



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Finance and Constitution Committee

**Monday 21 October 2019**

**Session 5**



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**FINANCE AND CONSTITUTION COMMITTEE**

**23<sup>rd</sup> Meeting 2019, Session 5**

**CONVENER**

\*Bruce Crawford (Stirling) (SNP)

**DEPUTY CONVENER**

\*Adam Tomkins (Glasgow) (Con)

**COMMITTEE MEMBERS**

\*Tom Arthur (Renfrewshire South) (SNP)

Neil Bibby (West Scotland) (Lab)

Alexander Burnett (Aberdeenshire West) (Con)

\*Angela Constance (Almond Valley) (SNP)

Murdo Fraser (Mid Scotland and Fife) (Con)

\*Patrick Harvie (Glasgow) (Green)

Gordon MacDonald (Edinburgh Pentlands) (SNP)

\*John Mason (Glasgow Shettleston) (SNP)

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

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

George Adam (Paisley) (SNP) (Committee Substitute)

Rt Hon Michael Gove (Chancellor of the Duchy of Lancaster)

**CLERK TO THE COMMITTEE**

James Johnston

**LOCATION**

The Robert Burns Room (CR1)



# Scottish Parliament

## Finance and Constitution Committee

Monday 21 October 2019

*[The Convener opened the meeting at 12:33]*

### Brexit

**The Convener (Bruce Crawford):** Good afternoon and welcome to the 23rd meeting in 2019 of the Finance and Constitution Committee. We have received apologies from Murdo Fraser, Alexander Burnett, Neil Bibby and Gordon MacDonald. I welcome George Adam, who is attending as a substitute member, and I thank members for making themselves available to attend the meeting.

The one piece of business on today's agenda is to take evidence on Brexit from the Chancellor of the Duchy of Lancaster, the Rt Hon Michael Gove, via videoconference. I welcome Mr Gove to the meeting and invite him to make a short statement, if he wishes to do so.

**Rt Hon Michael Gove (Chancellor of the Duchy of Lancaster):** I am very grateful for the opportunity to give evidence to the committee by videolink. As members will appreciate, there are a number of proceedings later today in the United Kingdom Parliament that require me to be here, including an update that I will give on no-deal preparations. However, I hope to be able to answer all the committee's questions as fully as possible, and I am very grateful for the opportunity to do so.

**The Convener:** Thank you. I will begin the questions.

The committee has previously stated:

"the devolved settlement cannot function effectively without mutual trust between all of the governments across the UK."

Do you agree that the building of mutual trust is important?

**Michael Gove:** Yes, I do. I think that it is important for the UK Government and the devolved Administrations to work as closely as possible together. Of course, there will be political differences when the parties that are in power in the devolved Administrations have different agendas and seek different outcomes. However, one of the things that I have found, both in the role that I occupied as Secretary of State for Environment, Food and Rural Affairs and now in my current role, is that dramatic progress can be

made on agreed areas of implementation. I am grateful to Scottish Government and Welsh Government colleagues for their help.

**The Convener:** Could you therefore tell me, as simply as possible, how Scotland's 62 per cent vote to remain is reflected in the Prime Minister's deal and how that has helped to facilitate a relationship that is based on mutual trust?

**Michael Gove:** Well, we voted in that referendum as one United Kingdom and, of course, as one United Kingdom we will leave the EU. Members of Parliament in the UK Parliament voted to trigger article 50 and we all agreed that, whatever the result of the referendum, it would be respected.

There are particular issues that relate to Scotland, not least, for example, the fact that, as the Scottish Government itself has pointed out, once Scotland is outside the common fisheries policy, there is the potential to create thousands of extra jobs and millions of pounds of extra revenue to help the Scottish economy. Again, one of the things that are very much in my mind is to ensure that the advantages of being outside the CFP are reflected in the deal that the Prime Minister has secured with the European Union.

**The Convener:** I know that some of my colleagues want to raise the issue of fishing with you, Mr Gove.

As you are aware, the vote to leave the EU was not unanimous across the four UK nations. England and Wales voted to leave and, under the Government's proposals, they will get to do so; and Northern Ireland, which voted to remain, will get a differential deal. However, alone of all the UK nations, Scotland, which also voted to remain, is being forced to leave with no say over our future relationship with the European Union and no differential deal. In what way is that helping to build mutual trust?

**Michael Gove:** Trust in all our democratic institutions depends on respecting the results of referenda. This was a UK-wide referendum. Of course, preceding that, in 2014, we had a referendum on Scotland's place in the United Kingdom. At that point, the people of Scotland concluded that they wished to remain part of the UK, which means that there are certain decisions that are taken on a UK-wide basis. It is the case that international relations and international negotiations are a reserved matter for the UK Parliament.

Trust is built every day through the conversations that I have had with Scottish Government ministers such as Fergus Ewing and Michael Russell. We take their views seriously and often adjust policy to ensure that the specific concerns and hopes of Scotland are addressed.

**The Convener:** The Scottish Government has put forward on three different occasions proposals for a differentiated position for Scotland, whereby it would remain in the customs union and the single market—some of my colleagues might come back to that. At what stage was that idea considered by the UK Government and did you at any stage put those proposals to the EU?

**Michael Gove:** The negotiating position of the UK, reflecting the referendum mandate, is that we should be outside the customs union and outside the single market. Those who argue that we should be inside the customs union and the single market do so for a variety of reasons. In many cases, they do so not because of an ideological attachment to a particular set of constitutional instruments but because they want to ensure that the economic benefits, as they see them, of trade that is as frictionless as possible are maintained. That is one of the things that we want to secure in the free-trade agreement that we hope to conclude after the withdrawal agreement is passed.

**The Convener:** Of course, Northern Ireland got a differentiated position that involves it effectively being part of the single market and the customs union. Why not Scotland?

**Michael Gove:** The situation in Northern Ireland is specific and unique. In keeping with the spirit of the Belfast Good Friday agreement, we wanted to keep infrastructure of any kind away from the border, and there are principles of consent in the Belfast agreement that are part of the deal that we have concluded with the EU.

It is important to stress, however, that Northern Ireland will be part of the customs territory of the whole United Kingdom and that we will be leaving as one UK, whole and entire. It is also the case, with respect to customs, that any future free-trade agreements that the UK concludes with any countries outside the EU will involve Northern Ireland reaping the benefits of those arrangements as well.

**The Convener:** My final question is one that I have asked already. At any stage, did the UK Government put the proposals in respect of Scotland to the EU? Did that happen?

**Michael Gove:** Throughout the negotiations, we reflected on the submissions that were put to us by different Governments, we engaged with those Governments to better understand the aims and intentions, and we negotiated with the EU in that context. We did not say, “Here is a menu of options that have been put forward by different bodies within the UK—please choose from them.” We presented our preferred negotiating position, which was, of course, informed by the arguments made by the Scottish Government and by others.

**The Convener:** I will hand over to Adam Tomkins.

**Adam Tomkins (Glasgow) (Con):** Good afternoon, Mr Gove.

It is clear that the differentiation that will be accorded to Northern Ireland under the Prime Minister’s revised agreement and political declaration does not bear any relation to the level and magnitude of the differentiation that was argued for by the Scottish National Party, which the convener asked about. For example, as I understand it—please correct me if I am wrong, Mr Gove—under the current proposals, Northern Ireland will remain within the UK’s customs area and will not be part of the EU’s customs union, which is diametrically different from what the SNP proposed for Scotland, and Northern Ireland will not run its own immigration and migration policy, which, again, is diametrically opposed to what the SNP proposed, which is that Scotland should have its own immigration and migration policy. Am I right in all of that?

**Michael Gove:** You are 100 per cent correct, Professor Tomkins.

**Adam Tomkins:** Is there anything that we can do, as unionists, to help our nationalist friends understand that differentiation for Northern Ireland does not equate to SNP-style differentiation for Scotland?

**Michael Gove:** Yes. It is important to understand—as I am sure the committee does—that the devolved settlement is different in each part of the United Kingdom. Because of Northern Ireland’s troubled history, there are ways in which the Northern Ireland Assembly, when it is up and running, takes decisions that are wholly different from the way in which the Scottish Parliament takes decisions. It is important to recognise that. It is also important to recognise that there are specific circumstances that prevail in Northern Ireland, because of its land border with the Irish Republic, that require the UK, as the relevant state, and Northern Ireland, as the nation within that state, to have specific requirements that would be neither appropriate nor relevant to Scotland.

Of course, if at any time the Scottish Parliament concludes that there are aspects of the devolution settlement that it wishes to readdress, the UK Government will always listen with respect and understanding to proposals that are put forward by the Scottish Parliament and the Scottish Government.

**Adam Tomkins:** That is helpful—thank you.

Understandably, as members of the Scottish Parliament, our concern is specifically with the interests of Scotland—Scotland as part of the UK,

of course—and the interests of the Scottish economy. Will you outline why the revised withdrawal agreement and the revised political declaration are in the interests of Scotland and the Scottish economy?

**Michael Gove:** It is emphatically the case that the revised withdrawal agreement will be in Scotland's interests and, indeed, in the interests of the wider UK. It will allow us to leave the EU in a smooth and orderly fashion. It will ensure that we can move quickly to conclude a free-trade agreement with no quotas, tariffs or quantitative restrictions on the access of our goods to European markets. It will also ensure that we can take decisions about, for example, financial services in London and Edinburgh that will allow the providers of those services to take advantage of a greater degree of regulatory flexibility.

In addition, as the Scottish Government has pointed out, the deal will enable additional investment to be made and new jobs to be created in the fisheries sector, which will help to revive coastal communities. It is also the case that we will be outside the common agricultural policy, which will mean that the Scottish Parliament and the Scottish Government can design an agricultural policy that is specifically in the interests of Scotland's farmers and which will provide new opportunities for Scotland's farmers and food producers to export across the globe. If one looks at the whisky and distillery trade, fisheries, food and farming, one can see that the deal will provide Scotland with new opportunities to export on a global basis, while at the same time safeguarding as frictionless as possible access to the EU market.

**Adam Tomkins:** All of which raises the question of why, on four occasions, now, all SNP MPs have voted against this deal and its predecessor deal.

Mr Russell called for a transition period, and this deal provides for that. Mr Russell also called for no hard border on the island of Ireland, and it seems to me that this deal avoids that. Further, Nicola Sturgeon called for a guarantee on EU citizens' rights, and this deal provides for that. Given that this deal does so much of what the SNP has—rightly, in my view—demanded, can you understand why the SNP continues to vote against it? Is it, perhaps, because it wants a no-deal Brexit?

12:45

**Michael Gove:** The position of the SNP is perplexing to me. It has been clear that it does not want a no-deal outcome—I understand that position, as I certainly do not want that outcome—but the best means of averting a no-deal outcome

is to vote for this deal. The failure of SNP MPs in the House of Commons to vote for the deal will allow many people to draw the conclusion that you have just drawn, Professor Tomkins.

**Adam Tomkins:** I might come back in later on common frameworks and other matters, but that is all for now.

**Tom Arthur (Renfrewshire South) (SNP):** Good morning, minister. I am grateful to you for making the time to give evidence to the committee on what I know is a busy day for you.

Mr Tomkins referred to the transition period. Is it still UK Government policy that the transition period should come to an end at the end of 2020?

**Michael Gove:** Yes.

**Tom Arthur:** So you envisage that a comprehensive free-trade agreement with the European Union will be negotiated and ratified in a little over 12 months' time.

**Michael Gove:** Yes.

**Tom Arthur:** That is the UK Government's position.

**Michael Gove:** Absolutely.

**Tom Arthur:** Thank you for clarifying that.

There was some discussion about the arrangements differentiating between Scotland and Northern Ireland. I would like to bring the discussion of that issue back to simple language. I know that my constituents in Renfrewshire South, particularly those who are involved in businesses, would appreciate a simple answer to this question. Will Northern Irish businesses have easier access to the European single market than businesses in the rest of the UK will?

**Michael Gove:** Yes.

**Tom Arthur:** They will do.

**Michael Gove:** Yes.

**Tom Arthur:** Does that put businesses in Scotland—and, indeed, in England and Wales—at a competitive disadvantage to businesses in Northern Ireland?

**Michael Gove:** No, it need not.

**Tom Arthur:** Why is that?

**Michael Gove:** If we secure the free-trade agreement that we are looking to secure, it should be the case that there will be no quotas, no tariffs, no quantitative restrictions and no additional friction. That will allow businesses in Scotland, Wales and England to have full access to the EU market. Of course, in Northern Ireland, there are specific factors that pertain that mean that we want to ensure that there is no need for

infrastructure at or near the border. As Professor Tomkins pointed out, that was something that my friend Michael Russell insisted on. We have ensured that this deal has delivered that.

**Tom Arthur:** I appreciate the delicacy and the sensitivities around the situation in Northern Ireland. My question pertains more to what the economic impact would be for businesses in Scotland. In your remarks just there, you used the qualifying words “should” and “if”. The situation that you describe is contingent on a deal being negotiated by the end of next year, which is something that—like many other people—I am sceptical about, given the normal duration of negotiations around such deals. What assurances can you give businesses in Scotland that, if that deal is not negotiated by the end of next year, they will not be put at a disadvantage?

**Michael Gove:** The UK Government, will be doing everything that we can, with the help of colleagues in the Scottish Parliament and the Scottish Government, to ensure that we get a good free-trade agreement, which is emphatically in the interests of both the EU and the UK. During the period when we have been negotiating the withdrawal agreement and the political declaration, progress has been made and there has been mutual understanding in a variety of areas, such as the requirement for a satisfactory level playing field, which should mean that these negotiations can be concluded very quickly.

**Tom Arthur:** My final point relates to a question that the convener asked earlier. A clear majority of people in Scotland voted to remain in the European Union, and Scotland is the only part of the United Kingdom whose preference is ultimately not being recognised. You have conceded—as your colleague Dominic Raab did when he said that this deal is

“a cracking deal for Northern Irish business, because they stay part of the UK customs territory but they’ve got seamless access to the EU single market”

—that this deal is likely to put businesses in my constituency and the rest of Scotland at a competitive disadvantage. Do you think that that is fair?

**Michael Gove:** I think that businesses in your constituency and across Scotland will be at a competitive advantage when we secure a free-trade agreement. One of the things that would put businesses in Scotland at a competitive disadvantage would be if Scotland were to separate from the United Kingdom and we were to have new strains, new tensions and new friction in that economic, social, cultural and political relationship.

**Tom Arthur:** I thank you for answering my questions, but I do not think that businesses in my constituency will be reassured by that at all.

**The Convener:** Alex Rowley has the next question.

**Alex Rowley (Mid Scotland and Fife) (Lab):** Good afternoon, Mr Gove.

I would like to clarify something, following up on Tom Arthur’s line of questioning. Things seem to have happened so fast that it is sometimes difficult to keep up with where we are with Brexit. Yesterday and today, I noticed that quite a number of commentators are still talking about the possibility of a no-deal Brexit. I assume that, even if you cannot get a deal through Westminster this week, the fact that the Prime Minister wrote to the EU to seek an extension takes us past 31 October. However, it has also been suggested that this deal has a trap-door that leads to a no-deal Brexit at the end of next year. I assume that that is linked to whether you get a free-trade deal with Europe. What are your views on that, given that you are in charge of no-deal planning?

**Michael Gove:** That is a very good point, Mr Rowley. The first thing that I would say is that there is still a risk that we could leave without a deal on 31 October. The Prime Minister has complied with the Benn act and the letter has been sent, but any extension depends on the European Council agreeing to one. Each member state of the EU has to agree—there has to be unanimity—and there have been comments from the French President, the Taoiseach and others suggesting at the very least that they do not want an extension at this time.

I hope that we will be able to secure a deal. If we do, we have time to conclude a free-trade agreement. You are right that, if we do not conclude a free-trade agreement, there is a possibility of leaving without one, but it is the wish of almost everyone in the UK Parliament to conclude a free-trade agreement. With a united will across the House of Commons, I am sure that we will be able to secure that agreement and obviate the need for a no-deal Brexit.

Like you, I do not want a no-deal Brexit, but I have to recognise the fact that we have to leave the European Union, because that was the will of the United Kingdom electorate. However, we think leaving with a deal is, of course, preferable.

**Alex Rowley:** It will be quite a challenge to achieve that, given that trade deals between Europe and other places can often take years and years to conclude.

From what I have read about the deal over the past couple of days, it seems that it is significantly different from Theresa May’s deal, which I know



you argued for and voted for three times, in that it involves the possibility of much more deregulation taking place, which means that we would not be trying to get any kind of customs deal with the EU or any kind of alignment with the single market. Is that right? Do you see the deal as one that has far greater deregulation than the previous deal?

**Michael Gove:** I am naturally someone who wants to seek compromise and agreement whenever possible. That is why I supported the previous Prime Minister's deal, even though I had some reservations about it. However, I am more enthusiastic about this deal, and there is a specific reason why, which relates to Northern Ireland and the backstop. Under the deal that Mrs May agreed, there was a risk that we would not be able to leave the backstop arrangement once we had entered it, and that the people of Northern Ireland would not have given their consent to that. There was a second and related question, which was that the political declaration said that we would build on the arrangements in the backstop for the future economic partnership. At that point, that would have meant building on an arrangement that would have had the UK in a quasi-customs union with the EU, which would have created particular difficulties for our economy and for our capacity to negotiate new deals with other countries. The new deal means that we would not be trapped in a customs union, because the whole of the United Kingdom would leave the customs union as one UK. That is why I believe that it is a better deal.

On the broader point about deregulation, it is also the case that, in paragraph 77 of the political declaration, we make clear that we would agree level playing field arrangements that would mean that there would be no regression from the high social, workplace and environmental protections that we have at the moment.

**Alex Rowley:** I would like to move to some specific points that might help me to understand the deal. Will economic impact assessments be published as you take your bill through Westminster? Do you agree that it is important that we understand what the deal means for different industries in Scotland?

**Michael Gove:** We understand that point. There have been a number of commentaries from people who are economically well informed and who have a deep understanding of their sector that have explained what the advantages of securing a deal would be. Most recently, the governor of the Bank of England pointed out that passing the deal would be a good thing for the UK economy. Further, when his predecessor, Mervyn King, was interviewed yesterday, he stressed that it would be a positive thing overall for the UK to resolve this issue now and that we would be in a strong

economic position to do what was required in order to make our economy grow in the future.

**Alex Rowley:** Does that mean that economic impact assessments will be published in Westminster that we will be able to access so that we can understand better what this deal means for us? I note that Scottish Chambers of Commerce was quoted in *The Sunday Times* yesterday as saying that we must have answers on

"Brexit's potential impact for trade, investment, communities and jobs"

right across Scotland. That information does not seem to be available at the moment.

**Michael Gove:** One of the things that I would stress is that, when you are thinking about economics, it is extremely difficult to make projections on the basis of one particular change. We know that, in the economic life of our nation, even as we leave the European Union, there are other changes that the Government or any other Government could introduce to tax or other areas of policy, such as investment in infrastructure or education, that can ensure that the economy continues to grow. During the passage of the bill, we will be debating the precise economic parameters that allow us to grow our economy in the future, and it is, of course, the case that I and other Government ministers respond to the specific concerns—and hopes—of individual sectors in order to ensure that the people who are responsible for jobs and employment have their voice heard at the heart of Government and that they are welcomed into the conversation that we have in Parliament as well.

**Alex Rowley:** Do you accept that things have significantly changed since 2016? In the referendum campaign, you, the Prime Minister and others said that we would get a deal like Norway's or Canada's. That was what was being talked about—there was an implication that we would be closely linked to the customs union and closely aligned with the single market. We now seem to be a long way away from where you were, never mind from where I was when I was campaigning for remain. Therefore, given that we have had three years of such uncertainty and that we all hopefully know a bit more now than we did then, is it not right that you should bring your deal back to the people and give us the opportunity, now that we know what it is about, to say whether we want to take that deal or whether we want to remain?

**Michael Gove:** I completely understand the sincerity with which many people—including friends of mine—argue for a second referendum. However, during the first referendum campaign, the current Prime Minister and I were clear that leaving the EU meant leaving the single market and the customs union. Indeed, the then Prime

Minister, David Cameron, also made it clear that that would be the case. I remember that, during the referendum campaign, some people argued that that was a mistake, and that we should stay in the single market and the customs union. However, the leave campaign's clear view was that we needed to leave both, and that is what we are doing. However, we are also doing it in a way that will, if this deal passes, enable us to have a relationship with our European friends and partners that is based on free trade, friendly co-operation and closeness.

**The Convener:** Angela Constance has a supplementary question in that area.

13:00

**Angela Constance (Almond Valley) (SNP):** It is a supplementary question that goes back to our earlier discussion.

Good afternoon, Mr Gove. The Prime Minister has said:

"we have made consent a fundamental element of this ... deal. So no arrangements can be imposed on Northern Ireland if they do not work for Northern Ireland ... the people of Northern Ireland will have the right to ... withhold their consent"—[*Official Report, House of Commons*, 19 October 2019; Vol 666, c 572.]

If consent is a fundamental element of the deal for Northern Ireland, why would that not be the case for Scotland, which was the part of the UK with the highest remain vote?

**Michael Gove:** It is important to understand—as I know the committee does—the unique circumstances of Northern Ireland and the fact that consent is at the heart of the Belfast Good Friday agreement and has a specific meaning in the context of that agreement. The troubled history of Northern Ireland, with its community tensions and divisions, means that the Northern Ireland Assembly works in a way that is different from the way in which the Scottish Parliament works. Consent across communities is at the heart of the operation of the Assembly, and the broader principle of consent for Northern Ireland's position within the United Kingdom underpins the security of the Good Friday agreement, which was ratified and underlined with simultaneous referenda north and south of the border.

As members know, there have been two referenda in Scotland and across the United Kingdom, on Scotland staying in the United Kingdom and on the United Kingdom as a whole leaving the EU. In each case, the specific arrangements are underwritten by those democratic events, and it is in respect of those democratic events that the specific arrangements for Northern Ireland have been reached.

**Angela Constance:** I am not for one minute disputing Northern Ireland's special circumstances, and I am not even disputing the results of the 2014 and 2016 referendums. However, you say that you value the UK union, so why would you make extra efforts to accommodate Northern Ireland—rightly, given its uniqueness—but pay no heed to Scotland's uniqueness? Our Parliament still meets, of course, and it is a fact that Scotland is the part of the UK with the highest remain vote. Do you not accept that it is unfair and undemocratic for no accommodation to be given to Scotland?

**Michael Gove:** We do respect the uniqueness of Scotland's position, and we make more than accommodations. We think about—

**Angela Constance:** Can you give an example of an accommodation that you have made, please?

**Michael Gove:** Yes—absolutely. The work that I did when I was Secretary of State for Environment, Food and Rural Affairs to ensure that we could reap the benefits of the common fisheries policy in a way that helped the communities of Fraserburgh, Peterhead and Cullen and beyond and the way in which we negotiated throughout the progress towards the withdrawal agreement to safeguard the economic, environmental and political interests of Scotland are evidence of that.

Most recently, the Scottish Government cabinet secretary for agriculture, Fergus Ewing, asked that, in the event of a no-deal outcome, we specifically argue that there should be an exemption from the requirement for export health certificates to be issued for a period because of the specific dynamic alignment that we had agreed to more broadly as a result of third country listing. I was pleased to be able to ensure that his specific request formed part of the mandate for our negotiators.

**Angela Constance:** That is an interesting detail, but my question was more fundamentally about the issue of consent. At a fundamental level, that has been accepted for Northern Ireland, but not Scotland.

Is it the case that EU member states have a legal veto over whether Scotland and the UK leave the EU on 31 October?

**Michael Gove:** I will explain the procedure, with which the committee will be broadly familiar. Now that the letter has been sent as a requirement of the Benn act, the European Council will meet to decide whether to grant an extension, on what terms and of what length. Any single member state could decide that it would be inappropriate to offer an extension, in which case there would be no extension. That risk is in my mind, which is why

we are intensifying our planning for a no-deal Brexit. We cannot assume that every EU member state will agree to grant an extension.

**Angela Constance:** So EU member states have a legal veto on whether Scotland and the UK will leave the EU on 31 October. Do you know how many EU member states are smaller than Scotland?

**Michael Gove:** That depends on whether we are talking about landmass or population. In population terms, I think that Estonia, Latvia, Lithuania, Malta, Cyprus and the Irish Republic are smaller than Scotland.

**Angela Constance:** Nine EU member states are smaller than Scotland. Can you not see that, from the perspective of anyone who lives in Scotland, we have a UK Government that is telling us that we must simply put up with this, yet there are nine EU countries that are smaller than Scotland that have a greater say over our future than we do? Do you not accept that that exposes a fundamental weakness in the current union?

**Michael Gove:** If you mean that it is a fundamental weakness in the European Union that small countries can exercise a veto—

**Angela Constance:** I was talking about the treaty of union.

**Michael Gove:** Indeed. The EU has its own constitution, which we respect and operate within, and the UK has its own constitution, which we respect and operate within.

However, it is also important to bear in mind, as I know the committee does, that more than 1 million Scots voted to leave the EU. More voted to leave the EU than voted for the party that currently runs the Scottish Government. If we are looking at competing mandates, it is important that we look at the rules overall and recognise that the UK voted to leave as one United Kingdom, and that is the basis on which we should leave.

**The Convener:** Of course, one of the constitutional niceties of the UK is the Sewel convention, which is a unique process that requires consent from the Scottish Parliament. The Sewel convention means that the Scottish Parliament's consent is required for any legislative consent motion that is requested by the UK Government. If the Scottish Parliament refuses to give its consent to an LCM for the EU withdrawal agreement bill, what will your recommendation be to the UK Government?

**Michael Gove:** It is important that we respect the debates that are held in the Scottish Parliament but, ultimately, it is the UK Parliament—in which there are SNP members—that will decide the terms on which we leave the EU. It is important that we protect the principle that

international negotiations are conducted by the UK Government on behalf of all UK citizens, but it is also important that the relations between the UK and Scottish Governments are relations of respect and that the relations between the UK and Scottish Parliaments are relations of respect and understanding.

**The Convener:** Thank you very much for that, but I guess that that was just a polite way of saying that the will of the Scottish Parliament, in the event that it decides to withhold consent, will be ignored.

**Michael Gove:** No—we would never ignore what happens in the Scottish Parliament.

**The Convener:** Well, we will see what happens very shortly, when the LCM comes before the Scottish Parliament.

**Adam Tomkins:** When it comes to discussing the Sewel convention, SNP ministers often like to talk about respecting the devolution settlement. Do you agree that respecting the devolution settlement means respecting that which is properly devolved and that which is properly reserved, that international treaties and international negotiations and the UK's relations with the European Union are reserved to the Westminster Parliament and that, if we are to respect the devolution settlement, we should respect all of that?

**Michael Gove:** Yes, that is absolutely right. The people of Scotland voted in a referendum to re-establish the Scottish Parliament, but they also voted in a subsequent referendum to remain within the United Kingdom. That means that the will of the Scottish people is to have a devolved arrangement and, as you described, a devolved arrangement means that the Scottish Parliament and the Scottish Government have competence and authority in a specific number of areas. We absolutely respect that—the arrangement works well—but it is also the case that the UK Government has competence and authority in some areas. By dint of the fact that the UK Government is the relevant member state of the European Union and, as it happens, the relevant member state of the United Nations and of NATO, international negotiations should be conducted by the UK Government, which is answerable to the UK Parliament.

**The Convener:** But, of course, an LCM seeks consent from the Scottish Parliament for the UK Government to operate in areas that are devolved. That is one of the niceties of the Sewel convention.

**Patrick Harvie (Glasgow) (Green):** I would like to explore the issue of consent a little further. How much consideration did the UK Government give to producing a consent mechanism that was relevant to Scotland's circumstances?

**Michael Gove:** In thinking of the consent mechanism that operates in Northern Ireland?

**Patrick Harvie:** You have made the case that the consent mechanism in relation to Northern Ireland is particular to the circumstances there and has a special meaning within the Good Friday agreement. I think that we would all acknowledge that while reminding you that you opposed the Good Friday agreement—indeed, you called it

“a denial of our national integrity”

and said that it

“enshrines a vision of human rights which privileges contending minorities at the expense of the democratic majority.”

Therefore, it is a little peculiar for you to be relying on it now as a defence for the complete absence of a consent mechanism for Scotland.

I am merely asking whether the UK Government gave any consideration to designing a consent mechanism that was relevant to the particular circumstances of Scotland.

**Michael Gove:** I have two points to make about that. It is true that I had worries about the Good Friday agreement. Indeed, I also had worries about devolution to Scotland. However, there was a referendum in favour of the Good Friday agreement, in the same way that there was a referendum in favour of devolution to Scotland. It is my policy to respect referendums once they have occurred and to do everything that I can to make them work. It is undoubtedly the case that, since devolution to Scotland and the Belfast Good Friday agreement, progress has been made, and I am content—in fact, I am more than content; I am extremely happy—to acknowledge and respect the progress that has been made through devolution in Scotland and Wales and through the Belfast agreement, and I am anxious and determined to ensure that progress continues to be made.

**Patrick Harvie:** So what is the answer to my question? I asked what level of consideration the UK Government gave to designing a consent mechanism that was relevant to Scotland's circumstances.

**Michael Gove:** We have a consent mechanism that is relevant to Scotland's circumstances—we have our existing constitutional settlement.

**Patrick Harvie:** Can you explain how Scotland's consent is acquired for the withdrawal agreement?

**Michael Gove:** It is the case that, as Professor Tomkins laid out brilliantly, the UK Government is responsible for international negotiations and the UK Parliament ratifies international treaties. Scotland has a number of extremely able representatives in the UK Parliament who are of equal weight, worth and standing with every other

member of the UK Parliament. It is also the case that the Scottish Parliament has a number of devolved competences. As we leave the European Union, those areas in which there are devolved competences, such as agriculture and the environment, are ones in which the Scottish Parliament and the Scottish Government will acquire additional powers and flexibilities that they did not have prior to exit.

**Patrick Harvie:** In relation to the withdrawal agreement, though, you designed a consent mechanism for Northern Ireland that has been hardwired into the agreement. There is no similar consent mechanism in that agreement for Scotland.

In relation to the Sewel mechanism and legislative consent within the devolved legislatures, the UK Government has shown itself to be unwilling to impinge on devolved matters. Even when the ban on abortion in Northern Ireland was clearly shown to be a breach of human rights, the UK Government said that it was not willing to legislate on a devolved matter and it was the Parliament that forced the Government's hand on that. However, in Scotland, you have been willing to legislate on devolved matters without the consent of the Scottish Parliament. I understand why, from your position, that makes sense. Do you understand why, from our position, it feels extremely insulting?

**Michael Gove:** Which are the areas in which the UK Parliament has legislated on devolved matters?

**Patrick Harvie:** The EU withdrawal act is an example.

**Michael Gove:** As I say, the bill will, I hope, come before the House of Commons tomorrow, but that—

**Patrick Harvie:** I do not mean the withdrawal agreement bill, which is coming; I mean the European Union (Withdrawal) Act 2018, which has been passed.

13:15

**Michael Gove:** Yes, but that was consequent on a UK-wide referendum and is related to negotiations that the UK as a member state of the European Union undertakes. The UK Government is the body that triggers article 50, and there has been extensive discussion—although not always agreement—between the UK Government and the devolved Administrations about every aspect of EU withdrawal.

**Patrick Harvie:** You felt that it was justified to legislate when legislative consent had been withheld so, on that basis, it seems pretty clear

that you will be willing to do so again with the bill that is due to be published today.

Why has that bill not been published in advance in draft form? It is a profoundly serious, complex and weighty piece of legislation with profound consequences for the lives of the people we in the Parliaments and Assemblies throughout these islands represent. Why has the bill not been published in advance in draft form to allow some level of scrutiny, not just by parliamentarians but by civil society?

**Michael Gove:** It is now three and a half years since the original vote to leave the European Union, and there has been extensive debate in our Parliament and in the Scottish Parliament and the National Assembly for Wales about the ramifications of leaving. Many people understand very well many of the questions. If you want to probe specific questions about our departure, I would be more than happy to deal with those. The bill will give effect to our desire to ensure that the withdrawal agreement and political declaration, which have been published in full and are available for scrutiny, can be given effect.

**Patrick Harvie:** So we are supposed to ask detailed specific questions about the withdrawal agreement bill when it has not been published.

**Michael Gove:** People can ask specific and detailed questions about the withdrawal agreement, as some of your colleagues have done. The bill gives effect to the withdrawal agreement. Until people raise their concerns about the withdrawal agreement—I understand that people have such concerns—I cannot anticipate the questions that they might want me to answer.

**Patrick Harvie:** I cannot anticipate what questions I want to ask until I have seen the bill.

The Government has now, under protest, made a request for an extension to the process. Does it not make complete sense for that extension to be granted, even if you intend to pursue your withdrawal agreement, to allow time for adequate scrutiny by Parliament at Westminster, the Scottish Parliament and other jurisdictions, and by civil society and members of the European Parliament, the agreement of which is also required? Should we not proceed with that extension to allow the basic level of scrutiny that should be the norm for any serious legislation such as the bill?

**Michael Gove:** I know that this is not the case with you, Mr Harvie, but I sometimes find that people say, “We need more time for scrutiny,” but then, when that time evolves, they do not scrutinise the legislation; they just appeal for more time, so we have more delay and uncertainty. Europe’s leaders in the EU27 have said that they want the deal done by 31 October.

As I said, if you are unhappy with any particular aspects of the withdrawal agreement or the political declaration, I would be happy to discuss them. Even now, we are having a discussion about having more time, but we are not using the time that we have to scrutinise what is in front of us.

**Patrick Harvie:** How can we scrutinise it when you have not published it?

**Michael Gove:** You have not asked me any questions about the withdrawal agreement.

**Patrick Harvie:** All right—I will ask one final question about the withdrawal agreement. You referred earlier to the level playing field provisions. As I understand it, Theresa May’s agreement, which was rejected by Parliament on several occasions, had an appendix or annex that made explicit references to level playing field provisions. Do such provisions have any status in the new withdrawal agreement or have they been removed?

**Michael Gove:** They are in paragraph 77 of the political declaration, which makes it clear that the future free-trade agreement that we wish to conclude will ensure that there is no regression from high standards. Mr Harvie is of course a passionate environmentalist. The UK Parliament has introduced a landmark Environment Bill, which will create a new independent watchdog to ensure the highest possible environmental standards. There will also be legally binding targets on everything from net gain with respect to biodiversity to air quality. I know that a number of members of the Scottish Parliament would like similar legislation to be in place in Scotland to ensure that we not only match but exceed Europe’s ambition when it comes to environmental protection.

**Patrick Harvie:** In that case, can you help me to understand the comment from two weeks ago by Liz Truss, the Secretary of State for International Trade, that scrapping the protections is

“vital for giving us the freedom and flexibility to strike new trade deals”,

or the reports that a Cabinet source told *The Sun* newspaper that

“The level-playing-field promise has to go”,

because

“It would seriously restrict our ability to deregulate”?

What do those comments mean if they are read in the context of the assurances that you have just given?

**Michael Gove:** I fear that whoever is alleged or reported to have said that the level playing field commitments have to go must be disappointed,

because the level playing field commitments are in paragraph 77.

**Patrick Harvie:** So Liz Truss was wrong to say that.

**Michael Gove:** The international trade secretary would naturally want to ensure, as I do, that we conclude free-trade agreements with as many countries as possible. However, on your specific reference to an unnamed Cabinet source who referred to taking out the level playing field commitments, I fear that that unnamed source will—

**Patrick Harvie:** Liz Truss said that scrapping the protections is “vital”.

**Michael Gove:** I am not sure which protections were being referred to at that point.

**The Convener:** We will move on.

**George Adam (Paisley) (SNP):** I was heartened to hear you say that you would never ignore what is said in the Scottish Parliament, Mr Gove, and I will ask my question with that in mind.

Over the piece, the Scottish Government has been reasonable and pragmatic and has offered solutions. In December 2016, January 2018 and October 2018, the Scottish Government published papers that did so. The December 2016 paper said:

“People in Scotland voted decisively to remain in the European Union and we continue to believe that this is the best option for Scotland and the UK as a whole.”

The Scottish Government believes that, short of EU membership, the UK must stay in the single market and customs union. The paper published in October 2018 went even further and asked the UK Government to negotiate a solution that would keep Scotland in the European single market and customs union. You have told us that you are a person who naturally seeks compromise and agreement. With that in mind, why were those solutions never suggested by the UK Government in negotiations with the EU?

**Michael Gove:** We take seriously the Scottish Government’s papers and arguments. The reason why we are not asking to stay in the single market and the customs union is that the case that was made for leaving during the 2016 referendum was built on leaving the single market and the customs union, and it would be the case that—

**George Adam:** The vast majority of Scots did not vote for that, Mr Gove.

**The Convener:** Let Mr Gove conclude his answers, please, Mr Adam. On you go, Mr Gove.

**Michael Gove:** Thank you.

I would say two things on that. First, it was a UK-wide referendum, and the UK leaves, whole and entire. Secondly, as I mentioned to Angela Constance, it was of course the case that more people in Scotland voted to remain than to leave, but a million Scots voted to leave, and that is more than voted for the current Scottish Government. That leads on to one question that some people, although not me, would ask. Although the Scottish Government of course has a mandate, as it won the election and governs in the interests of Scotland, at the same time, a million Scots, as part of the United Kingdom, voted to leave, and their views must be respected as well.

**George Adam:** I will not get into an argument about who has the biggest mandate. I will move on to another question.

If the current proposal is considered a good enough option for Northern Ireland, why was no such option ever thought of for Scotland? I cannot understand that, if you are an individual who naturally seeks compromise and agreement.

**Michael Gove:** As the committee has generously acknowledged, there are specific circumstances in Northern Ireland that do not pertain in Scotland. It is the case that the Assembly—which, sadly, is not up and running at the moment—and the Executive are formed and composed in a different way. It is also the case that Northern Ireland, as a geographical fact, has a land border with the Republic of Ireland. Further, it is the case that the island of Ireland is a single epidemiological zone when it comes to animal health. There are specific circumstances that require specific solutions in Northern Ireland, and we accept that.

We also accept, more broadly, that the devolution settlement in Scotland, which is underpinned by referenda, as I said, is one in which certain decisions are quite rightly and properly taken by the Scottish Government and others are taken by the UK Government. However, one of the things that I know as a UK Government minister is that we always seek not only to pay attention to what the Scottish Parliament wants but to have good and friendly relations with Scottish Government ministers. That means that, as I explained earlier to Angela Constance, although we might not always agree with one another, if Scottish Government ministers make good arguments for things that we believe that it is important to incorporate into UK Government policy, we will always do that.

**George Adam:** I have a final question. Did the UK Government examine at any stage a different option for Scotland, given Scotland’s specific circumstances and current political background?

**Michael Gove:** We always reflect on what it is that might be best for all the nations of the United Kingdom. Our conclusion was that it would not be right for Scotland or, indeed, any part of the UK to be fully in the single market, because that would involve the acceptance of rules and regulations, for example in the financial services sector, that would mean that we would be a rule taker. I do not think that it would be in the interests of providers of financial services in London, Edinburgh, Perth or Aberdeen for us to be a rule taker under those circumstances.

**The Convener:** I think that you have exhausted that area, Mr Adam.

**John Mason (Glasgow Shettleston) (SNP):** I am looking at a publication from the UK Government that is called “Explainer for the New Ireland/Northern Ireland Protocol and the Political Declaration on the Future Relationship”. It mentions that the political declaration allows for additional agreements between those areas on fisheries and the access arrangements to each other’s waters. Can you confirm that EU countries will continue to have access to UK waters?

**Michael Gove:** As an independent coastal state, we will decide what access they have, and will negotiate on the basis that nations such as Norway and Iceland and jurisdictions such as the Faroe Islands do, which will involve maximising the economic benefit for the country and the environmental benefit for the marine environment. We will do so in a way that is consistent with our international obligations and which acknowledges that there are UK vessels that often seek access to EU waters, just as there are EU vessels that want access to ours.

**John Mason:** You will know that, in Scotland—even in constituencies such as mine that are not fishing constituencies—there is a huge commitment to fishing and great concern about it. The number of jobs, the turnover and so on are important throughout Scotland. Is there a commitment to protecting the Scottish fishing industry or will it be traded away because it is less important to the UK?

**Michael Gove:** It will certainly not be traded away. As I briefly mentioned, the Scottish Government has produced its own report with authoritative backing that shows that, once the UK is outside the EU and the common fisheries policy, there will be thousands of new jobs and millions of pounds-worth of additional investment. That is wholly welcome, and we will ensure that, outside the common fisheries policy, as an independent coastal state, we maximise the benefits for the Scottish fishing industry, as we will do for the UK fishing industry. I think—although obviously I cannot know—that that is why there was such strong support for leaving the EU in coastal

communities such as Banff, Macduff, Portsoy, Cullen, Peterhead and Fraserburgh.

**John Mason:** One of the concerns that have been raised around the special deal for Northern Ireland is that Scottish fishing boats could register in Northern Ireland and land their fish there for easy access to the Republic of Ireland and the rest of the EU, which would damage Scottish fishing communities. Can you offer reassurances about that?

**Michael Gove:** Yes. The best route to market for Scottish and other fishermen who currently land catches is to travel to Boulogne-sur-Mer, which is the principal fish market in Europe for Scottish catch, and the best way to reach it is through the Channel tunnel or by Dover to Calais. We are ensuring that that route is as smooth as possible for Scottish fishermen.

The natural thing to do would be to take advantage of the recently enhanced facilities in Peterhead harbour, for example. That would be the logical place for fishing boats to continue to land their catch so that it can be bought, processed and taken to market as quickly as possible.

13:30

**John Mason:** We accept that there will not be quotas and tariffs, as you have said, but could there be delays in getting fresh fish through the tunnel to Europe?

**Michael Gove:** If we conclude a free trade agreement, there will be no reason for any delay. If there is a no-deal exit, we may find that there are one or two particular challenges that we would need to negotiate. I have been talking to Fergus Ewing and others in the Scottish Government about how to ensure that we prioritise Scottish fishermen’s access to the European market. That is one of the principal aims of the work that I do.

**John Mason:** You referred to some Scottish communities supporting Brexit because they thought that they would get more access to UK waters. On the other hand, the fish processing industry was largely opposed to Brexit for a variety of reasons, which included the reason that it would not be able to get labour. The fish processing industry is dependent on EU labour. Can you reassure fish processors, other food processors and the hospitality industry that they will still have enough labour? The declaration also says that there will be an end to freedom of movement.

**Michael Gove:** Yes, absolutely, there will be an end to freedom of movement. We as a country—the United Kingdom—will be able to decide who comes here and on what terms. I have spent many hours of my life in fish processing premises, and I

was recently able to reassure fish processors that they would absolutely continue to have access to the skilled labour that they require.

**John Mason:** Is that also true for hotels in Edinburgh that would not pay salaries such as £30,000, or will hotels have to close because workers cannot come here?

**Michael Gove:** I do not think that any hotels in Edinburgh will close because of a lack of access to labour. It is important to recognise that, as your question implies, there is full employment in many parts of Scotland, although not everywhere. That is a good thing, and it is part of the strength that the UK economy brings to all the constituent parts of the union. We will continue to ensure that there is access to labour for every sector of our economy.

**The Convener:** Alex Rowley has a supplementary question.

**Alex Rowley:** I want to go back to the level playing field provision. Is it correct that that will last only until the end of the transition period and that EU leaders have said that that will severely restrict the access that the UK could get to EU markets?

**Michael Gove:** No. The specific reference to the transition period in paragraph 77 of the political declaration makes it clear—I hope—that it is the state of protections that exists at the end of the transition period from which there will be no regression. If protections in any area become stronger in the transition period, there will not be any regression from that. Therefore, we will have level playing field provision.

**Alex Rowley:** Are you saying that, legally, a year down the road from now, Boris Johnson could not sit and think that the real problem with Britain is the amount of its regulation and then decide to deregulate our economy? Are you saying that he would not be able to do that?

**Michael Gove:** We certainly would not have any regression from those level playing field principles. However, I am sure that we can all think of regulations that the Scottish Government or the UK Government has put in place in the past that we might want to amend or alter. There will always be some laws or rules that will need to change at some point. However, protections for workers in the workplace—I know that you have devoted your life to them—will not be eroded.

**The Convener:** I am conscious that you have a statement to make this afternoon, so we will conclude after a couple of quick questions.

**Adam Tomkins:** Before you go, Mr Gove, I have a question on the detail of the withdrawal agreement and the political declaration.

The Government department for which you are responsible is the lead department in the UK for the development with the devolved Administrations of common frameworks on the way in which powers that are to be repatriated from Brussels after Brexit will be used across the UK. Do either the revisions to the withdrawal agreement or the revisions to the political declaration make any material changes to the way in which those common frameworks will be negotiated and agreed?

**Michael Gove:** In my view, no. I believe that the common frameworks will work in the interests of every part of the United Kingdom and will ensure that the UK's internal market can operate to the benefit of producers and consumers in Scotland, England, Wales and Northern Ireland.

**Adam Tomkins:** I am pleased to hear that answer, but it raises a particular puzzle for me with regard to Northern Ireland. Given that Northern Ireland will be in a different position under the revised withdrawal agreement than it would have been under the backstop that existed in the previous withdrawal agreement, how will common frameworks be sufficiently flexible to accommodate those differences?

**Michael Gove:** One thing that we will want to do—which any UK Government would want to do—is to ensure that regulations are as aligned as possible in every area in order to ensure the minimum friction at any border and within any marketplace. For example, to take one of the most oft-cited areas where common frameworks would be required, I cannot see there being different food safety rules in any part of the UK, because we would want to ensure that people had confidence in the operation of food safety.

**The Convener:** The issue of the level playing field and close alignment has moved from the legal text into the political declaration. Adam Tomkins is right to explore the area of common frameworks, and my question is this: are the constitutional arrangements in the UK robust enough to enable devolved institutions to choose, if they so wish, to continue to be aligned to EU law in devolved areas while allowing the rest of the UK, if it so wishes, to pursue a different approach?

**Michael Gove:** We have to consider the common frameworks on a case-by-case basis and ask whether they continue to allow the UK's internal market to work in the interests of all. Let us take a case in point. If the Scottish Government were to decide that it wanted to pursue a different policy in a devolved area, such as agriculture or the environment, it would be free to do so. The common frameworks are there because they are in all our common interests. For the sake of argument, if, for example, the Scottish Government wanted to reintroduce headage



payments, it would be entirely within its competence to do so, although that might have an effect on the competitive position of farmers in the rest of the UK vis-à-vis Scottish farmers. Although the method of agricultural support that the Scottish Government is responsible for might well diverge from that of other parts of the UK, I think that there would be common rules on animal health and sanitary and phytosanitary standards to which we would all wish to adhere.

**The Convener:** Effectively, then, you are giving quite a commitment, on behalf of the UK Government, to be as flexible as possible in relation to policy diversions in devolved areas.

**Michael Gove:** Yes. My aim is to try to ensure that people recognise that devolution works and that we give the Scottish Parliament and the Scottish Government, in all the areas in which there is devolved competence, the capacity to initiate policy. However, the reason for common frameworks is that we believe that, in our negotiations with the EU and within the UK, the principle of divergence for its own sake works against all of our common interests. In those areas where we have agreed to shape the policy that we believe is right for those whom we serve, we should be free to do so, but we should also recognise that there are areas where co-operation and agreement work in all of our interests.

**The Convener:** Thank you for giving us your time today. I now close this meeting.

*Meeting closed at 13:39.*



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