



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Culture, Tourism, Europe and External Affairs Committee

**Thursday 20 February 2020**

**Session 5**



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**CULTURE, TOURISM, EUROPE AND EXTERNAL AFFAIRS COMMITTEE**  
**6<sup>th</sup> Meeting 2020, Session 5**

**CONVENER**

\*Joan McAlpine (South Scotland) (SNP)

**DEPUTY CONVENER**

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

**COMMITTEE MEMBERS**

Donald Cameron (Highlands and Islands) (Con)  
\*Annabelle Ewing (Cowdenbeath) (SNP)  
\*Kenneth Gibson (Cunninghame North) (SNP)  
\*Ross Greer (West Scotland) (Green)  
\*Stuart McMillan (Greenock and Inverclyde) (SNP)  
\*Alexander Stewart (Mid Scotland and Fife) (Con)  
\*Beatrice Wishart (Shetland Islands) (LD)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

David Barnes (Scottish Government)  
Michael Russell (Cabinet Secretary for the Constitution, Europe and External Affairs)

**CLERK TO THE COMMITTEE**

Stephen Herbert

**LOCATION**

The Robert Burns Room (CR1)



**Scottish Parliament**  
**Culture, Tourism, Europe and**  
**External Affairs Committee**

*Thursday 20 February 2020*

*[The Convener opened the meeting at 09:01]*

**Interests**

**The Convener (Joan McAlpine):** Good morning, and welcome to the sixth meeting in 2020 of the Culture, Tourism, Europe and External Affairs Committee. I remind members and the public to turn off their mobile phones. Members who are using electronic devices to access committee papers should ensure that they are turned to silent mode. We have received apologies from Donald Cameron MSP.

Agenda item 1 is a declaration of interests. I welcome Beatrice Wishart to the committee. She replaces Mike Rumbles, whom I thank for his contribution to the committee's work. I invite Beatrice to declare any registrable interests that are relevant to the committee's remit.

**Beatrice Wishart (Shetland Islands) (LD):** Thank you. I have no relevant registrable interests.

**Article 50 (Withdrawal Agreement**  
**and Negotiation of Future**  
**Relationship)**

09:01

**The Convener:** Under our next agenda item, we will take evidence on the withdrawal agreement and negotiation of the future relationship with the European Union, as part of our article 50 inquiry. I welcome our witnesses. Michael Russell is the Cabinet Secretary for the Constitution, Europe and External Affairs, and David Barnes is the head of EU exit strategy and negotiations at the Scottish Government. I congratulate the cabinet secretary on his expanded remit and invite him to make an opening statement.

**The Cabinet Secretary for the Constitution, Europe and External Affairs (Michael Russell):** Thank you, convener. This is the first occasion on which I have appeared before the committee or, indeed, done anything formal, since I was given my new title. I am honoured to take on portfolio responsibility for Europe and external affairs. I pay tribute to my long-term predecessor, Fiona Hyslop, who had responsibility for those areas for more than 10 years. She took on the role from me about 11 years ago, so it is good to be back. I look forward to working with the committee on those topics, as well as to continuing to engage on the other areas in my portfolio.

Members are aware that the Scottish Government's preferred compromise, if Brexit was to happen, was to remain in the single market and the customs union. We have argued that case since 2016 and we continue to contend that, as all the evidence shows, anything short of that will be deeply damaging. Theoretically, that position could still be achieved, which is why we have sought to influence the United Kingdom Government on the matter, and why we continue to do so through the joint ministerial committee process.

However, the Prime Minister's speech on 3 February, the statement from Michael Gove on the inevitability of friction on trade on 10 February, and Monday's lecture in Brussels by the chief negotiator David Frost, make it certain that the UK Government does not intend to follow such an approach: far from it. We now know that it is determined to tread a much more dangerous and damaging isolationist path. The UK Government intends to seek and deliver a hard, uncompromising and extreme Brexit that rejects co-operation and sensible collaboration, and seeks instead to retreat to some mythical "Empire 2" ideological purity. Regrettably, there is no

doubt—none at all—that the UK Government has made that choice.

That choice can lead only to an outcome that is, at the very best, the most basic of free trade agreements. Such an agreement will, in the words of the former permanent secretary at the Department for Exiting the European Union, Philip Rycroft, impose

“regulatory barriers to trade”

that make it certain that

“the conditions for doing business between the UK and the EU will change.”

It will not be Canada plus, or even Canada minus; it will be Canada minus minus. It will be minus, most probably, zero tariffs and zero quotas unless there is some degree of alignment, which David Frost has completely ruled out.

There could even be something worse. According to Tory sources there could be an “Australian-style” relationship. That is their code for no deal, because there is no EU deal with Australia. That is the no deal that has been predicted this week by Fabian Zuleeg, from whom the committee has heard evidence. We must be very clear what that will mean. In comparison with EU membership, a Canada-style deal will lead to a fall of £9 billion in Scotland’s national economic output. An Australian-style deal—more accurately, no deal—will lead to a fall of £12.7 billion. Trade, inward investment and productivity will be hit. In 2018, overseas exports of food from Scotland were valued at around £1.6 billion, of which £1.1 billion, or about two thirds, went to countries within the European Union. That will be hit.

The end of freedom of movement, particularly if it is allied to the UK Government’s stringent and ridiculous new immigration plans, will mean a fall in Scotland’s working population. Social care and the national health service will be particularly vulnerable.

That all means that there will be a turning away from the idea of mutual co-operation and the shared values that underpin the European Union, and it will make us poorer.

The UK Government has now drawn that hardest of hard lines in the European sand. The Scottish Government must re-assess its position. We will do all that we can to limit the damage and to try to talk some sense into the UK Government. We must now also prioritise not persuasion, but defence. We will have to work even harder on securing Scotland’s rights and on mitigating the negative impacts of Brexit, while also seeking every opportunity to give Scotland the right to choose a different and more sensible path.

The Scottish Government will do all that we can to maintain dynamic alignment on environmental and labour standards, and close co-operation with the EU. That is in recognition of the positive outcomes that EU membership has delivered for Scotland and of our objectives to have continued alignment with a view to re-accession. That is also in recognition of what the Scottish people actually voted for.

One of our main tools will be the new continuity bill, which will be introduced in Parliament soon. We will assert our right to operate in our areas of competence in the closest and most dynamic alignment that we can secure with the EU. We will defend that right vigorously if it is challenged by the UK Government. It is our firm view that the extent to which devolved law aligns itself with the law of the EU should be a decision for the Scottish Parliament, and no one else, to take.

We will be clear about our priorities and we will make sure that they are emphasised in all our dealings with the UK Government and the EU. We will, for example, press the case for continued full participation in programmes such as horizon Europe and Erasmus+ We will seek to secure a good agreement on services, especially around mobility of people and data, which would be well beyond the kind of free trade agreement that the UK government wants to impose.

We will argue for protection of our exports, particularly those such as seafood and red meat, which are especially vulnerable to tariffs and to the trade friction that the Prime Minister—remarkably—sees as being acceptable.

Regarding internal security, our citizens will be less safe unless we put in place replacement arrangements for tools like the European arrest warrant and for access to key EU databases.

We will continue to protect Scotland’s interests as best we can, but people in Scotland have to be realistic about the extent to which the Brexit ideologues who are in charge of UK Government strategy are prepared even to listen. We cannot leave the people of Scotland under any illusion. The position that the UK government has taken will be very damaging, and it is a position that it alone has chosen. Devolved Administration ministers have so far been given no chance even to look at it, let alone to influence it. UK ministers cite plenty of meetings taking place, especially among officials, but as yet there has been no sharing of the text of the deal, no role for the devolved Governments in deciding the UK position, and no meaningful ministerial discussion.

It is, I regret, obvious that even with the best relationship in the world with the UK, UK ministers would still be hell-bent on the destructive and damaging hard Brexit that they have defined with

their aggressive rhetoric and their indelible red lines. No matter what we, Wales, or Northern Ireland say in or out of the JMC, that is the stark truth.

We will, of course, continue to try to protect Scotland's interests because that is our job, but unless something fundamental changes, the UK now intends to do to us the hardest of Brexits, rather than negotiating with us the type of Brexit that we want. We will have to stand up for ourselves to stop that happening.

**The Convener:** Thank you, cabinet secretary. That is a bleak prognosis, indeed. You have made it clear that the Scottish Government has not been involved in any way and has not had its views fed in to the negotiating position that has been taken by the UK Government.

You have outlined some of what you will do in respect of Scotland's priorities over the next few weeks. Will you publish your set of priorities for the future relationship negotiations?

**Michael Russell:** We have already published a substantial amount of material on our priorities. The trade paper that we published 18 months ago is absolutely explicit about what needs to happen. We have published material on a wide range of things. The UK Government likes to claim that we and others have not said what we want, but we have published 27 documents that indicate clearly where we are and what we want.

My colleague Ivan McKee will soon have more to say about our views on trade issues. We need to say to Scottish business and industry, and the wider Scottish community, that we want to help them. We want to find a way to protect them from the worst of the situation, and to ensure that their views are heard. We will do that.

I am also in the process of meeting all my colleagues to examine the negotiating priorities within their portfolios and our priorities for seeking speedy re-accession once Scotland has had the chance to choose. Those things go together.

More material will be coming into the public domain, but we have already made it clear exactly what needs to happen, in both the micro and the macro senses. In the macro sense, we need a sensible discussion about the legal texts and documents that inform, and will inform, the negotiating mandate of the UK. Because of how the EU has operated, we know much more about its negotiating mandate than we do about that of the UK. However, this is not just about seeing what the UK is doing; it is also about making sure that we participate in drawing its position up. That is where the major weakness is now. The devolved Administrations have not seen that material.

**The Convener:** You mentioned our expert witness Fabian Zuleeg. We have been lucky to take evidence from a number of expert witnesses, including Anand Menon, and they all talked about how, in negotiating trade relationships, it is now standard practice around the world for Governments to involve sub-state actors, which includes industrial sectors as well as devolved Administrations. Do you think that there is any understanding of that in the UK Government?

**Michael Russell:** I would say no. If there is such understanding, it is overridden by the absolute conviction that the sovereignty of the UK Parliament is the most important issue. In the mantra of Brexiteers, that sovereignty—in terms of control of borders, laws and money—overrides everything.

We have used a telling example of that several times, to illustrate the mistake that is being made. People will remember the difficulty with the Canadian comprehensive economic and trade agreement—CETA—when the Flemish Parliament held up ratification, at the end of the process. The lesson that the UK Government took from that was that Governments should never involve devolved Administrations because they will end up with a problem.

Another lesson that could have been learned from the CETA treaty, however, is that the Canadian Government got to the stage of having a comprehensive treaty only because it made sure that all the Canadian provinces were in the room when negotiation took place on provincial responsibilities. In other words, full engagement at every level in Canada led to the treaty. That is not the lesson that the UK Government took on board, and it has been emboldened in that matter by the election results south of the border.

We have a right to ensure that the devolved competencies are spoken on by us. As I say repeatedly in meetings of the JMC—although I am not sure that people are listening—there is no hierarchy of Governments in devolution; there is a hierarchy of Parliaments. Therefore, we carry the responsibility for a range of subjects.

Schedule 5 of the Scotland Act 1998 defines what we should represent in negotiation and have the final say on. Fishing is a very good example. Although fishing is a UK-wide interest, the substantial interest is, overwhelmingly, the Scottish interest. At the moment, the UK Government is behaving as though fishing is a reserved matter that will be spoken for entirely by the UK Government. It justifies that by saying that international negotiations are reserved. However, throughout devolution, there has been an understanding that there is no absolute hard line and that it is necessary to ensure that devolved Administrations are involved in international

matters when that is important for devolved functions.

09:15

**The Convener:** Fishing features in the sequencing that is set out in the EU's negotiating document and in the withdrawal agreement itself. Do you have a view on the sequencing of the negotiations, as laid out by the EU?

**Michael Russell:** Sequencing was an issue in the first round of negotiations, on the withdrawal treaty. Back in the heady days of the summer of 2016, David Davis rushed about the continent saying that he had lots of friends who would make everything fine and that the German car manufacturers would sort everything out. In those days, he fought a losing battle on sequencing; by losing the sequencing battle, he lost the war.

The UK Government is in danger of losing again, because it is desperate to say that fishing is a discrete matter on which it alone will speak for the UK, and that it cannot be connected to any other matter. It is, however, alone in believing that. I think that it will be a major issue.

Outside Scotland, in the rest of the UK and in London, in particular, there tends to be a belief that fishing is not vital and is dispensable. That is an internal UK view. The reality is that fishing is among the most important things that the EU wants to talk about, and it will not be fobbed off by UK exceptionalism, especially as it is the exceptionalism of a third country. I am sure that we will come on to that.

There was a very profound change on 31 January—attitudes changed. There is not equity in the negotiation; the UK is behaving as though it is an equal negotiating partner with 27 other countries, but that is not the case—rather, it is a single third country that is negotiating with a bloc of 27 countries. I do not think that the UK Government understands the implications of that.

**The Convener:** Other members will want to discuss fishing with you in some depth later in the meeting.

Before I hand over to Claire Baker, I have a question about your new role. You have talked about how you will work with Cabinet colleagues to focus on our priorities for the negotiations and on how to cope with the eventuality of a hard Brexit. How do you intend to use your new role in Europe to advance Scotland's position with the Europeans? Do you have a planned series of visits? Will there be a change of approach?

**Michael Russell:** Fiona Hyslop undertook a great deal of work in that area and we worked together very closely. The arrangement has been

rationalised, and Fiona taking on a new brief has allowed that to happen.

There will be continuity in our approach. I already spend as much time as I can, given the nature of the parliamentary process, in Brussels and elsewhere, and I intend to continue to do so. I am very glad that we now have Jenny Gilruth as junior minister in the portfolio. She will take on the role of talking to, and keeping the channels open with, the EU27 and more widely. We have a very effective group of people in Brussels who work on our behalf. Their job will now become more important, because they must make sure that our view is heard and that our contacts continue.

In discussing alignment, we will need to be alert to what is happening. It is harder for a country that is outside the EU to be fully aware of all the issues that arise. Inevitably, alignment will have to be a selective process. We simply could not cope with—nor would we wish to cope with—the huge demand for alignment in every area, but we will need to have our antennae switched on and be aware of the changes that take place and the things that we will need to do.

Therefore, there is a big job to be done, but I hope that we will spend as much time as we can talking to our friends and colleagues. We have many good friends and colleagues in Brussels and around Europe.

**The Convener:** How well understood in Europe is Scotland's commitment to alignment, and what are the implications for Scotland's future there?

**Michael Russell:** Those are probably two different issues. On Scotland's future in Europe, it is understood that we wish to move to membership. Of course, we first have to show that we wish to be independent, which is also understood in Europe. The UK constitution is complex, so helping people to understand how it works is important.

On understanding alignment, there is recognition that we share values. Alignment is not an abstract; it is about shared values. Alignment on human rights, employment rights and environmental protection is about shared values, doing the same things and agreeing how they should be done. The Europeans understand that, but of course that does not affect the negotiation between the UK and the EU, because we do not speak for the UK on that matter. I am sure that they will be glad that we share those values, but it will not alter the negotiations.

**Claire Baker (Mid Scotland and Fife) (Lab):** I want to touch on the political declaration, the status of which is that, separate from the withdrawal agreement, it is not legally binding. At the start of the meeting, you provided an analysis of the regulatory alignment aspect, which was



initially in the withdrawal agreement but was moved to the political declaration. It seems that there is now not much of substance in the political declaration. Is there anything left in it that is meaningful or that either side intends to pursue?

**Michael Russell:** I do not think that there is anything in it that is not expendable as far as the UK Government is concerned. One of the big fears that exists—we hear it being expressed quite often in the EU—is that whatever has been agreed may not happen unless it is tied down and enforceable. That fear extends to some of the agreements on Northern Ireland, for example. There is a fear that when Brandon Lewis, the new Secretary of State for Northern Ireland, says that there will be no need for paperwork and regulatory activity east to west, he is sending a signal that what has been agreed does not really matter, which would be very worrying indeed. With regard to the political declaration, no, unless something is in the withdrawal agreement and is enforceable, it does not have much validity.

I heard the Taoiseach say something at the British Irish Council that I thought showed an important understanding of trust—I have said this before at the committee. He said that the trust between countries in the EU was there because it was enforceable. Behind the countries working together was the European Court of Justice, so what they agreed was enforceable. How do you enforce anything that Boris Johnson is involved in with the EU, particularly if he and many people in his Cabinet have more than half an eye on not having any agreement at all? That will become a really big issue.

**Claire Baker:** You said to the convener that UK Government is not consulting the devolved Administrations, so there is no partnership working on future trade deals. How much scrutiny is being done by the UK and Scottish Parliaments? It feels as though there is little opportunity for parliamentarians to be involved in the process.

**Michael Russell:** As a Parliament, we should look closely at a scrutiny role in the intergovernmental review that is taking place. It has been going on for almost two years and has nothing to show for it. At the JMC in Cardiff three weeks ago, the devolved Administrations expected to receive the UK Government's proposals on the intergovernmental review, which we were assured were almost ready. We have still not seen them; they never happened. Whatever the proposals are, I do not expect them to go anywhere close to what any of the devolved Administrations want, but it would be a start if there was a document on the table from the UK Government. If we then start talking about what that should look like, we need to ensure that the Parliament has a role. The relationship between the intergovernmental review

and the Brexit process is that the review will, I believe, give a role to an enhanced JMC (European Union negotiations), which has a defined remit, although it has not been observed. The Parliament should be able to plug in there.

I know that there is frustration, for example, when I write to the committee about having been to the JMC and you see the communiqué and it tells you nothing—it just tells you who was there. That is because the UK Government made an attempt early on to word those communiqués as though they were an outcome of the meeting. There was some resistance to that from a number of us, because the UK Government was representing the outcome as being something other than what we thought had happened; as a result, you now get bland communiqués.

We can build on the intergovernmental review to provide a scrutiny role. I do not think that the UK Government is looking for an enhanced scrutiny role from the UK Parliament, but we should.

**Claire Baker:** The Scottish Government and other devolved Administrations spent a lot of effort planning for no deal. However, you said in your introduction that we would not be able to achieve frictionless trade and that tariffs and checks would be put in place. What kind of planning is the Scottish Government doing to anticipate the regime that we might have to deal with—although it is unknown at present—whether that involves border checks of goods or indeed of people, given the immigration announcement this week?

**Michael Russell:** There will not be significant internal borders for people in these islands. The common travel area existed before the EU and I think that it is pretty well set as it is. However, the work that we are doing on potential outcomes by the end of this year continues. We have been through two processes of preparing for a no deal. The mechanisms have been refined as we have gone through those processes. Officials are working with me and other members of the Cabinet on that. We remain active in assessing what will take place, with our preparations in place. However, if there is the type of no deal that we are talking about, there will be severe consequences. Just as we said for last March and just as we said for October, there is not a painless outcome.

**Claire Baker:** We are going through the budget process at the moment. Has consideration been given to some of the practical costs that might be involved in terms of infrastructure investment?

**Michael Russell:** That area is heavily under review. We had special funding for a no deal. In my view, that funding did not cover the costs; there are a lot of costs in staffing and elsewhere that were not covered. However, there would have

to be continued moneys available. Some money went to local authorities both in general and specifically for the work that needed to be done to plan for things such as phytosanitary inspection. A lot more of that work will be needed.

One of the problems with having a third go at no deal is the ability and the willingness of the private sector to respond, having been through a no-deal process twice already. There is a lot of scepticism, and stockpiling will be harder to do every time because people's financial flexibility is not there.

**The Convener:** That is interesting.

**Beatrice Wishart:** Cabinet secretary, you have already alluded to the concerns about fisheries in the negotiations. What would the Government like to see agreed between the EU and the UK Government on fisheries?

**Michael Russell:** We have been pretty clear on where and how we think those negotiations should go. You represent a significant fishing constituency; so do I, but it is a different type of fishery. We need to start off, as you well know, by saying that there is no homogeneous policy on fisheries. There are different sectors and they need to be treated in different ways. We also have to bring in aquaculture; that has to be recognised.

We share what should be the common goal, which is long-term conservation and sustainable exploitation. That is the underpinning, so anything that is decided has to be decided on that basis. We also recognise the deep dissatisfaction with the common fisheries policy as it has been operated. You will know that we have to differentiate between the CFP as it has been operated and what the CFP actually is. Speaking politically for my party, we have always talked about local coastal management. However, the UK has never talked about that; it has resisted doing that type of thing.

There can be a negotiated outcome that maintains the overall objectives of sustainable fishery and ecological management but also accepts that how the CFP has operated is not in the interests of many coastal communities. If we accept those things, we can have a sensible negotiation that leads to a better outcome for fisheries, but we do not want to mislead people. As you know, a lot of the rhetoric on the "sea of opportunity" is very misleading.

09:30

I turn from Beatrice Wishart's area to my own. Although some people who have given evidence to the committee have been sceptical about possible advantages for Northern Ireland, we should be mindful of the closeness of western coastal waters to Northern Ireland and the

European market. That will be significant, and particularly so for the processing and shellfish sectors.

We do not want the CFP as it is. We want there to be much better management of fisheries, including through local involvement. We want to ensure that historical rights are recognised, as well as the rights of coastal communities and the fishing industry. We also want to ensure that the differences in each part of the industry are recognised. The best way of doing that is to ensure that Scotland, the Scottish Government and the Scottish Parliament are active players in the negotiations and are not on the sidelines.

**Beatrice Wishart:** What are your views on fisheries being used as a bargaining chip? Is that how negotiations on future trade agreements will progress?

**Michael Russell:** It is important that people are told the truth. For the past two and a half years, UK ministers have been willing to talk about Brexit and Scotland only in the context of fisheries. To be blunt, Michael Gove has been in Aberdeen and Peterhead fish market more often than some people who work there. UK ministers go there and talk about protecting the fishing industry, but we need some truth on the issue. If the UK Government is determined not to have fisheries linked to anything else, how will it achieve that, given that the issue is such a priority for European countries? Without a doubt, a negotiated outcome can be reached, but anyone who has been involved in the negotiations knows that history shows that there is big talk from the UK Government and then complete capitulation. Many people wonder whether that will happen again.

**Beatrice Wishart:** How do you view the trade-off between access to markets for Scottish fish exports and access to waters for EU boats?

**Michael Russell:** I do not think that there is an absolute trade-off, because there are historical rights that cannot be denied. There needs to be a renegotiation of those rights, but it is a two-way street. Scottish boats need to dock in EU ports, too, so there needs to be a recognition of interdependency, which has been completely lacking. There is a view that everything can be managed on a discrete basis.

We can look at the reality of a negotiation agreement between a coastal state and the EU. There is an annual round of negotiations with Norway, but it is more than happy to accept aspects of EU membership that the UK has just torn up. It is difficult to speculate, but would there be a different set of circumstances if, for example, Norway refused to be in the European Economic Area and to be part of the single market? Would there really be the same type of collaboration if

that happened? That is the position that the UK will be in.

**Stuart McMillan (Greenock and Inverclyde) (SNP):** I want to go back to the Government's approach to negotiations. Your comments this morning have been quite clear, but can you clarify the Scottish Government's view on the UK Government's bandwidth? What does the UK Government have in its locker? Does it have enough expertise to allow it to engage in negotiations with the EU?

**Michael Russell:** I could not possibly say, because I do not know what resources the UK Government is bringing to bear. My experience of Brexit is that it is bringing to bear vast resources for a policy that can only impoverish the UK. That seems perverse, but that is what it has been doing. I do not wish the UK Government ill in negotiations, but I wish it good sense. The question of capability relates directly to the UK Government's capability of achieving the objectives that it has set. I am sceptical that some of those objectives can be achieved, no matter how much resource is thrown at them.

Michel Barnier's response to David Frost's lecture was interesting. He said that the EU understands the idea of Canada but that the UK is not Canada. Canada is over there and the UK is here. There is a big difference in proximity, which is one of the biggest factors in trade. The UK will not get a Canadian agreement because the proximity is very different, so what will happen if the UK spends the whole time negotiating for a Canadian agreement?

The UK Government peddles the myth that what happened at the end of last year with Johnson's renegotiation of the withdrawal agreement was in some sense a triumph: Johnson was elected, he came in and took a tough line, the EU capitulated and everything was fine. That is not true. Johnson got a worse deal than Theresa May. It was presented as a better deal, but in reality he only got the deal because he essentially agreed to an east-west border for Northern Ireland. It is interesting that, in Northern Ireland, the May deal is regarded as better than the Johnson deal.

There is a myth that Boris Johnson is a tough negotiator and will go in and sort things out. We are now on round 2 of the myth. Boris Johnson has taken charge of the negotiations; he has got rid of DEXEU, and David Frost reports directly to him, which creates an issue for the devolved Administrations in terms of ministerial responsibility. Up until now, the DEXEU ministers were part of the JMC(EN), but they are no longer in office and Gove is not responsible for the negotiations, so we are in a structure in which the meetings do not directly involve a minister with responsibility. That is a significant issue. Even if

we leave that aside, the view is that the Johnson approach will succeed, but it did not succeed last time and it will not succeed this time. If one spends a lot of time on impossible things, one still will not get there.

Red lines are definitive. If we take all the myth out of the situation and go back two and a half years, people will remember that we saw a stepped diagram showing red lines and their outcomes, working through from EEA membership down to what has actually happened. That diagram predicted then that the UK red lines would lead to the present outcome and it is the same now. If the red lines and the refusal to align hold, the outcomes are inevitable. I have made that point and that is where we are at the moment.

**Stuart McMillan:** What role is the Scottish Government looking to obtain, both internally through the UK structures and in negotiations with the EU, to put forward its and Scotland's position?

**Michael Russell:** For two years, we have been discussing in the JMC(EN) what role the devolved Administrations should have in stage 2, which was much delayed. February 2018 was the first time we talked about it. On the table is a proposal that I made, which has found favour and could operate. I want Scotland to have the right to choose and to re-enter the EU as a member, but we have always taken the position that, while we are in the UK, we should endeavour to be as constructive as we can be. The model I have proposed is what we call a three-room model in all the correspondence and so on. Let me explain—it is quite simple.

The first room is where the devolved Administrations and the UK Government would put on the table their position on a subject. Fishing might be an example, although there are many others. We would go in and say what we need and want for that. If we were able to get through that room by negotiating to a common position, we would enter the second room, which is where the UK negotiating mandate would be decided on. That would require all sides to compromise and come together to decide what could be done. That is not to say that we would agree with it all or that it would be good, but we could do that.

If we could sign up to the mandate, the third room is where the negotiation would take place. I have no ambition for the Scottish Government to be in that room, but the parallel would be Scotland's former presence at the European Council. I have been at European councils as a minister in various portfolios, so I know that you very rarely get to speak. That is disgraceful, particularly with fisheries. Although Fergus Ewing goes to the meetings, he is not running the negotiation or negotiating effectively, because he is not allowed to, but there is a parallel of speaking and being involved in such meetings. I have

represented the UK in at least one European Council meeting, for a variety of reasons. The third room is the negotiation. Most of the time, the UK Government would be there, but it would be operating on a mandate that had been agreed by the devolved Administrations.

That is a model. It requires the UK to accept that there would be meaningful negotiation at the first two stages, but there is no such acceptance at the moment.

**Stuart McMillan:** Have you had any dialogue with the Secretary of State for Scotland to express your concerns?

**Michael Russell:** Since his appointment, there have been three JMC(EN)s, and the secretary of state has been at two of them. David Barnes might remember whether there was one in December; I cannot.

**David Barnes (Scottish Government):** No. There were two meetings in January and there was one in the autumn.

**Michael Russell:** The meetings are meant to happen every month, but for some reason they do not. The Secretary of State for Scotland has been at two of those meetings and I have spoken to him at them. I have not met him apart from at those meetings. I am not criticising him for that—it simply has not happened.

The important link in this regard is now with the Chancellor of the Duchy of Lancaster, Michael Gove, and his office. That has changed: Oliver Dowden, as Paymaster General, had responsibility for the constitution, and he is now the Secretary of State for Digital, Culture, Media and Sport. The trouble is the constantly changing cast. Chloe Smith is back from maternity leave and is back in the constitution brief. We had DEXEU until 31 January, but we do not know what is going to happen now.

The territorial secretaries of state were at the Cardiff meeting. Julian Smith was there—I have to say that he was very effective—as were the Welsh and Scottish secretaries. David Frost's number 2 came to give us a presentation. Cardiff was the first meeting at which the Northern Irish were back, and they were represented by their First Minister and Deputy First Minister. The meeting was chaired by Mark Drakeford, the Welsh First Minister. I chaired the JMC(EN) in Edinburgh in October, which was the first one in a new round, which Gove tried to establish, of meetings held outwith London and chaired by devolved ministers, when appropriate.

**Stuart McMillan:** My final question is on a different issue. As you are aware, I chair the cross-party group on recreational boating and marine tourism. Through that, I am aware that an

increasing number of visitors are coming to Scotland from EU nations, especially Germany and the Scandinavian countries. My colleagues will ask questions about border checks later, but has there been discussion about border checks at marinas and putting in place potentially required infrastructure?

**Michael Russell:** No—but I am happy to take the matter up if you want to talk to me about it. I am always pleased and surprised to see the flags of other countries, and people coming from elsewhere, in the large number of marinas in my constituency. I am happy to look at that issue, which has not yet been raised.

**Alexander Stewart (Mid Scotland and Fife (Con):** Throughout the process, we have continually dealt with deadlines. Mr Barnier has talked about the clock ticking, and it is still ticking, now that we are in the transition period. When we took evidence recently from Dame Mariot Leslie, she said that, rather than one deal, there will probably be a number of deals, because the transition period is too tight to achieve everything that is required. Does the Scottish Government believe that the transition period should be extended past 2020?

**Michael Russell:** The sound of the clock ticking is the sound of Boris Johnson's clock, because he set it. There is no need for the clock to tick on the transition period. It is not indefinite, but he has accepted the transition period that was discussed by May 18 months beforehand. Therefore, the transition period has been more than halved. I am not sure whether Boris Johnson has repeated his pledge to die in a ditch, but he is sticking to that period, which is not necessary.

No FTA of any significance has been negotiated in such a period of time, although that precedent is not definitive—one could imagine it being done. I think that Boris Johnson imagines that the pressure will concentrate minds, because he imagines—this is the myth that I mentioned—that that is what he did last year when he came out of the initial meeting with the Taoiseach at a hotel in Liverpool with what he saw as a triumph. I think that he misinterpreted what took place then. If he thinks that that is the precedent, he is making a serious mistake.

09:45

The transition period—even a tightly set transition period—could have been much better used to get us the closest possible relationship through single market and customs union membership, even if just for a transitional phase. Transition is not necessarily about just becoming a third country and walking away, which is what Boris Johnson thinks it is about. Membership of

the European Free Trade Association and the EEA has always been seen as a way in to the EU, but it would probably also have been quite a good way out of the EU, had the UK wanted to take it. That would have involved holding to regulatory alignment as a result of being in the single market, but not doing so in relation to fishing and agriculture, which is the position that the Norwegians are in, and accepting that there would be a process of change. It would not necessarily have involved being in the customs union, although that offer was there. That would have allowed the UK to consider where to go from there, which would have been the sensible thing to do.

The prospect of there being no single deal is an interesting one that Charles Grant has written about. Essentially, the thesis is that in a limited number of areas, including fishing and security, things could be sorted out by the end of the year. A solution on security is probably easier to imagine; we have always thought that it would be possible to get a deal on security pretty quickly. There are one or two other areas in which it might be possible to get a deal in that timeframe. Data—which will be vital, as we go forward—is one of them. The other areas would be left in limbo, in a type of no-deal scenario, whereby it would be recognised that work remains to be done. In other words, we would say, “Yes, it’s all done—we’ve got an agreement—but these are the areas on which we still have work to do.” That would be a sort of refinement of the Swiss model, under which there is no single agreement but a host of agreements. The EU’s view has always been that it does not want to replicate the Swiss model, because it is complex to operate, although it is not ineffective. I do not know whether the EU would change its view.

In my view, the biggest difficulty with that approach is that it underestimates the desire of the EU to have this done and dusted. I think that people would enter into such an arrangement if there was trust among the partners that the process would be constructive. If it appears that the process will continue to be as destructive as it is now—this week, the French minister said that people were going to tear lumps out of one another—and we get to the end of the year and all we can see is more lump tearing, I think that people will get pretty fed up.

**Alexander Stewart:** As I said, Dame Mariot Leslie spoke about the idea of having separate deals. You identified the areas that could be looked at initially. In the past, you have talked about providing protection. If an approach were to be adopted whereby not all the arrangements would be in place, what would the Scottish Government do to maintain the status quo and provide the protection that you have mentioned?

**Michael Russell:** One point that I should make is that the EU is keen on a single governance mechanism for the future, but a single governance mechanism would not arise naturally out of such an arrangement, because the granularity would be too great to make it work. Therefore, let us park that.

As far as our perspective is concerned, as I said at the outset, it would still be possible to go for the single market and customs union option. I have no confidence at all that that will happen, but if the UK Government were to say that now, and were to accept that we wish to align with the EU as closely as possible, we could constructively put that together quite quickly and make some pretty clear decisions about how we want to align and what that alignment would look like.

On environmental regulation, we can see the direction in which the UK Government is going with its Environment Bill. Scotland is going in a different direction, so we will tie ourselves to a degree of alignment on environmental issues. If that is non-controversial for the UK Government, and it is sensible and relaxed about it, we could do it without any great difficulty. However, I believe that it will be very controversial, and that the UK Government will not want us to do it, although it would also take away a bit of friction.

One issue that has concerned me over the past three and a half years is that there have been constant opportunities to de-escalate the situation that have not only been missed, but have been specifically rejected. We have not sat in a corner and said that we do not want to be part of this. We do not like it, we want to do our own thing and ensure that the people of Scotland have the right to choose, but we have offered ways in which it could be de-escalated. All that is required is recognition that we are going to do things in a different way.

A good example of that arose this week, on migration. We have made a series of sensible proposals on migration policy. The proposals are not supported by mad fringes of society; they are widely supported across business and industry in Scotland. I have also heard members of the Conservative Party and Conservative MSPs say that they support the idea of a devolved migration policy, such as operates effectively elsewhere. However, rather than de-escalating the situation, our proposals were rejected without being read.

Douglas Ross, who is apparently a minister in the Scotland Office, presented the proposals that were made by the UK Government yesterday as being effective for the whole UK, including Scotland. That is simply not true. If Douglas Ross is not willing to accept my word, and I suspect that he might not be, he should look at what virtually every organisation said yesterday—in language

that, I have to say, was unusual, in my political experience—about what the UK Government is doing.

For the record, I think that the situation could be de-escalated pretty quickly, effectively and simply. However, it is not being de-escalated.

**Alexander Stewart:** Scotland's role in Europe has been discussed. There has been discussion about offices in Brussels, the footprint that the Scottish Government will have, and managing that during the transition period and into the future. This morning, you have suggested that things could be de-escalated and enhanced, and that we could work along those lines. That is a perfect opportunity to achieve something with that footprint, because you are already involved in the process.

**Michael Russell:** If only the Conservative ministers whom I deal with were as reasonable. This might be the kiss of death for your career, but I commend you for high office, because you are absolutely right.

The Scottish Government's office, at Rond-point Schuman in Brussels, is round the corner from the United Kingdom permanent representation to the European Union's office. There is no reason why there could not be positive communication between them on day-to-day business. We each have our interests, and we will follow them. We have different political perspectives and views on what we want to achieve, but we need those people to work as effectively as possible. An active attempt to frustrate that—which is not unlikely—will be very stupid.

**Annabelle Ewing (Cowdenbeath) (SNP):** I will pick up on a few points about the transition. When Charles Grant gave evidence on 23 January, he suggested that there might be an extension but it will be in disguise; it will be a secret *de facto* extension. I heard what you said about reaching agreement in a few areas before the end of the year. However, I presume that in order for a disguised *de facto* extension to take place, the rules of the single market would continue to apply as they do at the moment, and that European Court of Justice judgements would need to be followed.

**Michael Russell:** I have the greatest respect for Charles Grant. He is immensely knowledgeable about those matters. However, an issue that needs to be considered is the need to walk away from normalcy bias.

It would be wrong to assume that the UK Government operates on anything other than hardline political ideological principles: it is the most politicised Government that I have ever seen. It does not operate on the basis on which other Governments often operate, which is to

fudge things at the end. We have seen huge errors, but we have seen no fudge.

The European method is very often about creative ambiguity—Annabelle Ewing knows that, having worked extensively in Brussels. That allows people to come to their own conclusions about what is happening. In many cases, that is very useful. The Good Friday agreement is a tremendous example of the positive nature of creative ambiguity and people not having to come to hard decisions because we accept that there are various desired outcomes. That is not what I see from the UK Government. If what Annabelle Ewing suggested had been coming from the UK Government, our relationship would not be in the very difficult situation that it is in.

I do not think that, in the end, the UK Government will do what Annabelle Ewing described, but I might be wrong—it might be forced into that position. However, I cannot see it accepting ECJ judgments. From the beginning, there have been views expressed on such things, but one does not realise how deeply held those views are until one has conversations. The ECJ is absolute anathema to it, which is utterly irrational; there is no evidence that the ECJ has been anything other than fair. If members have the chance to read it, I commend to them the fantastic closing lecture that Ian Forrester made in the court two weeks ago. It was a very moving and important statement. He made it clear that the court has been scrupulous, fair and positive, and that the UK has benefited from it.

The same anathema exists in relation to migration. Yesterday's announcement is just unbelievable—it is utterly counterproductive.

One thing that we have seen this week that makes me think that a philosophy is developing around the UK Government's approach is David Frost's lecture, in which he attempted to put a philosophical and intellectual gloss on what is happening. He leaned heavily on Edmund Burke. Mr Frost was more or less saying that they know that the situation will be difficult or damaging for 10 or 15 years, but out of it will come a new age. So, what we should do is take the pain while all that happens, then, suddenly, Gloriana will be reborn. We are in that period and I think that that is incredibly foolish. Somebody should have asked David Frost at the end of his lecture how Burke would have dealt with climate change. There is a need to adapt the philosophies of the 18th century to the current reality, but that was nowhere in the lecture.

David Frost's lecture is also worth reading because he seems to be profoundly keen on the independence of small countries. That is very helpful—he will hear me quoting some of his remarks.

My view of the situation is not positive. I understand where Charles Grant is coming from, but I am very sceptical.

**Annabelle Ewing:** I hear what you say. It is interesting that all the things that we thought could never happen have happened, and that we are hearing arguments being put forward, in particular by the UK Government, that we thought we would never hear. We crossed the Rubicon a long time ago. Charles Grant's experience of Brussels is rooted in what would be rational, but what we are hearing is irrational.

You referred to good will. On the key issue of alignment and having a level playing field, it seems as though the UK Prime Minister's sabre rattling continues. I presume that there being no good will is a deal breaker for the EU 27. If there is no movement because of political positioning, the EU27 will just have to accept that there will be no deal.

**Michael Russell:** It is very hard. A number of themes have run through the negotiations from the beginning. One of the most powerful is that the integrity of the single market cannot be threatened. The EU would have to accept, on its doorstep, a competitor that will not abide by its rules, but which expects trade favours and access. I do not see that happening. That would be a major change of position from the EU from everything that has gone before.

The UK Government has been wrong about such issues in the past. Johnson's view on the influence of pro-secco manufacturers and Davis's views on BMW turned out to be—if I might use the term—mince. We are going back to that situation.

10:00

I take issue with the term "sabre rattling", which implies that, in the end, the sabre is not used. I do not think that the UK Government is sabre rattling. I do not think that it intends to have alignment, because its ideological purity is such that it will not accept that. Even if that was not a deal breaker, and if Charles Grant were right that that would lead to a number of mini non-deals that could be dealt with, the economic impact is not in doubt. I have cited the figures again today. The estimates might be £1 billion out one way or the other, but there is no doubt that severe and long-lasting damage would be done.

We are talking about a situation that would be bad for a long time. We have had more than a decade of austerity, and we are talking about things becoming worse for another decade and more. What would it look like for the people of Scotland, whom we represent, if, 15 years down the road, we have had 25 or so years of austerity and decline and are facing a climate emergency,

as we are now? How could we countenance actions that would allow that to happen?

**Annabelle Ewing:** It looks pretty grim to me.

In your opening remarks, you mentioned the Scottish Government's intention to proceed with alignment in the areas for which the Scottish Parliament has competence, and you said that you would vigorously reject any UK challenge. Are you expecting, or have you had any indication from the UK Government of, such a challenge?

**Michael Russell:** I am always prepared. The Supreme Court found that the UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill, which we passed, was within competence, with the exception of one very small part. If people read the judgment, as opposed to listening to some of Mr Stewart's colleagues, they will find that that is what the judgment says. Other bits of the bill then fell out of competence because the UK Government changed the law after we had passed our bill, which was a very sneaky thing to do. We have read the judgment carefully again and again. Anything that we introduce will be based on absolutely clear competence. In those circumstances, I cannot imagine that any challenge would be successful, but it is right to say that we would resist any challenge.

**The Convener:** You suggested that the Scottish Government cannot align with the EU in every area. Will you say more about what that would mean and how the Scottish Government would prioritise alignment in certain areas?

**Michael Russell:** Again, we have to be realistic. The best alignment is achieved through membership. If we gained membership, which I hope we will, we would align, because we would be part of the single market and the customs union. Indeed, the alignment would grow and develop through an association agreement while the membership process progressed. That is what happens, and it would be the best way of aligning.

If a third country is seeking alignment, there are issues and difficulties, one of which is the constant flow of material. Twelve years ago, when I was Minister for Environment, I remember talking to the Norwegian environment minister, who said that one of the difficulties was that, although Norway was not part of the EU, it was obliged to constantly upgrade and change its environmental law because of its position in the EEA. Therefore, I do not think that we would be capable of aligning in every area; doing so would be an onerous burden on us if we did not have full membership. However, we should be able to align in key areas, either because that is more convenient or because we believe that to be the right thing to do.

I will give two examples, the first of which is a case in which it is more convenient to align. The

present system of recognising fish diseases in aquaculture and taking precautions because of them is based on European law, whereby new diseases, when accepted and notified, are put into law automatically. We would have to have a constant process of primary legislation to do that every time European law was changed. We should align with that, so that every time there is a new notifiable fish disease in aquaculture, we automatically change our regulation to take account of it. That is sensible and practical.

On the principles side, we want to be aligned on human rights issues that we can legislate on, and on environmental regulation, because the EU standards in that regard are the highest and continue to improve. In those circumstances, we should align well with the EU.

We could extend that and say that we do not want to be cut out of the digital single market. We cannot be part of that formally until we are a member, but we might be able to continue to develop our law and regulation in parallel with the EU, which would make the interchange easier.

**The Convener:** How might that interact with common frameworks?

**Michael Russell:** If we are going to get into frameworks, we will be here for a long time.

In recent weeks, the frameworks issue has become difficult. It is the one area in which we have been able to make reasonable progress. I pay tribute to the officials on all sides, who have worked hard on it. An important issue has now arisen—I raised it in October at the JMC and was told by the UK Government that it was not a problem, but it has now become a significant problem.

There are now two threats to the frameworks. One is on the issue of alignment. If we want to align, but London or Wales does not want to align, how do we participate in that? From our point of view, it works perfectly well. Remember that a framework is a way of trying to continue to operate in areas that were part of EU competence and are now in shared competence. In some areas, our approach will be that something worked pretty well and we just want to keep up with it because, if we do not, there will be a mismatch.

The more important and fundamental issue is where the Northern Ireland protocol leaves the frameworks. What happens if Northern Ireland aligns with single market rules but is part of a framework in which we are not so aligned? Do we continue? I would be quite happy if we were to continue to align with Northern Ireland and the rest of Europe, but the UK will not do that.

There are some profound underpinning questions. The committee has been involved in

frameworks activity and the five-stage process. One of the frameworks is now at stage 4—I think that it is the hazardous substances one, but I would have to confirm that with the committee—but, in moving the other frameworks forward through the process, those two difficulties will have to be taken into account.

**Ross Greer (West Scotland) (Green):** When we spoke to you previously, we had far less detail than we have now on how the Northern Ireland protocol will operate. However, even with further detail, there is still a level of disagreement about who is the most advantaged or disadvantaged by the implementation of the protocol. Does the Scottish Government have any updated economic impact assessments that it has undertaken or commissioned?

**Michael Russell:** No. We have of course done work on that—we have talked about that work—but it is difficult to do so. As the committee has heard in evidence, the exact details of how the arrangement will operate and what it will look like are still unclear. I like Colin Murray's view that Northern Ireland is at

"the centre of a very complicated and convoluted Venn diagram."

That is exactly correct. The trouble with the Venn diagram is that big parts of it are heavily shaded and we do not have clarity on how they work.

We do not know and, interestingly, the UK does not know either. One problem that is beginning to be talked about is the frustration in Northern Ireland that the UK does not understand the protocol and is not working in a way that recognises it.

Interestingly, in evidence to a House of Lords committee, those who have studied the protocol said that it is incredibly complicated for ministers and civil servants to operate and, at present, there is no detail about how it operates. We will wait and see, but it will have a profound effect. I did not agree with some of the other evidence that has been given, as I believe that there is a threat to the Scottish fishing industry and that the arrangement will be to the advantage of Northern Ireland. I want Northern Ireland to do well, but it will have an advantage over Scotland, and that creates problems.

**Ross Greer:** On the point about clarity, or the lack thereof, and the need for the UK Government to clarify what it believes, the issue is that certain UK Government ministers—Michael Gove is the most obvious example—say that there will be some checks while others, including the Secretary of State for Northern Ireland and the Prime Minister and his spokespeople, insist that there will not be. What has the UK Government's line been



in any discussions with the Scottish Government about whether there will be checks?

**Michael Russell:** The line has always been that there will not be checks. However, that is not what the EU is saying or what some ministers have been saying. There will have to be some checks; I do not imagine that it can be done without them. One issue is the nature of the checks and what they will mean for free flow; another is the way in which they will be regarded by parts of the community in Northern Ireland.

It goes back to the point that I made earlier to Beatrice Wishart that you have to be straight with people. It might be best for the UK Government to say that it does not know what will happen, although that does not sound very convincing. However, if there are two contradictory messages, the intention must be to mislead or confuse—to make people feel that they will be okay. There was a video clip of Boris Johnson saying to businessmen on a visit to Northern Ireland that, if anybody said that there would be checks, they should be sent to him. However, there would not be much point in anyone going to him, because he does not know. I have no doubt that there will be checks; the question is about their nature.

**Ross Greer:** If checks are required—I agree that they will be—they will almost undoubtedly require infrastructure that someone will need to pay for. What is the Scottish Government's position on who would foot the bill, particularly for infrastructure on the west coast? Infrastructure might also be required in Aberdeen and Rosyth, for example, but the issue will be acute on the west coast.

**Michael Russell:** Our position is what it was on day 1 of Brexit: there should be no financial detriment to the Scottish Government or any part of the public sector in Scotland. Therefore, any infrastructure must be paid for by somebody else—the UK. The real irony is that the UK Government spends a lot of time talking about independence and how we must not have borders, but Boris Johnson is erecting borders, and it is clear that he is doing so deliberately, because we could do it without erecting borders. As Mr Stewart has indicated, there is knowledge in the Conservative Party that it could be done without borders, but borders will be erected by the Conservatives.

**Ross Greer:** The issue of timescales will become increasingly pressing. If the UK Government holds to its current ambiguous position on whether checks will be required and therefore whether infrastructure will be required and who will pay for it, the time available for infrastructure to be delivered to make the checks possible will rapidly diminish. Does the Scottish Government have a view on the point at which it

will no longer be viable to put anything in place by the end of the current transition period?

**Michael Russell:** Time is pretty tight at the moment. It depends what is required, but nobody has had that discussion with us, because the UK Government is denying that anything will be required. The first move is to accept that something is needed, and we can then begin to plan and put it in place. Until it is accepted that something is needed, there is no possibility of moving forward.

That is true not only of checks. The view is that the migration measures that were announced yesterday will come into effect on 1 January 2021, which is extraordinary. If there is no extension, people would have to change all their arrangements and plans within 10 months, and the only opportunity to extend the period in law is by this summer, although there are political issues that could come into play.

That all creates more uncertainty. Nobody wants to talk about this now, but you might remember that the UK Government won the election south of the border—the Tories have not won north of the border for 50 years—with the slogan “Get Brexit done”, but Brexit is not done; it is not half or even a quarter done, and it is pretty damaging to pretend that it is.

**Ross Greer:** Accepting the difficulty that is caused by the ambiguity and everything that we have just discussed, has the Scottish Government done any scenario planning based on its understanding of the protocol, the checks that might be required and, thus, what infrastructure might be required? Obviously, there would then be a dispute over who pays for installation of the infrastructure, how that would happen and so on. What scenario planning have you done in relation to what you can do, even if it is as simple as supporting businesses to understand what might be about to happen and what infrastructure might be put into place?

10:15

**Michael Russell:** We have a readiness process and work takes place on it. We do not publish everything that we do—that would be wrong—but things are always in place.

In addition, last year, in the run-up to October, John Swinney published a document in his role as the chair of the Cabinet sub-committee on Scottish Government resilience—SGoR. For example, he talked about arrangements at Stranraer and what might be needed in the short term. If I remember correctly, he was roundly condemned by Alister Jack MP, whose constituency includes Stranraer and who said that it was disgraceful that such things were going to happen—although, of course,

as a Brexiteer, he had made them happen. We have to deal with that level of unreality, too.

We will continue to prepare as best we can and consider all options, but we need to know the truth of the matter. As there is a denial of truth at the moment, that is difficult.

**Kenneth Gibson (Cunninghame North) (SNP):** In your opening statement, you mentioned the need to access European crime databases and called for continuation of the European arrest warrant. What would be the impact on the ability of the police and security services to tackle international crime, particularly organised crime and jihadist terrorism, if agreement is not reached in those areas?

**Michael Russell:** The Cabinet Secretary for Justice and I met Europol, and I have met the police, to discuss those issues.

There is, as you know, considerable concern about a number of legal issues. There is a worry about the European arrest warrant and the inadequacy of arrangements if the European arrest warrant were not to be available. In that case, Scotland would revert to extradition processes that other countries have given up. Therefore, it would be a question of not just going back to the previous belt-and-braces approach, but going back to a system that others have stopped operating, which would mean that it would all become complex. There already is a very good tool.

We have been keen to ensure that that does not happen. So far, we have made representations and we have had discussions. We will continue with that approach. We have seen no concrete proposals. However, I do not want to be totally negative, because, as I said earlier, security, which includes organised crime, issues of justice and keeping citizens safe, is an area in which agreement could be found moderately quickly.

Julian King, who was the UK's last EU commissioner—as the security commissioner, he covered law and order—was very positive in his approach to Scotland and making sure that everybody was working together. Although he is no longer in office, I think that a lot of the preparatory work that he did will turn out to be useful.

The matter is not resolved. If there is no resolution by the end of the year, our citizens will be less safe than they would otherwise be.

**Kenneth Gibson:** Yes, I would have thought that to be fairly obvious. I understand that Germany will not allow extradition to non-EU countries. That is just one of many examples of where there could be difficulties.

You said that you thought that the matter could be solved relatively quickly. I take it that you are having discussions with the UK Government on the issue. Has it indicated any timescale for resolving these matters before, for example, 31 December?

**Michael Russell:** I would not say that we have had those detailed discussions as part of the current round of talks; rather, I would say that the UK Government is aware of our position. I do not think that it has indicated its position particularly clearly.

On a scale of difficulty, the issue is not at the most difficult end. The UK Government would have to want this to work.

You are right about the extradition issues. There has been a case—I think that it is an Irish case—in which people have appealed against extradition on the grounds that the arrangements are falling to pieces and the European system is not operating. The courts will have some sympathy with that.

**Kenneth Gibson:** Perhaps you could look into the mind of the Prime Minister for a brief moment. Is there any possible reason why the UK Government would not want to come to an agreement on that? Would it simply be bloody-mindedness? That is, as you said, probably one of things that would be relatively easy to solve and is clearly beneficial to the shared interests of people in the UK and Europe.

**Michael Russell:** No—I cannot look into the mind of the Prime Minister, nor would I want to. It would seem perverse for the UK Government not to want to clear off things that could be cleared off. There are many things that I have said will be difficult to clear off, but it would be best to go for the low-hanging fruit, and that is one of them.

The trouble is that we do not understand what the UK Government is up to, because we are reluctant to believe that a hardline ideology that cuts off one's nose to spite one's face is really a motivation for politics, but that appears to be the case.

**The Convener:** We have some supplementary questions.

**Stuart McMillan:** Cabinet secretary, in your opening comments you touched on the strategy of moving from persuasion to defence. Could you provide more detail on the main planks of that strategy in relation to intergovernmental relations and using devolved competencies to mitigate adverse effects of Brexit? Which devolved levers would you use?

**Michael Russell:** I have indicated that the keeping-pace powers, which we wanted in the continuity bill, are an important part of that. The Parliament already approved them. It will have a

chance to look at them again as they develop, as those powers will be a major factor.

As I have said, we will indicate clearly what our views and lines are and what we need to get from negotiations through the JMC process. Although we are always willing to negotiate and discuss, it is important that we emphasise our priorities and the things that we need. Clearly, in areas such as migration, where the UK Government has indicated that it is taking the hardest of hard lines, we will continue to pursue our view that a different approach is possible, and seek to bring people round to it. We will continue to vigorously point to our mandate to give Scotland a right to choose as part of that package. That is all together in the strategy that we will take forward.

I want movement on the issue to result in three outcomes. One is that the UK Government accepts the reality of the mandates. I have clearly and publicly accepted that the UK Government has the right to take the UK out of EU based on the election result last year. I regret it, but that is the fact. However, we have the right to hold a referendum because the people of Scotland have indicated that they do not wish to leave the EU and have supported that position in several elections—certainly, they did so very clearly last year. Mutual recognition of mandate is point 1. If you cannot accept mutual recognition of mandate, you are not a democrat.

The second point is that, while the process of UK withdrawal goes ahead, the UK should be mindful of the devolved competencies and should accept that the right to represent those competencies lies constitutionally with the Scottish Government and the Scottish Parliament and that they should be exercised collaboratively with the UK Government.

The third point is that, if those things happened, the type of de-escalation that Alexander Stewart mentioned would be possible. It would be beneficial to both sides as we pursued Scotland's right to choose and made sure that our position was represented. That seems to me a clear way to go ahead; it would not compromise anybody's hard-won or deeply held position. It would not compromise the UK Government's desire to leave the EU; it would not compromise the Scottish Government's desire to give the people of Scotland the right to choose or the work that we could do to protect Scotland's interests. It would be win-win.

**Claire Baker:** I will ask about EU citizens and settled status. Can you give the committee an update on the situation of those who are applying for settled status in Scotland and on your understanding of the UK Government's current position on what happens to EU citizens when the

transition period ends, which seems to have moved around?

**Michael Russell:** We can send the committee the latest figures, which I think were published last week—we have an updated figure. People are continuing to apply.

It is clear to me that some people will not apply, or do not want to apply. They may hold that as a hardline position—I understand that, but I do not think that it is sensible to do anything other than apply, if they can—or it may be that people have already decided to leave and, therefore, are not applying.

My worry has been primarily about people who get pre-settled status when they should get settled status. That is an area for which Ben Macpherson is responsible, and I am sure that he will want to respond to you on that. In terms of what happens afterwards, the UK has indicated that the application period ends—I think—three months after the end of transition. Again, Ben Macpherson could confirm the detail.

We stand firmly alongside those who have settled status—a legal right to remain—if anything is done otherwise. We hope that the result of this afternoon's votes in the chamber will extend voting and candidacy rights to those people, to make sure that they are fully part of our system.

Those who have wrongly been given pre-settled status should have their position clarified. We believe that those who have not applied should apply, and we encourage them to do so.

**Claire Baker:** Thank you. We will follow up with Ben Macpherson.

**Michael Russell:** We will make sure that Mr Macpherson gives you the updated figures, and a clear answer on the issues that you have raised.

**The Convener:** As you know, cabinet secretary, the committee conducted an inquiry into the Erasmus+ programme, directly as a result of approaches from young people in Edinburgh. We wrote to the Government to say that we believed that everything should be done to maintain the programme. In your opening remarks, you said that the Government's preference was to maintain access to EU programmes such as Erasmus+ and horizon Europe. How will you go about doing that, if not through a strategy of persuasion of the UK Government?

**Michael Russell:** We continue to contend that it is in Scotland's—and everybody's—interests to retain membership of such programmes. As you know, we have been critical of the value-for-money exercise, which we believe was not done in a way that reflected reality. As, I think, Richard Lochhead has indicated publicly, we will continue to consider ways in which we could remain part of

the programme, even if the UK does not. I am not in a position at the moment to say where work on that has got to, but quite clearly it is something that we want to do. There are cost implications for all of those things, but we want to make sure that they are considered seriously.

**The Convener:** If you wanted to explore the possibility of a devolved or sub-state associate membership of those programmes, is that contingent on the UK Government giving permission?

**Michael Russell:** I believe that that would be the case—maybe not in all circumstances; it might be the case for Erasmus+. We will find that out and let you know.

One of the issues is the UK's position. Another is that, in financial terms membership is dealt with through the subvention that goes from the UK to the EU. Would the EU divert the cost to us, so that we could pay for it? That would essentially be a no-detriment approach. We would have to see.

**The Convener:** I will finish by looking ahead. I spoke to you about your new role and how the Scottish Government proposes to work with the EU institutions in the future. What outcomes do you seek to achieve through bilateral engagements with member states and with the EU? Can you say any more about the role that the Scottish Government's office in Brussels will now take on?

**Michael Russell:** Whatever our constitutional position, the EU will continue to be of enormous importance to us and to have influence over us. That is part of the stupidity of Brexit. On our doorstep will be one of the world's largest trading blocs, but it is much more than a trading bloc: it has common values, and objectives of improving the lives of its citizens, in a way with which we have strong empathy. We want to make sure that our engagement is positive and that it continues. That is also true for many of our businesses. It is vital that we have a continued, productive presence there. We have a big role to fulfil.

We also want to make sure that the EU understands our empathy and our desire to be, not uncritical in our relationship, but to work through it to full independent membership. The Government is quite open about that objective. We have short-term goals, to continue to benefit; medium-term goals, to continue to build our relationship; and slightly longer-term goals, although I do not think it is so far away, of entering as a full member.

10:30

**The Convener:** As convener of the committee, I am used to racing against the clock and telling witnesses and members to keep questions and

answers succinct, but we have covered a wide range of areas and we are actually finishing ahead of time. Unless you have anything else to add, cabinet secretary, I propose to move the committee into private session.

**Michael Russell:** I am grateful for a useful and productive discussion. Considering the roles that I have, I look forward to sitting, talking and working with the committee. I am very open to discussion with its members, collectively and individually.

**The Convener:** Thank you very much. I move the meeting into private session.

10:31

*Meeting continued in private until 10:58.*

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