who come from England to teach in Scotland, which allows qualifications to be sometimes gained in a reasonably fast way, which is positive, because the teachers need to have qualifications. In addition, there is now a compulsory qualification for headship, which I supported when I was the education secretary. There is no such compulsory qualification in England.

For all those reasons, the GTCS—by no means a body of mad nats but a responsible and independent body—says that it has worries about the bill. Michael Gove should have addressed those worries and made a commitment to amending the bill to make sure those worries are

not realised. He did not do so, and we can infer from that that he does not intend to do so and that, therefore, he is not unhappy that the possibility of interfering with Scottish education still exists.

10:15

**John Mason:** Mr Gove's argument was that he and his colleagues are such nice people that we should trust them and that, even though the bill gives them powers, they are so nice that they would not actually use those powers. Do you find that argument convincing?

**Michael Russell:** I suspect that you know the answer to that. I do not find the argument convincing.

I notice that a number of people who have commented on the bill have made the same point. These are very wide-ranging powers. At least until today—everything changes all the time—the defence appeared to be that the UK Government is not going to use those powers much and you should not really worry. I am sorry, but I do not believe that all.

**John Mason:** The final area that I want to touch on is the minimum unit pricing of alcohol. The measure has been introduced, so we should be able to keep it. However, if we were to, for example, increase the unit price dramatically, that could be challenged. Mr Gove's answer to those concerns seemed to be that that would happen only if there was a blatant ban on something like Buckfast or English cider and that the UK Government would not interfere otherwise. Is there a real risk to something like minimum unit pricing?

**Michael Russell:** Of course. I think it is obvious. Remember the Scottish Tories' opposition to the measure; if the UK Government had the power to interfere, would they not encourage it? Imagine if that had happened.

We were able to bring in minimum unit pricing, although it was difficult and hard work, because there was flexibility in the European system. There is no such flexibility in the proposed UK system. If you think back to the brakes that people tried to apply to it—and I well remember that you were part of that—in all circumstances, I absolutely believe that minimum pricing would be exactly the type of thing that they would not want to happen.

We also have to take a parallel look here at the type of criticism and sniping that happens when we do different things, even in the really difficult area of coronavirus regulations. Then there is sniping, particularly from the Tories, about whether we should be different. As I have said to the committee before, there is a deep dislike of devolution at the heart of the current UK

Government, and it is unfortunately being aided and abetted by the Scottish Tories.

**Jackie Baillie (Dumbarton) (Lab):** I welcome the cabinet secretary's defence of devolution. I do not know whether he was listening—I suspect that he was—to the session that we had with Michael Gove, who seemed to suggest that he would be willing to pause to try to gain consensus on the bill, although I suspect that that might be more what I hoped to hear than what he actually said. Do you consider that there is any prospect of more substantive amendments being proposed that would make a bill more acceptable to you?

**Michael Russell:** I welcome Jackie Baillie to the committee. I am sure that she will test me as well as others.

That is a very good question. The bill is deeply flawed in conception, because it tries to create a mechanism to undermine devolution. If, for example, the bill was to be amended so that there was a consultative process that might provide some statutory underpinning to the frameworks, I would be prepared to sit down and discuss it. However, I think it unlikely that that will happen, given where the UK Government is. Nevertheless, as Jackie Baillie knows, I am not an unreasonable person, so, if Michael Gove came along and said that he wanted to sit down and discuss things to see whether we could find a way forward, we and the Welsh would be willing to do so, as would the Northern Irish.

We have not mentioned Northern Ireland much, but the issues for Northern Ireland in the bill are very complicated because they involve not only the internal market but the Northern Irish protocol.

The wisest thing to do would be to withdraw the bill and return to the table to discuss frameworks. If there was a face-saving measure—Boris Johnson constantly looks for face-saving measures at negotiations—we would discuss that.

**Jackie Baillie:** It is helpful to know that. Given that the devolved nations are likely to reject the bill in its current form, it would be difficult for the UK Government to legislate without consent from any of them. Would you suggest getting round the negotiating table again? I appreciate that time is pressing, but would you take a lead on that?

**Michael Russell:** I am never reluctant to take a lead, but I am not sure that my lead would be followed by Michael Gove. However, this discussion is on the record and public, and if Michael Gove is listening with the same attention with which I listened to him—perhaps even more so—then maybe he will take it forward. The Welsh are also key players and I know that they want changes to take place. They cannot be cosmetic changes, though, and they cannot accept the principle that the devolved Administrations' right to

legislate in their areas of competence—with which I am sure you agree—can be constrained. The reserved powers model should not be interfered with, and changes should be made by consent.

If there is a desire for a videoconference on the matter today or any other day, I am up for that.

**Jackie Baillie:** Excellent. Thank you.

**The Convener:** I have a couple of further questioners for the cabinet secretary. The first is Alex Rowley, who will be followed by Angela Constance.

**Alex Rowley (Mid Scotland and Fife) (Lab):** I have two questions. First, Michael Gove said yesterday something that we keep hearing from Boris Johnson's Scottish Tory party, which is that there will be a serious power surge through powers coming to us—that claim has to be addressed.

Secondly, Michael Gove said continually during yesterday's meeting that the Tories are the party of the national health service and of animal welfare and animal rights. However, do you agree that, in fact, the UK Government is legislating to allow a weakening of animal rights and the protection around our health service and public services? Why would it legislate in those areas to allow, for example, the health service to be attacked or privatised in the future if it was committed to protecting those services?

**Michael Russell:** I will respond to the power surge point in a moment.

If the Tories do not intend to use the powers that they are giving themselves, why are they giving themselves those powers? There is no threat—none whatsoever—to trading within these islands. Over the whole period in which the legislation has been discussed, Michael Gove has not been able to come up with a single, specific, clear threat from anywhere to that trading. Nobody is making any proposals to threaten that. The Tories are therefore giving themselves those powers only because they intend to use them, and they can be used only to impose lower standards on other jurisdictions. I do not believe that the commitment to high standards will, in the end, survive the brutal requirements of a free trade treaty with, for example, the US. There is no doubt that agriculture, health services and pharmaceuticals would have to be part of that. We are being softened up for that with a variety of statements about the powers never being used, although they will be used—we have to be clear about that.

On power surges, I am sitting here, in rural Argyll, looking at my broadband router, which I have lost twice because of power surges that can be destructive and blow things up. A power surge is not a good thing but a bad thing in that sense.

There is no power surge in terms of powers coming to the Scottish Parliament. [*Inaudible.*] Saying that there is one badly misleads people. They can see the list of areas where the Scottish Parliament's powers intersect with those of the EU and the UK Government, but one partner is dropping out of that intersection.

The question, then, is how we share that power out. The UK is taking for itself the lead role in all those areas, so it can undermine us in all those areas. Even if there were some additional power, we could not exercise it. However, there is no additional power—we are still able to do the things that we were already doing. This year, we passed the Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Act 2020—animal welfare is one area of intersection. We have strong and complex food regulation—that is another such area. There is no power surge.

There were lots of remarks about power surges during the 2016 European referendum. Michael Gove said that the Scottish Parliament would get powers over immigration, for example. That is what Michael Gove promised the people of Scotland during the 2016 referendum. Did it happen? Now, he thinks it is the worst thing that could possibly happen. There is no power surge, and we should be careful of anyone who tells us that there is, because they have previous on such matters.

**Angela Constance (Almond Valley) (SNP):** Clause 48 of the United Kingdom Internal Market Bill effectively reserves state aid to Westminster, despite it not being reserved in the Scotland Act 1998. Does the cabinet secretary agree with the Scottish Trades Union Congress and other commentators that it is hard to see that as anything other than a power grab by the UK Government? I am sure that he also agrees with the STUC when it says that

“the Scottish Parliament should have meaningful powers over the Scottish economy.”

What are the cabinet secretary's views on how that power grab could impinge on the Scottish Government seeking to give financial support to workplaces that are threatened with closure?

**Michael Russell:** State aid is a crucial area of the bill. There is no doubt that it is a rereservation—even the House of Commons Public Administration and Constitutional Affairs Committee has made that clear—and it is taking something away that existed previously.

When we were discussing the frameworks, we were never able to get agreement on state aid. It was the only area on which we could not agree the need for a framework. Clearly, that was because the UK Government wanted to take the power away, because it wants to disengage from the EU

state aid structure. That is not because it wants its own state aid structure but because it wants to tie us to what is currently a very weak, badly developed state aid structure with the World Trade Organization. That is what the UK Government now says that it has done.

It is a reservation, and that means that we cannot do some of the things that we want to do. It takes knowledge of the economy to do it. The European framework was useful, because we knew what the overall guidance was and there were specific issues that we could address. Indeed, during the pandemic it became clear how flexible the EU could be about state aid when it needed to be. The bill will weaken the Scottish ability to deal with the economy.

The EU position is interesting; it is saying that it has a major competitor on its doorstep that it believes will use state aid to buy in companies—not just to prop up ailing companies—and that, if there is a free trade arrangement with the EU, that competitor will be able to export at preferential rates into the EU. So, it is a very sensitive area for the EU. The right way to deal with state aid is by negotiation. The Government should have left the situation where we all had a share in it and the UK could have developed its own structure. It did not do so, and that weakens Scotland as a result. The UK Government will also weaken its own position—it is one reason why the UK will be treated nervously as a trading partner.

**The Convener:** I thank Mr Russell for his evidence today. The committee expects to set out its views on the LCM next week.

As previously agreed, the committee will take the next item in private.

10:29

*Meeting continued in private until 11:55.*





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