



OFFICIAL REPORT
AITHISG OIFIGEIL

Finance and Constitution Committee

Wednesday 5 September 2018

Session 5



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FINANCE AND CONSTITUTION COMMITTEE

20th Meeting 2018, Session 5

CONVENER

*Bruce Crawford (Stirling) (SNP)

DEPUTY CONVENER

*Adam Tomkins (Glasgow) (Con)

COMMITTEE MEMBERS

- *Neil Bibby (West Scotland) (Lab)
- *Alexander Burnett (Aberdeenshire West) (Con)
- *Willie Coffey (Kilmarnock and Irvine Valley) (SNP)
- *Murdo Fraser (Mid Scotland and Fife) (Con)
- *Emma Harper (South Scotland) (SNP)
- *Patrick Harvie (Glasgow) (Green)
- *James Kelly (Glasgow) (Lab)

*attended

THE FOLLOWING ALSO PARTICIPATED:

- Suzanne Greaves OBE (Department of Trade and Industry)
- Rebecca Hackett (Scotland Office)
- Rt Hon George Hollingbery MP (Minister of State for Trade Policy)
- Stuart McMillan (Greenock and Inverclyde) (SNP)
- Michael Russell (Cabinet Secretary for Government Business and Constitutional Relations)
- Eleanor Weavis (United Kingdom Government)

CLERK TO THE COMMITTEE

James Johnston

LOCATION

The David Livingstone Room (CR6)

Scottish Parliament

Finance and Constitution Committee

Wednesday 5 September 2018

[The Convener opened the meeting at 10:02]

Trade Bill

The Convener (Bruce Crawford): Good morning and welcome to the 20th meeting in 2018 of the Finance and Constitution Committee. I hope that everyone has had a good summer recess. Stuart McMillan joins us today as an observer.

The first item on our agenda is evidence on the United Kingdom Government's Trade Bill. We will hear from the Rt Hon George Hollingbery MP, who is the Minister of State for Trade Policy, and—from the UK Government—Suzanne Greaves OBE, who is the Trade Bill manager, Eleanor Weavis, who is the head of domestic portfolio, and Rebecca Hackett, who is the deputy director of policy at the Scotland Office. I welcome our witnesses to the meeting. I understand that this is the minister's first visit to the Scottish Parliament—he has, at least, seen committee rooms and the lift on the way up. I hope that he will get a chance to have a greater view of the building later on, because it is a fantastic place.

Minister—I invite you to make brief opening remarks.

Rt Hon George Hollingbery MP (Minister of State for Trade Policy): Thank you, convener. I am pleased to be here. It is fantastic to see the building; I have driven past it a number of times. My son is at the University of Edinburgh, and Pollock halls of residence are just around the corner, so I have seen the Parliament from a distance on many occasions.

I am looking forward to supporting committee scrutiny of the Trade Bill. The bill continues to be a key element of our package of legislation to ensure that we are fully functioning for our international trade partners, businesses and individuals across the United Kingdom. The UK Government wants all parts of the UK to support the bill.

We have been very clear from the introduction of the bill that some elements, namely in clauses 1 and 2, engage the legislative consent process. I note the Scottish Government's memorandum on the legislative consent motion from December 2017. Since then, the UK Government has taken significant strides through its amendments to the Trade Bill, which were introduced at the report

stage, to make improvements to the bill and to answer many of the concerns that were raised in that memorandum. I acknowledge that despite the amendments, the current position of the Scottish Government is that it will not provide legislative consent.

I reiterate the Government's commitment to engage with the Scottish Government, and I remain confident that we will reach a position that the Scottish Parliament can support.

I welcome the Scottish Government's recent paper "Scotland's Role in the Development of Future UK Trade Arrangements", which my officials will discuss with their Scottish counterparts later today. Importantly, the Trade Bill focuses on transitioning European Union deals, not on making future arrangements. However, I would very much like to learn what are the most important parts of that paper for the committee. I look forward to hearing the committee's views on the bill and to answering its questions today. I am relatively new in post: I will attempt in all cases to give the political steer that a minister should give, but on some of the technical detail of the bill, I hope that members will agree that referring questions to my colleagues might give you better information.

The Convener: We appreciate that point, minister. Thank you very much for your opening remarks. We will get some things on the record just for the purpose of making sure that we cover all the detail. I accept that some amendments have been made, but given that a majority of members on this committee and in the Scottish Parliament have recommended that consent not be given to section 12 powers in the EU (Withdrawal) Act 2018, and given what you said about being confident about reaching agreement, why does the UK Government continue to propose that the same restrictions apply, in effect, to the powers in clauses 1 and 2 of the Trade Bill?

George Hollingbery: It is worth saying that it is unlikely that any of those powers will be necessary. I discussed with officials earlier the sorts of circumstances in which we might have to use the concurrent power in those areas in order to put something on to the statute book, and such circumstances are relatively difficult to see. I completely understand that that does not obviate the principle; nevertheless, it seems to us that it is quite unlikely that the power will be used.

On the principle itself, there are certain areas in which consistency of approach across the UK as a whole is the driving force that we must work with and make sure that, when we transition existing EU trade agreements, it is maintained. There is still room for negotiation, and we are absolutely committed to carrying on talking, co-operating and working with colleagues and officials in the

Scottish Parliament to find our way through this. When I say that I am confident, I mean that I believe that there is plenty to talk about and that we will achieve success, despite the objection to the principle.

The Convener: You think that there may not be many changes, but the bill makes no provision at all for circumstances in which the terms of existing trade agreements change as a result of negotiations—in particular, those that might be initiated by third countries. Under the current proposals, the devolved Administrations would not be involved in such negotiations, which would be conducted by the UK alone.

George Hollingbery: Are you talking about future trade agreements or about continuity?

The Convener: I am talking about continuity in grandfather rights roll-over, which is, in effect, the description that you provided earlier for the Trade Bill. If that were to happen, there is potential for prolonged and involved trade-offs. In those circumstances, we can imagine that people in Scotland would have concerns about impacts on the fishing and seafood industries, and so on. The House of Commons International Trade Committee takes a slightly different view from the UK Government. Its report said:

“Our evidence strongly suggests that substantive changes will be necessary when EU trade agreements are rolled over. The Government should set out provisions for both ... extensive parliamentary scrutiny and enhanced involvement by the devolved administrations in situations where such changes ... occur. ... The Government must show what it is doing to foster a cross-departmental approach to the issue of rolling over trade, and other trade-related, agreements and ... involve fully the devolved administrations.”

Can you give an update about what that involvement will look like, what progress is being made, what discussions have already taken place and what might happen in the future?

George Hollingbery: I will address those comments at the top level.

First, we made a large number of amendments to the Trade Bill. For example, Jonathan Djanogly proposed a new clause 6 that said that we need a great deal more scrutiny when we transition to a new version of an arrangement, whatever it is. I looked at the matter carefully; the answer was yes—we need more scrutiny. It was agreed that a report will be placed before Parliament that will describe the changes that occur between the original EU agreement and the new agreement that will be ratified by the UK. In each case, we will be clear about what the changes are, where they will happen in the agreement and what their effect will be.

Delegated legislation that is to be passed to enact the changes will in its explanatory

memorandum point to exactly which bit of the report on the transitioned arrangement it will affect. That gives Parliament a clear route for scrutiny of any changes and, indeed, the ability to object to and to deal with them in the debates that will happen on them.

Furthermore, each of those will be subject to ratification; of course, the Parliament is capable of delaying that, through the CRAG process, which is the process under the Constitutional Reform and Governance Act 2010.

We have made very real concessions that have improved the bill. The sponsor of new clause 6, Jonathan Djanogly, agreed that we had come to a better conclusion about how we will scrutinise changes.

On top of that, it is, of course, our intention to alter the arrangements as little as possible. The whole point of the trade agreement continuity process is to ensure that we have the agreements in place for exit day. I agree with your analysis that, if we try to change too much, that will delay matters. There is absolutely no question about that. Therefore, colleagues should take comfort from the fact that it is absolutely in the Government's interests to ensure that as little as possible changes, because speed is of the essence.

The Convener: It might be that change does not happen very often but, on the basis of evidence from the House of Commons International Trade Committee, there is a prospect that it might happen on some occasions. You have described well what the process is for the UK Government and the UK Parliament, but I am not hearing how the devolved institutions would be involved in that process and in any consultation and discussions about potential changes.

George Hollingbery: I will ask my colleagues to describe access to those papers, but I think that I am right in saying that, like all parliamentary papers, they will be available to anybody who wishes to access them. As trade is a reserved competence, I am not entirely sure that there is a formal role, at least, for Scottish colleagues.

Eleanor Weavis might want to fill in a little on that.

Eleanor Weavis (United Kingdom Government): At official level, we engage regularly with the devolved Administrations. We have a number of fora through which we update those institutions on the trade agreement continuity work. Those are the main fora at which we would discuss any changes that might be made to ensure continuity.

In addition—which the minister referenced—the papers that we will lay before Parliament in

advance of statutory instruments being laid will be freely available. The Scottish Parliament would be free to review them as it wishes.

The Convener: So, there will be no formal process of consultation between the UK Government and the Scottish Government, or indeed the Scottish Parliament, when there are changes to existing trade arrangements.

Eleanor Weavis: The process will be at official level, as we have described.

As the minister said, it is a technical process and we are making technical changes to the trade agreements to ensure that they make sense in a bilateral context.

George Hollingbery: All the arrangements have been in place for some time. That is the case by definition, because we cannot transition anything that is not already on the books. The arrangements are tried and tested and have been ratified by Parliament, and their texts have been available for a long time.

I re-emphasise one more time that it is absolutely not in our interests to vary the arrangements greatly. There may be opportunities in the future to renegotiate with partners, as and when time allows and things have settled down, but continuity is all about giving certainty to businesses, consumers, politicians and anybody else who needs to understand the process, that what we will have in place will be pretty much exactly what we have in place now. The process has already been gone through once in detail. It therefore seems to us that the right way forward is to take a light-touch approach—to modify as little as possible and put that through Parliament, while making sure that everybody understands what has changed. That will be evidenced to anybody who wants to read the documents.

If we were looking to change huge issues of grand principle in any of the agreements, a question might arise, but we absolutely do not intend to do that.

10:15

The Convener: I will press you on that, because the International Trade Committee of the House of Commons has a different perspective from yours—as do others around this table—which is that substantial changes may be required. If we are talking about existing systems, the concordat between the UK Government and the Scottish Government states:

“The UK Government recognises that the devolved administrations will have an interest in international policy making in relation to devolved matters and also in obligations touching on devolved matters that the UK may agree as a result of concluding international agreements”.

Therefore the thrust is that involving the devolved Administrations is already part of the architecture. That involvement may not be specifically so in existing trade deals, but it is part of the architecture of agreements between the Government of the UK and the Scottish Government.

I, personally, would be disappointed if there were to be no formal mechanism that recognises that there is a role for the Scottish Government and the Scottish Parliament if and when changes to trade arrangements are introduced. That would be a weakness—and not just for Scotland, but for the UK.

George Hollingbery: I am very happy to confirm to the committee that that is clearly noted. The committee may wish to move on to this in a separate section, so I shall try not to anticipate too much, but I am also absolutely clear that, as far as future trade arrangements are concerned, the devolved Parliaments and Assemblies should be very involved. I absolutely hear what the convener said as a matter of principle. I think that our difference is that you have taken the word of the International Trade Committee that there will be substantial changes, whereas I believe that there will not be such changes, which would not be in our interests. I also believe that time militates against them. Therefore, I think that there will be little to discuss other than that what we had before will, largely, be had again, but with the UK being substituted for the EU.

The Convener: Does anyone have a supplementary question?

Willie Coffey (Kilmarnock and Irvine Valley) (SNP): Good morning, minister.

My question is on the same point, if you do not mind. We already have an agreed concordat relating to co-ordination of EU policies, which is set out in the memorandum of understanding. It says quite clearly that

“the UK Government wishes to involve the Scottish Ministers as directly and fully as possible in decision making on EU matters which touch on devolved areas”

including

“policy formulation, negotiation and implementation”.

I ask again: does what you said a moment ago not backtrack on that agreement already?

George Hollingbery: I do not believe so. I would like Eleanor Weavis to elucidate a little on how we are fulfilling what is promised in that concordat and the memorandum. A large number of meetings have taken place on trade policy and how we all work together on that. I would like Eleanor, if she can, to give the committee a view of how many meetings there have been and what we intend to do in the future.

Eleanor Weavis: We have a number of mechanisms through which we are engaging with the devolved Administrations on our future trade policy, following a deep dive that we had with them before the summer recess. We have had a series of technical policy round-table meetings roughly monthly, to discuss UK trade policy in detail and to enable the devolved Administrations to feed their views and expertise upstream in the policy development process.

In addition to those, we have six-weekly senior officials' meetings that review the devolved Administrations' role in trade, and cover cross-cutting issues including discussions on the bill. We and teams across the trade policy group regularly engage with our counterparts in the Scottish Government. Indeed, after this meeting, we will have a series of meetings with the Scottish Government on its role in future trade agreements and how it might best feed into the upcoming consultations.

Willie Coffey: Can you give examples of how the devolved Administrations have shaped policy formulation in ways that you had not proposed initially?

Eleanor Weavis: I am sure that we could find some such examples. They would be at technical policy level for the policy leads who work on the trade agreements, so I would need to return to the committee on those. However, I know that our colleagues have had a number of very interesting discussions with colleagues in the Scottish Government about the detailed policy that goes into forming a UK position for trade agreements.

The Convener: We have other supplementaries on this area.

James Kelly (Glasgow) (Lab): I want to explore what you are saying with a practical example in terms of the locus of the Scottish Parliament and the Scottish ministers. In Scotland, there are 467,000 people whose earnings are below the living wage, which is far too high a number. I think that the view is shared across the Scottish Parliament that we want to use any levers at our disposal to bring that figure down. If a new trade agreement was being set up in the future and part of it involved Scottish public bodies in purchasing goods or services, would there be a facility under the agreement for a devolved Administration to mandate its own public bodies to pay the living wage?

George Hollingbery: The provisions in the Trade Bill about the Government procurement agreement sign us back up to the obligations that we already have as members of the EU. I am very happy for officials to intervene if I misspeak. In essence, that means that British—Scottish, Welsh and Northern Irish—companies have access to

£1.3 trillion-worth of international procurement opportunities. On the other hand, it also means that we are relatively limited in the way we can shape the procurement policy that we use at home. It has to be open, transparent, understandable and accessible to all who use it.

I do not think that I will comment on the particular example that James Kelly gave, but if a particular policy was to be applied, it would have to be compliant with the rules of the GPA.

James Kelly: Are you saying that, under a new trade agreement, devolved Administrations such as the Scottish Government would not be able to exempt their public bodies and apply a specific policy when they are involved in procurement activities?

George Hollingbery: I think that we are talking at cross-purposes slightly. I am concentrating on the provisions in the Trade Bill and I am absolutely clear that the procurement agreement will be exactly the same as the one we have. In essence, we will simply be individual single members and I believe that Scottish institutions already have legislated for and made policy decisions about how they do that sort of procurement. Perhaps my colleagues have further notes on that.

Eleanor Weavis: It is worth noting that, as a member of the EU, we signed up to the Government procurement agreement, which sets the rules around procurement policies. Under the Trade Bill, we would continue our membership of that as an independent trading partner, so nothing would change.

George Hollingbery: Just to readdress your question, which is perhaps about whether, in future trade arrangements, Scottish authorities could take on a different role or a different set of policies on procurement and so on, the agreements will be mandated and agreed at UK level, so I would have thought that the policy in the free-trade agreement as agreed at UK level would apply to all public authorities in the UK.

James Kelly: Are you saying that if the Scottish Parliament and Scottish public bodies took a different view, the UK view would override that?

George Hollingbery: No. I will give the example of the EU-Japan free-trade agreement that was recently signed, in which there was a whole chapter on procurement by local authorities. The example might not be directly relevant, but it will give you a flavour. Some local authorities decided that they did not want to be included in the free-trade agreement, so they were not; others concluded that they did. It is an example of where there are variations across the piece, although Japan is a different country with different relationships so it gives no great indication as to

how we treat things here. It will entirely depend on the free-trade agreement and how it is struck.

The GPA is wholly separate from that and, if we are talking about procurement in general, we are just replicating the arrangement that we already have with the EU, other than changing technical details and using the delegated powers where necessary to do accessions and deal with people going in and out of the arrangement. It will be pretty much as experienced previously.

The Convener: Minister, members will inevitably ask questions on issues wider than the Trade Bill, but we all understand that the bill is about rollover issues, grandfather rights and existing arrangements.

Patrick, it is probably the right time to raise scrutiny issues.

Patrick Harvie (Glasgow) (Green): Yes, absolutely. To pick up on the minister's comment about changes in relation to parliamentary scrutiny, it is right that this not only covers the immediate issues in the Trade Bill but the longer-term approach to trade policy and the UK Government's commitment to work with the devolved Administrations on both those fronts. In particular, your "Preparing for our future UK trade policy" document states:

"We ... remain committed to working with the devolved administrations on our approach to the implementation of new trade agreements signed after EU exit, as well as the role they will play in helping to shape the UK's future trade policy."

There are two levels to this—one is about the extent to which the UK Government will work with the devolved Administrations and the other is the extent to which parliamentary scrutiny is brought to bear on both levels of Government.

Do you agree that, in general, if we are to be consistent with those commitments, trade policy and some of the immediate decisions in relation to continuity and roll-over and so on should be shared responsibilities and that both Governments must therefore have a mechanism by which they can decide and express clearly whether an agreement or an approach has been reached and both Parliaments must have the ability to say no?

George Hollingbery: The Scotland Act 1998 makes it pretty plain that the conduct of international issues, including trade, which is specifically identified, is a reserved matter. There is absolutely no doubt that Scotland has an interest in trade, including promoting it and influencing UK Government policy on it, which is quite right and proper. However, according to the Scotland Act 1998, I do not think that Scotland has a formal role where it can set trade policy for the UK. Perhaps I should ask Rebecca Hackett to come in on this at some stage, but the UK is the

body that sets trade policy. That is my understanding; I am happy to be contradicted.

Patrick Harvie: I am not saying that the devolved Administrations will set trade policy. I am saying that the UK Government's position is that the devolved Administrations will play a role in helping to shape future UK trade policy. Can you tell us what that role will be and how things will operate in practice?

George Hollingbery: As we have already heard, there is extensive discussion with the devolved authorities at official level about the UK's trade policy as it emerges and evolves. We take those discussions very seriously and points that are made will be incorporated as appropriate into the policies that we introduce.

It is also, of course, entirely proper for the Scottish Parliament to have debates on any issue that it wishes to debate, including trade policy, and I have no doubt that those debates will be noted in the UK Parliament as well, so there are many mechanisms there.

I confirm that it is the department's clear intent and desire to take the concerns of the Scottish Government and the other devolved authorities about trade policy extremely seriously. There are very important industries in Scotland and very important issues to consider; it is clearly right that the UK Government takes those into account. We will continue the contacts at official level, at as deep a level and for as long as we can, so that we can shape our overall trade policy such that it reflects the interests of the devolved authorities.

Patrick Harvie: I will just reflect back to you some of the evidence that we have heard so far. Professor Rawlings told us that the UK Government's new Board of Trade treats the devolved Administrations just like any other stakeholders and that it

"is very much a top-down approach",

which sends

"a negative set of messages".—[*Official Report, Finance and Constitution Committee*, 15 November 2017; c 26-27.]

The Scottish Government has said that the UK Government's approach to trade policy,

"which appears to place the interests ... of the devolved nations on a par with sectoral interests—must change."

If that is the perception of the level of involvement and the seriousness with which this has been taken, we have a problem and something has to change—is that right?

George Hollingbery: Although there may be that impression, it does not reflect the reality. I reiterate my earlier reply—there has been a huge amount of engagement with the Scottish

Government and officials on trade policy, and there will be a great deal more.

We continue to evolve and think through our approach to trade policy and its relevance to devolved authorities and how we engage on that. We are thinking very carefully about the devolved authorities' roles and the expertise that no doubt exists here and how we work very closely with the Parliament to make sure that we exploit that expertise, get those views and incorporate them into UK-wide policy.

The impression from one or two commentators may be that that is not happening, but my impression from what I hear about the engagement is that it very definitely is.

Patrick Harvie: So you do not see any need to change the approach that has been taken.

George Hollingbery: I think that the approach should always evolve and improve. We should always look to do things differently if it can create better results.

10:30

Patrick Harvie: My final question looks further ahead, to the longer-term approach to the development of potential future trade agreements. One of the serious themes of the evidence that we have heard is democratic scrutiny of the process. If we look at the level of democratic scrutiny that has existed in the European Parliament, which will—obviously—no longer apply if Brexit goes ahead, we see that there was a huge amount of public campaigning around concerns about the transatlantic trade and investment partnership. That was effective campaigning, and the European Parliament was able to reflect it and prevent the things that people were concerned about from happening. What level of democratic parliamentary scrutiny—I am talking about multiple Parliaments—is necessary to ensure that people power can have the same role in future? Will it involve Parliament signing off negotiating mandates, having scrutiny of draft texts and ultimately approving trade agreements, rather than ministers doing that and reporting their decisions?

George Hollingbery: I re-emphasise that this remains a UK competence and the royal prerogative is used to sign off the treaties. There is no intention to change that position.

As for democratic accountability—the ability of people to shape what free-trade deals look like—the secretary of state is extremely clear that one of the problems with TTIP was that it was not widely explained and there was not a huge ability to address key issues and the problems that people had with it, and that if we were going to have a system in this country, it was going to be much

more widely accessible and the public would be generally consulted. We are starting that off today here in Scotland.

We are going to run a 14-week consultation period in which people of any age from any walk of life, any background and any part of the country can put in their views as to what we should be doing with the four potential free-trade agreements that we are proposing to move forward with. We are also holding, as you know, lots of direct round tables and consultation groups with people in regions across the country. People will be able to have much better knowledge of agreements and to shape them before they become set down in a framework.

Patrick Harvie: Forgive me—that is all nice to have, but will they be able to call on their MP to vote no if they feel that the outcome is not in their interests?

George Hollingbery: I think that the honest answer is that the ratification process provides—it was changed in 2010—for the CRAG process to be delayed, indefinitely in fact. If there are very, very serious concerns about the shape of the free-trade agreement and sufficient numbers of MPs agree, that can be achieved. However, we are looking to produce an agreement that everybody can agree on and we are putting in place a mechanism by which all the benefits of a free-trade agreement can be made plain. People will be able to feed in where they have concerns, and those can shape the framework around which we negotiate.

We will report to the UK Parliament regularly and we will be reporting directly to the International Trade Committee as well. There will be regular parliamentary opportunities on the free-trade proposals. We believe that there is a level of democratic accountability whereby people can see what is going on while, at the same time, the UK Government retains the ability to sign free-trade agreements.

Adam Tomkins (Glasgow) (Con): If I may, I will pick up directly on that last point, minister. When you mention the CRAG arrangements, you mean the arrangements under the Constitutional Reform and Governance Act 2010, which placed on a statutory footing what I think used to be called the Ponsonby rule. It significantly enhances the role of the UK Parliament effectively to hold the UK Government to account for what it agrees in any international agreement or treaty—not uniquely in trade agreements. That is the UK Parliament's ability, as I think you said, indefinitely to delay the ratification by the Crown of international instruments that the UK Parliament has problems with.

George Hollingbery: Indeed. There are also clear counterpoints with where the EU is moving on that, where we now have competence. The investor protection arrangements are EU-only agreements from now on in, pretty much, so what we are proposing is certainly superior to that. If you compare it with the previous arrangements, ratification was an issue there as well and could be delayed, but now the EU is quite clearly moving towards something completely different, so the UK arrangements provide an opportunity for the inputs that we need to shape and an opportunity to scrutinise on a regular basis and see where we are with the negotiations and how they are being changed. When we have a final agreement, parliamentarians will still have an opportunity to infinitely delay the ratification of a treaty if they object sufficiently.

Adam Tomkins: In that important process of parliamentary accountability of the UK Government, Scotland is represented by the 59 MPs that it elects to the House of Commons. As you have said a number of times, completely correctly, we are talking about competences that are reserved to the UK Parliament.

George Hollingbery: Quite so, and it is key to remember that Scotland has its fair representation. There have any number of debates on all those topics, on which Scottish MPs have made their opinions well known. They have looked after their sectoral interests, consumer interests and political interests, and they have told the UK Parliament precisely what they think. Indeed, many amendments were regularly lodged by Scottish members of the UK Parliament. As I am sure you would expect, they are an effective group of people and highly successful campaigners, so I would trust them to be able to shape rules, regulations and FTAs in ways that suit Scotland.

Adam Tomkins: It has been the strongly expressed view of this committee—and it is certainly the view of my party—that Brexit can and must be delivered compatibly with the UK's devolution settlements. That means not only that devolved competence must be respected but that reserved competence must be respected. I take it that that is also the view of the UK Government.

George Hollingbery: It certainly is.

Adam Tomkins: So there is no sense in which Brexit can somehow return the UK to the constitution that we had before we joined the EU in 1972, when there was no legislative devolution in Scotland or Wales.

George Hollingbery: Quite so, and it is right to reflect at this stage that, upon the moment of Brexit, the Scottish Government will become fully responsible for a great deal more than it has been responsible before. Although we can discuss the

issues around section 12, a large amount of competence that it did not have is going to be given to the Scottish Parliament.

Adam Tomkins: That is the constitutional starting point. We are talking about reserved competences and therefore about competences in which Scotland's interests are represented principally by the 59 MPs that it elects to the House of Commons, but the UK Government has consistently said, ever since the EU referendum, that in the management of the process both the Scottish Government and the Scottish Parliament will have roles to play in helping to shape policy and to hold the policy-making process to account, notwithstanding the fact that we are talking about something that is essentially reserved to Westminster rather than devolved to this Parliament. That is correct, is it not?

George Hollingbery: Absolutely. There has been an intention at all stages in all of the legislation to ensure that the settlement that was reached when the Scottish devolved powers were brought in in 1998 is respected and that, as far as possible, the devolved authorities must be brought with us as the process reaches its conclusion. Not to do so would undoubtedly create problems, difficulties and objections, so it must be done.

Adam Tomkins: You said in your opening remarks that you had been in post only for a matter of weeks, but within that timeframe how is that process going? What is your immediate reflection on how the process of engagement with the Scottish Government is going? We have heard from your officials that there is frequent and meaningful engagement at official level. What about at ministerial level?

George Hollingbery: One of the first visits—in fact, the first visit—that I made in my new role was to Leeds and later the same day to Glasgow, to meet Mr Mackay.

Adam Tomkins: Derek Mackay?

George Hollingbery: I meant Ivan McKee. I do apologise. I had a slight brain fade there. I have been up here before and I am here again today. There has been any amount of engagement, as we have already discussed at some length, between officials, and I believe that we can raise the level of that engagement. There is more to do, and we continue to think carefully about how we deal with, work with and co-operate with colleagues in the Scottish Parliament, and I think that we can make improvements. We continue to think about how we can improve this process, how we can make it better and how we can reach agreement with colleagues as best we can.

Does anyone else want to add anything more for the record?

Rebecca Hackett (Scotland Office): With regard to the UK Government process, I suppose that, in addition to the 59 MPs that Scotland has at Westminster, there are the territorial secretaries of state, who represent the interests of the devolved nations as policy is made. The Scotland Office is actively involved in the process of developing the policy.

The territorial secretaries of state also participate in the meetings of all the institutions that have been re-established, such as the Board of Trade, and businesses from devolved nations are involved in those meetings, too. In addition to that, a review of intergovernmental relations is under way, and the UK Government is working with the devolved Administrations to look at how the structures that we have can be reformed to respond to the new challenges post- EU exit.

Adam Tomkins: When might that review be completed?

Rebecca Hackett: It is going on over the course of the year. It is progressing with a view to having further discussions later in the year, with new arrangements perhaps being ready for EU exit.

Adam Tomkins: Thank you very much.

The Convener: That has been quite a useful look at the architecture of how the UK works with regard to these issues. In our interim report on the European Union (Withdrawal) Bill, we noted the concordat on international relations. How does that fit into this discussion? The concordat quite clearly

“promises cooperation on exchanging information, formulating UK foreign policy, negotiating treaties and implementing treaty obligations. It also provides for Ministers and officials from the devolved administrations to form part of UK treaty-negotiating teams and for apportioning any qualitative treaty obligations”.

Do you see devolved Administrations having that kind of role in future, as laid out in the existing concordat?

George Hollingbery: The answer to that, convener, is that I absolutely rule nothing out. Clearly that is what is in the document. All of these issues are being considered as part of the process that Rebecca Hackett has just outlined, and I do not think that I can go any further than that at the moment.

The Convener: Murdo, did you still want to cover the Government procurement agreement?

Murdo Fraser (Mid Scotland and Fife) (Con): Yes, convener. Minister, my colleague James Kelly touched on some procurement issues earlier, but I want to follow up on a couple of points.

Clause 1 of the bill deals with the power to implement the agreement on Government

procurement, which is a voluntary agreement between 19 World Trade Organization members, including the EU. However, the bill does not appear to address the process by which the UK will become a signatory to the GPA or the role—if there is any—of the devolved Administrations in such a process. Are you able to tell us a bit more about how that process will work in practice?

George Hollingbery: Are you talking about actual application at WTO level?

Murdo Fraser: Yes.

George Hollingbery: I will definitely have to refer to officials on that, if you do not mind—as long as we have someone here who can respond. That question requires a very precise answer and, if I may, we will write to you with a reply.

Murdo Fraser: That is fine, convener.

Just to put this in a little bit of context, I want to ask a follow-up question that is more about future trade policy than about what we are discussing today. If we listen to some of the commentary around these issues, we will often see the claim that future trade policy will lead to the national health service in Scotland being sold off to American multinational companies or that we will all be force fed chlorinated chicken, which will then become part of the food chain. Can you give us some assurance with regard to whether those claims have any basis in fact?

George Hollingbery: The fact is that the American market is different from the UK market. I suspect that a great many people have been to the United States and have therefore probably consumed products with some of these items in them. The UK is absolutely clear that we will not be dropping our phytosanitary or food standards and that these are things that we will not be negotiating away in any free-trade deal.

The question of how these things can be dealt with in a free-trade deal will be a matter of negotiation. There are offensive and defensive interests; there are some things that you will refuse to accept, and there are other things that you might have to give. All of these things will come out in the wash.

It is right for people to express their concerns about free-trade deals, and it is right that, if they want particular issues to be included, they make those plain to us and write to us about them. Indeed, they should go ahead and do that as part of the consultation. At the same time, it is also right that we should seek to deal with any misinformation that is out there. It is not true to say that any free-trade deal will end up creating issues for the national health service. The right to shape public policy is clearly protected in all the trade deals that we strike, and it will be so in future. We

will not be signing any free-trade deals that do not include that protection. It is right for the Government to be able to control how it provides healthcare for the nation and to push investor state dispute settlements to one side. The UK will not be signing agreements that allow the national health service to be challenged by foreign investors.

Likewise, any food issues can be dealt with in such agreements and we have made clear commitments about how we will deal with such issues.

Murdo Fraser: That is clear. Thank you.

10:45

Suzanne Greaves OBE (Department of Trade and Industry): If it would help, I could answer the question about the UK joining the GPA in its own right. As the minister explained, that gives us access to a huge market for public procurement and it is in the UK's interests and in those of the other members of the Government procurement agreement for us to join. We want to join on the same terms as we have at the moment, and if the other members agree to that—as I said, it is also in their interests—the agreement would be ratified and, if it wishes to do so, Parliament would have the opportunity to consider that under the Constitutional Reform and Governance Act 2010, which we referred to earlier.

Murdo Fraser: For the avoidance of doubt, this is simply the UK replacing its membership of the GPA via the EU with direct membership. There will be no substantial change to the arrangement.

Suzanne Greaves: That is absolutely correct.

George Hollingbery: Does that answer the question sufficiently so that we do not need to write to the committee? I do not want waste officials' time in doing so when it is not necessary. Are you content with that answer?

Murdo Fraser: That is fine for me, convener.

The Convener: If you are content, I am content, as usual.

James Kelly, do you have any further issues on GPA?

James Kelly: No.

The Convener: In that case, we will go to Emma Harper and protected geographical indications.

Emma Harper (South Scotland) (SNP): I am interested in protected geographical indications for foods. Under the protected food name scheme, a named food or drink will be given legal protection from bogus imitations. The UK has about 86 protected geographical indications. There are 18

for cheese, of which one is for Orkney and one is for Ayrshire Dunlop cheese.

I understand that the EU wants to continue with PGI status, which is great, but the UK Government does not. Why not?

George Hollingbery: We are going to need to flesh that question out a little. It is plainly not a Trade Bill issue, but I am content with that.

Geographical indication is a quite complex area. PGIs present quite serious difficulties in free-trade negotiations because some nations regard them as unfair protection or non-tariff barriers to trade. Could you explain to me a little about what the EU has said about Ayrshire cheese and in what circumstance?

Emma Harper: As far as I am aware, the EU is happy to continue to assign protected status to certain products, such as Scotch beef and lamb. The welfare of our animals is perhaps different from that of animals in America. I used to live in America and I stopped eating beef when I started looking after patients who presented with Creutzfeldt-Jakob disease. We are looking at the difference in the welfare of our products. We have great products—our beef, lamb, salmon and whisky. Why cannot it just be a done deal that we protect the geographical indication status of our good provenance?

George Hollingbery: Okay—

The Convener: I know that this is not an easy answer and I realise that you might have to come back to us.

George Hollingbery: We might do. However, as I said, some countries regard these indications as non-tariff barriers to trade. Do we think that they are important? Yes, we do. There is no question that the likes of Scotch whisky have to carry some sort of GI because they are easily counterfeited and they need to be protected. Whisky is a very important export for the United Kingdom, let alone Scotland, and we believe there are other clear sectoral interests where that applies.

In most free-trade deals—certainly the ones that I have looked at recently—one has to demonstrate a certain level of penetration into the market and/or a desire among consumers for that GI to gain protection. On the whole, quite a few of the UK GIs that we promote fail that test in respect of the Japanese or South Korean markets. Whisky is no problem at all and—amazingly—the GIs for blue and white Stilton often get through. However there are several other products that we would like to protect that just do not have sufficient market penetration to warrant GI status in that market. The GI issue is not particularly straightforward.

If possible, I would like someone to have a quick word with you afterwards, so that we can get a better feel for your question so that we can answer it properly in the letter. Will that suit you?

Emma Harper: Okay.

Alexander Burnett (Aberdeenshire West) (Con): I wonder whether, following the summer recess, you can give us an update on how the common frameworks have been developing and how you feel that they will interact with trade negotiations. Do you have any timetables that you will be able to share with us either now or by correspondence?

George Hollingbery: That is definitely a question for Rebecca Hackett. I think that I am right in saying—please correct me if I am wrong—that the Secretary of State for Scotland is appearing before the committee tomorrow. It may be that the question would be better directed to him to receive a fuller answer. I am sure that Rebecca Hackett can help a little.

Rebecca Hackett: The frameworks negotiations are on-going and the deep dives in the discussions with the devolved Administrations that Eleanor Weavis referred to form part of that process. A lot of intensive work is under way. The Secretary of State for Scotland will be very happy to talk about the detail of that tomorrow.

Alexander Burnett: I look forward to tomorrow. Thank you.

The Convener: Do you have a supplementary question, Patrick?

Patrick Harvie: I would like to ask one last question at the end, if that is possible, convener.

The Convener: That is no problem. I have another couple of folk to get in first. Willie Coffey, we will go to your question on the trade remedies authority, which is part of the bill.

Willie Coffey: As you know, minister, the trade remedies authority will be set up to consider issues involving trade and so on. Inevitably, there will be intersection with issues of devolved competence. That is bound to happen. How can you ensure that the interests of all the devolved Administrations—not just Scotland—will be properly represented on that body?

George Hollingbery: I have very firm views on that area. It is absolutely essential that the trade remedies authority is seen to be independent, to have no sectoral interests and to have no specific interests of any kind represented on its board. I say that because those who are outside the system, making representations to the authority and demanding restitution from it, and those who are trying to resist that restitution must have absolute confidence that it is independent and

does not reflect any sort of interest at all—whether that is sectoral, country-based or whatever.

That does not mean that someone from Scotland cannot be on the board—of course they can. However, it means that they must be someone who takes an impartial view based on the evidence from across the UK, because these are cross-UK measures. I am absolutely clear that we should be choosing people on merit and their interest in doing the job—because it will be hard and technical. They must have the ability and background that would allow them to conduct the sort of analyses and understand the sort of evidence that they would be presented with in a reasonable and rational fashion. It would be preferable that they have a background in the area, although it is by no means required. We must ensure that they are people who can take an absolutely clear view. If they cannot do so, there will not be trust in the authority—there will be disputes and we will have people petitioning to say that the board that made the decision had narrower views than the straightforward policy that the Government had set for the TRA to follow.

I am absolutely clear that no narrow group, or narrower group, whether it is a devolved authority or sectoral interest, should be directly representative of or chosen by a body to be on that board.

Willie Coffey: Will you at least ensure that whoever is successful in being appointed to the board has knowledge and skills in relation to the devolved Administrations and the shared competences that we have?

George Hollingbery: I am reluctant even to go that far. I am not reluctant to say that the views and sectoral interests of the devolved authorities—all the technical data that is needed to make any of those judgments in a reasonable, rational, sensible and timely fashion—will be taken into account by the authority itself. I am not referring to the board but to the chief executive and his or her staff. That is the place for those interests to make representations.

The board's job will be to decide whether the decision that is being made is correct, based on the evidence. The evidence that all the devolved authorities and sectoral interests can provide should be provided as information to the authority so that it can base its judgment on that.

On top of all of that, there sits the economic interest test. If for whatever reason a decision comes out that fits the various metrics and rubrics that are provided to the authority to calculate damages and the lesser duty rule but it looks like the decision that has been produced by those is somewhat perverse, the economic interest test allows the authority to look more closely at

geographical weightings and effects on particular communities and to modify the recommendation that goes up to the board, or indeed to annul it. Devolved authorities' interests can play a part in the economic interest test, too, which should provide a second level of satisfaction or of comfort that narrower geographical consequences of potential trade remedies that might be applied, or damage that is being caused, will be properly represented.

Willie Coffey: There could be people serving on the board who have an influence on devolved issues relating to trade disputes but who themselves know nothing about the devolved competences that they are dealing with and perhaps adjudicating on.

George Hollingbery: I suppose that that is theoretically possible. However, I suggest that, given the sorts of people who will sit on the board and, I suspect, the position in which they find themselves and the knowledge that they will require, they will be only too well aware of devolved competences and those sorts of issues. That is the sort of people who we will recruit to do the job. Will they formally be required to know those things? Possibly not. Are they extremely likely to have real appreciation and understanding of those issues? The very job that they are doing will expose them to that, day in and day out.

The Convener: Thank you—that was helpful.

On the establishment of the TRA, the secretary of state has said that he is looking forward to

“working with the Devolved Administrations on the establishment and operation of the TRA, to ensure that their views and interests are taken into account”.

How are you going about that?

George Hollingbery: Again, there have been huge amounts of discussions with officials. Since Eleanor Weavis is largely having those discussions, I will defer to her to discuss that in a bit more detail.

Eleanor Weavis: Actually, it is my trade remedies colleagues who are having those on-going discussions with the Scottish, Welsh and Northern Irish Governments about how the devolved Administrations will be engaged throughout the trade remedies process.

The Convener: Okay. I will shortly have a chance to ask Mike Russell what that really means.

Suzanne Greaves: I can perhaps add something. Obviously, the Trade Bill sets up the trade remedies authority and provides the governance structure. That is about the efficient operation of that body. There is also a separate piece of legislation—the Taxation (Cross-border

Trade) Bill—which sets out the framework under which the authority will operate and which is legislating for the economic interest test. Obviously, when the trade remedies authority is investigating a particular issue, it will want to consider what the impact of that is across the UK and to investigate whether there are particular impacts in particular areas, including in any of the devolved nations. If there are such impacts, the authority will look to get evidence for that so that, when it comes to making the recommendation, it will take into account all the factors that might have an influence, wherever that may be in the UK.

Neil Bibby (West Scotland) (Lab): There is a huge amount of concern among businesses and trade unions about the possible impact of a no-deal Brexit, particularly about the impact of a shortage of goods on manufacturers, suppliers and consumers. What types of goods does the UK Government believe there are likely to be shortages of in the event of a no-deal Brexit? Are any of those likely to affect the Scottish economy disproportionately compared to that of the rest of the UK?

George Hollingbery: The straightforward answer to that is that those questions should be directed at the Department for Exiting the European Union, which is much more likely to be in a better position than I am to talk about that. We are talking about future trade policy. My general comment is that the Government continues to negotiate to create the future economic partnership and to try to strike the withdrawal agreement. I believe that, crucially, the Chequers deal solves the Northern Irish issue, which is far and away the most difficult part of the entire arrangement to get right. It solves that issue in the way that the Prime Minister always suggested it should be done, which is through the way in which the future economic partnership will work.

That seeks to create frictionless borders and zero tariffs, which will answer the questions that you raise in that the deal that we seek is intended to mitigate the issues that you identify. I believe that we will strike that deal because it is in the interests of all the parties to do so. There remains a realistic possibility of a no-deal Brexit but it is much more likely that both sides will come to the table pragmatically with the potential consequences in mind, that they will see that the future lies in a close partnership between them and that the process will be successful.

11:00

Neil Bibby: I note what you say about directing questions to DExEU, but you are representing the UK Government so I am slightly disappointed with your answer. Michael Russell, the Cabinet

Secretary for Government Business and Constitutional Relations, who will give evidence shortly, wrote to David Lidington earlier this week saying:

“We have serious concerns that a no deal outcome will magnify massively the uncertainties over Brexit. The Scottish government believes there are major questions over a range of vital matters, including customs arrangements, burdens on business, imports and exports of plasma products, medicines and medical devices, the involvement of UK universities in programmes such as the Erasmus scheme and future funding for UK aid organisations.

I would be grateful to know what arrangements”

the UK Government

“will be making to ensure that the devolved administrations are consulted and their views made known in advance of the special cabinet meeting”.

That letter, which was published earlier this week, was not directed to you, but do you have any response to the concerns and issues that the Scottish Government raises in it?

George Hollingbery: I can only echo what I said before. Clearly, a no-deal Brexit would have consequences and we absolutely do not want it to happen. I could reiterate what I said about Mr Russell’s analysis of the chance of success.

I am sorry that you were disappointed with my response to the previous question, but you are talking about the effects of a no-deal Brexit on particular sectoral interests, which is exactly what DEXEU was set up to deal with. It is absolutely that department’s line of responsibility and it is not proper for me to comment on those details, because they are very much its provenance and I would be stepping over ministerial boundaries if I did so. It is perfectly reasonable for me to say that I do not think that we will hit that position. I very much hope that we will not and that we will have a close relationship with the EU. However, I am not about to set policy for, or make comments on, a portfolio that is held by a different department.

Patrick Harvie: I presume that you hope that any outstanding differences with the Scottish Government on the Trade Bill will be resolved, that it will recommend that the Parliament gives its consent to the bill and that the Parliament will vote for consent. If the Parliament does not consent to the bill, does the UK Government intend to respect that decision and not impose legislation in devolved areas without the Parliament’s consent?

George Hollingbery: The best that I can say is that we will work very hard to ensure that we get that legislative consent motion.

Patrick Harvie: Will you respect the decision on consent that this Parliament makes?

George Hollingbery: I repeat my previous answer.

Patrick Harvie: That is a no, then.

The Convener: Thank you very much for coming along with your officials, minister. I hope that you have enjoyed your first visit to the Scottish Parliament.

I suspend the meeting for five minutes to allow for a changeover of witnesses.

11:03

Meeting suspended.

11:09

On resuming—

The Convener: I welcome to the meeting our second panel of witnesses: Michael Russell, the Cabinet Secretary for Government Business and Constitutional Relations, and, from the Scottish Government, Francesca Morton, solicitor; and Stephen Sadler, head of the trade policy team.

I invite the minister to make some opening remarks.

The Cabinet Secretary for Government Business and Constitutional Relations (Michael Russell): Thank you very much, convener, and thank you for the invitation to start the new parliamentary year the way we finished the last one. I am very pleased to be back before the committee.

I will reflect very briefly on the background to this discussion and on the Trade Bill itself. The events with regard to legislative consent for the European Union (Withdrawal) Act 2018 have effectively overturned 19 years of constitutional convention and practice. The UK Government sought this Parliament’s consent; it was refused; and the UK Government proceeded with its legislation, ignoring that view. If the UK Government believes that it can proceed, whatever the decision of this Parliament on consent, the convention is of very little value in protecting this Parliament and the interests of this country.

We are therefore seeking urgent discussions with the UK Government on how to strengthen and protect the Sewel convention. Of course, we will be discussing that next week. We will also be looking for discussions with the other parties on how to respond to these developments. In the meantime, we have made it clear that we will not be lodging further legislative consent motions on Brexit bills. We will work with the UK Government to develop the Trade Bill to ensure that Scottish interests are protected as far as we can, but we

cannot in all conscience invite the Parliament to consider the issue of legislative consent if the UK Government reserves the right to set aside that view for all bills.

The Trade Bill is designed to operate alongside other legislation to help ensure continuity in the UK's existing trade and investment arrangements with third countries by allowing steps to be taken to carry over, or grandfather, existing arrangements between the EU and third countries when the UK leaves the EU. The UK Government has said that in most cases the implementation of any obligations in existing international trade agreements will be dealt with through the European Union (Withdrawal) Act 2018; the Trade Bill deals with those circumstances where that will not be possible and, in such cases, confers powers on the Scottish ministers and Parliament to do so in devolved areas.

Our concerns about the bill as introduced were set out in a legislative consent memorandum last December. I am pleased to say that some changes have been made, and the bill, which will be considered in the House of Lords next week, is better than the one that was introduced. However, we still have significant concerns in two areas, as set out in Derek Mackay's letter of 28 June to Liam Fox, which I believe committee members have seen.

The first area is the direct read-across to section 12 of and schedules 2 and 3 to the 2018 act, which gives Scottish ministers powers to make fixes to retained EU law. As things currently stand in the Trade Bill, as with the 2018 act, Scottish ministers will have the power to amend direct retained EU legislation in areas that are otherwise devolved, but not where section 12 UK framework regulations have been made by the UK Government.

Our second concern, which I know that committee members have already discussed this morning, is in relation to the trade remedies authority, which will play an important role in the development of UK trade policy. It will undertake trade remedies investigations across the UK, which will inevitably touch on devolved areas or areas of significance to Scotland. Its decisions could have a substantial impact on businesses and consumers in Scotland, but, despite repeated representations from us and the Welsh Government, neither the Trade Bill nor the Taxation (Cross-border Trade) Bill provides a role for the devolved Administrations, for example, in relation to the appointment of board members. We will continue to press for the bill to be amended to address those concerns.

The Trade Bill focuses on ensuring continuity through the rollover of existing arrangements, but it does not deal with the development of future

trade arrangements, which is the issue that I will conclude on. Last week, Derek Mackay and I published a discussion paper, "Scotland's Role in the Development of Future UK Trade Arrangements". Focusing on the decision-making processes that underpin them, the paper makes an evidence-based case for an overhaul of existing arrangements for developing, scrutinising and agreeing trade deals. The arrangements for agreeing trade deals are already inadequate; they are out of date and are in need of a radical overhaul, even if the UK continues as an EU member state and member of the customs union. That inadequacy can be seen in the currently limited role of both the UK Parliament and the devolved institutions, and that point has been made often to this committee and at Westminster during the passage of the Trade Bill.

The need for change becomes even more urgent as the UK leaves the customs union and the single market. Leaving the EU will fundamentally change the nature of the UK as a state and impact on the UK's current constitutional arrangements. Much has changed in the past 40 years, both within the UK and internationally, and the scope and nature of trade deals have themselves changed considerably, from focusing initially on a limited range of issues such as tariffs, quotas and co-operation to encompassing a far broader range of issues affecting a wide range of devolved interests that directly impact on Scotland's businesses and citizens. The development, conduct and content of future trade deals will therefore have very important implications for Scotland.

The UK Government has talked about trade deals that work for the whole of the UK, but Scotland, Wales or Northern Ireland could, in some negotiations, have very different interests from the rest of the UK, and those differences would be best addressed before reaching the negotiating table. However, the UK Government's approach so far appears to place the interests and involvement of the devolved nations on a par with sectoral interests. That must change; we must have decision-making processes that recognise, respect and protect the economic and social interests of all four nations of the UK.

Scotland wants to be a constructive partner to the other nations of the UK, and a fair trading partner to countries around the world. In order to protect and promote Scottish interests, the Scottish Government and the Scottish Parliament must have a guaranteed role in all stages of the formulation, negotiation, agreement and implementation of future trade deals.

The paper is, however, a discussion paper. It describes what future involvement in trade deals might look like, but we recognise that others,

including members of this committee, will have a role in shaping the proposals. I look forward to that process.

11:15

The Convener: Thank you for those opening remarks. Before I ask my first questions, I want to clarify whether you saw any of the previous evidence.

Michael Russell: I saw some of it.

The Convener: You may have heard, at the beginning of the evidence-taking session, how clauses 1 and 2 of the current Trade Bill replicate section 12 of the 2018 act. I would like your reaction to what the UK Minister of State for Trade Policy said in that regard. Also, what is your reaction to his position that, as far as existing trade arrangements are concerned and any potential change in those arrangements initiated by third-party countries, no specific role is seen for either the Scottish Government or the Scottish Parliament in overseeing, providing scrutiny, consultation and so on?

Michael Russell: My reaction is one of surprise, given the commitment that already exists within the joint ministerial committee process, and, indeed, has been accepted by the Prime Minister, that there should be a review of the devolution arrangements, particularly those for consultation.

I think that everybody would accept that the weight of Brexit is too great for the current devolved settlement to bear. That is obvious from what has happened in the past two years. No matter what position you took on it, the system has not worked and, therefore, changes are needed. If we take a rational, evidence-based approach to that, some of those changes would come in areas that have also changed substantially since devolution first took place, including trading arrangements.

As I indicated in my opening remarks, trading arrangements were at one stage very much solely about tariff and border issues. They now respect nations' domestic requirements. In Scotland, we regard ourselves as a moderate, progressive nation, with a particular interest in environmental issues, for example, and we would bring that to the table in any considerations.

We think that there is a case to be made for substantial change. I make that case and encourage people to discuss it. That is very much in parallel with the view that the Welsh Government put forward last year about how devolution requires to change. I make no secret of the fact that I believe in independence—that will not be a surprise to anybody—but if we are to continue to live under the devolution system, it

needs to change as it is not adequate for the times. We are arguing a positive and constructive case for that change and have published a paper for discussion. It should be seen as a positive issue. I am not sure that the UK minister has had time to read the paper, but I am happy to debate it with him and others.

The Convener: As part of the first evidence-taking session, the UK minister also emphasised what he saw as meaningful engagement between officials and Scottish Government officials—for example, in relation to the TRA. What is your view of those discussions? How often have they been held?

Michael Russell: I understand that the officials may meet one another four times today, but I do not think that they have met for weeks and there are no plans to meet. I am pretty critical of the nature of that engagement. Some engagement across the Governments is meaningful and has worked well—the deep dive, for example, has been driven forward. However, where I see what is essentially a tick-box exercise going on, I have an obligation to say that is what it is.

In any case, the quality of that engagement is the key issue, not its regularity, and whether there is any willingness to listen to and discuss changes that are required and to express fully in the work that we do what was meant and promised to be a partnership of equals. I do not see that.

The white paper is an indication of that. We went through a process in which we saw drafts of five chapters of the white paper—in fact, I saw only four—which did not bear much relation to what was eventually in the white paper. I sat in a ministerial meeting at which two UK ministers read out a précis of a couple of drafts because we—ministers and other people at the table—were not allowed to see them. I do not call that a high quality of engagement; I felt as if I was in a monastery being read at while things went on around me. That is not equality of representation. To be fair, I doubt whether the two ministers had seen the white paper. The issue is partly a culture of extreme centralisation in the current UK Government and of extreme chaos, but I do not believe that the quality of engagement is meaningful at present.

Adam Tomkins: It will not surprise you to know that I want to get into more detail about issues that I raised yesterday in the chamber—you chose not to respond on that occasion. This time last year, you and I agreed that Brexit can and must be delivered in a way that is compatible with the United Kingdom's devolution settlements. Why do you no longer hold to that view? Why is it now your view that the United Kingdom's devolution settlements need to be changed—that is what you

have just told us—in order to bear the weight of Brexit?

Michael Russell: Those positions are not mutually incompatible. The current devolved settlement needs to be observed, but it is possible to say that parts of it need to be improved because they do not work. An example is the Sewel convention, which has been shown not to work in recent months. Consent means consent, even if we say that there is not consent. In those circumstances, there needs to be a change. What happens at present has, of course, to be delivered according to the current settlement, even though we can envisage a better settlement. It is a dynamic work in progress.

Adam Tomkins: Under the current settlement, is it not the case that international relations, international treaties and international trade are reserved to the United Kingdom Parliament?

Michael Russell: They are reserved, but their operation has tended to be much more relaxed than your definition. The definition that was given by the Advocate General in the Supreme Court case considerably narrowed that definition, which is a worrying development that it is right for us to point out—the other devolved Administrations have pointed it out, too.

Adam Tomkins: So you accept that international trade is a reserved competence, in which Scotland's interests are represented by the 59 MPs whom Scotland elects to Westminster.

Michael Russell: No; I accept that the devolution process is dynamic and has continued to change. I do not accept that there is a hierarchy of Governments within the devolution settlement as it exists. The devolved Administrations' responsibilities should be represented in trade talks—that is my position. Richard Keen's position on the international obligations will be tested in the Supreme Court and its judgment will say something—

Adam Tomkins: I do not think that it is wise for us to speculate on the record about what the Supreme Court might say in a case that is live before it—

Michael Russell: I did not do so.

Adam Tomkins: —so I will not accept the invitation to reflect on arguments that were put before an independent judicial body, if that is all right with the minister.

In the paper that was published jointly with Mr Mackay last week or the week before, you propose that Scottish ministers should have an effective veto in every stage of the preparation, negotiation, mandating, ratification and signing of all future trade agreements, notwithstanding the fact that those are reserved competences. How is

that proposal the standing up for the devolution settlement that you and I agreed 12 months ago needed to be done throughout the Brexit process?

Michael Russell: I did not respond to your point yesterday because I wanted to have the opportunity to do so properly in this debate, so I thank you for raising it. The only veto in the devolution settlement is that of the UK Government. There is no other veto because, in the settlement, the actions of any devolved Administration can be vetoed by the UK Government. Whether in the paper or in anything that exists or is anticipated under devolution, there are no means by which we could veto the decisions of the UK Government. You have, regrettably, a mistaken impression, and I am glad to be able to correct it. In the paper, we suggest areas in which it would be important to have the agreement of the Scottish Government, just as—

Adam Tomkins: I am sorry, but you do not say "important"; you say that agreement would be "required". In annex B on page 62 of your paper, you list five instances in which the agreement of not only the Scottish Government but the Scottish Parliament would be "required" for a future trade agreement even to be prepared, never mind negotiated, ratified or signed. "Agreement required" is the definition of a veto, because if the agreement is not given, there is an effective veto—

Michael Russell: No, that would be the case only—

Adam Tomkins: —or does "required" not mean required?

The Convener: This is not a debate, folks. Let us have questions and answers, please.

Michael Russell: That would be the case only if agreement was withheld for good reasons and the withholding of agreement was final, but it would not be final in the circumstances. You treat agreement as something that is confrontational, but I treat it as something that we would seek to find—we have sought and continue to seek to find agreement.

For example, on matters of agriculture that are in a trade deal, it is not unreasonable to say that the devolved Administrations, which have responsibility for agriculture, should be involved in and agree to that process. Chlorinated chicken and hormone-fed beef, which I think Emma Harper raised earlier—it has taken 20 minutes or so to bring them up again—are relevant issues here. There are circumstances in which we would not agree to such things and, in the end, the UK could impose them unless Scotland was independent. However, seeking agreement would be what we would do—we would sit down and negotiate. I know that the current UK Government is incapable

of negotiating agreement, but we are not, and I am quite sure that agreement could be found. I do not think that that is at all unreasonable.

In addition, this is a discussion paper. You might say that you want to change the word “required” to “agreement would be sought”, and that would be good, because then the UK Government would be able to seek agreement on matters that were our responsibility. Perhaps that is a change that you would like to see in the paper.

Adam Tomkins: I welcome those remarks, minister, as they are much more conciliatory than the angry tone that you take in the paper that you have published. You do not talk in that paper about the UK Government seeking your agreement; you talk about it being required not to proceed with areas of reserved competence unless and until it has your agreement. That is a different set of issues.

The point remains that, a year ago, you were all for defending the devolution settlement, and we supported you in that. Now, you have changed your tune and you want to attack the devolution settlement, because you do not believe that international trade should remain a reserved competence. Is that not the long and short of it?

Michael Russell: It is not a great surprise to anybody here that I would prefer independence to devolution. However, in the light of the chaos that we have seen and the difficulties that Brexit has created for devolution, putting forward constructive proposals to develop the devolution settlement should be seen as a constructive act. We are trying to say that devolution does not work and, my goodness me, the evidence for that is all around. We are trying to say that there are different ways to do it.

I have read, reread and even edited that paper, and I do not think that it is angry in any place. It tries to put forward a constructive set of proposals to improve devolution. There are those who would attack me for doing that, because they expect me to talk only about independence, so I seem to be caught between a rock and a hard place. However, it is a useful debate to have, and the Welsh are having it, too. It is not inconsistent to defend what exists now and to say that it could be improved—that would seem to be rational.

Patrick Harvie: Good morning. The Scottish Government has said that the devolved institutions—I stress “institutions”—of Government as well as Parliament

“must play a much enhanced role in the development of future trade policy”.

That is very similar to what the UK Government said in its paper on future trade policy, which said that there must be a role for the devolved

institutions. Is there a way of framing that in a clear, comprehensible manner that allows decision making and recognises that it is an area of shared responsibility in which co-operation and compromise will be needed on both sides, and in which each institution will need the ability to determine whether sufficient compromise has been reached without getting into the kind of dynamic that we have just seen where people angrily count the number of vetos?

Michael Russell: Yes. We could use the example of the Canadian trade treaty and of the Canadian provinces being involved and having to be at the table in those negotiations because they were about responsibilities that the provinces hold.

There seem to be two examples that can be taken from the Canadian experience. That was the positive example, in which the range of provinces sat with the federal Government, discussed the issues and came to a conclusion. The negative take has been that of the UK Government, which is terrified of what happened at the ratification stage with the Wallonian Parliament, and saying that it had reservations. That was perfectly natural and it was overcome, so there is an example before us that shows that we can move in that direction and have it work. There would need to be a willingness to do so. We have put on the table some ideas about how we might do so. If there are other ideas about how that could be refined, we are very open to them.

11:30

Patrick Harvie: You have also given a fairly clear indication that you favour more parliamentary scrutiny in general, not just in relation to the devolved institutions—for example, in maintaining to some extent, and perhaps even building on, the level of parliamentary scrutiny that is operated in the European Parliament that will not operate in the UK Parliament under the UK Government’s plans. Is it reasonable, then, for us to assume that, whatever level of engagement exists between the UK Government and the Scottish Government, the Scottish Government will persistently seek the agreement of the Scottish Parliament for the decisions that it takes in relation to those discussions?

Michael Russell: Yes.

Patrick Harvie: What is the mechanism for us to ensure that that happens?

Michael Russell: There is some discussion in the paper on what that mechanism should be, but I would have thought that there would be stages in the process at which we would seek parliamentary agreement or authority. There would also be committee scrutiny, which would be a pretty powerful part of it. Trade deals, by definition, are

complex, so you would want to ensure that the decision-making process was on the principles that were applied, not necessarily on every subparagraph, but the committee scrutiny would be important, as would parliamentary scrutiny and decision making.

Patrick Harvie: If, for example, a UK Government does not agree that the Scottish Government should be able to agree or disagree to a negotiating mandate for a future trade agreement, but is willing to discuss that mandate with the Scottish Government, would the Scottish Government be able to discuss it with the Scottish Parliament without being inhibited from doing so or from seeking parliamentary approval for its approach?

Michael Russell: I agree that that would be the right way to do it. Of course, we have shown an example of that in what we did with the UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill, which was very much a product of discussion and debate. Indeed, that bill was developed as it went through Parliament, because there was a willingness to do so, and that is exactly how I would envisage the process.

Patrick Harvie: Finally, I want to ask about shorter-term issues in the Trade Bill, relating to what happens if Brexit is done and there is a desire for continuity of existing arrangements. In the evidence given by the UK minister earlier in today's meeting, there was a great emphasis on there being no substantial changes, or very few substantial changes. Has any discussion taken place between the two Governments about the scenario in which the UK Government thinks that a change is not substantial but the Scottish Government thinks that it is substantial, and how that difference would be resolved?

Michael Russell: No, there has not been such a discussion, and it is a topic that needs to be addressed. However, as usual, the present structures make it difficult to resolve those issues because, at the end of the day, the UK Government makes those decisions. It is like the definition of the word "consent". It is defined by the UK Government.

Patrick Harvie: So we can have no confidence in the UK Government's commitment that there will be no substantial or significant changes. You do not believe that.

Michael Russell: I have very little confidence in that, I am afraid to say. I am being straight about that.

Alexander Burnett: Could the cabinet secretary give us an update on any progress that has been made over the summer on his contribution to the common frameworks?

Michael Russell: Officials answered that question with the trade minister and they referred to the discussion with the secretary of state. From our side, the deep dives have continued. There have been no section 12 orders as yet, which I regard as a positive step, and we continue to discuss the areas in which we think that we can work together. I do not believe that section 12 orders are the right things to do, so if we can find ways to establish those frameworks without section 12 orders, we have made it absolutely clear that we will do so. That work is continuing, and we have not reached an impasse, as yet, on any of those.

Emma Harper: We have unique differences in Scotland with our agriculture and fishing, so Scotland needs the ability to contribute effectively to trade negotiations. When we are talking about common frameworks and further agricultural aspects, how can we be assured that we have that ability to communicate effectively what the unique issues are with the requirements for common frameworks moving forward?

Michael Russell: The outcome of a common framework in the areas in which we think that they may be required may or may not be legislative. That has clearly been the debate until now. Progress is being made on a Brexit agriculture bill, therefore the issue that you address is germane to the discussion on whether the UK agriculture bill is making progress and to understanding that. So far, so good. That discussion continues. When it is at its conclusion and the bill is published, we will see whether that discussion has produced the correct fruit. I am not completely sure that that is an agricultural term, but that is what we are looking to find out. That discussion is the product of the deep dives and of ensuring that there is continuing dialogue on those matters. If we were to get to the stage where there was a section 12 order, or a bill that took powers that it should not take, that would be the hard moment. We are not at that moment yet, but it will take a lot of work from a lot of people to make that happen.

Emma Harper: Is one of the key aspects not that we need to ensure that the frameworks are agreed by and not imposed on Scotland?

Michael Russell: That is exactly the thing. It is the outcomes of that process that are important—for example, an agriculture bill that can be agreed and which recognises the roles of the devolved Administrations but does not impinge upon them. That is vital.

Murdo Fraser: Cabinet secretary, I do not know whether you saw the previous exchange that I had with the UK trade minister on the GPA. I am not sure whether you have any specific concerns on that. My understanding, from what Mr Hollingbery said to us, is that all that is happening is that the

UK, which is currently part of the GPA through the EU, is replacing that with direct involvement. Is the Scottish Government content with that approach?

Michael Russell: We are already in the GPA, because we are a member through the EU. Last year, I met officials who were involved with the GPA and who were starting the process of making the transfer. I was slightly concerned about one of the answers that you got from an official today, which seemed to imply that the trade opportunities—the opportunities to bid for public procurement contracts—would be something new. They are not new—they already exist under the EU—and the official admitted to you that the UK Government would be seeking to replicate the EU terms, so there would be no difference in that regard. However, it seems as though a lot of work will be required on both sides to get to where they already are. The opportunities that the GPA presents to businesses in this country will not change, provided that they are able to secure the same terms, which is not guaranteed. Therefore, one wonders why this is going on.

Murdo Fraser: I will put to you the same question on procurement issues as I put to Mr Hollingbery. We have heard various claims that future trade deals will open up the NHS in Scotland to bids from American companies, and that we will all be force fed chlorinated chicken that will be part of the food chain. We heard very clearly from the UK trade minister that that is nonsense and will not happen. Do you accept that?

Michael Russell: No, I do not accept it.

Murdo Fraser: So he is not telling the truth.

Michael Russell: No, I am not saying that he is not telling the truth. He, as an individual, may be telling you exactly what he believes to be true. However, I believe that the system that will come into place will make it considerably easier, as far as trading is concerned, for such things to happen. The interests of the people who are influencing this—who will be politicians such as ourselves, and there are many of those—lie in ensuring that they do happen. It is also in the interests of the countries that are seeking trade deals to push for what they want to happen.

I fear that the UK's expertise in trade deals will be considerably lessened by our not being in the EU, as will the weight that is available in such deals. That is a big issue. Trade is not solely about who has the biggest stick, but sometimes it is about that. For example, if we have a debate and say that we will not have chlorinated chicken, the weight against that from the United States—which has not exactly been behaving charmingly in such matters in recent times—will be great. Therefore I do not accept Mr Hollingbery's assertions—not

because I doubt his word, but because I think that the weight of the whole system will be against where we are now, which is that we have weight on our side. Not having chlorinated chicken is a European issue. On the TTIP, we saw that there was a European issue in the people of Europe being very substantially against the weakening of a system that would have destroyed certain public services. I think that there is a danger in there.

Murdo Fraser: With respect, Mr Russell, the UK trade minister could not have been clearer in his answer to me. He said that there will be no diminution of food standards and there is no question of our public services being opened up to international competition. I do not understand why you cannot accept him at his word.

Michael Russell: I am being absolutely clear with you. I am not accusing him of lying. I just think that the changes to the system will immensely weaken our ability to stop those things happening. We have two divergent points of view. People will have to choose between them.

James Kelly: On future trade deals, what is your view on devolved Administrations being able to opt out—for example, in relation to the living wage, where contracts involve Scottish public bodies?

Michael Russell: That would be important. It relates to the issue that I raised earlier, which is the wider context of trade deals. In the 19th century and even the early 20th century, trade deals were about tariffs and borders, but 21st century trade deals are about a wider range of things. They should be about public protection, social standards and environmental standards: we should put those things into them. That is the type of trade discussion that we not only want to have, but want to influence the EU to have. That is increasingly the case.

Trade deals are also about data, for example. I noticed yesterday a piece of news that said that the last stages of the new EU arrangement with Japan are being put in place, which has involved Japan assuring the EU about its data standards so that Japanese companies and others can be involved in data processes and data handling. That is about a trade deal that includes very high standards of regulation that protect citizens. That is extremely important; we need to make sure that we are in control of such standards, especially in the areas for which we, as a Parliament and as a Government, are responsible. Where things are our responsibility, we should be the people who make the decisions. I would have thought that that would be axiomatic.

James Kelly: Okay.

Willie Coffey: I do not know whether you heard the discussion that we had with the minister about

the TRA. I asked him about representation on that board for the devolved Administrations, and he ruled it out. I went on to ask whether he would assure us that whomever he appoints to that body will at least have experience or knowledge of the devolution settlement, powers and so on, but he appeared to rule that out as well. What is your view on that? Does it look as though we could have a board of adjudicators who do not know anything about what they are adjudicating on?

Michael Russell: I was disappointed by the minister's response. That remains an issue on which we, along with the Welsh Government, are seeking amendment to the Trade Bill, because it is necessary.

There is an easy answer, of course. There is an amendment that would solve the problem, but there is also practice in public appointments that makes the matter easy to deal with. That practice would be to ensure that the person specification is such that the board has on it two individuals, one of whom has a substantial knowledge of the Scottish economy, Scottish trading and the Scottish market and the other having the same knowledge in respect of Wales. We might want a person for Northern Ireland as well, depending on what happens in that settlement. That practice is normal in person specifications: in advertisements for appointments to public bodies, there are key specifications for members. That practice should be applied. I just cannot see the difficulty with that.

The argument that appointments should be made solely on merit seems to imply that knowledge of Scottish trade would be in some way not as meritorious as some other qualifications. At the very least, the person specification for the appointments should include individuals who are nominated on the ground that they have that knowledge and wider knowledge. That approach has been common practice for generations.

I am sure that the convener will remember that the Deer Commission for Scotland used to have particular categories of membership—for example, it had to have one member who had knowledge of deer issues in the south of Scotland. I seem to remember that it was always difficult to appoint such a person. The situation is not new. What I read from what the minister said was simply a refusal to accept that he should be thinking about issues to do with the Scottish economy, the Welsh economy and Northern Irish economy.

Willie Coffey: Is that another example of what you said earlier about the whole process in effect overturning 19 years of the devolution settlement?

Michael Russell: It is about a lack of recognition of the reality, which is that Scotland is not the country that it was 20, 30 or 40 years ago, because devolution has changed things. We need

to recognise that change. You would expect me to say that, but you might not expect the UK Public Administration and Constitutional Affairs Committee to have said it in its report. I know that the committee has met Bernard Jenkins. That committee's report makes it clear that lack of knowledge of devolution is an issue and a problem.

11:45

Neil Bibby: You have written to David Lidington to outline some of your very reasonable concerns about the impact of a no-deal Brexit. There is obviously great concern about there being a shortage of goods as a result of a no-deal Brexit, which could hit the UK economy. However, I am interested to know what the specific impact on the Scottish economy could be. Mr Hollingbery said that he is not in a position to respond to that question, but I know that your letter outlines a number of areas about which you have concerns. In what specific areas will there be a disproportionate effects on Scotland?

Michael Russell: There are several such areas. There is a legislative burden that the Scottish Parliament will have to bear. We are already locked into that; we will have to do a considerable amount of additional work between now and next March. That is the simple reality.

Of greater importance, perhaps, is that there is a dawning realisation in some sectors that they will have to make exceptional preparations. It has been well publicised that the medical sector, for example, will have to stockpile drugs. It is extraordinary that we are at that stage—however, it will have to happen. Discussions are taking place between Jeane Freeman's department and the Department of Health about how that will be handled and exactly what our role will be.

There are issues in relation to food supply—coming in and going out. No one is suggesting that there will be an end to food, but there will be a pinch point at Dover, through which a great deal of our food supplies come. Disruption to trade at Dover would have a knock-on effect. Of course, the further you are from Dover, the greater that knock-on effect. There is an issue for food businesses—especially those that send perishable foodstuffs the other way. I often use from my constituency the example of shellfish: leaving shellfish that is going to France on the hard shoulder of the M20 for three or four days is not conducive to making it better.

One of the biggest issues is that we do not know what will happen. Reasonable people would say that every effort is being made to avoid a no-deal Brexit, but a no-deal Brexit is being talked up by the UK Government time and again. I was talking

to a very senior MEP about this some time ago: some people believe that there is a dynamic within the system that means that once finance secretaries and others like them talk about there being no deal, it becomes more likely, because people are hedging against there being a no deal and are making preparations for it. We are locked into an extraordinary set of circumstances.

There are things that we just do not know, including the arrangements for ports and at ports. We can make a lot of arrangements, but what will happen if we suddenly have to put in place customs inspections and we do not have enough people or facilities to do that?

As a Government, we will do everything that we can to achieve two things: avoid a no-deal Brexit because—as we keep saying—that should not happen, and ensure that we put in place whatever preparation and protection we can. That is a job for the whole Parliament, and we will work with everyone to try to do that. However, it is fair to say that no Government will be able to put in place everything that is required, partly because we will not know what “everything” will be.

The Convener: I have a question about process. The Government has already put forward a legislative consent memorandum in respect of the Trade Bill. We heard what you said at the beginning of the process with regard to LCMs. Do the circumstances and the fact that there have been some changes to the bill mean that there will be no supplementary legislative consent memorandum from the Scottish Government? If so, are we expected to rely on the letter that Derek Mackay sent to Liam Fox on 28 June as being the Scottish Government’s position?

Michael Russell: Yes. Let us not say “never”. I have proposals that the Scottish Government will want to make to the UK Government about the Sewel convention. I have had conversations with the UK Government about that, so I hope that there is some thinking that things might change. If there were to be a change to the Sewel convention, legislative consent would change too. The timing of that will be crucial, but the legislative consent process for the Trade Bill must take its course. However, the position that Derek Mackay and I have outlined on why we will take those actions is quite clear.

I should point out that we recognise, for example, that in respect of secondary legislation for a no-deal Brexit, we will be required to do certain things and we will do them, but the Brexit bills themselves are an issue, and will remain an issue until we have a Sewel process that we can rely on.

Adam Tomkins: I just seek clarification. I understand why the Scottish Government has

taken the position that it has taken. I do not want to interrogate that, although we can get into it if you want to—

Michael Russell: I think that the convener does not want us to.

Adam Tomkins: I am just trying to understand the process. I did not really understand your answer to the convener’s question. Will there be a supplementary legislative consent memorandum for the Trade Bill or not?

Michael Russell: At the present moment, there will not be one, but I am open to discussion. It is something that we would want to discuss, including with the Conservatives. It is not a situation that any of us like, so I am happy to discuss it with the committee and on a cross-party basis, as we have done before.

Adam Tomkins: Okay. If the current position is that there probably will not be a supplementary legislative consent memorandum for the bill, do I take it that there will not be a Government-sponsored legislative consent motion?

Michael Russell: That is correct.

Adam Tomkins: Does that mean that Parliament will not have the opportunity to express whether or not it consents to the bill?

Michael Russell: Whether or not Parliament consents is, in UK Government terms, irrelevant: it would be taken to have consented anyway. I suppose that that would be the case. However, I am open to discussion about whether the Parliament would wish to have the opportunity to say that it had refused legislative consent. We did that with the withdrawal bill; we did not have to, but we did it.

It may well be that the view of many people is that we should debate the matter, in which case I suppose that we would then develop a supplementary legislative consent memorandum. However, the situation is fluid at the moment, because there are still changes to the bill that we have suggested, and I want to see what happens with them.

I am disappointed by what we heard from the trade minister this morning, but there is still the opportunity for a change of heart on that, and there is still the opportunity for a change of heart on Sewel, both of which would be helpful.

Adam Tomkins: Is the Government’s current position that there will not be legislative consent memorandums in respect of likely future Brexit-related legislation such as bills on, for example, agriculture?

Michael Russell: I do not think that that is a hard and fast position. The hard and fast position is that we will not recommend a legislative consent

motion on those bills. However, we are under an obligation to set out our reasoning on that, so we would do that. That would be the normal process; I cannot see why would we refuse to do so.

Adam Tomkins: Do you anticipate that it is likely that there will be future legislative consent memorandums, on the basis of which committees such as this one could take evidence and report?

Michael Russell: Yes—if the issue is committee involvement.

Adam Tomkins: So there has not been a complete withdrawal by the Scottish Government from the entire LCM process.

Michael Russell: No. It is a good point and it is useful to clarify it. We are not resiling from the process within this Parliament, or from the involvement of this Parliament; we are seeking to ensure that this Parliament understands the position that the Government has taken and we seek the support of Parliament for that position. However, we do not intend to recommend a legislative consent motion on any of the Brexit bills. Is that clear?

Adam Tomkins: That is helpful.

The Convener: That is very helpful and very clear. We will move into private session. I thank our witnesses for their contributions this morning, for which we are very grateful.

11:53

Meeting continued in private until 12:05.

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