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Wednesday 7 March 2018

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Scottish Parliament

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[The Deputy Presiding Officer opened the meeting at 13:30]

Portfolio Question Time

Education and Skills

The Deputy Presiding Officer (Linda Fabiani): The first item of business is portfolio question time. I would appreciate succinct questions and answers, please.

Play Strategy

1. **Ruth Maguire (Cunninghame South) (SNP):** To ask the Scottish Government whether it will provide an update on the implementation of its national play strategy. (S5O-01854)

The Minister for Childcare and Early Years (Maree Todd): Scotland's national play strategy was developed in collaboration with the play sector. This year alone, we have invested more than £3 million in this area, which includes our continuing support for Play Scotland. Play Scotland continues to develop and to distribute excellent resources and training for practitioners, teachers and parents to support the play strategy. That includes the play types toolkit, which highlights the range of play that children experience and the vital contribution that play makes towards their learning and development.

Ruth Maguire: Given the minister's response, I know that she will agree that Play Scotland has a central role to play in the continued implementation of the strategy. Will she agree to meet Play Scotland and me to discuss current play issues, such as how weather is used as an excuse not to go outside, the withholding of play due to negative behaviour and some schools banning running in the playground?

Maree Todd: Absolutely—I would be more than delighted to meet the member and Play Scotland to discuss those issues.

Last week, I think that we all enjoyed watching the children of Scotland building igloos all around the country. I am not sure that the weather should be an excuse for not going outside. Undoubtedly, there are safety issues, and a risk assessment and a good decision need to be made but, in general, weather should not prohibit playing outside or running.

Brian Whittle (South Scotland) (Con): I absolutely agree that early access to play is essential for children's physical and mental

wellbeing and their development. I read through the national play strategy, which has some great visions and objectives with which I wholeheartedly agree. However, it is light on the delivery programme. How will the Government practically deliver the ambitions of the strategy?

Maree Todd: As the member will know, the significant expansion of funded early learning and childcare gives us an opportunity to define the experience that we offer. Last week, I spoke in the chamber about my fantastic visit to the forest kindergarten. There is a growing body of research and evidence about the benefits of outdoor learning for children's health and wellbeing and for their physical and mental development. We are determined that outside learning will be a key part of our offering.

The Deputy Presiding Officer: Question 2 has been withdrawn.

Science, Technology, Engineering and Mathematics Apprenticeships

3. **Peter Chapman (North East Scotland) (Con):** To ask the Scottish Government what action it is taking to encourage young people into science, technology, engineering and mathematics apprenticeships. (S5O-01856)

The Minister for Employability and Training (Jamie Hepburn): Central to our developing the young workforce strategy is a commitment to prioritise and further expand STEM apprenticeship opportunities. We recently published "Science, Technology, Engineering and Mathematics: Education and Training Strategy for Scotland". It makes a commitment to the planned expansion of STEM-related foundation apprenticeships for pupils in the senior phase of school and graduate apprenticeships for those working and studying for a degree qualification, which will provide clear pathways in STEM-related work-based learning qualifications.

Peter Chapman: For the current 2016 to 2018 cohort, foundation apprenticeships are being delivered in just 23 of the 32 local authorities. There have been only 251 STEM starts over that entire timeframe. This is national apprenticeship week. Will the minister outline what he is doing to ensure that all school-age students will have access to STEM foundation apprenticeships, if they want them?

Jamie Hepburn: As the member will appreciate, foundation apprenticeships are a relatively new creation, which we have been road testing and are still rolling out. We have gone from a position in 2014 when we had two pathfinder frameworks being delivered in two local authorities to the position this year in which we will provide opportunities for more than 2,000 young people

across Scotland to take part in foundation apprenticeships, which will be delivered in all 32 local authority areas. Therefore, the member can be assured that we take the roll-out, the development and the expansion of foundation apprenticeships very seriously. We have made a commitment that there will be 5,000 such opportunities from 2019 onwards. We are continuing to grow the offer, and I assure the member that STEM is a critical part of that offering.

Mary Fee (West Scotland) (Lab): Cutting more than 800 STEM teachers will not help to promote opportunities in STEM to young people, especially those from the most disadvantaged backgrounds. What specific action is the Scottish Government taking to support children and young people from our most deprived communities to enter STEM apprenticeships?

Jamie Hepburn: As I have just said, we are rolling out foundation apprenticeships more widely. That wider availability will ensure that more young people have the opportunity to take part and, specifically, it will ensure that we have greater diversity among those taking part in STEM careers and apprenticeships. We take that very seriously and we are approaching it through a range of initiatives. Skills Development Scotland works with partners at a local level to ensure that there is greater uptake of foundation apprenticeships in STEM-related opportunities, and ensuring that young people from deprived backgrounds can get that opportunity is of critical importance.

School Clothing Grant (Payments in 2017)

4. **Jackie Baillie (Dumbarton) (Lab):** To ask the Scottish Government what the average school clothing grant payment was in 2017. (S5O-01857)

The Deputy First Minister and Cabinet Secretary for Education and Skills (John Swinney): Local authorities spent £9.2 million on school clothing grants in 2016-17, although the level paid varies across local authorities. I am determined to help families with the cost of the school day and am working closely and constructively with local authorities on the provision of a minimum school clothing grant.

Jackie Baillie: I welcome that response from the cabinet secretary. He did, of course, agree to work with the Convention of Scottish Local Authorities to produce a minimum payment in 2016, but we have not seen evidence of that yet. I am concerned, because just this week the Scottish National Party members of West Dunbartonshire Council considered reducing the school clothing grant to £50. Thankfully, they did not. The Labour group proposed an increase to £130, and the cabinet secretary will of course be aware that the poverty truth commission says that the true cost of

kitting out a child for school is, indeed, £130. Will he consider using that as the appropriate minimum figure for all local authorities in Scotland?

John Swinney: There have obviously been discussions in local authorities about the level of the school clothing grant. Jackie Baillie cited the proposals that were considered in West Dunbartonshire. Glasgow City Council is a very large local authority that is controlled for the first time by the SNP, and I notice that it has increased the school clothing grant from £52 to £70, which is very welcome progress after all the years in which the Labour Party could have done something about the issue.

To give Jackie Baillie the assurance that she is seeking, I had a very constructive meeting a couple of weeks ago with Councillor Stephen McCabe of COSLA. We are undertaking joint work to establish an agreed approach to a minimum school clothing grant for all local authorities within Scotland. That work is actively under way just now. I welcome the collaboration that we have with COSLA on the issue and as soon as we have reached the conclusion of that work I will, of course, report to Parliament.

Vulnerable Young People (Guidance and Counselling)

5. **Gail Ross (Caithness, Sutherland and Ross) (SNP):** To ask the Scottish Government how it supports school staff who provide guidance and counselling to vulnerable young people. (S5O-01858)

The Deputy First Minister and Cabinet Secretary for Education and Skills (John Swinney): The mental health of children and adolescent young people is a very important issue, which we must all take seriously. We know that prevention and early intervention make a big difference in reducing the risk of developing mental health problems. Every child and young person should have access to emotional and mental wellbeing support in school. Some schools will provide access to school-based counselling, while others will be supported by pastoral care staff and will liaise with the educational psychology, family and health services for specialist support when required. A mental health link person is available to every school. That has been achieved in a variety of ways, using various models working to meet local needs.

Gail Ross: We are becoming more and more aware that preventing adverse childhood experiences—or ACEs—is fundamental to the wellbeing of children and young people. However, where we cannot prevent them, how can we make sure that all teaching staff can identify and nurture vulnerable young people and help to build

resilience and the ability to cope with trauma in those youngsters?

John Swinney: I will make two points. The first concerns the application of professional practice in relation to adverse childhood experiences, and its wider application across our public services. In the past few months, many of us have seen the film “Resilience”, which focuses on adverse childhood experiences. Following a showing of that film that I hosted at St Andrew’s house, the Government will be hosting later this month an extensive dialogue involving a range of ministers, local authority partners and a huge cross-section of stakeholders to find ways in which we can apply best practice in tackling adverse childhood experiences across the country.

The second point is a practical one about the education system. Education Scotland has developed two national professional learning resources—one concerning nurturing approaches in the primary school and the other concerning a whole-school nurturing approach—that encourage a focus on creating an environment that is anchored in the principle of nurture. Creating such a supportive atmosphere and environment for children and young people will ensure that we are taking all the steps that we can to intervene at the earliest possible opportunity in order to avoid any mental health difficulties arising for young people.

Iain Gray (East Lothian) (Lab): In England and in Wales, pupils have a legal right of access to a trained and qualified counsellor at school, if needed. Could our children not benefit from that same right?

John Swinney: The most important thing is to ensure that young people have access to the services that they require. In my answer to Gail Ross, I set out the range of support services that are available. Of course, a mental health link person is available to every school—that resource is deployed in different ways across the country.

The vital issue that we have to focus on is ensuring that young people have access to that support and that we are able to intervene as early as possible. Of course, early intervention can avoid the escalation of some of these issues and can, as a consequence, deliver a much more sustainable solution for young people across the country. That is exactly what the Government will do to ensure that we meet the mental health needs of all young people in Scotland.

Student Associations

6. **Liam McArthur (Orkney Islands) (LD):** To ask the Scottish Government what it sees as the key roles of student associations in representing the interests of students at colleges and universities. (S50-01859)

The Minister for Further Education, Higher Education and Science (Shirley-Anne Somerville): Student associations play a vital role in the learning and lives of college and university students and it is important that students are given the opportunity to express their views on issues of concern to them. In recognition of that, the Higher Education Governance (Scotland) Act 2016 sets out that the membership of the governing body of any higher education institution must include two student members who have been nominated by a student association of that institution.

Students also have representation on boards in the college sector, with the Post-16 Education (Scotland) Act 2013 increasing the minimum number of student members on college boards to two. The Scottish Further and Higher Education Funding Council currently funds the National Union of Students Scotland to support colleges and their student associations to deliver on the key aims and objectives that are set out in the framework for the development of strong and effective college student associations in Scotland.

Liam McArthur: Last week, I visited Inverness College, where I was hosted by the Highlands and Islands Students Association, which has enjoyed tremendous success in a relatively short period of time in giving students from across the University of the Highlands and Islands a strong and effective voice. During the discussions with HISA representatives, including the team from Orkney College, concerns were raised about the cost of attending events and meetings, which invariably take place in the central belt.

In the light of the ministers’ comments on the funding that is provided, will she consider whether there are still cost barriers to be overcome in relation to allowing students across the field to play that representative role on behalf of their peer group? Will she also consider ways in which events might be encouraged to take place outwith the central belt, which would benefit those in the Highlands and Islands, the north and indeed the south?

Shirley-Anne Somerville: I am unsure of the detail of the events that Mr McArthur highlights; I am not clear whether he is talking about Scottish Government, funding council or NUS events. However, from the point of view of the Scottish Government and the funding council, I am happy to take on board the suggestion that we consider those issues when we are collaborating with students from across the country, and that we need to think about using digital technology where that is appropriate. I will encourage others to take those points on board, too.

It is important that UHI students can collaborate and share their experiences with others. I have had quite a few dealings with the students at

various UHI campuses and I have seen how well they work together. However, given the unique nature of UHI, they undoubtedly also face certain challenges.

I hope that Mr McArthur will be assured that the Scottish funding council is receiving feedback from associations—indeed, it received that last year—about the positive impact that college student associations are making. We have an on-going commitment to ensure that we share best practice as that goes along, and if that is not happening, the funding council will work with the college and the students to ensure that it does happen. If there are specific issues that the member would like me to look into further, I will be happy to do that.

School Curriculum (Scottish Studies Strand)

7. Joan McAlpine (South Scotland) (SNP): To ask the Scottish Government what evaluation it has carried out of how the Scottish studies strand of the curriculum is operating. (S5O-01860)

The Deputy First Minister and Cabinet Secretary for Education and Skills (John Swinney): Although there has been no formal evaluation of the Scottish studies strand of the curriculum as a whole, Education Scotland's evaluation report on literacy in the curriculum, published in 2015, found that teachers were increasingly using Scots and Scottish texts to develop children's literacy skills. That was followed by Education Scotland's report on Scots in the curriculum, published in August 2017, which confirmed the educational benefit of learning Scots. The Scottish studies awards were introduced in 2013-14, and there has been an increase in the uptake of them across all Scottish credit and qualifications framework levels, rising from 165 awards in 2014 to 1,383 in 2017.

Joan McAlpine: In 2011, the Government set up an independent working group, including highly respected cultural leaders such as Phil Cunningham, Liz Lochhead and the late Gavin Wallace, to advise on how best to implement its manifesto commitment to roll out Scottish studies in a meaningful way across the curriculum. That review group made a number of specific recommendations, including on continuing professional development, signposting and generally supporting a positive environment for schools engaging in learning about Scotland. Can the Government tell us which of the working group's recommendations have yet to be implemented and whether implementation is consistent across schools and local authorities?

John Swinney: I will have to write to Ms McAlpine about the detailed implementation of individual recommendations. What I would say at the outset is that a variety of different approaches will be taken to the application of that aspect of the

curriculum in different schools, as should be the case, because curriculum for excellence relies upon the judgment of individual teachers to deploy the curriculum in the most effective way to meet the needs of young people.

I can assure members that the recommendations from the Scottish studies working group have been embedded across the curriculum, and schools will be able to develop their practice to reflect the steps that have been taken. Education Scotland and the Scottish Qualifications Authority provide materials and resources to support schools and teachers to include Scottish studies in the curriculum and to actively promote studying Scotland and the Scottish studies award to teachers and to schools, to ensure that the increase in uptake that I talked about in my first answer is capable of being delivered by the education system.

Liz Smith (Mid Scotland and Fife) (Con): On the same Scottish theme, can the minister tell us how many pupils across Scotland are taking up the Scottish baccalaureate qualification?

John Swinney: I do not have that number on hand, but I am certainly happy to write to Liz Smith on that question. What I can say is that we have a broad and broadening range of qualification opportunities available for young people. Just a couple of weeks ago, I attended the Scottish credit and qualifications framework conference, and I was enormously heartened by the strength of that framework and the breadth of the curricular and qualification opportunities that are available for young people, to recognise all aspects of their learning and to use that as a foundation for future success.

Teacher Recruitment Campaign

8. Alex Cole-Hamilton (Edinburgh Western) (LD): To ask the Scottish Government what impact its most recent teacher recruitment campaign has had. (S5O-01861)

The Deputy First Minister and Cabinet Secretary for Education and Skills (John Swinney): The Scottish Government's teaching makes people campaign was launched in February 2017 and has led to almost 3,500 people attending teaching makes people events and more than 42,000 visits to the website. Campaign tracking showed a 21 per cent increase in those considering applying for a postgraduate diploma in education, and that 40 per cent of people who had seen the campaign took action, such as seeking advice on a career in teaching. A further phase of campaign activity was completed at the end of February and is currently being evaluated.

Information received from universities on recruitment into initial teacher education showed a

7.5 per cent increase in student teacher numbers, from 3,591 in 2016 to 3,861 in 2017. The number of teachers in Scotland rose by 543 in 2017, and that included a rise here in Edinburgh, where we have seen a rise in the number of teachers for the third year in a row.

Alex Cole-Hamilton: Last week, I was contacted by Gail Morrison, who is a constituent of mine with a son at Queensferry high school. She told me that the computing science teacher left last month and has not been replaced and, as she was the only such teacher at the school, all computing classes are currently going without. The measures that have been adopted by the school include pupils following a set of PowerPoint lesson plans under the supervision of a history teacher. Will the cabinet secretary explain to Gail how he expects pupils to attain vital qualifications if there is nobody there to explain coursework to them when they get stuck?

John Swinney: I am the first to acknowledge the challenges that we face in the recruitment of individual teachers into particular subjects across the country, and I have done so on a number of occasions. There are acute challenges in the STEM—science, technology, engineering and mathematics—subjects. For that reason, the Government has taken steps to increase the number of STEM teachers who are recruited into our education system. On 8 October, I announced the creation of a scheme for STEM bursaries to enable individuals to access £20,000 of funding to make a career switch from existing activities into teaching. I am pleased to tell Parliament that applications for the STEM bursary will be available to be completed from 3 April. The scheme will be available to individuals in order to fill some of the vacancies that Mr Cole-Hamilton mentioned.

Finlay Carson (Galloway and West Dumfries) (Con): Since 2010, there has been a 16 per cent decline in STEM teachers in secondary schools in Dumfries and Galloway. As the newly created fast-track teacher route focuses on other rural areas, what action is being taken to address the specific STEM recruitment issues that Dumfries and Galloway faces?

John Swinney: A number of steps are being taken. There are the STEM bursaries that I have just referred to, which open up opportunities for individuals to enter the teaching profession. We have expanded the number of available places for individuals to gain access to initial teacher education. More than 4,000 places were available for the current academic year. As a consequence of the new routes into teaching that the Government has established, more than 250 candidates have been recruited into initial teacher education who would not otherwise have been able to gain access.

Mr Carson is correct that the Government is opening up opportunities for particular rural areas through a partnership between the University of the Highlands and Islands and the University of Dundee to take steps to attract more STEM teachers. That will assist the general flow of teachers into the teaching profession as a consequence of the steps that the Government has taken.

Registered Childminders

9. Stuart McMillan (Greenock and Inverclyde) (SNP): To ask the Scottish Government what support it is giving to registered childminders. (S5O-01862)

The Minister for Childcare and Early Years (Maree Todd): We recognise the valuable contribution that childminders can and do make to delivering high-quality early learning and childcare for many families. We want to see more childminders involved in delivering funded early learning and childcare. The introduction of our provider-neutral approach, in which funding follows the child, will support childminders across Scotland who wish to do so to offer the funded entitlement to families.

We provide grant funding to the Scottish Childminding Association to enable it to support and actively promote childminding services. That grant funding enables the provision of induction, training, access to legal advice, business support, advertising and an advice helpline for the association's members. We recently also funded the Care Inspectorate to develop "Your childminding journey: a learning and development resource", which has been warmly welcomed by childminders and which provides support for new childminders as well as personal development material for existing childminders.

Stuart McMillan: Inverclyde has 54 registered childminders, who work with 411 children, supporting 310 families. Clearly, childminding plays a crucial role in my constituency. How does the Scottish Government envisage childminding playing a role in delivering the 1,140 free hours policy, given that local training regularly takes place after nurseries have closed for the day but childminders regularly work until after 6 pm and so are prevented from attending?

Maree Todd: We expect childminders to play a full role in the expanded early learning and childcare sector. We worked closely with the Scottish Childminding Association in developing our quality action plan for the ELC sector. One of the actions included in that plan was making available to all ELC practitioners, including childminders, a national online programme of continuing professional learning that can be undertaken at a time that is convenient to them.

In September 2017, the Care Inspectorate published “My Childminding Experience”, which is a learning resource specifically for childminders that guides them through their induction and professional learning once they are in practice. Again, that can be accessed at their convenience. The Scottish Childminding Association regularly runs courses at weekends, specifically to ensure the opportunity for attendance by those who work outwith regular hours.

The Deputy Presiding Officer: We have a supplementary question from Michelle Ballantyne.

Michelle Ballantyne (South Scotland) (Con): The Scottish Government has said that it will go to greater efforts to involve childminders in the expansion to 1,140 free hours. However, as recently as November 2017, the Scottish Childminding Association said that only 100 out of the 6,000 childminders in Scotland are actually commissioned by local authorities to deliver funded childcare. What steps has the Scottish Government taken—or will it take—towards increasing that figure and getting childminders on to the partner provider lists?

Maree Todd: Through our review of local authority ELC expansion plans, and in response to the latest figures produced by the Scottish Childminding Association on the current use of childminders in providing funded ELC, we have committed to working with local authorities, the association and individual childminders to identify any barriers to commissioning childminding services. We will work together to remove those barriers and to build on learning from the national programme of 1,140 hours trials. Of the 14 Scottish Government 1,140 hours trials, 10 involved childminders.

School Curriculum (Life Skills)

10. Brian Whittle (South Scotland) (Con): To ask the Scottish Government what consideration it gives to the provision of teaching life skills as part of the school curriculum. (S5O-01863)

The Deputy First Minister and Cabinet Secretary for Education and Skills (John Swinney): Our curriculum has always been about providing young people with a well-rounded education that prepares them to thrive in today’s world. The teaching of life skills is an entitlement for all learners under Scotland’s curriculum. The curriculum for excellence is explicit in stating that all learners must have opportunities to develop skills for life, for learning and for work, with a continuous focus on literacy, numeracy and health and wellbeing.

Brian Whittle: Does the cabinet secretary agree that skills such as learning to swim or to cook a healthy meal, and having access to good

physical education, are all extremely important in ensuring that our children develop into healthy, active adults who attain all that they can, and that school is the obvious place to deliver those crucial skills?

John Swinney: Yes, I agree with Mr Whittle’s observations. All those elements are essential parts of the experience of young people. A breadth of opportunity is available through different schools in different parts of the country. There is an increasing focus on the knowledge and appreciation of skills for work through the developing Scotland’s young workforce agenda, which has been a tremendous innovation over the past few years, in response to the report from Sir Ian Wood. Some of the fundamental long-standing elements of our school system on the teaching of skills such as cooking, swimming and being physically active are all key parts of our curriculum that are deployed across our education system.

Children Affected by Alcohol Harm (School Support)

11. Monica Lennon (Central Scotland) (Lab): To ask the Scottish Government how schools support children and young people who are affected by alcohol harm. (S5O-01864)

The Deputy First Minister and Cabinet Secretary for Education and Skills (John Swinney): Improving outcomes for children who are affected by parental substance misuse is a priority for the Scottish Government. We recognise the need to work together with a range of partners to ensure that children who live with substance-misusing parents get the care and support that they need.

All staff in schools share a responsibility for identifying the care and wellbeing needs of children and young people. Schools should establish open, positive, supporting relationships across the whole school community, which could include the provision of school-based counselling or support from pastoral care staff in those efforts.

Monica Lennon: In Scotland, 51,000 children and young people live with problem drinkers, and we now have a better understanding than ever before of alcohol harm in the context of adverse childhood experiences and its impact on long-term health. As we have heard, counselling is available in some schools but not in all. Does the cabinet secretary agree that, when one in 18 young people under the age of 16 is affected by alcohol harm, access to school-based counselling should be a right and an option that is open to all? Does he agree that it is an effective way of using preventative spend to help those young people? What better time is there to deliver that than in the year of young people?

John Swinney: Fundamentally, I agree with Monica Lennon that there has to be a very clear focus in our policy making on the wellbeing of every child. Wellbeing is central to the curriculum for excellence and, alongside literacy and numeracy, it is one of the three key elements that the chief inspector of education highlighted in his guidance to the education system in August 2016. It is available to every young person as part of our curricular approach.

As I said in my earlier answers—principally in response to Gail Ross—there is support available in every school for young people. It takes different forms in different schools and there are different arrangements but, fundamentally, all schools are obliged to follow the getting it right for every child agenda. If we follow that approach, we assess the requirements and needs of every young person individually and support them to overcome any challenges that they have.

The wider discussion around the impact of adverse childhood experiences is now much more significant in the policy debate. I am very optimistic that the steps that we are taking with the discussion that I set out in my answer to Gail Ross will have a constructive effect in focusing public services across the board on making sure that young people can attract the support that they require.

The Deputy Presiding Officer: Question 12 has been withdrawn.

Schools (Spending Trend)

13. **Iain Gray (East Lothian) (Lab):** To ask the Scottish Government whether it will comment on the trends in spending on schools since 2010-11. (S5O-01866)

The Deputy First Minister and Cabinet Secretary for Education and Skills (John Swinney): Funding to local authorities, which are responsible for the delivery of education, has been fair and is increasing, despite continued United Kingdom Government cuts to Scotland's budget. The total spending on education by local authorities has increased from £4.9 billion in 2010-11 to £5.1 billion in 2016-17. That is a 4.5 per cent increase in cash terms.

Through this year's local government settlement, we are providing £112 million next year to fund councils to maintain teacher numbers specifically, including funding for the recent teacher pay award.

We are investing £179 million in 2018-19, which is up £9 million from last year, in raising attainment and closing the attainment gap, and will target the schools and local authorities that should benefit most. The funding contributes to our commitment to provide an extra £750 million for education

through the Scottish attainment fund during the course of this parliamentary session. That investment in Scottish education has enabled a total of nearly 700 additional teachers to be recruited as at September 2017.

Iain Gray: The Improvement Service's latest local benchmarking report has detailed figures on education spending around Scotland, and it paints a rather different picture from that of the cabinet secretary. The report reveals that there has been a reduction in real-terms spending per pupil in primary and secondary education. In primary schools, there has been a real-terms reduction in spend of £513 per pupil and, in secondary schools, the real-terms reduction has been £205 per pupil.

Will the cabinet secretary admit that cuts of £1.5 billion to local government since 2011 have inevitably had a detrimental impact on our children's education?

John Swinney: I will comment on the fact that, in very difficult and challenging economic times, when there has been significant constraint applied to the Scottish Government's budget, the investment in education has increased by 4.5 per cent. That is the practical impact of the Government wrestling with a difficult financial challenge.

By voting against the local government settlement this year, and also voting against the budget, Iain Gray voted against extra money going to support the Scottish attainment challenge and to close the poverty-related attainment gap. The Labour Party voted against every single measure of that type, so Mr Gray should not come here and complain to me about education spending when the Labour Party voted against it.

University of the Highlands and Islands Colleges (Merger)

14. **Rhoda Grant (Highlands and Islands) (Lab):** To ask the Scottish Government what discussions it has had with trade unions regarding the merger of University of the Highlands and Islands colleges. (S5O-01867)

The Minister for Further Education, Higher Education and Science (Shirley-Anne Somerville): UHI had a constructive meeting with the relevant unions on 6 March and will continue to work with them. Initial discussions have taken place between the Scottish Further and Higher Education Funding Council and the unions. A further tripartite meeting between UHI, unions and the Scottish funding council is currently being arranged.

Rhoda Grant: The minister is aware that college lecturers won a universal pay settlement in the summer. Will that be honoured if further

education lecturers are to be employed by a university? Is the minister aware of the locally rooted as well as world-renowned reputations of many of the partner colleges? How will those reputations be protected under the new settlement?

Shirley-Anne Somerville: I highlight that the proposal for integration is at a very early stage, and further details will be available in the summer of 2018. The reason why the UHI partnership is looking to evolve in that way is to create a fully integrated curriculum and a more effective delivery of academic provision. I recognise that there are concerns, such as around trade union recognition and national bargaining, which is why I am pleased that yesterday's discussions were constructive. It was the first of what I am sure will be many discussions that will involve the trade unions, UHI and the Scottish funding council. I am due to meet UHI to discuss those issues and we will go through in great detail the concerns that have been raised by the trade unions and the views of students and local communities. I take very seriously the point that the colleges that are involved in integration, and indeed the others within UHI, are much valued in their local communities and provide world-class services in their own right.

Tavish Scott (Shetland Islands) (LD): I notice that the minister mentioned the other colleges, and I hope that she is aware that there has not been a lot of discussion—if any at all—with those other colleges. I think that there is a meeting today about that very subject. When the minister has her meetings with UHI, will she take that matter up directly? Is she also aware that Perth college has already said that it may not wish to be part of this merger—not integration—and will she recognise that the learner student experience is the most important thing? Many of us are not convinced that yet another merger is the way to achieve better student experiences.

Shirley-Anne Somerville: The proposals are at a very early stage, and Perth college will attend the integration board meetings as an observer. The proposal does not involve all the colleges in UHI, because the process has come not from the Government or the Scottish funding council but from within UHI, which was looking specifically at the point that Tavish Scott has raised, quite rightly, about what is right for the students—I add to that what is right for the staff and the local communities that they serve. We take very seriously the views of the students and the staff, as well as those within the UHI implementation board, in which I include not just the colleges that are involved in the process, but UHI as a whole and every other college that is taking part as a partner organisation.

Support for Learning Staff

15. **Colin Smyth (South Scotland) (Lab):** To ask the Scottish Government what changes it forecasts in the number of support for learning staff in schools in the next year. (S5O-01868)

The Deputy First Minister and Cabinet Secretary for Education and Skills (John Swinney): The Education (Additional Support for Learning) (Scotland) Act 2004 places duties on education authorities to identify, provide support and review that support for their pupils. It is for education authorities to ensure that they have the appropriate resources, including support staff, in place to meet the needs of their pupils. "Scottish Local Government Financial Statistics" for 2016-17 shows that local authorities spent £5.1 billion on education in Scotland, which is a 0.3 per cent increase in real terms and a 2.5 per cent increase in cash terms. Of that, £610 million was on additional support for learning, which has increased from £584 million in 2015-16—a 2.3 per cent increase in real terms and a 4.5 per cent increase in cash terms.

Colin Smyth: The number of learning support teachers fell by 12 per cent between 2012 and 2016 and overall additional support needs staff numbers fell by 3 per cent at a time when the number of students with additional support needs has risen by 55 per cent. Does the cabinet secretary not take any responsibility for the fall in learning support staff numbers? Does he accept that, unless we see a reversal in the cuts in funding per student with additional needs over the same period, we will fail to meet the needs of some of our most vulnerable children in the classroom?

John Swinney: My first point is that, as Mr Smyth is well aware, the classifications that are used and the recording of students have changed dramatically over the period, and that must be reflected in my answer.

Secondly, Mr Smyth talks about the total number of staff who support pupils with additional support needs. According to the information that I have in front of me, that figure increased from 15,723 in 2011 to 15,880 in 2016, which, by anyone's calculation, is an increase.

I remind Mr Smyth of and repeat the point that I made in my original answer: there was a real-terms increase of 2.3 per cent in expenditure on additional support for learning in the most recent year for which information is available. That investment is welcome, and I am glad that that money is being invested in supporting some of the most vulnerable young people in our society.

UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill: Stage 1

The Presiding Officer (Ken Macintosh): The next item of business is a debate on motion S5M-10817, in the name of Michael Russell, on the UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill at stage 1.

14:11

The Minister for UK Negotiations on Scotland's Place in Europe (Michael Russell): When I came to the chamber last week, I spoke of my regret that the Government had had to take the step of introducing the UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill. Today, as we consider the general principles of the bill at stage 1, I regret that the circumstances that led the Government to take that step still persist. We have yet to reach agreement with the United Kingdom Government on satisfactory amendments to the European Union (Withdrawal) Bill in advance of a further meeting of the joint ministerial committee (European Union negotiations) tomorrow, and the meeting of the JMC (plenary)—in which the Prime Minister and the First Ministers are involved—that is scheduled for 14 March.

Last week in the chamber, the First Minister set out the crucial issue of principle that divides the Scottish and Welsh Governments from the UK Government: that the consent of the Scottish Parliament should be required for any changes to our powers. I go into tomorrow's meeting of the JMC(EN), as the First Minister will go into next week's meeting of the JMC (plenary), still working imaginatively and co-operatively to achieve the agreement that remains our aim. I will of course keep Parliament fully informed of developments—indeed, I sent a note to all members last night, which included information on where things stood.

Mike Rumbles (North East Scotland) (LD): On the matter of this Parliament's powers, why does the Henry VIII power in section 13 of the continuity bill give ministers the power, for 15 years, to make regulations that would create new public authorities without MSPs having the ability to amend ministers' proposals in any way whatever? Is that not an assault on the powers of this Parliament?

Michael Russell: We have made very considerable changes to the powers as recommended by the UK Government. When I appeared before the Delegated Powers and Law Reform Committee yesterday, I made it clear that

we had met almost in their entirety the objections that it raised with us last year on the Government's bill. I point out to Mr Rumbles that this is a stage 1 debate. If he wishes to lodge an amendment to the continuity bill at stage 2, which will take place next week, so that the matter can be considered by the Parliament, he will have the opportunity to do so. I will defend the powers in the bill with my usual vigour, and I am sure that Mr Rumbles will argue against them with his usual vigour.

We are now at the first key milestone in the passage of the continuity bill through the Parliament, but although today's debate is the first key milestone, it is far from the first parliamentary activity on the bill since its introduction last week. In addition to my statement on 27 February, the Lord Advocate made a statement on the issue of legislative competence on 28 February. We then had a very full and—for the most part, I think—interesting and constructive debate on the emergency bill procedure and timetabling on 1 March, even as the snow closed in all around us. During that debate, the Government was rightly challenged on its plans on how to maximise scrutiny of the bill, given the circumstances and timeframes within which we are operating. Mr Rumbles challenged the Government vigorously on that issue.

I hope that members are now aware of the arrangements that are proposed for what I think is a novel and, I hope, highly effective procedure for stage 2. It will allow maximum participation by members in the chamber so that they can offer their views on proposed amendments, and it will allow for the in-depth scrutiny by an expert committee of individual amendments that is a feature of normal stage 2 proceedings. Indeed, that committee—the Finance and Constitution Committee—was challenging and detailed in its scrutiny of the bill this morning.

I hope that members are satisfied with that approach, and I pay tribute to the imaginative way in which the bureau, the committees, the Government and the Parliament's officials have worked together co-operatively to develop new procedures to meet these unique circumstances.

Jamie Greene (West Scotland) (Con): The minister hopes that members are satisfied with the approach, but does he think that one evidence session with one witness is absolutely sufficient to duly scrutinise this bill? I am not satisfied with that, and I suspect that many other members are not satisfied, either.

Michael Russell: Mr Greene needs to look at what has happened. There has not been one evidence session with one individual; indeed, this morning, the Finance and Constitution Committee closely questioned a panel for an hour and a half. I, too, have appeared before committees; I believe

that I am appearing before four or five committees next week, and others are doing the same. I ask the member to consider whose responsibility this is—it is the UK Government's responsibility for pursuing Brexit.

Members: No.

Michael Russell: Tory members might have great difficulty in taking responsibility for their Westminster colleagues, but they have—and should face up to—that responsibility.

With regard to committee scrutiny, I pay tribute to the rapid mobilisation of the committees of this Parliament to examine the bill and provide the chamber with detailed insights from their perspectives. Yesterday, as I have said, I gave evidence to the Delegated Powers and Law Reform Committee in an interesting session, and the convener has now written to the Presiding Officer with comments that have been distributed and which are now available to every member. The Government will, of course, be considering carefully our response to the committee's points. I should say that we also provided the committee yesterday with detailed information on certain specific questions, and we will continue to do that.

Johann Lamont (Glasgow) (Lab): Will the minister give way?

Michael Russell: No, I want to make some progress.

I noticed this morning that the Scottish Parliament information centre has issued a note of yesterday's meeting that summarises the evidence. A range of things is being done to help the chamber consider the bill and to meet the objections that have been raised. Next week, I will have evidence sessions with the Environment, Climate Change and Land Reform Committee, the Equalities and Human Rights Committee and the Culture, Tourism, Europe and External Relations Committee, and I will also return to the Finance and Constitution Committee. I look forward to all those sessions, which are signs of the Parliament's seriousness of intent in considering the continuity bill and that the maximum possible scrutiny is being applied within the timeframe.

For the remainder of my remarks, I want to concentrate on the purpose of the bill and its major provisions. I am sure that the chamber is well aware of the Scottish Government's view on leaving the European Union. I find it difficult to overstate my own fears about the damage that is being done to the UK and Scotland through this process—a process that we did not vote for—in almost every aspect of our political, social and economic life.

However, the Scottish Government has always accepted that necessary steps have to be taken to

prepare for withdrawal and that the Scottish Government and Parliament have a responsibility to play their full part in those preparations in areas for which we have legislative competence. Hence we have engaged with the UK European Union (Withdrawal) Bill—and hence we have introduced the continuity bill. As section 1(1) sets out, its purpose is

“to make provision ... for ensuring the effective operation of Scots law (so far as within devolved legislative competence) upon and after UK withdrawal.”

Neil Findlay (Lothian) (Lab): Several times now, the minister has been asked to publish the 25 areas of contention, but he has said that there is no agreement in that respect. Previously he published 111 areas on which discussion was going to take place. As a way out of this, will he publish the 86 areas where there has been agreement?

Michael Russell: I want to be very accurate about this, because yesterday the member asked me this question, which I answered, and this morning Mr Bibby asked me the same question, to which I gave the same answer. I will put this on the record: I spoke to my Welsh counterpart on a range of issues two days ago as well as today. I raised the issue of publication; I will raise that issue again tomorrow at the JMC(EN); and my officials, too, have raised the issue. I wish to publish, I intend to publish and I hope that, tomorrow, we will agree to publish. I have given that answer twice now, but I put it on record for a third time. I hope that we will have that list published as soon as we possibly can and certainly well before stage 2.

Let me make some progress. As I have said, section 1(1) provides

“for ensuring the effective operation of Scots law (so far as within devolved legislative competence) upon and after UK withdrawal.”

It achieves that by doing three things. It saves all domestic devolved law that relates to the EU, and separately incorporates into domestic law EU law that is directly applicable in devolved areas. It gives Scottish ministers the necessary powers to ensure that that law continues to operate effectively after the UK has left the EU, and it gives Scottish ministers the power to ensure that Scotland's laws keep pace with developments in EU law.

The first two are familiar to members from the withdrawal bill, which has been extensively scrutinised by committees of the Scottish Parliament. Today, I will highlight some differences from the approach in that bill.

In saving currently applicable EU law, the continuity bill has two main differences from the withdrawal bill. First, it retains for devolved matters

the European charter of fundamental rights, which will not be retained under the withdrawal bill. The Scottish Government considers that the charter is an important source of law and protections, and that certainty and continuity of law, and the principles that apply to that law, should continue to be the same on and after exit day. Secondly, the Scottish Government considers that the general principles of EU law should have the same status after exit day as that which they had before. To achieve certainty and continuity there should, after withdrawal, be the ability to bring an action based on the general principles of EU law. The withdrawal bill does not allow such actions.

Johann Lamont: I seek the cabinet secretary's guidance and advice on the issue of scrutiny. I understand that he is seeking a deal with the UK Government. What will be the standing of this legislation if a deal is achieved? What opportunity will there be for Parliament to scrutinise that deal given that we do not know where the areas of dispute lie?

Michael Russell: I have indicated that I wish to publish further information; I have just given that commitment for the third time and I am happy to give it again. Last week, I also gave a commitment to Patrick Harvie that, if we were likely to reach an agreement, we would come to the chamber and ask members for their views on the matter, particularly on whether we should proceed with the bill, which we do not think we would want to do if we reach an agreement. I made that commitment last week and I repeat it today.

Let me try to make some progress. Turning to the powers to fix deficiencies of retained EU law following withdrawal, the Government acknowledges that criticism has been made of the scope of the equivalent parts of the withdrawal bill. However, despite that criticism, the Government shares the view of the Delegated Powers and Law Reform Committee on the withdrawal bill. It said:

"The Committee reluctantly accepts that the unprecedented task of modifying domestic legislation to preserve the statute book on leaving the European Union, and the short timeframe in which it is to be done, necessitates broad powers. In any other circumstances the conferral of such wide powers would be inconceivable, but the Committee accepts that in these circumstances the taking of wide powers is unavoidable."

However, to address some of the points raised by the committee, important changes have been made to what is in the withdrawal bill, as I indicated to Mr Rumbles. Most significantly, the power will only be able to be used when it is necessary to address a deficiency. Once the threshold that has been defined in the bill has been reached, it will be for ministers to decide the appropriate fix for that deficiency, but there is a higher initial test for the power to be applicable. Additional limits are built into the powers. For

example, it will not be possible to be use them to modify the Equality Act 2006, the Equality Act 2010, or the Scotland Act 1998.

In addition to the normal negative and affirmative procedures, the bill includes an enhanced version of the affirmative procedure in which the powers are used to create a new public body, transfer functions to a new public body or abolish an existing function. The Scottish Parliament is given 60 days rather than 40 days to consider the order. Scottish ministers must also consult on the proposals and report on that consultation to the Parliament.

Mike Rumbles: The crux of the matter is very simple. You are taking powers to yourself and out of the hands of the Parliament for 15 years. Parliament will only be able to say yes or no. It will not be able to do its job of legislation. That is my point.

Michael Russell: I have just quoted to the member the view of the Delegated Powers and Law Reform Committee about the exceptional nature of the circumstances that are not of our making. I do not wish to leave the EU. Many people in this chamber do not wish to leave the EU. We would be happy not to have to do this. However, in the circumstances that have been created, we must make a reasonable response, and we have made sure that that response will be scrutinised more by this Parliament than the response of the UK Government will be. We are open to further discussion, debate and amendments. I have made that clear, and I look forward to debating in detail the amendments that are lodged, within the confines of the fact that this is a job that has to be done. I do not want to see it done. I would rather not leave and Mr Rumbles would rather not leave, but within the confines of what has to be done, we have some pressures upon us.

There are two aspects of the powers that I also want to mention. First, the bill allows ministers to fix deficiencies in EU law that is directly applicable in devolved areas. Members will be aware that one of the criticisms of the UK bill is that it would allow only UK ministers to fix such deficiencies. Secondly, the bill requires UK ministers to seek the consent of Scottish ministers if they wish to exercise their powers in the UK bill in devolved areas. Again, that point was made by the Delegated Powers and Law Reform Committee and the Finance and Constitution Committee. It also illustrates how the continuity bill has been drafted to work alongside the UK bill. Our intention remains to work closely with the UK Government on the necessary secondary legislation flowing from Brexit, whatever the eventual primary legislative arrangements. That would include consenting to UK-wide orders touching on

devolved matters, where that is the best course of action. Any such proposals would be subject to the scrutiny of the Scottish Parliament.

The final aspect of the bill that I want to touch on is the keeping-pace power in section 13. There are likely to be fields where we will want, at least in the short term, to maintain regulatory alignment with EU rules. That will mean choosing to keep pace with developments in a particular field of regulation after UK withdrawal; for example, continuing to apply new and developing rules about food safety, which are updated regularly and without which many people, such as those in my constituency who export live shellfish, would not be able to operate.

The Scottish Government is clear that that approach is part of a coherent continuity of law and therefore a power properly in the bill. The power will be sunsetted after five years, with the possibility of extension by affirmative order. Given the considerable uncertainty about events, the Government considers that that is a prudent approach. The discussion of any extension will take place against the backdrop of any longer-term arrangements that will then be in place, including agreements with the EU for market access, and with the knowledge of the actual use that has been made of the power over that period.

I am aware of criticisms of that provision and I am happy to discuss possible changes to address them, but I believe that it is a crucial power in minimising disruption from Brexit and providing a coherent continuity of law over the next few years. We hear a great deal about regulatory alignment, and there needs to be something in the bill that allows that to take place.

I said at the start of my remarks that I remain regretful that we still need to carry on with this bill. I should also say that that regret is now mingled with some admiration for the way in which many members of this Parliament have reacted to what are challenging circumstances and continue to react to them. Those circumstances are not of our making, but we need to make the best of them. I am confident that the bill will receive extensive scrutiny in the time available. The Government should and will find that a challenging process, and we will face up to it. The first step is taken today. I therefore invite the Parliament to agree to the general principles of the continuity bill in the motion in my name.

I move,

That the Parliament agrees to the general principles of the UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill.

The Presiding Officer: Thank you. I call Bruce Crawford to speak on behalf of the Finance and Constitution Committee.

Bruce Crawford (Stirling) (SNP): On a point of order, Presiding Officer. I do not think that I am actually speaking on behalf of the Finance and Constitution Committee in this debate. My name was put in as a speaker on behalf of the Scottish National Party.

The Presiding Officer: Aha! [*Laughter.*]

Bruce Crawford: I do not mind speaking just now.

The Presiding Officer: As you are speaking on behalf of the SNP, I will move to the first Opposition speaker, if you do not mind, and I will come back to you later. I call Adam Tomkins to open for the Conservative Party.

14:28

Adam Tomkins (Glasgow) (Con): I am happy to give Bruce Crawford's speech, if he wants to swap—but perhaps not.

The Scottish Conservatives will vote against the stage 1 motion on the bill this evening because the bill is unnecessary, seriously flawed, ill thought through and incoherent—errors that are compounded by the reckless speed with which the Government is railroading the bill through Parliament. Even worse, the bill is incompetent. Our very own Presiding Officer has told us so, but the SNP carries on regardless of the views of the Presiding Officer, the rule of law and the devolution settlement—which, in its rhetoric, the SNP claims to champion but which it tramples over in its actions.

I will start with why the bill is unnecessary. We all agree that there needs to be legislation to give effect to the democratic decision of the British people in June 2016 to leave the European Union, and we all agree that the legislation needs to make provision to correct and update the statute book so that it hangs together and makes sense in a post-Brexit world. We also all agree that the legislation must respect the foundations of the United Kingdom's constitution, including the devolution settlements in Wales, Scotland and Northern Ireland—where we hope the settlement is soon to be restored. Nobody can seriously think that leaving the European Union means that we will somehow revert back to the constitution of 1972, which was the year in which the UK joined the EU.

Leaving the European Union means, among other things, that this Parliament will get even stronger. Already one of the most powerful devolved legislatures in the world, the Scottish Parliament will inherit a fresh suite of powers when we leave the European Union, none of which SNP members actually want, despite their mocking. They do not want powers over Scottish agriculture,

environmental protection, fisheries, state aid and public procurement—no, they want all those powers to remain in Brussels.

The legislation to do all this—to give effect to the referendum result and to correct the statute book so that it makes sense post-Brexit—is, of course, the European Union (Withdrawal) Bill, which has passed the House of Commons and is now in the House of Lords. We all agree that that bill is flawed and needs to be amended so that it achieves its objectives fully in accordance with our devolution settlement. This Parliament has been unanimous on that point, and the UK Government has listened and has undertaken to amend the bill.

That amendment does not go quite far enough for the SNP. However, we learned at the weekend that we are now just a single word away from agreement between the Governments. Yet, now, both the negotiations at Government level and the all-party consensus in this Parliament have been placed in jeopardy by the SNP's so-called continuity bill. I say "so-called" because the reality is that it is no such thing. It is designed not to create continuity but to sow the seeds of confusion, even chaos. It is not a legal continuity bill but a legal confusion bill—a wrecking bill. It threatens to wreck the negotiations and it certainly wrecks the consensus that has existed in this Parliament.

The bill's own policy memorandum says that it will "add to the complexity" of Brexit and "present serious logistical challenges". Those are not my words but the Scottish Government's words, and they rather give the game away. It seems that the Scottish Government is no longer all that interested in doing a deal with the UK Government on the withdrawal bill. The SNP is reverting to the stance that it first took on Brexit—the stance that cost the nationalists 40 per cent of their MPs and 500,000 votes in June's general election. It is the stance that tries to maximise the complexity and challenges of Brexit in order to sow the seeds of constitutional division.

That the bill is seriously flawed and ill thought through is not just my view; it is the view of a number of expert witnesses who gave evidence this morning to the Finance and Constitution Committee. Professor Alan Page of the University of Dundee said that he has

"considerable doubts over whether the Bill"

constitutes

"an effective solution to the challenge the Scottish Parliament will face"

in preparing the devolved laws for the UK's withdrawal from the EU. That, he says, is

"for the simple reason that the Bill does not resolve—indeed cannot resolve—the critical question ... of which EU competences are devolved and which are reserved".

The answer to that question can be determined only by Westminster legislation, which is why we, on these benches, say that the right vehicle is the European Union (Withdrawal) Bill, not this wrecking bill.

The Law Society of Scotland is equally critical. It rightly draws our attention to the way in which the bill introduces wholly new categories of law such as retained devolved EU law, which will

"make it more difficult to be certain about the law".

How ironic it is, then, that legal certainty is one of the general principles of EU law that the bill seeks to preserve in Scots law, in section 5. The reality is that this is a bill for legal uncertainty, legal confusion and legal chaos—the very opposite of legal certainty. The bill fails to meet the tests that are set by the general principles that it seeks to preserve. We are some way through the looking glass here—Mike Russell in Wonderland.

The Law Society is critical of section 4, which seeks to save rights and obligations that are derived from EU law in Scots law after exit day, arguing that the bill needs to specify which rights and obligations are meant. The Law Society is also critical of section 5, which seeks to safeguard the general principles of EU law in Scots law after exit day, arguing that the bill needs to explain which general principles are referred to.

Patrick Harvie (Glasgow) (Green): Will the member give way?

Adam Tomkins: No, I will not give way to Mr Harvie after his disgraceful interventions in last week's debates on the issue.

The Law Society warns that, even if that were done, inconsistencies between section 5 and the withdrawal bill "might create complications". On that issue, the Law Society is politely pulling its punches, because we know that that provision has been designed by the SNP to go out of its way to create complications.

The Law Society is similarly critical of section 6, on the principle of supremacy, and of section 10, on the interpretation of retained devolved EU law, pointing out that, rather embarrassingly for the Government, section 10 fails to reflect what was agreed between UK and EU negotiators last December regarding the on-going jurisdiction of the Court of Justice on matters pertaining to citizens' rights. There will be a lot for the Finance and Constitution Committee to amend on Tuesday, assuming that the bill passes stage 1 tonight—which, of course, it should not.

I said at the beginning of my speech that the bill is unnecessary, seriously flawed, ill thought

through and incoherent. I have dealt with the first three of those charges. I turn now to the charge of incoherence, which I think is the most serious one.

Last week, the Lord Advocate was asked a number of questions about what will happen if the bill is passed by this Parliament but is thereafter found by the Supreme Court to have been passed incompetently. He declined to answer such questions, because, he said, they were speculative. However, when considering the general principles of legislation, as we are this afternoon, it is wise to consider their likely effects and their possible consequences.

Here is one scenario. Let us suppose that there is no agreement on clause 11 of the withdrawal bill and that this Parliament presses ahead with stages 2 and 3 of the continuity bill. The Scottish ministers have said that it should follow that the devolution provisions of the withdrawal bill would then be removed from it. However, I think that that is highly unlikely for the very reason that the Lord Advocate would not concede last week. The continuity bill, if passed, is much more likely than not to be challenged in the Supreme Court—I think that we all know that. If it is struck down, and if the devolution provisions of the withdrawal bill have been removed, there will be no lawful means whatever of correcting the Scottish statute book so that it makes sense post-Brexit. No sensible UK Government could allow that risk to be run.

Michael Russell: That is, of course, theoretically possible, although, as I indicated to the member this morning, I think that it is highly unlikely. In his questioning at the committee this morning, the member indicated that the UK Government would be likely to ignore the Sewel convention in these circumstances. Is he saying that the Sewel convention is about to be suspended by the UK Government? That would be a very considerable and difficult step to take.

Adam Tomkins: Absolutely not, because the Sewel convention was suspended by Mike Russell last week. I will quote to him exactly the section of his speech last week that suspended the Sewel convention. He is not quite as clever as he thinks he is, and he does not quite know what he is doing.

“What of Sewel?” I hear members cry. The UK would have to remove the devolution provisions from the withdrawal bill if we did not consent to them, would it not? No, because, contrary to the advice of the Scottish Conservatives, this Parliament decided last week to fast-track the bill. Emergency legislation is the very opposite of normal. As has been pointed out many times, the Sewel convention applies normally; it does not apply in exceptional or abnormal circumstances.

Last week, in moving the motion that the bill be fast-tracked, the minister, Mr Russell, said:

“this is a ‘novel’ situation. In normal times, such a bill would follow a normal timetable, but these are not normal times.”—[*Official Report*, 1 March 2018; c 29.]

There we have it: the minister’s own admission, repeated three times in a single sentence, that the Sewel convention no longer applies, meaning that the UK Parliament is now free to legislate on EU withdrawal even if we do not give our consent to the withdrawal bill. Those were not my words but the minister’s words.

Michael Russell: Will the member give way?

Adam Tomkins: I am in my last 30 seconds.

Far from safeguarding the interests of this Parliament, the bill and the way in which it is to be considered—in haste—have completely undercut and, indeed, betrayed the interests of this Parliament. The SNP is playing games with the constitution and does not even understand the rules.

Until the introduction of the continuity bill, this Parliament had more leverage than many observers may have realised. The House of Lords would, I think, have found it very difficult to give the withdrawal bill a third reading if we had declined to consent to it. That leverage has now been traded away. We are not in “normal times”, the Sewel convention does not apply, our voice is diminished and the hand of the UK Government is vastly strengthened, all thanks to the SNP. That is great negotiating—well done.

14:39

Neil Findlay (Lothian) (Lab): I wish that we were not here, debating this bill. I wish that the Scottish secretary, David Mundell, and the Tory leader, Ruth Davidson, had fulfilled the commitments that they gave to this Parliament, to the UK Parliament and to the people that we represent. I wish that the Tories had not made such a mess of the process of devolving powers to this Parliament. They have failed miserably, and, instead of recognising that and doing something about it, they are digging an even bigger hole for themselves.

In the House of Commons, Labour’s shadow Scottish secretary, Lesley Laird, moved an amendment that would have removed the EUWB’s proposed restrictions on the ability of the Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly to legislate on devolved matters and provided for new, collaborative procedures for the creation of UK-wide frameworks for retained EU law.

However, every compliant and subservient Scottish Tory MP was whipped to troop through

the lobbies to trample all over the devolution settlement. In the House of Commons, Mundell said:

“I know that”

Lesley Laird

“does not like it, but the Bill is going to be amended not at the behest of the Labour party’s incoherent approach”—

there is a distinct lack of self-awareness there—

“but because Scottish Conservatives have tabled practical amendments.”—[*Official Report, House of Commons*, 6 December 2017; Vol 632, c 1020.]

Ruth Davidson and Mr Tomkins told us that it would all be resolved in the House of Commons. Then they told us that it would all be fixed in the Lords. What happened to those amendments? Where are they? Did they appear during the parliamentary process? No, they did not, and by 10 January, just a month later, the full extent of the Tory shambles was exposed: there were no amendments, no agreement on devolved powers and no dispute resolution process. There was nothing except a constitutional stand-off that was playing straight into the hands of the nationalists.

Will Mr Tomkins tell us who instructed Tory MPs to vote as they voted? Was it the Prime Minister, Ruth Davidson or Mr Mundell? I will give way to the member if he is willing to tell us—and the public—what role his leader in Scotland played. Did she issue instructions or did she just follow instructions?

Not even Mary Berry could deliver a bigger custard pie to Ruth Davidson than the Tory party is delivering on this. If the Tories had supported Labour’s amendment, there would be full transparency over areas of disagreement and there would be a dispute resolution process.

There is not a word of apology from the great Professor Tomkins. Is it not telling that the man who lectures people on constitutional law could not even take an intervention from teeny-weeny little Patrick? [*Interruption.*] Professor Tomkins is exposed for what he is—

The Presiding Officer: Just a minute, Mr Findlay.

I am conscious that passions are running quite high this afternoon, but a couple of members have already strayed into rather personal terms. Please keep the proceedings as formal and proper as is correct.

Neil Findlay: As things stand today, only the cabinet secretary and his counterparts in the UK and Welsh Governments know what the issues are. The rest of us are in the dark about what we are being asked to vote on.

In the debate last week, I asked for the issues of contention to be published. I lodged a parliamentary question, I asked at the Delegated Powers and Law Reform Committee and I ask again today. It is unacceptable that we cannot see what is causing the current stand-off.

We have to go back in the history of devolution to get to the heart of why the Scottish Labour Party gives its cautious support to the principles of the bill. I stress that our support is not unconditional and that we will seek to amend the bill. There is no blank cheque for the Government on this. We have serious concerns about the timetabling, the rushed nature of the bill, the limited time for consultation, the rights of the people that we represent to shape the bill’s content and the powers that the bill seeks to place in the hands of ministers.

We have concerns about how the bill’s introduction has been handled and about the Government’s selective use of challenge to the Presiding Officer’s ruling. Members will recall that, in the previous session of the Parliament, the Labour Party challenged the Presiding Officer’s ruling on whether this Parliament had legislative competence over areas of the Tory Trade Union Bill. What happened then? Did the Scottish Government bring in the Lord Advocate to support the position that it and we held? No. SNP members cheered to the echo when my friend James Kelly was excluded from the chamber for challenging the decision. The hypocrisy and double standards are there for everyone to see.

If we go back into the recent history of devolution, older members will recall that, when the Scottish Constitutional Convention was formed, it was Labour, the Scottish Trades Union Congress, the Liberal Democrats, the Green Party, the Communist Party and the churches that came together to work co-operatively and to do the heavy lifting. There were long debates and compromise all round to deliver the blueprint for a new Parliament.

Members will notice that that list had two significant omissions—the Tory Party and the Scottish National Party, both of which were completely hostile to devolution. Therefore, when we hear David Mundell, Ruth Davidson, Nicola Sturgeon and Mike Russell claim to be the defenders of the devolution settlement, we have to take their claims with a gritter full of salt.

The SNP exists to end devolution. It wants to use Brexit as another means of creating division between Scotland and the rest of the UK in order to advance its overall policy objective. We can contrast that with the Welsh Labour Government, which has introduced a continuity bill because it wants devolution to work. We do, too.

We will support the continuity bill. We want those powers coming from Brussels that would ordinarily be devolved to be exercised by this Parliament, and we will move amendments to the bill on a range of issues. Despite our reservations about the bill and the whole process, we have a duty to try to make the bill as good as it possibly can be.

I ask that Ruth Davidson and Mike Russell get their people back around the table and get the matter sorted. Let us get back to discussing the issues that the people that we represent see as a priority—their jobs, the economy, their living standards, the health and social care service, their children's education and how we can build a future for all our people.

14:46

Patrick Harvie (Glasgow) (Green): I agreed with some of what Neil Findlay had to say, even if occasionally his judgment let him down—and I am big enough to say so. [*Laughter.*] I am certainly happy not to repeat any disgraceful slurs about members in other places who think that an issue as complex as the Irish border, for example, is no more complicated than the London congestion charge. However, I note that Professor Tomkins questioned the intelligence of a member of this Parliament unimpeded, Presiding Officer. I wonder whether he will reflect on that.

Today's discussion at the Finance and Constitution Committee covered the competence of, necessity for and content of the continuity bill. I will mostly address the content of the bill and the changes that we need to make to improve it.

However, I will briefly talk about competence. As we have been told, there is clearly room for disagreement around the interpretation of issues relating to competence. These are judgment calls, not definitive rulings. With the greatest respect, Presiding Officer, it seems to me that, when we look at the range of views that are being expressed, we can see that the view that the continuity bill is not competent does not appear to be gaining ground.

I do not consider that we can take that interpretation of competence as a reason not to take action, because the bill is necessary. Should we do nothing and leave ourselves with a legal cliff edge? Of course not—no one would say that. Should we trust the word of the UK Government? It has broken its word repeatedly throughout the process; I am afraid that it has failed too many times already for us simply to trust that it will reach an acceptable agreement in the time available.

Should we introduce the continuity bill and then have the minister continue to negotiate with the UK, or introduce the continuity bill and then pass

it? Neither of those options is perfect, but if we leave ourselves without the option of passing the continuity bill we would simply hand a victory to those within the UK Cabinet for whom Professor Tomkins had no hostile or harsh words and who are fundamentally opposed to devolution and to respecting the right of the people of Scotland to govern themselves on matters that are already devolved under our devolved powers model.

Johann Lamont: I am sure that Patrick Harvie must share my concern that this Parliament is perhaps being used as a bargaining chip in a negotiation that is happening elsewhere. Does he consider that the continuity bill should continue regardless of whether a deal is done? What role should this Parliament have in scrutinising any deal, should one be secured?

Patrick Harvie: In my view, the gap between where the UK Government currently is and what would be acceptable—certainly, to me—is so significant that I find the likelihood that the UK Government will give sufficient ground for us to reach an acceptable agreement to be vanishingly small. However, after we vote for the bill to pass stage 1 tonight—as I hope that we will—it will be for the whole Parliament to decide whether we consent to its withdrawal in those circumstances.

Mike Rumbles: Will the member take an intervention?

Patrick Harvie: I need to move on.

One of the reasons why legislation in this Parliament is a preferable route, from my point of view, is that it gives us the opportunity to move beyond arguments about what the UK Parliament ought to do with its legislation and to make changes to and improve legislation here. I will advance arguments on that, based on the broad principle that power should sit with the majority in Parliament, not with a minority Government. Both Governments in this situation are minority Governments; neither has a mandate for unilateral action.

Mike Rumbles: Will the member take an intervention?

Patrick Harvie: I will if it is very brief.

Mike Rumbles: Is Patrick Harvie satisfied with section 13 of the bill, which takes powers away from this Parliament for a period of 15 years? It gives those powers entirely to ministers and takes the decision making away from us.

Patrick Harvie: I am not going to say that I am satisfied with the detail of any section until I have seen everyone's amendments, including those that Mr Rumbles lodges.

I would like to make some progress by addressing the specific changes that I think are

necessary. The minister talked about the range of scrutiny measures that will be available for subordinate legislation—the negative, affirmative and super-affirmative or enhanced affirmative procedures. There is a case not only to have some definition of the issue in the bill, but for Parliament to be in a position to decide that a measure currently requiring the negative procedure should get the affirmative procedure or, indeed, that consultation is necessary and that the enhanced procedure should be used. That decision should be available for Parliament to make through some form of sifting mechanism, whether that is conducted by an independent committee or by our subject committees.

Section 17, to which the minister also referred, is about the ability of Scottish ministers to consent to measures taken by UK ministers on devolved matters. Clearly, such measures must require parliamentary consent and not merely ministerial consent. The Government has given us some verbal reassurance that parliamentary consent will always be needed. I believe that there is a case for putting that in the bill, so that ministers are never able to consent to UK measures on devolved matters without Parliament's agreement.

Finally, the opportunity for ministers to effectively pass laws in urgent cases—to change laws and then ask for Parliament's approval afterwards—is a massive new power. Again, I think that we need to improve the parliamentary scrutiny of that, by means of an emergency brake—a period between the making and the laying of an instrument—or measures to prevent it from happening during a parliamentary recess.

I do not have time to go into detail on the submission by Scottish Environment LINK, which highlights the gaps that will exist in domestic law in place of EU environmental principles. The ability to take action on those issues would be better under the bill than under the UK legislation, but that needs to be spelled out more clearly in the bill, as do measures to close what Scottish Environment LINK describes as the “environmental governance gap”.

I hope to advance arguments for changes to the bill that will address all those matters, and I give an absolute assurance to others that the Greens will have an open mind on amendments, from whichever political party, that seek to improve and strengthen parliamentary scrutiny of the powers that are created under the bill.

14:54

Tavish Scott (Shetland Islands) (LD): We will vote for the bill at stage 1, because the Scottish Parliament is where we are. We want the Governments of the nations of the United Kingdom

to agree on the powers that should be in Edinburgh, Cardiff, Belfast and London. It is disappointing that the opening speech from the Conservatives this afternoon did not start from the basis that there is a need for an agreement. Indeed, the briefings to the press this week suggest that agreement is further away, rather than closer.

Adam Tomkins's speech masqueraded as a parliamentary assessment of the bill; instead, it was really a political justification for the Tory position, which is about not the future of the nations of the United Kingdom but unity in the Tory party.

I see that Ruth Davidson is laughing—if anyone should know about unity in her party, she should. She is working hard in that regard. If she wants to stand up and say what her position is, she can go right ahead.

Ruth Davidson (Edinburgh Central) (Con): If Tavish Scott wants to talk about unity, can he remind us how his enormous group of five MSPs voted on the recent budget?

Tavish Scott: Is that it? I will tell Ruth Davidson what we did: we voted for our constituents, and she should do the same on Europe. If the Tories started putting their constituents first on Europe, we would not be where we are today.

I share some of Neil Findlay's concerns about the bill. As I am sure that the Government would expect, we will lodge amendments in a number of areas. The one aspect of Adam Tomkins's speech that I could take involved concerns over parliamentary scrutiny and how this Parliament can keep a check on what any Government of any political persuasion will do in the future. To a large extent, those concerns involve section 13 of the bill.

A truncated approach is being taken, which is concerning given the complexity of the bill. We have only a little time to consider the bill and to reflect on the evidence that any of the parliamentary committees receive. We are particularly concerned about section 13 because of the sweeping powers that it gives ministers. Those ministers might not include Mike Russell; indeed, there may be few members present today who will be sitting on the front bench in 15 years' time. I do not think that we should lightly consider giving ministers a power for the next 15 years without requiring them to come back to Parliament on the actual power itself.

Michael Russell: I want to make it clear that the proposal is for five years, with renewal available after scrutiny. As I indicated in my opening speech, that scrutiny would involve consideration of how the power had been used. I will return to the issue when we have a debate about it,

because there are strong reasons for having some continuity. That principle has been supported by Liberal Democrats in the UK Parliament because of the need for regulatory alignment.

Tavish Scott: I will offer Mr Russell a couple of reasons as to why there is a better way to handle the situation. I am sure that he is true to the point that he made in his opening remarks about accepting a different way to approach the issue, so I hope that he will accept these points.

First, with section 13, Michael Russell is encouraging Parliament to accept EU regulations post-March 2019 without having any influence at all over what they are. He and I do not want to be in that position, but that is the position that we would be in, and that cannot be a good way to proceed.

Secondly, we want to ensure that changes are compatible with European law. The way to do that is to ensure that portfolio ministers introduce in the Scottish Parliament the measures that they judge to be appropriate to enable us to keep pace with what is happening in Europe. To defeat that line of argument, Mr Russell and his colleagues will have to do more than just say that there are stakeholders who have concerns, as today's letter from the Delegated Powers and Law Reform Committee says. They will need to set out the range of those concerns, the range of those stakeholders and the range of legislation that would be brought forward. We are all aware of how many instruments come from Brussels to the UK Parliament and the devolved Parliaments of the United Kingdom every year. Nevertheless, to go with the power that is in section 13 without considering what it means in practice is neither realistic nor appropriate.

We cannot have that power in isolation. The minister has rightly made much of the need to collaborate and come to agreement with Cardiff—which it has done with the bill because, we are told, it is the same as the bill that has been introduced in Cardiff—with Belfast, when the Government in Belfast is back in place, and, indeed, with London. In other words, Administrations around the UK have to agree. However, section 13 makes no reference to the other Administrations in the UK.

The minister has made an argument on issues such as animal health and, as a member for a rural constituency, I know that there is a real logic to having consistent animal health regulations across the UK—those members who had to deal with BSE and its aftermath will agree with that. If we are to maintain a single market, there should be something in section 13, if it is to be in any way appropriate, to require agreement and discussion with the other Administrations of the United Kingdom to achieve exactly that. That is why I

want to finish with the letter that the Delegated Powers and Law Reform Committee wrote to the Presiding Officer earlier, which sets out what was discussed in respect of that particular section.

The letter states:

“The Minister explained that this power had been included in the Bill in response to concerns raised by stakeholders”.

I simply ask, as Neil Findlay did when he asked for clarification on the powers, that the Government set out who those stakeholders are, so that committees can properly look into that.

The letter goes on to say that the minister

“had been surprised that a similar power had not been included in the European Union (Withdrawal) Bill.”

That does not make it right to have such a power in London, for the very reasons that we have been discussing.

When the minister is considering a better way to achieve what he wants to achieve in section 13, my proposal to him is that the best way of the lot would be to ensure that this Parliament deals with primary legislation on the very measures that we all seek—and need—to address, but to do that in a way that allows for full and proper parliamentary scrutiny.

The Presiding Officer: We come now to the open part of the debate. Before I call Bruce Crawford, I call Graham Simpson to open on behalf of the Delegated Powers and Law Reform Committee.

15:01

Graham Simpson (Central Scotland) (Con): I am speaking as convener of the Delegated Powers and Law Reform Committee.

Like the European Union (Withdrawal) Bill, the continuity bill confers wide powers on ministers and consequently is of great interest to my committee. The tight timetable for considering the bill has imposed significant restrictions on the ability of the committee to thoroughly scrutinise the bill. As convener, I find that unacceptable, but we all take our jobs seriously, and my fellow committee members—my impressive deputy convener Stuart McMillan, Alison Harris, David Torrance and the ever entertaining Neil Findlay—will scrutinise the bill as thoroughly as the limited time allows.

The committee took evidence on the delegated powers in the bill from the minister at its meeting yesterday. We sought to answer the questions that we always seek to answer on all bills. Is it appropriate to confer these powers on the Scottish ministers? Are the powers appropriately framed? Do the powers match the policy intention as

expressed in the delegated powers memorandum? Are the powers subject to an appropriate level of parliamentary scrutiny?

Having taken that evidence, the committee agreed to draw a number of the powers to the attention of the Parliament and wrote to you, Presiding Officer, this morning. Normally, we would do a detailed report, as we did with the UK bill, and that is what should be happening here. I am not going to cover all the powers mentioned in that letter, but I want to highlight some of them. In some cases, we welcome how the Scottish Government has responded to concerns that the committee had about similar powers in the European Union (Withdrawal) Bill. In other cases, we note the Government's intention to bring forward amendments to respond to concerns raised by the committee. There is a remaining category of significant powers, which I want to draw to the Parliament's attention.

First, section 11 of the bill confers a wide power on the Scottish ministers to correct

“(i) a failure of retained (devolved) EU law to operate effectively, or

(ii) any other deficiency in retained (devolved) EU law”.

The committee has already considered evidence in connection with similar powers in the European Union (Withdrawal) Bill. In its report on that bill, the committee concluded that

“the powers should only be available where Ministers can show that it is necessary to make a change to the statute book, even if they cannot show that the particular alternative chosen is itself necessary.”

The committee therefore welcomes the fact that the continuity bill has restricted ministers' powers to making changes that are necessary rather than appropriate.

Section 13(1) is described as a

“Power to make provision corresponding to EU law after exit day”.

The Government's delegated powers memorandum describes the power as giving

“Scottish Ministers the ability to ensure that, where appropriate, devolved law in Scotland keeps pace with post-withdrawal developments in EU law.”

The committee noted that that is a “very significant power” that

“would potentially allow delegated powers to be used for a wide range of circumstances that may otherwise be considered appropriate to be done by primary legislation.”

The committee queried whether the power

“was appropriate to the purpose of this particular Bill”

and whether

“there was the same urgent need for such a power and, therefore, whether it was appropriate to include such a power within a bill being treated as an emergency bill.”

The minister said that the power has been included

“in response to concerns raised by stakeholders and that he had been surprised that a similar power had not been included in the European Union (Withdrawal) Bill.”

He explained that the power

“was needed for practical reasons”

and

“to ensure that, where appropriate, certain areas of law could keep pace with EU law.”

He suggested that

“environmental law and food safety law were areas in which there may be a desire to use this power to keep pace with EU law. In his view, this power was appropriate for inclusion”.

The committee has not taken a definitive view on that.

The bill allows the Scottish ministers to set an exit day by regulations. That power does not provide any limits on the date that can be fixed. I asked the minister why the bill does not just say that exit day is the day on which the UK leaves the EU, since that is the factual situation. He said that

“the power would not be used to set a date for exit day that was different to the one for the UK”,

but pledged to amend the bill in response to that point, which is to be welcomed.

In addition to exploring the delegated powers in the bill, the committee asked the minister and his officials for a legal explanation as to why the bill has to be subject to the emergency procedure, and the minister committed to providing that explanation. The committee has not yet had the opportunity to consider that response.

We will follow the progress of the bill over the next two weeks, but we should have had longer.

15:06

Bruce Crawford (Stirling) (SNP): The debate is an important occasion—perhaps more important than most. It is also somewhat unique, in that the vast majority of MSPs, if not all, strongly wish that it was not taking place. Certainly from a personal perspective, I am deeply dismayed that it has proved to be necessary for the Scottish Government to introduce this emergency bill.

However, I have reached a clear personal view that it is without doubt a necessity that the bill is before us for debate today. Quite simply, it is necessary for the Parliament to be in a position, if all else fails, to protect the powers that were invested in it following the successful devolution

referendum of 1997 and the Scotland Act 1998. That act, which was cleverly constructed and delivered by Donald Dewar, enabled the creation of the first Scottish Parliament in more than 300 years.

The debate is therefore about more than just the potential impact of clause 11 of the European Union (Withdrawal) Bill or the continuity bill. I well recall the sheer joy of the opening day in July 1999 and the beginning of a new democracy in Scotland. Today's debate, almost 19 years later, is about defending that very democracy, which so many people fought so long and hard to create. The debate is about protecting the precious democracy that Donald Dewar and many others allowed to flower in 1999.

Let us recall clearly that the only party that is represented at Holyrood that campaigned against the creation of this institution was the Tory party. Of course, there were notable exceptions—some Conservatives supported the Parliament—but the establishment of the Conservative Party was bitterly opposed to it. I am far from convinced that the tone and attitude of today's UK Tory party to the Scottish Parliament are much changed from what they were in the past. I sincerely hope that I will be proved wrong in my scepticism, and that an agreement will be reached that will mean that the continuity bill will become an historical irrelevance.

I had certainly hoped previously that agreement would be arrived at and that the Secretary of State for Scotland would be able to deliver on his promise to sort clause 11—albeit that it would be much later than under the originally envisaged timescale. However, that hope has been all but dashed by the tone and attitude that have been adopted recently by the Minister for the Cabinet Office, David Lidington. We can only assume that he is closer to the leadership of the UK Tory Government than is the rather forlorn figure of the Secretary of State for Scotland, who has, it appears, promised more than he can deliver. I have to say at this point that I disagree with Neil Findlay, who characterised the Tory Government's position as being like a custard pie. On this occasion, it is much more like an Eton mess. I ascribe that line to Ash Denham, as not as many members laughed at it as I expected. [*Laughter.*]

In the near future, we will know whether agreement can be found. However, I, for one, am not prepared to take a chance on that. There are no guarantees, and I will take some convincing that any of the promises that have been made for the future are deliverable. That is why the backstop of the continuity bill is so important, and why I will vote for its general principles at decision time.

Today, the majority of Tories here at Holyrood are supporters of devolution. They clearly

demonstrated that by supporting the Finance and Constitution Committee's position in declaring clause 11 of the withdrawal bill to be incompatible with the devolution settlement. I ask those same Tories today, if they are not prepared to support the general principles of the bill at decision time, and if agreement cannot be reached, whether they will vote with those who would protect this Parliament and refuse consent to the withdrawal bill, because their decision day may be coming very soon.

Jeremy Balfour (Lothian) (Con): We all want to protect this Parliament. What will Bruce Crawford's view be if, in due course, the Supreme Court says that the continuity bill is illegal and cannot go ahead? How will that protect the Parliament?

Bruce Crawford: That point has already been addressed by Mike Russell, but I will say this to Jeremy Balfour: I have to ask him and the rest of his colleagues whose side they will be on. Will they protect democracy in Scotland, and this Parliament, or will they take the Tory party line from London? That is the question that will be coming their way very shortly.

In closing, I will outline my position on competence. First, I do not disrespect the position that has been adopted by the Presiding Officer. However, I will put this simply: I choose to agree with the position of the Lord Advocate, who is Scotland's top law officer. I use the word "choose" deliberately, because the matter is about who we are as parliamentarians and what we choose to believe. As Patrick Harvie said earlier, the Finance and Constitution Committee heard this morning that there is space for disagreement on the matter. It is therefore not as simple as asking who is right and who is wrong, in terms of the finer points of law.

In taking my view, I am reminded of the words of Donald Dewar from the opening of the Scottish Parliament and the birth of a new democracy on 1 July 1999, when he said on that fantastic day:

"This is about more than our politics and our laws. This is about who we are, how we carry ourselves."

Therefore, when we come to decision time, let us all remember the last of those words. I urge members to support the general principles of the bill and to vote to protect this Parliament and democracy in Scotland. We owe it to the memory of the people who fought so long and hard to bring this Parliament into existence to protect its powers: we should do the right thing.

15:13

Christina McKelvie (Hamilton, Larkhall and Stonehouse) (SNP): It is my belief that the UK's leaving the EU will be the greatest act of political

self-harm of our time. We have not yet properly seen the damage that is unfolding, but I believe that it will, when it comes, be immense.

The purpose of the continuity bill is abundantly clear. It will be a vital declaration of protection for every individual in Scotland, and it will preserve and defend our devolution and our very democracy. It will mitigate the impact of Brexit on this Parliament, on the Scottish Government and on Scottish society—although, sadly, it cannot save Scotland completely.

Johann Lamont: Can I assume from what Christina McKelvie has said that she thinks that the bill should continue, regardless of whether there is a deal?

Christina McKelvie: The bill is in place today in order to ensure that we get a deal. [*Interruption.*] If we do not get that deal, we have to protect the Scottish Parliament. I also have to say that neither David Mundell nor David Lidington give me any reassurance that we will get a deal, so we need the continuity bill in order to protect this Parliament's power and its place in our nation. Let us make no mistake: the very ethos behind the reconvening of the Scottish Parliament is now under threat, which would have horrified Donald Dewar.

Theresa May does not seem to know from one day to the next what she is trying to put in place; she has no idea and is riddled with contradictions. She wants Brexit, but she does not want a hard border in Ireland. I am sorry to say that those are mutually exclusive positions. She cannot have a UK imperialist cake and eat from the EU cake. She needs to recognise that there are 27 other countries in a long-established entity that want to protect their own interests rather than indulge the UK's.

While Theresa May continues her lament for British imperialism, we need to make sure that we understand what she might do next—which will be no mean feat. The message that we got last week was that if the Scots will not do what they are told, she wants the ability to pull back devolution, tell us that we have all been bad children and put us on the naughty step—perhaps forever. She cannot decide what to do about anything, and totally rejects any concept that might irritate her Brexit fanatics including Jacob Rees-Mogg, Boris Johnson and the Democratic Unionist Party, but that does not mean that she will not act. It means only that she will almost certainly make the wrong decisions. In some senses, she is as much a hostage as Scotland. Her position is dictated to her by others; she is the proverbial puppet on a string.

Brexit is not just about economics and trade—I am fed up of hearing about those—but is also

about the profound impact on our rights. Leaving the EU will deprive us of the benefits that have been guaranteed to us by the EU through the European charter of fundamental rights, which came into effect in December 2009. The charter guarantees a far wider range of rights than the UK's Human Rights Act 1998. For example, it prohibits all discrimination based on sex, race, colour, ethnic origin, religion, disability, age and sexual or gender orientation. It also guarantees access to healthcare and provides the valuable environmental protections that we all need.

I am profoundly concerned that people who voted for Brexit did not realise that they were voting to limit or lose altogether our rights at work, including reasonable working hours and holiday leave, rights under the European Court of Justice, rights to pregnancy and maternity leave and a host of other protections that seem set for the bonfire of EU regulation that will follow Brexit.

Vernon Bogdanor, who is a professor of government at King's College London and author of "Brexit and our unprotected constitution", said:

"Last autumn, two employees sued foreign embassies for unfair dismissal, failure to pay the minimum wage and holiday pay, and breaches of Working Time Regulations. One embassy claimed immunity under the State Immunity Act but the Supreme Court overruled."

We could lose those rights. Opportunities to access that additional power of justice will vanish on Brexit day, which makes me angry and alarmed. Brexit will reduce the rights and protections that are given by the European courts. People will lose their automatic EU right to healthcare elsewhere in Europe on the same terms as the local population—a broken leg in Benidorm will become an extremely expensive business.

The Conservatives' notion that there is no threat is utter fantasy, since their leader seems to have no idea what rights to guarantee or how to do so. Human, consumer, children's, employment, equality and disability rights are just some of those that will be lost post-Brexit. I am not inclined to assume that the outcome will be in line with our current deal. As John Major remarked last week, there can be no Brexit outcome that will be as good as the package that we already have by being in the EU. I hear nothing from the Conservatives that gives me reassurance; what I hear gives me a lot of anxiety and an ever-increasing sense of doom.

What does give me reassurance is our Lord Advocate and his detailed, considered and thought-out determination. Further, as my colleague Michael Russell highlighted last week, we might ultimately not need the continuity bill, but he has also made it clear that the legislation needs to be put in place fast to avoid the danger of the

unguided rickety Westminster train passing a bill when it is too late for us to do anything to protect the position of the Scottish Parliament. That would leave a Westminster Government able to decide suddenly to repeal the entire devolution package, and we could see Scotland being spun back under Westminster's rule and silenced. That is unthinkable. We must have the continuity bill, so I urge my colleagues to support the general principles of the bill at 5 o'clock.

15:19

Jackson Carlaw (Eastwood) (Con): I start with a word in defence of the reputation of Mary Berry. I say to Mr Findlay that, were she to bake it, it would be a custard tart and not a custard pie. She currently has a series on BBC One about her classic recipes for people who find cooking challenging. He would do well to watch it; I only wish that she had a series on Brexit for him to watch, as well.

Neil Findlay: Will the member take an intervention?

Jackson Carlaw: I will maybe do so a little later. I fear that there is not much that Neil Findlay can tell me about baking.

I remain an optimist. When Adam Tomkins and I look at the same glass of water, he will see it half empty and I will probably see it half full. Neither of us is right or wrong, so I want to be slightly more generous and say that I continue to believe that it is the endeavour of ministers to secure an agreement that will render the continuity bill unnecessary. Why do I want to continue to believe that? It is because the Deputy First Minister and Mr Russell have both told me that that is the case. That is why I think that the preferable option is that an agreement is struck and so the bill does not proceed.

It is worth going back to September when Mr Russell came to the chamber and sought the support of us all, in looking at the European Union (Withdrawal) Bill that had been published, and accepting—as we subsequently all did, as Mr Crawford acknowledged—that clause 11 is unacceptable. There was unanimous consent across Parliament that that is so, and that an amendment was needed. Conservative members have joined others in the chamber in their frustration that such an amendment has not yet been developed—for changes of ministers, or whatever reason—and that discussions have not yet led to a conclusion.

However, it is not fair that—as some members have characterised the situation and as others might like to characterise it—there has been absolutely no progress in the negotiations: rather, they have led to significant progress between the

two Governments. We remain obstructed on a key point, which the First Minister identified in Parliament last week as revolving, in essence, around a fundamental and hugely important clause, and a particular word—whether this Parliament gives its consent or is consulted on the frameworks, and on disagreements within the frameworks, that might arise. I would like to come back to that point.

I hope that in the discussions that will take place this week and ahead of—or, at the very latest, on—14 March, when the Prime Minister and the First Minister will, I hope, meet as scheduled, an agreement that builds on the work of both Governments can be found to resolve the debate that remains over that fundamental clause, so that the continuity bill need not proceed. Although I believe that that is the objective of ministers, I do not believe that it is necessarily the objective of all members. Patrick Harvie, for example, expressed again today his naked and unvarnished prejudice against Westminster, and there is a desire among some members not to see agreement but to see the “legal confusion” bill, as Mr Tomkins called it, as the preferred option.

Patrick Harvie *rose—*

Jackson Carlaw: Perhaps I will give way in a minute. I do not think that Mr Harvie is alone; some SNP members also feel that way. Even on the front bench, Roseanna Cunningham, through her exhortations, her expostulations and her body language during the debates has given the impression that she would prefer no agreement to be reached and for the continuity bill to be the preferred route forward for the Scottish Government.

The Deputy First Minister and Cabinet Secretary for Education and Skills (John Swinney): I take Mr Carlaw back to where his speech got accurately to the problem in the negotiations. On resolution of the problem, it has to be considered whether it can be resolved in a fashion that protects devolution or undermines it. That is what the SNP Government is concerned with advancing. Does Mr Carlaw accept that the United Kingdom Government must also determine on that question?

Jackson Carlaw: I will come to that point. There are 111 powers in question. It is not unreasonable to say that they are powers that the SNP prefers, in principle, would never again cross the channel to these isles, but would instead be left permanently in Brussels's hands, and not in the hands of this Parliament or Scottish Government ministers. Those 111 powers have been narrowed down to a series of powers that require to be covered by framework agreements.

On consent and consultation, I understand the anxiety of the Scottish Government about the word “consultation”, but I hope that it can understand the anxiety of others about the word “consent”. “Consent” implies a veto, and not just one veto, but three—those of Wales, Northern Ireland and Scotland.

The Westminster Government, which is charged with the sovereign responsibility of protecting the single market across the UK, on which so much depends, cannot agree to an arrangement whereby any one of four parties could exercise a veto over something as fundamental as the internal working of the single market across the UK. Therefore, it cannot and will not agree to the word “consent”. Urgent talks are taking place this week and in the run-up to the meeting on 14 March, but it must be understood by Scottish Government ministers that the word that they are seeking is as unacceptable to the UK Government as the word that the UK Government has used to date is to them. Therefore, both sides must approach the final discussions with the greatest possible imagination, and must resolve to reach agreement.

John Swinney: Does Mr Carlaw acknowledge that the constitutional structure of the UK is fundamentally different because of what the UK Parliament has legislated for with devolution? His argument is that, ultimately, there is no role for the Scottish Government to exercise proper devolved competence, where that competence has been legislated for in the Scotland Acts. We have a right to protect that.

Jackson Carlaw: I have not said that. I have said that the agreement that must be reached over the next few days must be one that both Governments engage in. They must understand that there are wider issues at play. The Westminster Government cannot and will not accept the prospect of our arriving at a point at which any one of four Governments could paralyse the internal market in the UK by refusing to give consent to something as fundamental as animal welfare rights across the kingdom.

My fundamental concern is that the continuity bill is adding confusion and consuming the narrative that is needed for agreement to be reached. I believe that those discussions should be the primary focus of all ministers in Scotland and at Westminster over the next 10 days. It is urgent that the issue be resolved. Otherwise, as Adam Tomkins said, the devolution settlement, which we all want to be protected, will be undermined inadvertently by actions that I think could be far reaching in their consequences for this Parliament.

15:27

Alex Neil (Airdrie and Shotts) (SNP): I start by agreeing with Jackson Carlaw on two fundamental principles, with which I think that everybody in my party agrees. The first principle is that getting an agreement between the Scottish Government and the UK Government would be the best solution for everybody. As a back bencher, I was under the impression that that was the direction that everybody was trying to head in. The second principle is that we all agree that, whatever those arrangements are, they should not pose any threat to the integrity of the UK single market. That does not apply only in a devolved settlement. I would argue that, if and when Scotland becomes an independent country, we would need arrangements between an independent Parliament in Edinburgh and the Westminster Parliament to protect the integrity of the UK single market.

Therefore, it is in the interests of everybody on our side of the argument as well as of everybody on the Conservatives’ side of the argument to try to get agreement, but there is a problem. Until last weekend, I thought that everybody was striving for the same objective that Mr Carlaw wants and that we want: to reach an agreement and to do so in the next few days, because time is beginning to run out. However, I then saw a Downing Street briefing—which did not appear in only one or two newspapers; it is clear that it was a fairly wide briefing—that said that the Tory UK Government was intent on “freezing” the powers of the Scottish Parliament, which meant not devolving the outstanding 25 powers. It is clear that that briefing was given fairly universally, and it must have been given by people who do not share the same objective that Jackson Carlaw and I share. That briefing does not help the situation one iota.

During his speech, Jackson Carlaw suggested that it might have been a change of ministers that was responsible for the delay. I presume that he was referring primarily to the loss of Damian Green, who I think got this, and who was replaced by David Lidington, who, to be fair, has no experience of such matters in his ministerial background. My worry is that this is not just about a change of ministers. That briefing on Sunday suggested a change of policy by the UK Government, which has dug in its heels and decided that we are not getting the 25 powers.

This is where I come to Adam Tomkins’s speech, in which he referred to contradictions and incoherence. I say to Mr Tomkins that there is incoherence in his own position, and it lies, as he pointed out in his speech, in the fact that the Scottish Tory group and party signed up to the unanimous decision taken by this Parliament that, after Brexit, all 111 powers currently in Brussels should be devolved to the Scottish Parliament,

where they belong. I thought that we had unanimous agreement on that point, but it would appear that we do not.

This is all about those outstanding 25 powers. The bill is nothing to do with whether people voted for or against Brexit; it is about Brexit's implications for the Parliament's powers.

Johann Lamont: Will the member give way?

Alex Neil: I will, in a minute.

It is very clear to me that there is a way forward if everybody is prepared to be reasonable and if there is no change in policy in the way that there might have been in London. Basically, we need to agree on two things, the first of which is that the outstanding 25 powers be repatriated along with the other 86 from whence they came under the law on devolution. Those powers are devolved; they belong to this Parliament; and they should come back here.

In return, however, we need to give reassurance—and this is where, I think, Jackson Carlaw has got it wrong when he suggests that the word “consent” means “veto”. I am sure that the minister will clear this up in his winding-up speech, but I do not think that that is what he intended, and I do not think that it is the correct interpretation. However, there has to be a quid pro quo in the form of some kind of dispute resolution procedure. If it is believed that a particular measure taken by a devolved Government—or a Westminster Government—is going to adversely affect the integrity of the UK single market and if agreement cannot be reached politically on the matter, it must be resolved, eventually, through some agreed dispute resolution procedure.

I do not for the life of me know why that poses such a major problem to the UK Government. I am old enough, unfortunately, to remember the original devolution bills that were presented by the Wilson and Callaghan Governments. They contained no tax-raising powers, but there was a proposal for a joint exchequer board; moreover, the fiscal framework signed by Mr Swinney two years ago includes a joint fiscal committee, the purpose of which is to iron out differences without having to go to the Supreme Court as final arbiter. If the UK Government still genuinely intends to reach agreement, as I am absolutely convinced that our party and Government do—I know that Mr Tomkins thinks otherwise—all reasonable people should be able to come together and reach an agreement that we can all sign up to. That, at the end of the day, is what the Scottish people want.

With your permission, Presiding Officer, I will take Ms Lamont's intervention.

The Deputy Presiding Officer (Christine Grahame): I am afraid not. I think that Ms Lamont is actually down to speak. Are you, Ms Lamont?

Johann Lamont: No.

The Deputy Presiding Officer: In that case, I will allow the intervention, because I would like to hear what you have to say.

Johann Lamont: I have been mesmerised by the member's contribution.

Mr Neil says that there is come and go on this question, but is he concerned by the suggestion being made by some that the bill's purpose is to protect Scotland from Brexit? On that reading, it is more than simply a bargaining chip to encourage the UK Government to come back to the table.

The Deputy Presiding Officer: Briefly, Mr Neil.

Alex Neil: My view is very simple. The purpose of the bill is to protect the devolved settlement, full stop. It has nothing to do with Brexit per se. It is about protecting the devolved settlement. If the kind of solution that I have outlined is implemented, it will do exactly that.

15:35

Claire Baker (Mid Scotland and Fife) (Lab): It is fair to say that this is unlike any stage 1 that I have participated in during my time in Parliament. We usually have a few weeks in committee to hear important evidence, a chance to question the minister and the time to consider a detailed report, which is then recommended to Parliament. With this bill, we have not had the time to pause or catch our breath. That leads to legitimate concerns about effective scrutiny. No one wants the Parliament to pass poor legislation that can lead to more problems than solutions and can have unintended consequences that can cause future difficulty.

I appreciate that efforts have been made to address some of my concerns. A number of committees, including my own, are taking evidence on the bill this week and next week. I understand that the official report will concentrate on the committee evidence sessions to ensure that they are available to all members as soon as possible. It has also been helpful to consider the evidence previously taken by the Finance and Constitution Committee on the UK Government's EU withdrawal bill.

I welcome the minister's commitment to providing briefings but, so far, they have largely been a summary of information that we already know. I hope that we get more substance in the future. We have the policy memorandum, but the Government needs to be more transparent about where the points of contention with the UK

Government are. I recognise that the minister wants agreement from other partners on this, but MSPs would benefit from knowing more about where the disagreement lies. The UK Government's assurances are unconvincing, but we need to know more detail about the dispute.

I am most grateful to the Law Society of Scotland for its briefing in advance of the debate. It identifies a number of areas in which greater clarity is required. The bill before us mirrors the EU withdrawal bill but, as the Law Society identifies, it replicates many of the issues that affect the EU withdrawal bill. The Law Society describes the Scottish bill as sharing the challenges of being complex, often difficult to interpret, and sometimes lacking clarity. We should take this opportunity to alter the bill and look at ways of improving it.

Today's report from the Delegated Powers and Law Reform Committee echoes some of the issues highlighted by the Law Society. Section 13.1 of the bill is described by the Law Society as

"a significant power to implement laws in Scotland corresponding EU Law even if that EU Law is effective after exit day."

The committee has questioned whether it is not more appropriate for that to be done through primary legislation. I note that the minister has today said that it is appropriate for the power to be in the bill, but I anticipate that we will return to that at stage 2. There are serious concerns that parliamentary scrutiny would be lacking in areas where it is necessary.

In highlighting section 10, "Interpretation of retained (devolved) EU law", the Law Society identifies one of the challenges of this whole situation when it argues that section 10 does not reflect what was agreed in the 2017 joint agreement in December. The Brexit process is very fluid, but it is important that the legislation is accurate. Perhaps the minister could comment on those points in closing.

It should not be necessary to have the continuity bill before us, but the task that we have today is to agree the general principles. Does it achieve what it sets out to do? It aims to provide continuity for EU law that is currently operating in devolved areas, to give ministers powers to ensure that devolved law continues to operate effectively, and grants powers to enable devolved laws to keep pace with EU law after exit. It is one stop on the Brexit journey, but we should not forget that accepting this principle was a small victory, giving a degree of continuity and recognising the strong ties with our legal, social and environmental laws. Whether those measures are achieved through this bill or the UK bill, they are essential and need to be supported.

The bill before us is as much about context as content, and the consequences of pursuing the bill are much wider than the legislation. This is probably the first time that Parliament has considered a bill on which, although there is a great deal of disagreement, there is agreement that it would be better if the bill became redundant. The next few weeks are crucial if an agreement is to be reached.

One of my first roles as deputy convener of the Culture, Tourism, Europe and External Relations Committee was to meet representatives from the House of Lords committee, along with Welsh committee colleagues, to share our serious concerns about clause 11 and its implications for the devolution settlement.

It is clear that the withdrawal bill as it stands is not compatible with devolution, does not respect the devolution settlement and could not command the support of the devolved Parliaments. However, the UK Government's intransigence has led us to this position. There was acceptance that there needed to be changes to the bill, but they have not been forthcoming. The Conservatives are incoherent on the issue. Reaching stage 1 on the continuity bill cannot be a surprise, as the issue has been unresolved for months. The lack of action from the Conservative Government brought Labour at Westminster to propose amendments to introduce a presumption of devolution, a principle that is widely accepted. In not accepting Labour's amendments, the UK Government said that it would propose its own amendments to protect the devolution settlement. However, it has delayed, prevaricated and come up short, meaning that no deal has been reached and time is now running out. I therefore urge the UK and Scottish Governments to work as hard as they can to reach an agreement.

The Law Society argues that there is a public interest in the Scottish Government and the Scottish Parliament publishing the legal advice that they have received on the legislative competence of the continuity bill. These are exceptional circumstances, as the Parliament is prepared to advance with a bill that does not have the confidence of the Presiding Officer. It is a matter to be taken seriously and one that I believe justifies sharing the legal advice.

15:40

Tom Arthur (Renfrewshire South) (SNP): This year marks the 20th anniversary of the passing of the Scotland Act 1998, an act that gave effect to the overwhelming wishes of the Scottish people as expressed in the devolution referendum of the preceding year. As such, it carries with it a weight and political legitimacy that is perhaps more normally associated with a written constitution.

Although devolution has been and remains a process, the existence of the Scottish Parliament is the settled will of the Scottish people.

For my own and subsequent generations—I say this as the first member to speak in the debate who was not old enough to vote in the devolution referendum—this Parliament has been and remains a permanent fixture of adult life. It is the centre of Scottish civic and political life; indeed, that view is held by a majority of people in Scotland, as reflected in surveys of public opinion. Consequently, any proposed changes to the competences of this Parliament are of a fundamentally different category to any other matter that comes before us in this place for consideration.

As things currently stand, the UK Government's European Union (Withdrawal) Bill presents a challenge to the powers and legitimacy of the Scottish Parliament that are unprecedented in the 19 years since it was reconvened. That the powers of this Parliament are under threat is not in dispute. The Parliament's Finance and Constitution Committee reported with unanimity that the proposals contained in clause 11 of the withdrawal bill as introduced by the UK Government are

“incompatible with the devolution settlement in Scotland”

and fail

“to fully respect the devolution settlement.”

It remains the case that the best way to remove this threat to Scotland's devolution settlement is for clause 11 to be amended to the satisfaction of the Scottish Parliament and legislative consent to be subsequently granted for the withdrawal bill. That represents the most efficient and elegant solution to the current constitutional impasse. However, that can be achieved only if the UK Government grasps that the debate fundamentally concerns a matter of principle, namely that decisions regarding powers devolved to this Parliament must remain with this Parliament.

Daniel Johnson (Edinburgh Southern) (Lab): Will the member give way?

Tom Arthur: I want to make a wee bit more progress.

An agreement should be achievable. However, the actions of the UK Government since June 2016 do not give cause for optimism. Meetings of the JMC have often been irregular; assurances of a joint approach ahead of article 50 were shown to be hollow, with the UK Government's position presented to the devolved Governments as a fait accompli; and amendments proposed by the Scottish and Welsh Governments that would have allowed legislative consent were dismissed by the UK Government. From that long, dismal sequence

of repeated rebuffs, it is clear that the UK Government does not view the UK as a “partnership of equals”, as Theresa May once described the relationship between the UK and the devolved Governments. Rather than Scotland being invited to lead the UK, the UK Government now seeks to impair the Scottish Parliament's ability to lead Scotland.

Although time does remain for an agreement between the Scottish and UK Governments to be reached, we are running out of track, as the withdrawal bill will shortly enter its concluding stages at Westminster. It is therefore incumbent on the Scottish Government and Scottish Parliament to make preparations for all eventualities.

The introduction of the UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill represents a correct and proportionate contingency measure in the event that agreement is not reached. It is correct in that it will enable legal continuity post-Brexit and safeguard the powers of this Parliament. It is proportionate in that it contains a mechanism for its own repeal should agreement on clause 11 be reached between the Scottish and UK Governments.

I come to the timing of the introduction of the continuity bill. Had it been introduced prematurely, the Scottish Government would no doubt have been criticised, with perhaps some justification, for attempting to prejudice the outcome of negotiations with the UK Government. However, the bill has been introduced as late as reasonably possible when account is taken of both the four-week lying period prior to royal assent that the bill would face if enacted and the earliest date that the withdrawal bill could be passed at Westminster.

Presiding Officer, as this is a stage 1 debate, we are being invited only to approve the general principles of the continuity bill. However, I wish to state that I recognise the legitimate concerns of members regarding scrutiny. I therefore welcome the work of both the Delegated Powers and Law Reform Committee and the Finance and Constitution Committee, which is already under way. I further welcome the formal role for the Finance and Constitution Committee at stage 2. This process is, of course, not ideal, but nothing in the entire Brexit process can be described as ideal.

This is a bill that I would rather we were not required to consider. I voted remain, along with the majority of my Renfrewshire South constituents and the overwhelming majority of the Scottish people. Being stripped of our European Union citizenship against our will is an offence to democracy in Scotland. To be faced with a UK Government seeking to strip powers from this Parliament is intolerable.

The Finance and Constitution Committee was clear that

“Clause 11 represents a fundamental shift in the structure of devolution”.

The clause is “incompatible with” and “fails to fully respect the devolution settlement”.

and the committee is not in a position to recommend legislative consent on the withdrawal bill. The fundamental issues that led to the committee reaching those conclusions have not, as of yet, been resolved.

If, ultimately, we must withhold legislative consent, we will require our own legislation to safeguard this Parliament’s powers and ensure the stability and continuity of our laws after Brexit.

It is on that basis, and with regret that we find ourselves in this situation, that I support the general principles of the UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill.

15:47

Maurice Golden (West Scotland) (Con): In 1997, the people of Scotland voted to establish a new Scottish Parliament. Like Tom Arthur, I was not old enough to vote in that referendum, but I have the utmost respect for the institution that it created.

Neil Findlay: Will the member give way?

Maurice Golden: I would like to make some progress, Mr Findlay.

It is the Parliament that have we the honour of serving in. It is a Parliament that should ensure that Scotland prospers. It is a Parliament that respects the law that created it and which acts in accordance with both customary and codified legal practice.

What we have before us today, Presiding Officer, is a bill that fails in every respect. It is outwith the competence of this Parliament, it is poorly constructed, it will not be properly scrutinised, it risks Scotland’s prosperity and it is a salacious attempt to launch a second independence referendum campaign.

Michael Russell: The member said a moment ago that the Government had breached the law with this bill. Could he explain that more fully? According to the law as it stands and the practice of this Parliament, the Government is quite entitled to bring in this bill, even if there is no statement from the Presiding Officer. What law has been breached? If no law has been breached, perhaps he will withdraw that allegation, as it would be untrue.

Maurice Golden: The bill is outwith the competence of the Parliament, and if the minister

reads the *Official Report*, he will see that I did not make the remarks that he suggests. However, this is a bad law that is badly constructed and which will end badly for Scotland.

If the SNP is prepared to ride roughshod over the Presiding Officer and the devolution settlement in this case, what is to stop it doing so again? Just last year, Nicola Sturgeon tried to force through another independence referendum against the will of Scots. It was only when the Scottish electorate sent a clear message to the SNP at the general election that she was forced to take a pause on a new independence referendum. When will that pause be over? The truth is that the SNP is using wildcat legislation on Brexit as a dry run for forcing an emergency second independence referendum bill.

Michael Russell: Will the member give way?

Maurice Golden: I would like to make some progress—[*Interruption.*]

The Deputy Presiding Officer: Please sit down, minister.

Maurice Golden: As a result, this is not a serious bill of law from a sober-minded Government; it is a Scottish National Party pamphlet masquerading as legislation. It is a classic piece of SNP theatre: take an issue, stir up grievance and force a confrontation with the UK Government.

The Minister for Social Security (Jeane Freeman): Will the member give way?

Tom Arthur: Will the member give way?

Maurice Golden: Scotland, along with the rest of the UK, is leaving the EU. [*Interruption.*]

The Deputy Presiding Officer: Please sit down, Mr Arthur. I would like to hear what the member has to say, please, even if you disagree with it—that is democracy. Please proceed, Mr Golden.

Maurice Golden: Scotland, along with the rest of the UK, is leaving the EU and we must be prepared. There is a mechanism already in place to make sure that we are—the UK Government’s withdrawal bill.

There are challenges to overcome, which have been recognised, before this Parliament can grant its consent, but progress has been and is being made when the British and Scottish Governments sit down, talk and tackle the issues head on. That is the way in which we ensure that Scotland and the rest of the UK benefit from Brexit. That is the way in which we ensure that this Parliament secures new powers. That is the way in which we ensure that the interests of the Scottish people are served.

A barrel load of powers will be devolved to Scotland. That is something that I welcome.

Jeane Freeman: Will the member give way?

Clare Haughey (Rutherglen) (SNP): Will the member give way?

Maurice Golden: I give way to Clare Haughey.

Clare Haughey: I thank the member for taking the intervention. Can he list the new powers that are coming to this Parliament?

Maurice Golden: Aviation noise and 85 other powers will be coming. We could publish them if Clare Haughey's Government had not decided to block that.

A barrel load of powers are coming. If we compare the two Governments, we see that the UK Government is committed to giving more powers to this Parliament than the SNP Government is. The SNP Government is hell-bent on answering to its European masters—the Brussels bureaucrats who want to give away all of Scotland's powers.

We are presented with a continuity bill, but it offers no continuity, only chaos. We are told that it must be treated as emergency legislation, but no matter how much the SNP claims that to be true, there is no emergency. It will be more than a year before the UK leaves the EU, and yet the SNP would have us believe that we must steamroller the bill through Parliament in a matter of weeks.

Michael Russell: Will the member give way?

Maurice Golden: I am in my last minute.

Why the rush? There is only one reasonable answer to that question—to avoid scrutiny. Whenever a Government tries to avoid scrutiny, it cannot be said that it is acting in the public interest. What does it have to hide? Again, there is only one reasonable answer to that question—it wants to hide the fact that it does not want negotiations with the UK Government to be successful.

I will end on a more positive point. Cool heads must prevail. There is no time for putting party before country with constitutional games. *[Interruption.]*

The Deputy Presiding Officer: Calm down, calm down. I would like to hear the speaker's concluding words, even if other members would not. Have you concluded, Mr Golden?

Maurice Golden: Not quite yet, Presiding Officer.

The Deputy Presiding Officer: One more sentence, Mr Golden.

Maurice Golden: An avenue is open to the SNP to secure a good deal for Scotland, but this bill puts it at risk. The SNP must get round the table with the UK ministers, discuss, debate and do a deal. That is what Scotland needs and that is what the SNP Government must deliver.

15:54

Stuart McMillan (Greenock and Inverclyde) (SNP): I will try to take us back to the real world, after that speech.

I reluctantly welcome the bill and will vote for its progress at 5 pm this evening. I will explain why I said "reluctantly". This Parliament is in a situation that is not of its own making. If the UK Government were not acting like a petulant child, an agreement to safeguard the powers of this Parliament would be reached. However, a power grab is well and truly under way.

Our constituents need to realise that by introducing the legal continuity bill, the Scottish Government is trying to deal with the crisis that is being wrought on this Parliament and Scotland by the Westminster elite who are again marching to the beat of the Democratic Unionist Party drum, alongside the 60-plus Tory MPs who have a vision of a hard Brexit.

It is clear that the UK is in crisis and is being mismanaged. The lack of detail and vision thus far from the Prime Minister about the UK when it is out of the EU shows her contempt for the entire UK population. When the unelected House of Lords becomes the voice of reason at Westminster—with its Constitution Committee warning in January that although the UK Government's European Union (Withdrawal) Bill is necessary to ensure legal continuity after Brexit, it has fundamental flaws in its current state—it is obvious that the UK is up a creek on a piece of scrap wood, without a paddle or even a boat.

That is why the Scottish Government's continuity bill is necessary. It aims to bring stability to the Scottish economy post-Brexit. This Parliament has often heard about the need for stability and planning on a wide variety of issues. We hear that from the Opposition parties, year after year. The business community wants such stability, to help it to plan, pre and post-Brexit.

That is a commonsense approach. It is also the approach that was called for by representatives of the British Irish Chamber of Commerce, whom members of the Culture, Tourism, Europe and External Relations Committee met just over a month ago in Dublin. The business community in Ireland is looking at what is required to assist the Irish economy. It is planning, as best it can, so that it can deal with the fallout from Brexit. The UK Government, on the other hand, is dithering

overall while attempting a power grab at the expense of this Parliament.

Our Parliament's influential Finance and Constitution Committee published a unanimous report on the withdrawal bill. In paragraph 39 of that report, it said:

"The Committee is of the view that Clause 11, as currently drafted, is incompatible with the devolution settlement in Scotland."

In paragraph 40, the committee said that "a Continuity Bill", with

"a reduced timetable for parliamentary scrutiny",

was "highly likely".

The committee's report was published on 9 January, and the work to produce it was undertaken in 2017, so it should have come as no surprise to anyone, let alone any member of this Parliament, that a continuity bill would be introduced if the UK Government continued to treat Scotland as a second-class citizen.

In paragraph 36 of its report, the committee said:

"The Committee welcomes the recent progress which has taken place ... and notes the recent statement ... by the Secretary of State for Scotland that the UK Government intends to table amendments to Clause 11."

The amendments are not here. They were not tabled in the Commons and thus far they have not been tabled in the Lords. It was a shame that Mr Tomkins, in his speech, tried to defend his colleagues down in London, because when he and I were at a meeting in London only a month ago, he was defending this Parliament and defending Scotland.

That the UK Government has reneged on its position will come as no surprise to some people but is clearly embarrassing for some members of this Parliament. If—even at this late stage—the UK Government tables amendments to its bill that are agreeable to the Scottish Government, the Scottish continuity bill can be removed, as the Scottish ministers have indicated. If the continuity bill has already been passed, section 37 will be enacted, as Mr Russell again made clear when he gave evidence to the Delegated Powers and Law Reform Committee yesterday.

Mr Russell's evidence yesterday was helpful, and his letter to the DPLR Committee last night, which followed up points that were raised in the committee, was useful and demonstrated the Scottish Government's level of engagement with the emergency procedure.

Some people think that the emergency procedure is unnecessary. They are entitled to their view. However, as the minister indicated in his letter, the withdrawal bill is scheduled to be

passed in May so that secondary legislation can start to be made and laid in Westminster, to make full use of the period before the UK is due to leave the EU. It is therefore a commonsense approach for the Scottish Government to work in tandem with that process to ensure that this Parliament is not left behind. I am quite sure that there would be a wall of noise from Opposition members if the Scottish Government did not act in Scotland's interests in this matter. Therefore, it is absolutely necessary for the bill to be dealt with as emergency legislation.

Secondly, as I touched on earlier, the continuity bill should not have been a surprise to anyone. Indeed, the Finance and Constitution Committee highlighted the possibility of the bill coming. In addition, the Scottish Government has shown a huge amount of patience towards the UK Government and given it ample time to get its act together to amend the European Union (Withdrawal) Bill. The fact that the Welsh Government has also introduced a continuity bill—the Law Derived from the European Union (Wales) Bill—shows that this is not just a Scotland versus Westminster issue; it highlights the arrogance with which the UK Government treats Scotland and Wales in this unequal UK.

The differing legal statements from the Lord Advocate and the Presiding Officer have clearly opened up a line of questioning from all those with an interest in the continuity bill. Professor Aileen McHarg, Dr Christopher McCorkindale—

The Deputy Presiding Officer: You must conclude there, Mr McMillan. Thank you very much. I will take the same approach with everyone from now on.

16:00

Rachael Hamilton (Ettrick, Roxburgh and Berwickshire) (Con): Ironically, the best advice in an emergency is to never panic. The SNP has reversed that advice and allowed its panic to invent an emergency. We should be absolutely clear that this is not an emergency; it is the SNP deliberately trying to railroad through legislation and create a crisis where there is none.

Ash Denham (Edinburgh Eastern) (SNP): Will the member take an intervention?

Rachael Hamilton: I will, but I will first make a little bit of progress.

It is the result of a muddled SNP Government. First, it is still battling with the reality that the United Kingdom has voted to leave the European Union. The SNP will cry that Scotland did not vote to leave. Neither did I, but here I am accepting the democratic decision.

Ash Denham: The member's speech is a combination of the comments that I have heard from Conservative members so far today. I am very much enjoying the attempt to characterise the continuity bill as solely being an SNP construction. Will the member explain why the Welsh Government, which is a Labour Administration, is doing exactly the same thing?

Rachael Hamilton: It is clear that we all want the devolved powers to come back to the Scottish Parliament, as the Welsh Government wants its devolved powers to come back to the Welsh Assembly. However, the Welsh have a different devolution settlement from ours. Their situation is different; we cannot compare apples and pears.

The SNP seems to have a funny attitude to democracy. It has spent months claiming that devolution itself is under threat and months claiming every insult and injury. That is nonsense. The SNP has insisted that it wants a deal with the UK Government, and the UK Government has co-operated by making movement in the negotiations. I send Mike Russell every good wish for tomorrow's JMC (European Union negotiations) meeting—I genuinely hope that the negotiations go well. However, after all the gnashing of teeth and energy spent in negotiations, introducing emergency legislation now beggars belief; it makes every SNP claim ring hollow.

SNP members will take any chance to say that Holyrood is being treated with contempt. What could be more disrespectful than rushing through emergency legislation? In doing so, it ignored the Presiding Officer's ruling. By ignoring the rules that define and defend our democratic process, the SNP can never again claim any credibility on protecting devolution.

Once again, we have an SNP Government that will force through legislation to get what it wants—and what this SNP Government wants more than anything else is a second referendum on independence. For once, the SNP must drop its ideological obsession and work together—as it says it wants to—with the UK Government to get the best out of Brexit.

Until the continuity bill came before us, we were agreed that respecting the devolution settlement that was created more than 20 years ago and protecting the integrated UK internal market were crucial. My colleagues and the SNP were even making progress on that front. This Parliament was united in its focus to deliver the best Brexit for Scotland. We had what people want: constructive working between Scotland's two Governments. Mike Russell concluded that a withdrawal bill is necessary. He said:

"our laws must be prepared for the day when the UK leaves the EU."—[*Official Report*, 27 February 2018; c 56-57.]

Christina McKelvie: Rachael Hamilton said that the Governments were working together and they were doing what people want them to do. I know that my constituents want to remain in the EU, so what does she mean by that?

Rachael Hamilton: The vote was not about Scotland leaving the EU but about the UK leaving the EU.

The bill, however, shows a retraction in the sentiment for working together—a step back from that constructive progress—and we should be clear that that was a choice made by the SNP. That choice has the potential to undo all that we have been working towards together—respecting the devolution settlement and protecting the integrated UK internal market on which our prosperity hangs.

This bill, as presented, threatens both those key objectives. I was pleased to hear the words from Jackson Carlaw and Alex Neil committing to achieving common objectives. Let us take the example of food labelling. We have to protect the needs of Scottish food producers and we must work with the UK Government and the other devolved Administrations to ensure that their markets are not affected by divergence, and that may require a common framework.

At the same time, the bill may be superfluous, because it cannot work before Brexit, as James Wolfe told the Scottish Parliament. He said:

"The bill does nothing that will alter EU law or undermine the scheme of EU law while the UK remains a member of the EU."—[*Official Report*, 28 February 2018; c 21.]

As we all know, rushed legislation will not get the best Brexit for Scotland. Rushed legislation, for which this SNP Government is famous—take the Land Reform (Scotland) Act 2016—never achieves what it sets out to do. Nor, as has been mentioned many times today, does it allow this Parliament to fully scrutinise the bill making a mockery of what we are elected and made responsible for. This emergency bill is a means to bypass parliamentary scrutiny and make the Scottish Parliament simply a rubber-stamping process for what the SNP demands, no matter how unnecessary or damaging it may be.

The reasons why this bill cannot be delivered are simple: it is unnecessary and rushed, damages Parliament, belittles our role as parliamentarians and is a result of the SNP's desire for constitutional chaos. The fact that we are leaving the EU in 2019 means that the powers will not come to the UK Government or the Scottish Government before that time, which cements the fact that the SNP's true intention behind the bill is to damage the Brexit process, undermine the Scottish Parliament and further its mission to break up Britain.

16:07

Fulton MacGregor (Coatbridge and Chryston) (SNP): As usual with the Tories, it is all talk and no action. Almost every Tory in this Parliament promised to stand up for Scotland and the interests of the people they claim to serve but, when the time came for action, they voted against proceeding with this legislation that will ensure that our Parliament is not stripped of powers when the day comes for the UK to leave the EU.

I, like the vast majority of members in this Parliament and at the UK level, campaigned to remain and, like others, I maintain my opinion that it would be better for Scotland to continue as a full member of the European Union. However, I also accept that, until the people of Scotland are given another opportunity to vote for independence, there is little I or anyone else can do to overturn the decision of the people of England to leave the EU. It is incumbent on all of us, as elected representatives, to fight for the best possible outcome for our constituents, and ripping Scotland out of the single market and the customs union would be a disaster. That is not just my opinion; it is what the leaked Brexit analysis for the Prime Minister said.

It is important to note that the Finance and Constitution Committee recently agreed unanimously that the Brexit bill, in its current form, is unacceptable to this Parliament and that legislative consent should be withheld, branding the bill

“incompatible with the devolution settlement in Scotland”.

Specifically, the UK Government has identified policy areas where the clause 11 restrictions would have effect in Scotland, such as, but not limited to, environmental regulation, licensing of fracking, land use and public sector procurement. It is good to hear that the Welsh Assembly has taken a similar view to ours and is calling for a similar bill to be sped through there to prevent a crisis on exit day. Regardless of what Rachael Hamilton says, it is a similar situation.

As it stands, the withdrawal bill would give UK ministers wide powers to make legislation in devolved areas, and make devolved ministers' secondary powers narrower in scope than those of the UK ministers and subject to constraints, such as a requirement for UK Government consent, that would not apply to UK ministers' powers. Additionally, the bill outlines that Westminster would no longer be required to legislate consistently with EU law but that devolved legislatures would.

The amendments that the Scottish Government put forward in response included bringing devolved ministers' powers into line with the UK, protecting devolution statutes from amendment by

secondary legislation under the withdrawal bill and requiring UK ministers to seek devolved ministers' consent before using secondary legislative powers in devolved areas.

The Scottish Government has made clear that the continuity bill is a back-up plan and, like Alex Neil, I believe that 100 per cent. Its preference is to support Westminster's Brexit bill, once an agreement is reached to drop the restriction on competence under clause 11. Furthermore, the Government has repeatedly indicated that it is possible to establish UK-wide frameworks through co-operation, and not when imposed by the UK Government with no respect for the devolution settlement.

Therefore, it would be an abdication of responsibility if everyone in this chamber sat back and hoped that the Prime Minister and the Secretary of State for Scotland will be willing or able to make the necessary changes to allow this Parliament to reasonably grant consent.

The Tories oppose the introduction of this bill while simultaneously agreeing that the Parliament could not possibly grant legislative consent to the Brexit bill as it stands. Their contradictory stance would have Scotland in a crisis situation when the time comes to leave the EU, with hundreds of laws relating to agriculture, fisheries and environmental protection suddenly disappearing. It is time for Ruth Davidson to show the leadership that she claims she can exert by getting her Scottish Tory MSPs and MPs to do what it says on the tin and stand up for Scotland.

EU agriculture policy covers market regulation, rural development, food law, animal health and quality policy for agricultural products. Without the passage of the continuity bill, withdrawal would create a major legislative and policy gap in those areas, leaving many aspects of the agricultural industry in flux. For example, payments are currently made to Scottish businesses under the common agricultural policy programme of voluntary coupled support to help beef and sheep farmers maintain the social and environmental benefits that their livestock bring. If the Tories have their way, we will leave those farmers with no domestic support post-Brexit. Therefore, the Scottish Parliament needs the jurisdiction to continue reviewing legislation that is specific to the interests of Scotland.

The continuity bill ensures that, as far as possible, EU laws that are currently in place will continue to be in force the day we leave the EU, providing our industries with stability and protection. It will also require UK ministers to seek devolved consent from Scottish ministers before making devolved legislation, preventing the obvious power grab coming from Westminster. Further, the bill provides a keeping-pace power to

allow Scotland's laws to continue and, where appropriate, to align themselves with EU law after withdrawal, and it gives the Scottish Government an enhanced role in scrutinising proposals for changes to laws as a result of withdrawal.

It is important to note that, despite the emergency treatment of the bill, which is highly justified, given the urgency of passing it before the withdrawal bill is passed, the bill is still being intensely scrutinised, and the Minister for UK Negotiations on Scotland's Place in Europe has offered to provide evidence to committees in the coming weeks, as he said earlier.

Finally, our fundamental rights as citizens are currently protected by EU law and, consequently, they are at risk due to Brexit. I think that it is particularly telling that Westminster chose not to include the European charter of fundamental rights in the withdrawal bill. That lets us know exactly what EU withdrawal will mean for rights and equality in the UK. Although the Tories might be fine with disregarding the rights of their constituents, we in the rest of the Parliament are committed to enshrining such protections in domestic law prior to our exit from the EU.

I urge the chamber to agree the general principles of the bill. I ask the Tory MSPs to go against their whip and stand up for those they represent.

16:12

Neil Bibby (West Scotland) (Lab): As others have said, the Scottish Parliament should not be having this debate. Despite differences about the UK leaving the EU, there has been a consensus across all parties in the chamber about the role and status of the Scottish Parliament and a common determination to protect it and its powers. However, as Neil Findlay has said, the handling of the withdrawal bill by the UK Government has been nothing short of a disgrace. It is a shambles. The fact that even the Scottish Conservatives argued for changes in the bill is testament to how bad the process has been up to now.

What is at stake here is not injured pride or bruised egos. What is at stake is the right of this Parliament to exercise in full its jurisdiction over those policy areas that have been agreed as being devolved and to have full authority on how decisions will be made on those devolved powers that are transferred back from the EU once the UK leaves. It is, therefore, a matter of profound disappointment and regret that we are having this debate. As Neil Findlay also said, the Scottish Labour Party believes that the Tory UK Government should, as a matter of urgency, bring forward amendments to its bill so that we can avoid having to consider other alternatives.

In the meantime, the challenge for us is to consider what those alternatives might be. The conflicting legal opinions that have been expressed by the Presiding Officer and the Lord Advocate illustrate the complexities of the issues and highlight the potential for this bill to be challenged in the courts. We are in uncharted territory, and it is not comfortable to be in a situation in which this Parliament disagrees with advice from its Presiding Officer.

Bruce Crawford: It is of course the case that any legislation that we pass in the Scottish Parliament can be challenged in court at any time.

Neil Bibby: I accept that, but we are not discussing just any legislation, and it is not usual for us to receive advice from the Presiding Officer that a piece of legislation is not competent.

We need to tread carefully and make sure that this unprecedented bill is being rigorously tested for competence, content and effect. Probably more so than for any other bill ever scrutinised by the Parliament, we need to demonstrate that it is not a political stunt or an overreaction to an incompetent and intransigent Tory Government.

As a starting point, it would be helpful if both the Presiding Officer and the Scottish Government were to publish their respective legal advice. The Law Society of Scotland has said that it would be in the public interest. This is an exceptional bill and these are exceptional times, and in these exceptional circumstances it is surely in the public interest that the relevant legal opinion is put into the public domain. The ministerial code makes it clear that that is allowed in exceptional circumstances. The Parliament should be able to reflect on the arguments both for and against the competence of the bill.

The Parliament is being asked to give legislation that is entirely without precedent the maximum scrutiny in limited time. In those circumstances, it is incumbent on the Scottish Government to cooperate with the Parliament and to provide the assurances that members require, before making an informed decision about the bill, particularly at stages 2 and 3. I asked the minister this morning about the 25 areas of disagreement over competence between the UK Government and the Scottish Government, which we are to understand are one of the principal reasons why the bill has been introduced, but the Parliament and the public still do not know what those 25 areas are. The minister hopes to provide that information in advance of stage 2, and he will raise the issue at the meeting of the joint ministerial committee tomorrow, as we heard earlier. However, as I told the minister this morning, I can see no reason why we should not have that information now, and before us today.

It is not just Scottish Labour members who are saying that. In evidence to the Finance and Constitution Committee this morning, Professor Alan Page described the Scottish Government's position as not satisfactory, and Dr Kirsty Hughes said that having knowledge of those 25 areas would be desirable. I therefore ask the Scottish Government to reflect on its position and to publish that information to the Parliament and, more importantly, to the public.

As has been discussed, section 13 of the continuity bill empowers the Scottish ministers to make provision corresponding to EU law following our exit. There has already been considerable debate about that section, which hands significant powers to the Scottish ministers. It would allow the Scottish Government to implement laws in Scotland that correspond to EU law even if that EU law takes effect after exit day.

There has been a lot of debate about that, and we heard evidence about it at the Finance and Constitution Committee this morning. The Law Society says that the section lacks clarity. Also earlier today, Professor Aileen McHarg of the University of Strathclyde alluded to the confusion about whether it is a keeping-pace power or whether it is included in the bill for some other reason that would be harder to justify. Another witness, Professor Page, warned that it amounts to a potentially major "surrender" by the Parliament of its legislative competence, and called it a "thoroughly bad idea". We should take heed of those serious warnings.

The UK Government's withdrawal bill has been rightly described as a power grab, not just because of its dispute with the devolved Administrations but because it could also allow the Executive to sideline the UK Parliament. Just as the role of Parliament must be respected by the UK Government, so too must the role of this Parliament be respected by the Scottish Government. The minister must listen and address the concerns that have been expressed about that section in particular as we go forward, and I was pleased to hear Patrick Harvie say that the Greens are open minded about amendments in that area.

Like other Labour members, I have reservations about the bill, about its rushed nature, about the limited time available for consultation and about the power that it would put in the hands of ministers rather than in the hands of the Parliament, but I will support the bill at decision time today.

We are in uncharted territory. Fundamental principles underpinning the devolution settlement are at stake. Doing nothing is not an option. If the UK Tory Government will not amend the European Union (Withdrawal) Bill to take account of the

concerns expressed by all parties, we must be prepared for that.

16:18

Kate Forbes (Skye, Lochaber and Badenoch) (SNP): I am never sure whether to declare this, but I probably ought to say that I am the parliamentary liaison officer to the Cabinet Secretary for Finance and the Constitution.

In last Thursday's debate, Johann Lamont commented that we have a tendency to forget the 1 million people in Scotland who voted to leave the EU. As a democrat, I have some sympathy with that view, not because I necessarily agree with those people but because I have a responsibility to represent my constituents. I am therefore pleased that this debate can unite all voters, because I also agree with Alex Neil that it is not about Brexit but about protecting the existing powers of this Parliament and the devolution settlement that people in Scotland voted for decisively in 1997—I will not tell anyone what age I was then.

As a democrat, I think that this Parliament is responsible for representing the wishes and aspirations of the people of Scotland. We have a responsibility to protect our country's interests and freedoms and to advance policies and strategies that make Scotland safer, fairer and more prosperous.

I also happen to think that that is what all of Scotland's 59 MPs of different parties should be doing, including the Secretary of State for Scotland, along with the Prime Minister. None of them should need to be convinced or persuaded to respect the devolution settlement, to honour their promises or to provide satisfactory answers on the economy, the long-term rights of EU nationals or the future border arrangements in Ireland, to name just three issues.

The challenge for all MSPs in dealing with the fallout from the Brexit vote is the sense of powerlessness, despite the best determined efforts of the Scottish Government. That Government has published several papers on Scotland's place in Europe and its public analysis has been far more comprehensive than that of the Government that is tasked with negotiating our future.

The Cabinet Secretary for Finance in the Welsh Assembly summarised the entire predicament by saying that clause 11 "rolls back devolution." He went on:

"It says that, for an indefinite period of time and to an extent that the UK Government cannot explain to us, powers that we have had since the start of devolution will be taken back to Westminster and, at some future date, eked back out to us."—[*Official Report, Finance and Constitution Committee*, 4 October 2017; c 8.]

Mr Tomkins and others have said that the bill is unnecessary, and perhaps it would be if his colleagues would get their act together, respect the fears in this Parliament and across Scotland and Wales for the devolution settlement and face up to the responsibilities of furthering the interests of this country and not undermining them.

There has been and continues to be an option for the UK Government to resolve what is unanimously accepted as being unacceptable. There were promises that Brexit would lead to more powers for Scotland, followed by promises to accept amendments to protect the devolution settlement. Regrettably, despite those promises, the UK Government first failed to lodge an amendment in the House of Commons and, although it has finally put a proposal on the table, that amendment would still allow the UK Government to restrict the Scottish Parliament's powers unilaterally through an order made in the UK Parliament. It is that, and not the continuity bill, that is putting everything in jeopardy.

The continuity bill will come into effect if the Scottish Parliament decides not to grant consent to the European Union (Withdrawal) Bill. The critical point is that not to have the continuity bill would be to abandon our collective responsibility—the responsibility of anybody who has ever been elected to the Parliament and those who will be elected in the future—to represent and further the interests and freedoms of the people of Scotland.

Tavish Scott mentioned the need for some UK-wide frameworks. The Scottish Government has always been clear that it accepts in principle the need for UK frameworks on certain matters, but what those frameworks cover and how they are governed must be decided only with the agreement of the Scottish Parliament. Under the devolution settlement and the terms of the way in which the nations of the UK operate together, it is not acceptable to rewrite that settlement and impose UK-wide frameworks in devolved areas without consent.

I finish where I started. There are disagreements about the rights and wrongs, the risks and benefits and the pros and cons of Brexit, and those will continue. However, this debate is about the cross-party agreement, inside and outside the chamber, that we have a responsibility as members of the Scottish Parliament to represent and further the interests of Scotland and we will not sign away that responsibility, no matter how temporarily.

16:24

Joan McAlpine (South Scotland) (SNP): Bruce Crawford hit the nail on the head when he asked the Scottish Conservatives whose side they

are on. He generously conceded that the Scottish Conservatives are now supporters of the Scottish Parliament, having been on the wrong side of the campaign to establish it in 1997. That campaign resulted in 74 per cent of people voting in favour of reconvening the Scottish Parliament, which is worth reflecting on when we consider the destruction that has been wrought on this country and, indeed, the whole of the UK, by 52 per cent of people across it voting to leave the EU.

Jackson Carlaw was deserving of Mr Crawford's generosity. In his speech, he said that he wanted the two Governments to reach an agreement. However, although his tone was conciliatory and measured, it concerned me that he equated the desire that the devolved Governments should consent to this intervention in their power with the desire for a veto. In my view, to describe consent as a veto is to coat the word in a veneer of hostility. I could not help noting that Michelle Ballantyne also used the word "veto" today, when she and I conducted an interview with ITV Border this morning. That suggests to me that, as Alex Neil said, a very hostile briefing that is deeply confrontational to devolution is emanating from the UK Conservatives.

I do not think for a moment that Jackson Carlaw is hostile to devolution or to this Parliament. As a member of the Culture, Tourism, Europe and External Relations Committee, he signed up to the conclusion of our Brexit report. I have quoted it before and make no apologies for doing so again. It said:

"We believe that any power currently a competence of the EU that is to be repatriated after Brexit and which is not currently listed in schedule 5 of the Scotland Act 1998 should be fully devolved, alongside a funding mechanism, resulting in no detriment to Scotland."

Of course, that has not happened.

Michelle Ballantyne (South Scotland) (Con): Ms McAlpine has said very clearly that she does not think that consent constitutes a veto. If the Scottish Parliament, the Northern Ireland Assembly or the National Assembly for Wales did not give consent to something, what would she call that?

Joan McAlpine: I would call that not giving consent.

Let me turn to the justification that the Scottish Conservatives have advanced for this act of vandalism against this Parliament. They repeatedly suggest that only by staging this power grab can they ensure that free trade will continue across the UK. However, as the minister, Michael Russell, said to the chamber last week:

"There is no single market in the UK, as the UK Government has presented it. There is a uniform market—we all trade together—but we have different arrangements

when those are required and when the powers of this Parliament or those of the Welsh Assembly make that necessary.”—[*Official Report*, 27 February 2018; c 73.]

As the minister noted, there is considerable diversity in the UK right now, between corporation taxes in Northern Ireland and income and property taxes here, and with the ban on fracking here, alcohol minimum pricing here and, critically, our refusal to open up the Scottish national health service to market principles as has been done in England.

The European single market that the Tories are set on leaving has a single set of rules that are interpreted and enforced by member states, with the European Court of Justice being the final arbiter. That allows divergences and, as long as states fit into the overall structure, trade can be maintained. The Scottish Government considers that there are likely to be fields in which, at least immediately following the UK’s withdrawal, its policy will be to voluntarily maintain regulatory alignment with EU rules. That will mean choosing to keep pace with developments in a particular field of regulation after the UK’s withdrawal. If the UK chooses otherwise, we will be allowed to do that. The EU single market gives a huge amount of flexibility to Parliaments such as ours while allowing fair and free trade across the borders of various member states.

The critical point is that the EU single market has an entire set of institutions and bodies that are dedicated to its maintenance and that are jointly controlled by the member states. There is currently no mechanism like that in the UK. If the JMC process is a mechanism, goodness help us all, because that has clearly not delivered anything like respect for the devolution settlement.

That is why we face the dilemmas that we face now. We must construct a series of frameworks to govern how we can make law. Central to that will be either this bill or one from the UK Government. Thus far, the UK Government has produced many warm words, which are welcome, but little concrete action. This Parliament’s Finance and Constitution Committee concluded unanimously that clause 11 of the withdrawal bill was incompatible with the devolution settlement, yet it still stands.

It is obvious that there is potential for many of the areas that are currently controlled by the EU to be viewed very differently by the Scottish Government and the UK Government in absolute terms and in interpretation. One pertinent example is the cultivation of genetically modified organisms, which is regulated at the EU level under the deliberate release directive as, from 2015, it has been possible to restrict the cultivation of such crops. In Scotland, we have enjoyed the benefits of that and, along with 19 member states, have

ended the cultivation of GMOs. The Welsh and Northern Irish Governments joined us in doing that, but England did not, so where will we stand post-Brexit? I wish that I or the UK Government could answer that question.

The Deputy Presiding Officer: I am afraid that you must conclude.

Joan McAlpine: That is just one reason why we need to preserve the powers of this Parliament.

The Deputy Presiding Officer: You must conclude. Please sit down.

16:30

Mike Rumbles (North East Scotland) (LD): Several members have made much about protecting the powers of our Parliament through this bill. That is the intention of the bill, which is why I will support its general principles in the stage 1 vote tonight. However, our job as MSPs is to scrutinise the detail of the bill, as the devil is always in the detail and—oh boy!—there is a devil in the detail of this bill.

We should be protecting the powers of our Parliament, yet section 13 takes power away from our young Parliament and delivers it to ministers. Subsection 13(3) states:

“Regulations under subsection (1) may make any provision that could be made by an Act of the Scottish Parliament.”

I cannot believe that giving ministers the power for up to 15 years to create, for instance, new public authorities, with MSPs only being allowed to say yes or no, is protecting the powers of our Parliament. Section 13 undermines the powers of this Parliament and fundamentally shifts powers from the Parliament to ministers. I ask all those MSPs who have said that the bill is about protecting the powers of the Scottish Parliament to read section 13 in full if they have not already done so, although I hope that most of us have.

Unless section 13 is removed from the bill at stage 2 or stage 3—I will certainly lodge amendments if other members do not—MSPs like myself, who are genuinely concerned about protecting the powers of the Parliament, will not be able to support it at stage 3.

Patrick Harvie: Neither Mike Rumbles nor I wished for the Brexit crisis to come about, but we recognise the extraordinary legislative heavy lifting job that will be required if we are taken out of the European Union. Is it Mike Rumbles’s view that that can be done entirely with primary legislation and not with any order-making powers?

Mike Rumbles: It can be done with both. What we must not see over the next 15 years is our

powers of primary legislation being taken away. That is the whole point of section 13.

Stuart McMillan: It is only for five years.

Mike Rumbles: No, it is for 15 years—read the bill properly. Five and five and five makes 15 years, and we will only be able to say yes or no.

16:33

James Kelly (Glasgow) (Lab): Like many members in the debate, I sympathise with the view that it is regrettable that we are having to consider the continuity bill. That is essentially, as many members have pointed out, as a result of the failure to resolve issues around the European Union (Withdrawal) Bill—in particular, on clause 11.

There is a general view in the Scottish Parliament that powers that will come from the EU that relate to the Scottish Parliament should reside here. That is the issue that has been debated around the withdrawal bill and which has—regrettably, because of internal differences in the Conservative Party—not been resolved. As Neil Findlay pointed out, we heard a number of statements before the turn of the year from Conservative politicians in Scotland saying that the issue could be resolved and that they would work constructively to table amendments. However, when the time came, 10 January 2018 passed with no amendments having been tabled, which has precipitated the crisis that we have today.

From the point of view that the devolution settlement is under threat and that the Government's purpose for introducing the continuity bill is to protect that devolution, we support the general principles. However, I will have a wry smile about the number of SNP members who have made speeches championing devolution. This time last year, we debated a second independence referendum in which the speeches of those members were about ripping up the devolution settlement.

A number of issues have been raised during the debate. One challenge is about legislative competence and the fact that the Presiding Officer's legal advice is different from that of the Lord Advocate, who has issued his certificate in support of the Government's position. Members from across the chamber have picked the legal advice that suits their political argument; Christina McKelvie favours the Lord Advocate's position and Rachael Hamilton favours that of the Presiding Officer. The situation puts MSPs in difficult and uncharted territory. With the exception of Sandra White's member's bill, this is the only occasion when the Presiding Officer has not issued a certificate of legislative competence, and it is

obviously serious that his view is different from that of the Lord Advocate. It is important that we try to resolve the issue during the process, because we do not want to end up in the courts. As Neil Bibby pointed out, it is not normal for the Presiding Officer or the Government to publish legal advice, but given the gravity of the situation, both should consider publication, in this instance.

Claire Baker was right to point out the challenges around scrutiny and transparency. It is already clear from the debate that the bill is complex and that a lot of amendments will be lodged at stage 2. The deadline for amendments is Friday and the stage 2 debate will be held next Tuesday, which is only six days away. That truncated process is a concern. In addition, calls have been made repeatedly—during the debate and at the committee meetings that Mr Russell attended—for publication of the 25 areas on which the Scottish and UK Governments disagree in respect of the powers that should be passed to the Scottish Parliament. It is difficult for members to formulate appropriate amendments when matters that are central to the debate are not fully transparent and before MSPs.

Stuart McMillan: Does James Kelly agree that no MSP should have been surprised by the continuity bill being introduced, because of the actions and inactions of the UK Government?

James Kelly: I have made that point, but now that we are in the process, we parliamentarians have a challenge in how to work our way through the issues. If we stick to the timetable over the next two weeks, there are issues about legislative competence, and serious challenges for scrutiny and transparency.

Mike Rumbles has raised concerns about the regulations that are to be passed to ministers under section 13, and there are concerns that too much power would be put in the hands of ministers.

Patrick Harvie spoke about section 17 and consent with regard to subordinate legislation. Graham Simpson raised the issue of retained EU law and the potential that it could undermine legal certainty.

Section 28 and the ambiguity around the “exit day” definition has also to be addressed: I know that the minister has said that he is committed to doing that.

The continuity bill presents for Parliament extremely difficult challenges relating to legislative competence, scrutiny and other issues. Having listened to the debate, I agree with Alex Neil and Neil Findlay: the Tories face a real challenge—that of resolving their internal differences and helping to come up with a solution. Otherwise, we will find ourselves in a position in which, as

parliamentarians, we will have to navigate a very difficult parliamentary process, around which there are legal issues. Even if the bill is passed, it could end up in the hands of the courts, which nobody wants. We want a solution to be found that keeps the devolved powers where they should be—in the Scottish Parliament.

16:40

Donald Cameron (Highlands and Islands) (Con): We are generally used to having at stage 1 a consensual debate in the chamber. It is usually the stage at which parties tend to avoid head-on confrontation by agreeing to the general principles of a bill so that it can be scrutinised in more detail at stages 2 and 3, when the technical specifics of amendments are debated. That is not the case today. The Conservatives will be voting against the UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill.

I begin with legislative competence. The Presiding Officer has deemed the bill to be beyond the competence of this legislature, but he has been ignored by the Scottish Government, which is charging on regardless, for the first time in the history of the Scottish Parliament. The significance of that should be lost on no one.

The devolution settlement is enshrined in the Scotland Act 1998, which is a remarkable and historic document. It is the act that gave birth to this institution—this Parliament. Tom Arthur and Bruce Crawford talked about it, and I agree with what they said about its special nature, although I disagree with many of the conclusions that they drew. The architects of that legislation, who carefully designed it, who understood the nuances of devolution and who calibrated the delicate balance between reserved and devolved authority and the sensitivities involved, created something of wonder. The act is not perfect—no act is—but it has led to remarkably little litigation and legal controversy.

The concept of legislative competence is paramount to that. Section 29 of the Scotland Act 1998 says:

“An Act of the Scottish Parliament is not law so far as any provision of the Act is outside the legislative competence of the Parliament.”

The Supreme Court has said that that provision lies

“at the heart of the scheme of devolution to which the Act gives effect.”

Anything that is outside competence “is not law”—that is a simple, basic, raw fact—and, as we all know, Presiding Officer, the act provides for you to give your ruling on legislative competence.

Joan McAlpine: Given the context of his remarks, would Donald Cameron like to comment on the remarks of Lord Hope, the former deputy president of the Supreme Court, who said that the European Union (Withdrawal) Bill had “a touch of Cromwell” about it?

Donald Cameron: Conservative members are on record as saying that clause 11 of the withdrawal bill is not fit for purpose. I do not dispute that, at all.

However, the Scotland Act 1998 expressly provides for the Presiding Officer to give his ruling on competence. In fact, it does not merely provide for that; it mandates it—it is compulsory. It states that the Presiding Officer “shall” give his view. Why should you give your view, Presiding Officer? Is it a courtesy or a mere convention, or could it be the case that legislators saw the need for the leader of this Parliament—the person who has been elected by us all to head up the institution; the Presiding Officer—to be the guardian of what this Parliament legislates on?

Bruce Crawford: Will the member take an intervention?

Donald Cameron: No. I want to make progress.

According to the Supreme Court, the sections in question are

“designed to ensure that the Scottish Parliament confines itself to the defined areas of competence”.

Section 31 is entitled, “Scrutiny of Bills”. It could not be plainer. The Presiding Officer’s ruling on legislative competence is about scrutiny; it is about examining and auditing the legislation that is introduced here. Presiding Officer, you are the gatekeeper. Last week, you stated unequivocally and explicitly that the continuity bill falls outside legislative competence. Despite that, the Scottish Government is ploughing on regardless, and is turning the Scotland Act 1998 on its head by obstinately persisting with the bill in a way that is both unnecessary and unprecedented.

Bruce Crawford: Does Donald Cameron accept that the architects of the 1998 act were clever enough to make sure that it was designed such that it is within the capacity of the Government of the day to introduce a bill for discussion in Parliament despite a ruling from the Presiding Officer that it is outwith competence? That is the situation that we are in today.

Donald Cameron: The explanatory notes to the 1998 act say that that is something that the Parliament should take into account in the passage of a bill.

The Lord Advocate can set out the legal views of the Government, as he did last week, but there

is absolutely no procedural requirement for him to do so. Again, that was unprecedented.

However, not content with those new departures, the Scottish Government goes further and faster. Last week, we were told that the continuity bill was to be emergency legislation, which goes against the grain of every emergency bill that has been passed so far. That remains a disgrace, and every party in Parliament other than the Conservatives was complicit in a decision that has landed us with a farcical timetable, in which fundamental legislation on the constitution has to be considered in the space of a mere three days.

Patrick Harvie: Will the member give way?

Donald Cameron: I am sorry, but I do not have the time.

Labour and the Liberal Democrats might piously express concern today, but they voted for the bill and for the timetable. We have also previously heard complaints from the SNP about not having enough time to read the Brexit impact papers or about the House of Commons not having time to debate amendments on the UK bill, but have there been any complaints about a three-day timetable for one of the most radical constitutional bills that has come before this Parliament? There has been not a whisper from SNP members. That is not respecting the devolution settlement; it is discrediting it. It is not defending the Scottish Parliament; it is attacking its very foundations.

Turning to the detail of the continuity bill, I note that the Scottish Government's policy memorandum says that the bill will "add ... complexity" and "present serious logistical challenges". No formal consultation was possible prior to its introduction, but if ever there was a need for consultation or for detailed oral or written evidence from professional bodies, the third sector or the vast array of people and members of the public who could be affected, this was it.

There are serious concerns that the bill goes beyond the UK bill on, for example, the EU charter of fundamental rights. The continuity bill would incorporate directly into Scots law the charter as it applies to devolved matters, but it is excepted from incorporation in the UK bill. The Law Society of Scotland has argued that where the bill takes a fundamentally different approach,

"the Scottish Government should be permissive with suggestions to improve or clarify the bill as it passes through the Parliament."

I hope that the Government has taken note of that.

Alex Neil: I want to ask Mr Cameron the core question that is at the heart of where the Tory party is. What, today, is Tory party policy? Is it still to transfer the 25 outstanding powers back to this Parliament, or is it to keep them at Westminster?

Donald Cameron: I will come to that in a moment. [*Laughter.*] I will, I will, I will.

The Law Society of Scotland has noted that the bill would introduce new categories of law such as "retained (devolved) EU law" that

"may make it more difficult to be certain about the law."

In its briefing, SPICe says that it is not clear which rights will be captured by section 4. There is also currently in the UK bill no clause that is comparable with section 13, which has already been mentioned and which would give ministers the power to make regulations to ensure that, where appropriate, Scots law on devolved areas can continue to keep pace with EU law after the UK has left the European Union. The 15-year period that is set out in that section is of grave concern; Mike Rumbles was absolutely right to suggest that it undermines this Parliament.

All those points—there are others that I am sure we will come to in the bill's later stages—point to the fact that the continuity bill does not complement or coincide with the UK withdrawal bill. It has to be acknowledged that it is something quite different, and that it has all the makings of a constitutional and legal minefield. I sense every lawyer in the land rubbing their hands in glee. So many issues, so little time.

Indeed, the real tragedy—Jackson Carlaw was right about this—is the timing of the continuity bill. Negotiations are at a crucial and delicate stage, with the two Governments close to agreement, but with an important issue to determine. At such a sensitive moment—the very moment when it is most critical that trust be maintained between Governments—what happens? Out of nowhere, the SNP gives us this bill.

In answer to Alex Neil's point, in that case, everyone agreed that clause 11 was unfit for purpose, accepted the need for common frameworks and was striving to reach an agreement. However, the bill drives a coach and horses through that.

Neil Findlay: Will the member give way?

Donald Cameron: No.

Neil Findlay: Come on!

Donald Cameron: No.

The UK Government has made a big concession in relation to immediate devolution of powers. It made a major move towards the SNP and marked a substantive change in position. The SNP faced a choice: either it could focus in good faith on the discussions that are coming to a head, or it could continue to play games with the constitution.

There we have it. The bill is outwith Parliament's powers, the Presiding Officer has been defied, and Parliament has been stripped of time to scrutinise the bill adequately. What a mess!

We will have no truck with the SNP's game playing. We will oppose this irresponsible law making. We will support a sensible deal on Brexit that will bring more powers back to Scotland. Above all, we will oppose this wretched wrecking bill at decision time.

16:50

Michael Russell: I am conscious that a number of themes have emerged this afternoon and I want to treat them carefully. However, I will start, as I often do, with a quotation. It is from John Maffey, the UK ambassador to Ireland during the second world war. He said, rather wryly, while looking at Ireland, its difficulties and the language that was being used, "Phrases make history here", which also happens to be the title of a very good book of Irish political quotations.

John Maffey meant that we have to be careful in difficult circumstances. We have to make sure that we do not make those circumstances worse, and that we try to use accurate and careful language to describe where we are so that we can make progress. I say that because I am concerned about the language that has come from the Tory front bench, as well as from some of the back benchers. I want to make it clear that difficulties are being caused by that language and its inaccuracy.

During the weekend, Ruth Davidson said in an interview on television—I did the subsequent interview but I was in the middle of a snowstorm while she was indoors—that the SNP Government had "rammed through" emergency legislation. Members in this chamber voted 86 to 27 in a democratic vote, so those words cannot be used accurately.

Secondly, Rachael Hamilton said that "rushed legislation" is always bad legislation and pointed to the example of the Land Reform (Scotland) Bill. I was on the committee that scrutinised that bill. There were two years of consultation, and nine months between the passing of the bill and royal assent. I understand that Rachael Hamilton does not like the Land Reform (Scotland) Act 2016. She does not like land reform, like many of the members who are sitting around her. They feel threatened by land reform; I wonder why. The reality is that that legislation was not rushed.

Adam Tomkins's account of this morning's meeting of the Finance and Constitution Committee and the evidence from the Law Society could, at the very least, be challenged simply by looking at the video of that evidence being given.

There was a very constructive discussion on a range of issues. Other evidence was given, too. It was not simply the Law Society turning up and saying "Woe is me!"; there were many discussions.

For example, there was discussion of section 5, on general principles of EU law and the charter. The bill takes clear steps to improve the position in the UK bill, keeping the charter in Scots law. Indeed, in other evidence, in exactly the same session this morning, Professor Aileen McHarg clearly pointed out that there are in the bill effective remedies to the problems raised by Professor Tomkins. It is extremely important to present such issues accurately.

I regret Donald Cameron's use of language. He used the word "disgrace" and described the Liberal Democrats as pious; that does not help when we are trying to discuss the issue carefully. The nadir was, of course, Mr Golden, who used the words "illegal" and "wildcat legislation". Strangely enough, those words appeared in a press release from Mr Cameron earlier today. Clearly there has been some collusion over the choice of words. The bill is not illegal. It anticipates exactly the circumstances that we are in, and there are remedies for those circumstances.

It is really important that I make clear the point that phrases make history. If, in difficult times, we are going to debate and discuss the resolution that we must find, let us do so with accuracy, rather than what we have heard this afternoon.

Let us also not mis-tell our history. Of course we all took different positions at various times in the Constitutional Convention, and all of us did different things. Mr Arthur and Mr Golden were too young to vote in the 1997 referendum, but I ran the campaign for the SNP; I also ran the yes-yes campaign jointly with Andy Myles from the Liberal Democrats and Jack McConnell from Labour. We therefore had parties working together in that campaign.

However, let us move on to the key question, which is not necessarily about what we did in previous referenda, but about what we do now. That is the very important point that Bruce Crawford raised. What do we do now? Do we keep the interests of devolution and the devolved settlement at the forefront of our minds—

Adam Tomkins: What about the bill?

Michael Russell: —or do we keep something else at the forefront of our minds, whether it be shouting, as in the case of Professor Tomkins, or party advantage? Let us look at that question very carefully.

I will turn to some of the issues of detail before I come to the point that I want to conclude on. I

have made it clear from the beginning of this process, and will go on making it clear, that I am open to discussion and debate on the issues of detail. Of course the bill is open to amendment; I indicated that to Mr Rumbles at the start of the process and I make it clear now. If there are defects in any of the bill's sections that members are passionate about—clearly, Mr Rumbles is passionate about section 13—amendments can be lodged and discussed in the normal way. I again pay tribute to the Parliamentary Bureau and all those involved, as we have developed a system that will allow that amendment process to happen and—I hope—happen well.

However, I am also happy to argue for section 13. I have to say that the wording is directly drawn from the existing provisions in EU law, in the European Communities Act 1972.

Daniel Johnson: Will the minister give way?

Michael Russell: No, I have to make progress. I am sorry.

We therefore believe that the power in section 13 continues to be appropriate in certain circumstances. However, if we have to define those circumstances more closely and if the Parliament wishes to have constraints on them, it is entirely legitimate for members to lodge amendments that we can debate and discuss, as I hope that we will.

A range of other issues have been raised in the debate that can be addressed in evidence at stage 2, or even during stage 3, and I have shown my willingness to discuss the bill with any individual member or any committee. We therefore have a range of ways of dealing with the bill's detail. We should do so using accurate language and with a determination—no matter people's views on whether we should be here with the bill—to try to get the best legislation possible.

The heart of the issue was seen in succeeding speeches this afternoon: one from Mr Carlaw, and one from Alex Neil. I commend both those speeches, although I disagree with Mr Carlaw and I agree with Alex Neil. I fear that Jackson Carlaw might have unwittingly taken us backward, rather than forward, in the debate on the bill, whereas Alex Neil tried to take us forward. Alex Neil will recognise that as a case of "respite, prospice"—something that he talks about often as the motto of his old school. Kate Forbes and Neil Findlay made exactly the same point.

Tomorrow, we will have to address the substantive issue of whether we can get an agreement and whether the UK Government has dug itself into a position where it cannot accept the basic principle—Kate Forbes made this point—not to sign away the Scottish Parliament's responsibilities. Mark Drakeford has made that

point about devolution and Kate Forbes quoted him on it.

If the UK Government is determined not to accept that basic principle of devolution, there cannot be an agreement. However, as Alex Neil indicated, there is the possibility of finding in the middle some way in which we can all accept the devolved settlement. The devolved settlement cannot be wished away. If the UK Government wishes to alter the devolved settlement, it must come with primary legislation to do so. However, as Alex Neil indicated, it is possible to find some way of coming to an agreement that accepts the devolved settlement.

I was concerned about Adam Tomkins's presentation of the Sewel convention. It had eerie echoes of Jacob Rees-Mogg on the issue of the Irish border, blaming the EU and not the Brexiteers. I make it absolutely clear that the Sewel convention should apply and should go on applying, and I hope that nobody in this chamber believes otherwise. If there is any attempt to argue, as appeared to be the case, that in some sense we have sold the pass on the Sewel convention, let me put that firmly and clearly to rest: do not blame the victim for the crime.

The reality is that the Sewel convention applies and should apply. It would be an extreme step—of the type that I hope was not anticipated by Mr Carlaw in his speech—if that convention were to be abandoned by the UK Government—*[Interruption.]* Mr Tomkins simply keeps shouting. I have tried to indicate that I think that that is an inappropriate way to deal with these issues. The appropriate way to deal with them is to have the type of debate that he was involved in this morning at the Finance and Constitution Committee, where there was constructive debate. I do not know what he had for his lunch, but clearly it did not agree with him.

I finish by simply saying this. I will go into tomorrow's discussions in London, as I know Mark Drakeford will—I spoke to him at lunch time today—hopeful, positive and purposeful. However, we will be judged in the end by the chambers to which we report. The judgment will come on the key issue that Kate Forbes spoke about. Have we made sure that we stand up for and do not trade away the responsibilities and rights of this Parliament? Have we found weakness within ourselves that does not allow us to do that?

I believe that we should stand up for the rights of this Parliament, because that is standing up for the rights of the people of Scotland. When I go in to negotiate, I will be absolutely determined to find a way to get an agreement.

The Presiding Officer (Ken Macintosh): That concludes the debate.

UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill: Financial Resolution

17:01

The Presiding Officer (Ken Macintosh): The next item of business is consideration of motion S5M-10784, in the name of Derek Mackay, on a financial resolution for the UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill.

Motion moved,

That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill, agrees to—

(a) any expenditure of a kind referred to in Rule 9.12.3(b) of the Parliament's Standing Orders arising in consequence of the Act, and

(b) any charge or payment in relation to which Rule 9.12.4 of the Standing Orders applies arising in consequence of the Act.—[*Derek Mackay.*]

Business Motion

17:01

The Presiding Officer (Ken Macintosh): The next item of business is consideration of business motion S5M-10838, in the name of Joe FitzPatrick, on behalf of the Parliamentary Bureau, setting out a business programme.

Motion moved,

That the Parliament agrees—

(a) the following programme of business—

Tuesday 13 March 2018

2.00 pm Time for Reflection

followed by Parliamentary Bureau Motions

followed by Topical Questions (if selected)

followed by Pre-Stage 2 Debate: UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill

followed by Business Motions

followed by Parliamentary Bureau Motions

5.00 pm Decision Time

followed by Members' Business

Wednesday 14 March 2018

2.00 pm Parliamentary Bureau Motions

2.00 pm Portfolio Questions
Health and Sport

followed by Scottish Labour Party Business

followed by Business Motions

followed by Parliamentary Bureau Motions

5.00 pm Decision Time

followed by Members' Business

Thursday 15 March 2018

11.40 am Parliamentary Bureau Motions

11.40 am General Questions

12.00 pm First Minister's Questions

followed by Members' Business

2.00 pm Parliamentary Bureau Motions

2:00 pm Ministerial Statement: Update on South of Scotland Partnership

followed by Stage 3 Proceedings: Offensive Behaviour at Football and Threatening Communications (Repeal) (Scotland) Bill

followed by Business Motions

followed by Parliamentary Bureau Motions

5.00 pm Decision Time

Tuesday 20 March 2018

2.00 pm Time for Reflection

followed by Parliamentary Bureau Motions

followed by Topical Questions (if selected)
followed by Stage 3 Proceedings: Forestry and Land Management (Scotland) Bill
followed by Business Motions
followed by Parliamentary Bureau Motions
 5.35 pm Decision Time
followed by Members' Business
 Wednesday 21 March 2018

2.00 pm Parliamentary Bureau Motions
 2.00 pm Portfolio Questions
 Communities, Social Security and Equalities
followed by Stage 3 Proceedings: UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill
followed by Business Motions
followed by Parliamentary Bureau Motions
 5.00 pm Decision Time
followed by Members' Business

Thursday 22 March 2018
 11.40 am Parliamentary Bureau Motions
 11.40 am General Questions
 12.00 pm First Minister's Questions
followed by Members' Business
 2.30 pm Parliamentary Bureau Motions
followed by Scottish Government Business
followed by Business Motions
followed by Parliamentary Bureau Motions
 5.00 pm Decision Time

and (b) that, in relation to First Minister's Questions on 15 March 2018, in rule 13.6.2, insert at end "and may provide an opportunity for Party Leaders or their representatives to question the First Minister".—[*Joe FitzPatrick*.]

Motion agreed to.

Decision Time

17:01

The Presiding Officer (Ken Macintosh): The first question is, that motion S5M-10817, in the name of Michael Russell, on the UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill at stage 1, be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

For

Adam, George (Paisley) (SNP)
 Adamson, Clare (Motherwell and Wishaw) (SNP)
 Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
 Arthur, Tom (Renfrewshire South) (SNP)
 Baillie, Jackie (Dumbarton) (Lab)
 Baker, Claire (Mid Scotland and Fife) (Lab)
 Beamish, Claudia (South Scotland) (Lab)
 Beattie, Colin (Midlothian North and Musselburgh) (SNP)
 Bibby, Neil (West Scotland) (Lab)
 Brown, Keith (Clackmannanshire and Dunblane) (SNP)
 Campbell, Aileen (Clydesdale) (SNP)
 Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
 Cole-Hamilton, Alex (Edinburgh Western) (LD)
 Constance, Angela (Almond Valley) (SNP)
 Crawford, Bruce (Stirling) (SNP)
 Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
 Denham, Ash (Edinburgh Eastern) (SNP)
 Dey, Graeme (Angus South) (SNP)
 Doris, Bob (Glasgow Maryhill and Springburn) (SNP)
 Dornan, James (Glasgow Cathcart) (SNP)
 Dugdale, Kezia (Lothian) (Lab)
 Ewing, Annabelle (Cowdenbeath) (SNP)
 Ewing, Fergus (Inverness and Nairn) (SNP)
 Fee, Mary (West Scotland) (Lab)
 Findlay, Neil (Lothian) (Lab)
 Finnie, John (Highlands and Islands) (Green)
 FitzPatrick, Joe (Dundee City West) (SNP)
 Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
 Freeman, Jeane (Carrick, Cumnock and Doon Valley) (SNP)
 Gibson, Kenneth (Cunninghame North) (SNP)
 Gilruth, Jenny (Mid Fife and Glenrothes) (SNP)
 Gougeon, Mairi (Angus North and Mearns) (SNP)
 Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (East Lothian) (Lab)
 Greer, Ross (West Scotland) (Green)
 Griffin, Mark (Central Scotland) (Lab)
 Harper, Emma (South Scotland) (SNP)
 Harvie, Patrick (Glasgow) (Green)
 Haughey, Clare (Rutherglen) (SNP)
 Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
 Hyslop, Fiona (Linlithgow) (SNP)
 Johnson, Daniel (Edinburgh Southern) (Lab)
 Johnstone, Alison (Lothian) (Green)
 Kelly, James (Glasgow) (Lab)
 Kidd, Bill (Glasgow Anniesland) (SNP)
 Lamont, Johann (Glasgow) (Lab)
 Lennon, Monica (Central Scotland) (Lab)
 Leonard, Richard (Central Scotland) (Lab)
 Lyle, Richard (Uddingston and Bellshill) (SNP)
 MacDonald, Angus (Falkirk East) (SNP)

MacDonald, Gordon (Edinburgh Pentlands) (SNP)
 Macdonald, Lewis (North East Scotland) (Lab)
 MacGregor, Fulton (Coatbridge and Chryston) (SNP)
 Mackay, Derek (Renfrewshire North and West) (SNP)
 Mackay, Rona (Strathkelvin and Bearsden) (SNP)
 Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
 Maguire, Ruth (Cunninghame South) (SNP)
 Marra, Jenny (North East Scotland) (Lab)
 Martin, Gillian (Aberdeenshire East) (SNP)
 Mason, John (Glasgow Shettleston) (SNP)
 Matheson, Michael (Falkirk West) (SNP)
 McAlpine, Joan (South Scotland) (SNP)
 McArthur, Liam (Orkney Islands) (LD)
 McKee, Ivan (Glasgow Provan) (SNP)
 McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
 McMillan, Stuart (Greenock and Inverclyde) (SNP)
 McNeill, Pauline (Glasgow) (Lab)
 Neil, Alex (Airdrie and Shotts) (SNP)
 Paterson, Gil (Clydebank and Milngavie) (SNP)
 Rennie, Willie (North East Fife) (LD)
 Robison, Shona (Dundee City East) (SNP)
 Ross, Gail (Caithness, Sutherland and Ross) (SNP)
 Rowley, Alex (Mid Scotland and Fife) (Lab)
 Rumbles, Mike (North East Scotland) (LD)
 Ruskell, Mark (Mid Scotland and Fife) (Green)
 Russell, Michael (Argyll and Bute) (SNP)
 Sarwar, Anas (Glasgow) (Lab)
 Scott, Tavish (Shetland Islands) (LD)
 Smith, Elaine (Central Scotland) (Lab)
 Smyth, Colin (South Scotland) (Lab)
 Somerville, Shirley-Anne (Dunfermline) (SNP)
 Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
 Stewart, David (Highlands and Islands) (Lab)
 Stewart, Kevin (Aberdeen Central) (SNP)
 Sturgeon, Nicola (Glasgow Southside) (SNP)
 Swinney, John (Perthshire North) (SNP)
 Todd, Maree (Highlands and Islands) (SNP)
 Torrance, David (Kirkcaldy) (SNP)
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
 Wheelhouse, Paul (South Scotland) (SNP)
 White, Sandra (Glasgow Kelvin) (SNP)
 Wightman, Andy (Lothian) (Green)
 Yousaf, Humza (Glasgow Pollok) (SNP)

Against

Balfour, Jeremy (Lothian) (Con)
 Ballantyne, Michelle (South Scotland) (Con)
 Bowman, Bill (North East Scotland) (Con)
 Briggs, Miles (Lothian) (Con)
 Burnett, Alexander (Aberdeenshire West) (Con)
 Cameron, Donald (Highlands and Islands) (Con)
 Carlaw, Jackson (Eastwood) (Con)
 Carson, Finlay (Galloway and West Dumfries) (Con)
 Chapman, Peter (North East Scotland) (Con)
 Corry, Maurice (West Scotland) (Con)
 Davidson, Ruth (Edinburgh Central) (Con)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Golden, Maurice (West Scotland) (Con)
 Greene, Jamie (West Scotland) (Con)
 Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)
 Harris, Alison (Central Scotland) (Con)
 Halcro Johnston, Jamie (Highlands and Islands) (Con)
 Kerr, Liam (North East Scotland) (Con)
 Lindhurst, Gordon (Lothian) (Con)
 Lockhart, Dean (Mid Scotland and Fife) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Mountain, Edward (Highlands and Islands) (Con)
 Mundell, Oliver (Dumfriesshire) (Con)
 Scott, John (Ayr) (Con)

Simpson, Graham (Central Scotland) (Con)
 Smith, Liz (Mid Scotland and Fife) (Con)
 Stewart, Alexander (Mid Scotland and Fife) (Con)
 Tomkins, Adam (Glasgow) (Con)
 Wells, Annie (Glasgow) (Con)
 Whittle, Brian (South Scotland) (Con)

The Presiding Officer: The result of the division is: For 94, Against 30, Abstentions 0.

Motion agreed to,

That the Parliament agrees to the general principles of the UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill.

The Presiding Officer: I point out that, because this is the emergency bill procedure and the Parliament has agreed to the general principles of the bill, stage 2 amendments should be lodged by 2 pm this Friday, 9 March.

The next question is, that motion S5M-10784, in the name of Derek Mackay, on a financial resolution for the UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill, be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

For

Adam, George (Paisley) (SNP)
 Adamson, Clare (Motherwell and Wishaw) (SNP)
 Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
 Arthur, Tom (Renfrewshire South) (SNP)
 Baillie, Jackie (Dumbarton) (Lab)
 Baker, Claire (Mid Scotland and Fife) (Lab)
 Beamish, Claudia (South Scotland) (Lab)
 Beattie, Colin (Midlothian North and Musselburgh) (SNP)
 Bibby, Neil (West Scotland) (Lab)
 Brown, Keith (Clackmannanshire and Dunblane) (SNP)
 Campbell, Aileen (Clydesdale) (SNP)
 Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
 Cole-Hamilton, Alex (Edinburgh Western) (LD)
 Constance, Angela (Almond Valley) (SNP)
 Crawford, Bruce (Stirling) (SNP)
 Cunningham, Roseanna (Perthshire South and Kinrossshire) (SNP)
 Denham, Ash (Edinburgh Eastern) (SNP)
 Dey, Graeme (Angus South) (SNP)
 Doris, Bob (Glasgow Maryhill and Springburn) (SNP)
 Dornan, James (Glasgow Cathcart) (SNP)
 Dugdale, Kezia (Lothian) (Lab)
 Ewing, Annabelle (Cowdenbeath) (SNP)
 Ewing, Fergus (Inverness and Nairn) (SNP)
 Fee, Mary (West Scotland) (Lab)
 Findlay, Neil (Lothian) (Lab)
 Finnie, John (Highlands and Islands) (Green)
 FitzPatrick, Joe (Dundee City West) (SNP)
 Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
 Freeman, Jeane (Carrick, Cumnock and Doon Valley) (SNP)
 Gibson, Kenneth (Cunninghame North) (SNP)
 Gilruth, Jenny (Mid Fife and Glenrothes) (SNP)
 Gougeon, Mairi (Angus North and Mearns) (SNP)
 Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (East Lothian) (Lab)
 Greer, Ross (West Scotland) (Green)

Griffin, Mark (Central Scotland) (Lab)
 Harper, Emma (South Scotland) (SNP)
 Harvie, Patrick (Glasgow) (Green)
 Haughey, Clare (Rutherglen) (SNP)
 Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
 Hyslop, Fiona (Linlithgow) (SNP)
 Johnson, Daniel (Edinburgh Southern) (Lab)
 Johnstone, Alison (Lothian) (Green)
 Kelly, James (Glasgow) (Lab)
 Kidd, Bill (Glasgow Anniesland) (SNP)
 Lamont, Johann (Glasgow) (Lab)
 Lennon, Monica (Central Scotland) (Lab)
 Leonard, Richard (Central Scotland) (Lab)
 Lyle, Richard (Uddingston and Bellshill) (SNP)
 MacDonald, Angus (Falkirk East) (SNP)
 MacDonald, Gordon (Edinburgh Pentlands) (SNP)
 Macdonald, Lewis (North East Scotland) (Lab)
 MacGregor, Fulton (Coatbridge and Chryston) (SNP)
 Mackay, Derek (Renfrewshire North and West) (SNP)
 Mackay, Rona (Strathkelvin and Bearsden) (SNP)
 Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
 Maguire, Ruth (Cunninghame South) (SNP)
 Marra, Jenny (North East Scotland) (Lab)
 Martin, Gillian (Aberdeenshire East) (SNP)
 Mason, John (Glasgow Shettleston) (SNP)
 Matheson, Michael (Falkirk West) (SNP)
 McAlpine, Joan (South Scotland) (SNP)
 McArthur, Liam (Orkney Islands) (LD)
 McKee, Ivan (Glasgow Provan) (SNP)
 McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
 McMillan, Stuart (Greenock and Inverclyde) (SNP)
 McNeill, Pauline (Glasgow) (Lab)
 Neil, Alex (Airdrie and Shotts) (SNP)
 Paterson, Gil (Clydebank and Milngavie) (SNP)
 Rennie, Willie (North East Fife) (LD)
 Robison, Shona (Dundee City East) (SNP)
 Ross, Gail (Caithness, Sutherland and Ross) (SNP)
 Rowley, Alex (Mid Scotland and Fife) (Lab)
 Rumbles, Mike (North East Scotland) (LD)
 Ruskell, Mark (Mid Scotland and Fife) (Green)
 Russell, Michael (Argyll and Bute) (SNP)
 Sarwar, Anas (Glasgow) (Lab)
 Scott, Tavish (Shetland Islands) (LD)
 Smith, Elaine (Central Scotland) (Lab)
 Smyth, Colin (South Scotland) (Lab)
 Somerville, Shirley-Anne (Dunfermline) (SNP)
 Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
 Stewart, David (Highlands and Islands) (Lab)
 Stewart, Kevin (Aberdeen Central) (SNP)
 Sturgeon, Nicola (Glasgow Southside) (SNP)
 Swinney, John (Perthshire North) (SNP)
 Todd, Maree (Highlands and Islands) (SNP)
 Torrance, David (Kirkcaldy) (SNP)
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
 Wheelhouse, Paul (South Scotland) (SNP)
 White, Sandra (Glasgow Kelvin) (SNP)
 Wightman, Andy (Lothian) (Green)
 Yousaf, Humza (Glasgow Pollok) (SNP)

Against

Balfour, Jeremy (Lothian) (Con)
 Ballantyne, Michelle (South Scotland) (Con)
 Bowman, Bill (North East Scotland) (Con)
 Briggs, Miles (Lothian) (Con)
 Burnett, Alexander (Aberdeenshire West) (Con)
 Cameron, Donald (Highlands and Islands) (Con)
 Carlaw, Jackson (Eastwood) (Con)
 Carson, Finlay (Galloway and West Dumfries) (Con)
 Chapman, Peter (North East Scotland) (Con)
 Corry, Maurice (West Scotland) (Con)

Davidson, Ruth (Edinburgh Central) (Con)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Golden, Maurice (West Scotland) (Con)
 Greene, Jamie (West Scotland) (Con)
 Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)
 Harris, Alison (Central Scotland) (Con)
 Halcro Johnston, Jamie (Highlands and Islands) (Con)
 Kerr, Liam (North East Scotland) (Con)
 Lindhurst, Gordon (Lothian) (Con)
 Lockhart, Dean (Mid Scotland and Fife) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Mountain, Edward (Highlands and Islands) (Con)
 Mundell, Oliver (Dumfriesshire) (Con)
 Scott, John (Ayr) (Con)
 Simpson, Graham (Central Scotland) (Con)
 Smith, Liz (Mid Scotland and Fife) (Con)
 Stewart, Alexander (Mid Scotland and Fife) (Con)
 Tomkins, Adam (Glasgow) (Con)
 Wells, Annie (Glasgow) (Con)
 Whittle, Brian (South Scotland) (Con)

The Presiding Officer: The result of the division is: For 94, Against 30, Abstentions 0.

Motion agreed to,

That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill, agrees to—

(a) any expenditure of a kind referred to in Rule 9.12.3(b) of the Parliament's Standing Orders arising in consequence of the Act, and

(b) any charge or payment in relation to which Rule 9.12.4 of the Standing Orders applies arising in consequence of the Act.

The Presiding Officer: That concludes decision time.

Electronic and Internet Voting

The Deputy Presiding Officer (Christine Grahame): The final item of business is a members' business debate on motion S5M-10407, in the name of Stewart Stevenson, on electronic and internet voting. The debate will be concluded without any question being put.

Motion debated,

That the Parliament acknowledges that there is an increasingly wide spectrum of applications for digital technology, including those related to internet shopping, banking, travel and automated supermarket checkouts; understands that the latest digital technology has the potential to be developed for electronic and internet voting and deliver electors flexibility in their choice of voting method; considers that the traditional paper voting method has remained virtually unchanged since 1872 and has yet to benefit from advancements in technology; notes the calls by the Institution of Engineering and Technology for government to embrace the latest knowledge in electronic voting, which it believes will encourage more young people in the Banffshire and Buchan Coast constituency and across Scotland to vote and help reduce the costs of the traditional paper voting system; recognises that there are important security considerations relating to confidentiality and eligibility that must first be resolved; believes that when these issues are resolved and public confidence is earned, electronic voting has the potential to deliver lower cost elections and improve voter turnout; acknowledges what it sees as the opportunity presented by the Scottish Government's consultation on electoral reform to further investigate the potential benefits of electronic and internet voting systems, and notes the calls on individuals and organisations to take part.

17:05

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): I start by drawing attention to my entry in the register of members' interests—particularly my membership of the Institution of Engineering and Technology, which is promoting e-voting, and my membership of the Association for Computing Machinery, which is leading a debate on the subject in the USA, in particular.

A professor of computer science at Stanford University, David Dill, who is the founder of the Verified Voting Foundation, captured the challenge of electronic voting—indeed, of any form of voting—when he wrote:

“The winners of an election are usually satisfied with the outcome, but it is often more challenging to persuade the losers (and their supporters) that they lost. To that end, it is not sufficient that election results be accurate. The public must also know the results are accurate, which can only be achieved if conduct of the election is sufficiently transparent that candidates, the press, and the general public can satisfy themselves that no errors or cheating have occurred.”

Until 1872, voting here was done by attending the polling place, orally advising the returning officer for whom one wished to vote and seeing them record that against one's name in a ledger.

Many of those ledgers survive today. Is that a perfect system that would have met Professor Dill's challenge? No. The ledgers often show that, at the end of voting, there was debate as to what an individual elector had said or whether the clerk had correctly recorded his—in those days it was always “his”—preference.

The change to the use of voting papers and a ballot box was made solely because changes in the franchise qualification led to a dramatic rise in the number of electors and oral voting was too cumbersome. Today, we have a system that works pretty well, in which those who vote have confidence and which broadly allows losers, in particular, to observe the process and be reconciled to the fact that their loss derives from their having failed to win the argument rather than from the voting system having cheated them.

The Open Rights Group says that any voting system must be secure, anonymous and verifiable, and technologists accept those tests. Professor Dill quoted the ACM, which stated that

“voting systems should enable each voter to inspect a physical record to verify that his or her vote has been accurately cast and to serve as an independent check on the result”.

Professor Kaliyamurthie, the head of the department of information technology at India's Barath university in Chennai, wrote that

“Internet voting is about making the act of voting as convenient as possible”

but qualified that statement by adding that

“this voting channel introduces risks to some of the fundamental principles of democratic systems.”

The question that I pose is whether more convenient voting is of value. Would greater convenience enhance the democratic process?

I have heard some people say that those who do not make the effort to get out of their armchairs to vote do not deserve the vote, but I take a different view. Every political party—and every independent candidate, for that matter—devotes an enormous amount of effort to getting people out of their armchairs and into the polling places. However, there are three numbers that should challenge us: 53, 44 and 34. Fifty-three per cent of people on the electoral roll voted “armchair” in the 2017 council elections, 40 per cent did so in the most recent Scottish Parliament elections and a third stayed away from the 2017 Westminster vote.

The IET has called for the Government to embrace the latest in electronic voting. Can technology help to boost turnout, and can it do so securely, with voter anonymity and in a way that is verifiable by lay observers?

What helps turnout? When I stood in 2003, our local voter database included 6,000 people who had committed to vote for the Scottish National Party in the previous two contacts with the party but had failed to vote in the two most recent elections. We concluded that we needed to get those people to vote. A huge number of activists spent considerable time knocking on the doors of those 6,000 people, and we got 4,000 of them to sign up for a postal vote.

Typically, about 70 per cent of postal voters actually vote. It is fair to say that there is imprecision and uncertainty about that, because we can only infer the number of postal voters from looking at those who voted in person and how many postal votes were issued, thereby indirectly concluding how many votes were postal votes. Nevertheless, the rate of voting is clearly higher among postal voters.

In 2003, which was an election in which the SNP's vote in Scotland was heading downwards—pretty sharply downwards, it is worth saying—our local vote went up by 3,000. Members might care to think about that. We signed up 4,000 postal voters, and I assert that 70 per cent of postal voters vote. Therefore, I draw a line between our effort to sign up 4,000 people for postal votes and the increase of 3,000 in our vote. People with a postal vote have 21 days over which they can vote from their armchair, which might be one of the reasons why our vote shot up. Of course, the excellent candidate and terrific campaign in Banff and Buchan contributed to the result, but I think that making it easier for people to vote helped.

Have countries that have adopted internet voting seen benefits? Do their systems meet the tests of security, anonymity and verifiability? There are mixed results, but there is substantial evidence of increased voting.

Eindhoven University of Technology researchers de Vries and Bokslag assessed the Estonian system and the Dutch internet voting system against eight criteria, which, in essence, encompassed the three tests to which I have referred. Estonia, which is generally regarded as the most advanced country online, following its experience of suffering a cyber attack from the Russians shortly after becoming independent, did not pass the Open Rights Group's three tests; it passed only two of them and met only half of the Eindhoven researchers' criteria. The Dutch system met only one of the researchers' eight criteria, and it did so very marginally.

The key difficulty in any electronically aided voting system is verification—that is, allowing the observation of every step in the process from voter registration through voting and counting votes to the determination of the final result. Is that an

unsolvable problem? No. However, it is probably a problem that is not yet solved.

I cannot describe my solution in my remaining 100 words, but it would leave paper as the medium for each vote that is submitted for counting and would allow secure submission from smartphone to counting centre and verification by voter and observers.

The Government's consultation on electoral reform closes on Monday—I am sure that the minister will refer to it. Members will be able to read my submission to ElectionsTeam@gov.scot when I publish it on Monday, on my website at ivoting.stewartstevenson.scot. I hope that other members will respond to the consultation.

There are seven unsolvable maths problems—the millennium problems. If someone solves one, they win \$1 million. I am working on one of them—the queens problem—and I think that I am halfway there. The problem that we face in relation to electronic voting is by no means unsolvable.

The Deputy Presiding Officer: I advise Stewart Stevenson that he benefited from a fault in the electronic clock and got an extra two minutes—we did not notice. We are now back to the right timings.

17:15

Jamie Halcro Johnston (Highlands and Islands) (Con): I am tempted to refer to the problems with our electronic voting system, Presiding Officer.

I congratulate Stewart Stevenson on securing the debate. The issue clearly has significant implications for our electoral system.

In a democracy, voting methods are important. Today's motion refers to the Ballot Act 1872, which met calls after the second reform act to ensure a secret ballot. Many of the principles in that legislation—that we have a thorough system that is anonymous and secure and that guards against electoral fraud—remain in our system today.

Some of the issues around the principles have arisen in relation to postal voting, whereby we have a system that, in essence, provides postal votes on demand. Undoubtedly, there have been problems but, thankfully, they are on a small scale. However, personation—the offence of voting as another person—has gradually reappeared after having all but died out in the 19th century.

In my region, a number of the remoter island communities operate universal postal voting, which enables election results to be delivered in good time despite the challenges of geography. It is possible to see potential benefits to electronic

voting in such circumstances if a robust system can be found.

We need to think not simply in terms of people using computers in their homes or voting via mobile phones, because positive outcomes could be achieved without compromising security by electronic voting through new, more remote polling stations where activities could continue to be monitored.

A number of the concerns that have been raised with me relate to the confirmation of identity, although the additional opportunities for undue influence that electronic voting may bring is also a concern. Those are not so much technological challenges as social ones such as the idea of people together in a group environment who are on mobile phones receiving pressure to vote on the spot and being subject to the influence of a crowd. Problems of that nature raise complicated questions. For example, what if a person wants to change their vote? Should that be enabled? Should there be a last-vote-counts system? Would that impact on political campaigning, or would it have a psychological impact on how people will, in the end, vote?

This serious subject merits further debate. However, I have a concern with the suggestion in Stewart Stevenson's motion that a switchover would "help reduce the costs". I appreciate that there is an inclination in motions to list potential positives, but we should not be considering electronic voting as democracy on the cheap. As I have outlined, there are possibilities around the proposals, but some may cost as much—if not more—to administer correctly. If voter flexibility can be provided, it may well be worth paying a little more. I would not want to see any attempt to change the voting system in which cost saving was put front and centre.

Our system is not perfect, but we should take time to consider the impact of changing long-held traditions. Matthew Parris, a columnist for *The Times* and a former MP, once described our village halls, schools and other polling places as "small cathedrals of democracy." I may be an electoral and political geek, but I still get a buzz every time I go into a polling station. On some level, voting binds society together, and there is perhaps a physical element to that, too.

If we look at places where voting has been denied over a long period, we find that people will queue for many hours—sometimes in dangerous conditions—just for the chance to vote. Those queues are a physical embodiment of democracy being practised. Although we do not always have voting queues in this country, we would lose that physical embodiment of democracy were we to make voting as simple as voting for contestants on

"X Factor", "I'm A Celebrity ... Get Me Out Of Here!" or "The Great British Bake Off".

I also question whether making voting easier would mean that more people would vote. I have always been surprised by the number of older people who have never voted and who never will. The young people with whom I have spoken about why they might not vote have told me that it is a question not of ease but of engagement, which is an issue that goes wider than just young people.

As much as the technical hurdles must be considered, I invite members to give thought to some of the other hurdles, too. We should not be under any illusions about the potentially enormous changes in our voting system that electronic voting would bring. If we make changes to how we vote, we must ensure that we get them right.

17:19

Alex Rowley (Mid Scotland and Fife) (Lab):

First, I apologise to you, Presiding Officer, because I am unable to stay for the whole of the debate as I have a constituency engagement in Fife.

I congratulate Stewart Stevenson on securing the debate and I support the principle that anything that we can do to encourage people to vote and make it easier for them to do so is a good thing.

I come from a local government background and, knowing how important local government is to everyday life, it is very disappointing that some of the lowest turnouts are for council elections. That is why this subject is often discussed in council chambers up and down Scotland. I have to be honest and say that I do not see electronic and internet voting as a panacea for low turnout, but I certainly think that it is worth further consideration, along with other methods of good practice that can be picked up from many other countries.

Earlier this week, I got an email from a constituent who was very concerned about electronic voting. I replied to him saying that I had an open mind about it. He was very worried about the security of such systems and the ability for the election to be rigged. Those are very real concerns, it seems to me.

Estonia, which has been one of the most successful countries in the use of e-voting, says that a crucial part of its system is that the online voting is linked to the country's state-of-the-art electronic identity cards, which are carried by every citizen and resident. We know from experience that identity cards were not popular when they were mooted for introduction in the United Kingdom. It would be important to know what the introduction of a successful electronic

voting system would require and what the impact of that would be on the general public.

The point about identity cards was also made by Professor Steve Schneider, the director of the Surrey centre for cyber security at the University of Surrey, who says that the success of Estonia's system lies in the fact that it was built from the ground up, supported by a solid infrastructure that includes the digital identification system. Given our track record with information technology projects in this country, that would also be a major concern. The Netherlands tried electronic voting but has returned to paper voting, and Norway tested i-voting but decided to discontinue that system. France has also said that it has concerns about cybersecurity.

To people who are enthusiastic about electronic voting, I have to say that there are legitimate major concerns and obstacles and that is why I do not think that we will be moving in that direction any time soon. Concerns are being raised about technology and how it can be used to distort democratic processes, and until many of those issues and concerns can be addressed, that is not the way that I want to go.

In conclusion, I am sure that many of the candidates and others involved in the Clackmannanshire North by-election last Thursday would have been happy to have electronic voting, given that there was a red weather warning for the whole day on which voting took place. That said, perhaps common sense should be applied.

17:23

Tom Arthur (Renfrewshire South) (SNP): I am grateful for the opportunity to speak in this debate and thank my colleague Stewart Stevenson for bringing the issue to the chamber. Much of what I was going to say has already been covered thoroughly by Stewart, in the way in which he tends to cover every possible aspect of a debate in his speech.

I am going to make use of a piece of advice that Stewart gave me, which is that a debate is not over when everything has been said, but only once everybody has said it. However, I will reprimand him on divulging our postal vote strategy. It is not something that I think we should necessarily be sharing with Opposition parties. If the official report would like to excise that from the record, I would be most grateful.

I come to the debate with an open mind as regards electronic voting. That is obviously an umbrella term that captures e-voting, online voting, internet voting and electronic counting. There are very strong arguments both for and against. I am grateful for the submission that the Open Rights Group made available on its website, which is a

response to the Scottish Government. That raises a lot of issues, some of which have already been touched on.

Electronic voting—particularly online voting—could have a positive effect because it would enable people to engage easily with the democratic process, which would make that process more accessible.

My party uses electronic voting as an effective way of doing candidate selection. Electronic voting also enables people to see their voting options presented alongside information on the candidate or—in the case of national elections—the political parties. If we used an electronic voting system in polling places, that would enable issues—some of which can be quite vague—to be presented to people who only get involved in politics at election times. Of course, we are not allowed to have campaign material within polling places, so there are opportunities there in relation to allowing people to properly evaluate their choices.

Electronic voting would also help to facilitate other election methods, such as the single transferable vote, as it would allow vote counting and verification to be carried out far more quickly.

I recognise the arguments against electronic voting, a key one being the challenge of auditing. Clearly, the various security mechanisms that would be required would create a level of opacity that only a technical expert with the capacities of Stewart Stevenson could accurately discern. Fundamental to any democracy is the capability of any person, without such expertise, to evaluate and discern what is going on with the voting system; I think that there is nothing more straightforward than seeing whether there is a cross or a number on a ballot paper.

Issues of personation, privacy and so on are also relevant, as is the issue of vote selling. Obviously, such issues are behavioural, and aspects of that could be mitigated. Clearly, a big concern in the present age is that of foreign interference—the on-going investigations in the United States are testament to that. The issue is not simply that experts can be convinced of the safety and security of electronic systems; the general public has to be similarly convinced. The system has to be unimpeachable, and people must have confidence in it.

At the moment, in terms of the balance of the issues, I come down in favour of e-counting, which is a useful mechanism. It certainly works extremely well in local elections—I do not think that anyone would welcome the idea of trying to do an STV calculation by hand. We could consider using it for elections to the Scottish Parliament and, indeed, to Westminster, if that Parliament wishes to go down that route. It would certainly

expedite the process, which would be beneficial for the staff who have to spend long hours in draughty halls, and would be beneficial to all the candidates, because it would shorten the period in which we have to wait in uncertainty.

I thank Stewart Stevenson for bringing this interesting debate to the Parliament.

17:27

Patrick Harvie (Glasgow) (Green): I apologise to Jamie Halcro Johnston for the fact that I missed part of his speech. It has been a long afternoon in the chamber for me—I will leave it at that.

As my party has not yet adopted any policy on the question of online, internet or electronic voting, I am speaking in a personal capacity only.

I would be concerned if we were to go down the route of a trial of these systems. As members will be aware from the email that I circulated, I am a member of the Open Rights Group. I was happy to host it in Parliament last week. Sadly, that was on the day of the red weather warning, so not all members who wanted to be there for the briefing event were able to attend. However, I have circulated some of the group's material to members by email.

I will run through some of the key concerns that the Open Rights Group set out. The first issue that I will address is that of the three-way test that says that a system should be secure, anonymous and verifiable. There is not much else that needs to meet that kind of test. People say, "Well, I do my banking online and I file my tax return online." Those things do not need to be anonymous—in fact, they require not to be anonymous. Other things might need to be anonymous but not need to be so secure. The Open Rights Group said that the need to meet all three of the tests was an unsolvable problem, saying that seeking to strengthen one or two of those factors in any system of online or internet voting would almost inevitably weaken the third.

I do not know whether it is, in fact, a theoretically unsolvable problem. I am not enough of a technical expert to know whether it is theoretically unsolvable, but I can see pretty clearly that the more complex and theoretical the solution needs to be, the less comprehensible it is to most voters.

A piece of paper with a mark on it, put into a metal or plastic box with a physical secure tag on it, carried from one room in one building to another room in another building, opened in front of people's eyes and counted physically can be seen by everyone. Everyone has a tangible sense of the security, verifiability and trust that there can be in that system. The more complex, theoretical and

technological the solution that is needed to achieve that high standard of security, anonymity and verifiability, the less trust a great many people will have in the system.

I also have to ask, what are we trying to fix by doing this? It has been asserted that it is a way of increasing turnout. According to the research that members have access to in the Open Rights Group's briefing, analysis has been done of countries such as Estonia, which has been conducting internet voting for a number of years—since 2007, in fact—and which provides a fairly substantial amount of data about how that system has worked. The conclusion is that there is not actually strong evidence of an increase in turnout, because the uptake tends to be from people who were more likely to vote anyway.

I suggest that there are a whole host of other options that we should be exploring first if we are concerned, as we should be, about turnout. Reducing the voting age to 16 was a good step. Getting high-quality, creative, engaging citizenship lessons in our schools, year after year and election after election, will help to drive up turnout. A whole host of other methods could increase turnout, but e-voting would be way down the list of priorities, even if there were not concerns around the security, verifiability and anonymity of the process.

I urge the Scottish Government, when looking at the responses to the consultation, to pay attention to the response from the Open Rights Group and others who have raised those concerns, and I suggest that we do not proceed with a trial of internet, online or electronic voting at this stage.

17:32

Ruth Maguire (Cunninghame South) (SNP): I thank my colleague Stewart Stevenson for bringing this important and exciting topic to the chamber. As the motion points out, it is crucial that considerations relating to confidentiality and security are addressed, but I believe that the potential of what e-voting could deliver makes it well worth exploring the topic and working towards that, and I welcome today's opportunity to contribute to the discussion.

We can all agree that democracy works only when people actually take part. Electronic voting holds huge potential for making it easier to vote, which could in turn increase turnout and engagement. That might be particularly true for younger people, who conduct so much of their lives online, but who are also least likely to turn out to vote. Figures for the Office for National Statistics for 2017 show that virtually all adults aged from 16 to 34 years—99 per cent of them—are internet users. At the same time, according to

YouGov, just over half of 18 and 19-year-olds turned out to vote at the 2017 general election, compared with 84 per cent of those aged 70 and over.

That might have some appeal to the members who are sitting on my left. I do not want to be cheeky, but the Conservatives had a 50-point lead among the over-70s at the previous election, so I could understand their reticence about increasing the youth vote. However, to be serious, I think that everyone in the chamber would share the desire to see greater democratic engagement and turnout among young people.

In an era of Twitter, Instagram, Facebook, Snapchat, hashtags and online petitions, imagine the impact on turnout if people could, for example, simply see a tweet reminding them to vote, click on the link and do just that, whatever the time of day or wherever they might be. Following the European Union referendum in 2016, a YouGov survey found that almost half of the 18 to 24-year-olds who were polled and who had failed to vote said that they would have done so if they had been able to vote online.

Although there is a particular case to be made for the impact of e-voting on young people, its appeal goes further. As has been mentioned, Estonia has used e-voting since 2005, and more than 30 per cent of voters cast their ballot online in the most recent parliamentary elections. The deputy head of Estonia's electoral office has stressed that e-voting "has become massive" and that

"statistically there is no such thing as a typical"

e-voter.

He said:

"All voters, irrespective of gender, income, education, nationality and even computer skills have the likelihood of becoming"

an e-voter.

Jamie Halcro Johnston: Would it not be better if we actually got across to people, particularly younger people, the importance of their vote and the impact that it has?

Ruth Maguire: Absolutely. We can do that right away, and many of us do so in our political campaigning. It is not a question of one thing or the other. I certainly do not suggest that e-voting is the one solution to the problem; there are lots of things that we need to do.

The Welsh Government has recently announced plans to pilot remote online voting in elections in Wales following the result of a consultation. The submission from WebRoots Democracy notes that voters in the 2021 Welsh Assembly election will be the first generation of voters who will not recall a

world before smartphones and social media. It states:

"As time goes on, a digital democracy will become an expectation instead of an aspiration. It is time we looked at how best we can bring this about and online voting will play an important part of that."

The Scottish Government's consultation on electronic voting is under way as we speak, and there is a real opportunity to reform the way in which we vote in Scotland, to make it more inclusive and engaging and to increase turnout among younger voters, and perhaps to inject a new lease of life into our democracy. I encourage any of my constituents who have views on the matter to make their voice heard and to respond to the consultation before 12 March.

The Deputy Presiding Officer: Before I call Mr Carson—you are not in trouble, Mr Carson; really, you are not—I point out that, due to the fact that four members still wish to speak, I am minded to accept a motion without notice under rule 8.14.3 to extend the debate by up to 30 minutes.

Motion moved,

That, under Rule 8.14.3, the debate be extended by up to 30 minutes.—[*Stewart Stevenson*]

Motion agreed to.

17:37

Finlay Carson (Galloway and West Dumfries) (Con): I thank Stewart Stevenson for bringing the debate to the chamber. As my party's spokesman on the digital economy, I am pleased to be able to take part and to outline some of the many issues surrounding electronic voting. We now deal with advances in technology on a daily basis, and it is important to discuss that in the context of our democracy and elections. Although members have raised many constructive points, I will outline why I still have many concerns over the introduction of electronic voting in Scottish and UK elections.

In December 2017, the UK Government commissioned Sir Ken Knight to look into electronic voting in industrial ballots. Sir Ken's report gives stark warnings about how vulnerable the UK's information technology systems are to cyberattacks. In April 2017, the Foreign Office came under a sustained attack from hackers who were alleged to be linked to a foreign state. That led to the Government reporting that it faces the threat of tens of thousands of cyberattacks every month. We hear very serious allegations that high-ranking officials in the Russian Government may even have helped to put President Trump into the White house. Do we really want electronic voting if it raises questions about the validity of who is resident in Bute house or about who may be responsible for that outcome?

An even greater warning about the dangers of electronic voting comes from the former head of MI6 Sir John Sawers, who said in January 2017:

“The more things that go online, the more susceptible you are to cyber attacks.”

He went on:

“Bizarrely the stubby pencil and piece of paper that you put your cross on in the ballot box is actually much more secure than anything which is electronic.”

I know from designing cattle management programmes for computers that it is much easier to put in false records on a computer system than it was when we had to fill in a ledger with a pencil. With that system, it was almost impossible to delete records, whereas that is very straightforward with an electronic system. As someone who very proudly visited my local polling station recently, to vote with my 90-year-old father and 18-year-old son, I think that we all need to learn lessons from what the former head of MI6 said.

Stewart Stevenson’s motion refers to electronic voting increasing turnout, which, of course, we would all like to see. At this point, I will not debate the argument surrounding lower-cost elections because I do not believe that we can really put a price on transparency and democracy. However, there is evidence from countries across the world that electronic voting has not resulted in increased turnout. In Estonia, which has used internet voting since 2007, the evidence shows that it has done very little to attract new voters. In Norway, where trials were done in 10 municipalities in 2011, analysis indicated that younger voters actually preferred the walk to polling stations, identifying it as being symbolic. Furthermore, 89 per cent of those who voted via the internet would have voted anyway if the electronic option had not been available.

I conclude by raising connectivity issues in my constituency of Galloway and West Dumfries, in which there are still widespread areas that are without good mobile or broadband signals; those issues continue to dominate my inbox. If we want to encourage people to participate electronically in our democratic process, should we not first ensure that everyone is able to do so?

As politicians, we all have a duty to encourage voters, young and old, to participate in that process. We all know how much we have had to do that in Scotland in recent years. However, as much as technology continues to advance, I believe that when it comes down to our democratic system, this is one area in which I do not want to take away the pencil and introduce the click or the text message. We should heed the concerns that were outlined in Sir Ken Knight’s recent report and

look at better ways of increasing voter engagement and turnout.

17:42

Emma Harper (South Scotland) (SNP): I thank my colleague Stewart Stevenson—who is sitting behind me—for securing this interesting debate.

It is only right that, as technology continues to develop at a fast pace, we examine how it could make the process of voting more in tune with how people live their lives. As the motion states,

“the traditional paper voting method has remained virtually unchanged since 1872”.

I therefore welcome the Scottish Government’s consultation on electoral reform, which seeks to investigate further the potential benefits of electronic and internet voting systems.

Prior to tonight’s debate, Stewart Stevenson circulated a helpful briefing note from the Institution of Engineering and Technology, which I read with interest. I have read before about some of the benefits that were highlighted in it, including boosting voter turnout, cutting the cost of elections and improving accessibility. Many other members have mentioned the IET, so I am sure that we found the briefing that Stewart Stevenson sent us to be very helpful.

Under the current system, there is room for human error: votes can be miscounted, misread or misplaced. When election counts go wrong, it can be very difficult to trace problems back to their source, and there is no easy way to fix them other than simply to begin again.

What has been done so far to test electronic voting technology? In 2007, 13 pilot studies were held during England’s local elections, and in 2011 trials were carried out in 10 of Norway’s municipalities. As part of Norway’s trials, two research centres used qualitative and quantitative methods to study participation and turnout. The findings were, perhaps, unexpected: 89 per cent of internet voters said that they would have voted even in the absence of the online voting option. That analysis was repeated in 2013 and the same conclusions were reached: again, the trials did not have an effect on voter turnout. In fact, as Finlay Carson mentioned, younger voters tended to say that they enjoyed attending polling stations. As a result, the Norwegian Government ceased the trials. In England, after the 2007 pilots, the Electoral Commission voiced its concerns about planning and quality assurance, and confirmed that those matters would need to be addressed before it would lend support to further e-voting pilots.

However, as members have mentioned, Estonia has used internet voting since 2007, and more

than a quarter of votes that are cast there are now cast online. The Estonians seem to have solved the problems of cybersecurity that the IET highlighted as a concern, by designing a system that lets voters sign and encrypt their own votes. The secret behind the solution is biometric identification cards. Every citizen has an online ID card with a digital signing capability, and the card can be used with a chip and PIN machine to prove to Government agencies that the online user is a citizen of Estonia. I am sure that members will remember that, in the previous decade, there was a debate in the UK about the introduction of ID cards, but the idea was shelved by the Tory-Lib Dem coalition.

There are legitimate concerns about the adoption of electronic voting that need to be addressed before its widespread adoption. Not least, there are significant cybersecurity risks, which I have not had time to go into today, and those risks might damage public trust in the voting systems. Fortunately, the IET has already started to examine those issues in its policy and panel work, and it is engaging with the Electoral Commission to discuss the challenges.

Until electronic voting is introduced, one way that we can ensure increased public engagement with the electoral process is to continue to drive forward a vision for a better country and to let people see for themselves that they have a Government and a Parliament that are committed to changing society for the better.

17:46

Stuart McMillan (Greenock and Inverclyde) (SNP): I congratulate my colleague Stewart Stevenson on securing this interesting debate. Notionally, I am sceptical about electronic and internet voting. However, the motion is detailed and measured, which is typical of Stewart Stevenson. As we all know, he is a mathematician. I am quite sure that, if he had the time, he would be able to design an electronic voting system for Scotland to use. He is halfway there with one aspect that he talked about earlier. I am sure that, if he was not an MSP, he would devote his time to designing such a system.

In the Scottish National Party, we have electronic voting when we hold internal elections. The system works very well, but I accept that a much smaller number of individuals are involved in that process than the number in the wider electorate. I am not sure whether other parties use electronic voting for internal elections.

I agree with the concept of electronic voting, but I have concerns, similar to those of colleagues, on security issues among other things.

Thus far, no member has mentioned accessibility of voting. I chair the cross-party group on visual impairment. At recent meetings we have had discussions about the Scottish Government's consultation on electoral reform. Cross-party group members who are blind or visually impaired have raised the issue of the problems that they have with voting using the current system, and many suggested that an electronic voting system using tablets or smartphones would improve their access to the electoral process.

Patrick Harvie: The issue was discussed at the Open Rights Group briefing last week, when there was a general acknowledgment that we are open to changes to the current voting system to improve accessibility. However, there was also concern expressed that there is no single technological solution that can overcome all forms of disability and the barriers that exist to using technology. We also know from research that was done by Citizens Advice Scotland that the barriers to using technology in other areas of life correlate with social exclusion, disability and a number of other factors. There is a danger that we would compound an existing problem, rather than solve it.

The Deputy Presiding Officer: You will have extra time, Mr McMillan.

Stuart McMillan: I am not suggesting for one minute that electronic and internet voting will be a panacea; not one person in the cross-party group suggested that, either. However, as a general concept, members of the cross-party group are willing to examine the possibility of electronic and internet voting as one means of increasing accessibility and voter participation in the electoral system.

If electronic voting could help more electors to be involved in the democratic process, it should certainly be examined. However, we politicians have a crucial role to play with our campaigns, our parties' campaigns and how we engage with the electorate. The motion says that

"security considerations ... confidentiality and eligibility ... must ... be resolved".

I agree that before we move to wider electronic voting, those three points must be fully dealt with so that the electorate has absolute confidence that their votes will be counted and that votes will be confidential. Those issues are so important.

Electronic systems have been used for many things in society. With electronic banking, billions of financial transactions take place daily. If we can make electronic progress in those matters, the concept of electronic voting should not be rejected. Its time will come, but it is not there yet. It still has a considerable way to go, and work still needs to be done. However, this start—dialogue in

Parliament—is very worth while. Once again, I congratulate Stewart Stevenson on securing the debate.

17:51

The Minister for Parliamentary Business (Joe FitzPatrick): I add my congratulations to Stewart Stevenson on securing this timely debate. In 2016, the Scottish Government gained additional powers over elections so that, for the first time, we have full responsibility for Scottish Parliament as well as local government elections. This is the ideal time to consider the possibilities that are presented by new developments in voting technology.

We are keen to explore, in particular, how recent electronic innovation might support our aim to maximise access to democratic participation. The Scottish Government aims to be a global leader in its adoption of digital solutions. The Government's digital strategy sets out how we plan to achieve that and includes a specific commitment to trial electronic voting solutions.

As Emma Harper and Finlay Carson have said, many countries have already either adopted or trialled some form of e-voting. We are open to exploring the range of options. That might mean trialling the use of electronic voting machines—which are already widely used in a large number of countries—and researching the potential of internet voting, which is much less widely used for local and national elections. Internet voting presents significant security challenges, as the motion highlights, but, as Stuart McMillan said, it is already used for some significant elections in this country.

In whatever way we choose to proceed—taking into account the outcome of our electoral reform consultation—this will not be Scotland's first foray into using technology to manage the electoral process. As Tom Arthur said, the electronic counting of votes for our local government elections has been in place since 2007. E-counting has been used successfully without issues in the past two Scotland-wide local government elections as well as in a number of by-elections. Last May, nearly two million votes were cast in local elections and counted across 32 local authorities in just eight hours. In all elections where e-counting has been used in Scotland, the results have been accepted by all those who were involved.

Some people may ask why we should consider moving away from the tried-and-tested paper and pencil-based voting system that has widespread public confidence. This year, 2018, is an important year in the history of our democracy, and 6 February marked 100 years since the passing of the Representation of the People Act 1918, which

allowed some women who were aged over 30 to vote in elections in the UK. It seems a bit odd that in our most recent council elections, last May, and in all elections that have been held in Scotland, votes were cast in much the same way as they have been since the 1800s. It was great to hear from Stewart Stevenson what happened prior to 1872—every day is a learning experience when he is around. It seems extraordinary that the process that is so important to our act of citizenship and democracy has not materially changed for more than a hundred years.

Patrick Harvie: To be honest, it does not seem extraordinary to me that it has not changed. What that suggests to me is that we have a system that works, that is secure, anonymous and verifiable, and that meets the tests that it appears are not yet meetable and might never be meetable by an internet system.

I am sure that the minister will pay close attention to all the consultation responses, including those that raise such concerns. When does he expect the Scottish Government to come forward with proposals, which I assume will come to Parliament before any final decision is made? How long after the consultation closes does he anticipate that that will happen?

Joe FitzPatrick: I thank Patrick Harvie for his question. I will return to the consultation later in my speech. As with all consultations, the consultation will close and we will take time to analyse the responses before we produce proposals. In making progress on anything to do with elections, we need to operate on the basis of consensus.

I recognise the tests that Mr Harvie mentioned. I would argue that the three tests are not 100 per cent met by the current system. We need to look at all the arguments. As I said, we will look carefully at all the representations that are made in the consultation, including those from the organisation that Mr Harvie mentioned.

Technology has brought us to the point where we can shop with a watch, consume media on a phone and count 2 million votes in eight hours, so is it right that our system of elected representation remains basically unchanged since Victorian times? It is clear that we need to look at that.

Our decision to move to e-counting in local government elections was based largely on need—it was driven by the introduction of the STV system. I would like us to consider being driven by opportunity rather than need. The use of new technology brings with it potential benefits, a couple of which I will highlight.

As Stuart McMillan said, for many of Scotland's disabled voters, casting their vote or being able to vote in secret can be challenging, whether they make use of a postal vote or vote in a polling

booth. That is an area in which technology could help. Electronic machines can be modified to make voting easier for voters with certain disabilities. For example, e-voting machines can be configured to include audio and tactile interfaces for those with visual or mobility impairments, and the voting instructions can be presented in different languages, including visually, in British Sign Language. In addition, internet voting could benefit blind and visually impaired voters and people with mobility challenges.

As Ruth Maguire mentioned, another potential benefit of e-voting is that it might help to improve participation. It is clear that we are not where we want to be as regards participation at all levels. I do not think that anyone is suggesting that e-voting would be a panacea, but it is right for us to consider whether it might encourage more people to vote, particularly—given that it is the year of young people—younger voters who have grown up in a digital world. We certainly need to look at that.

I am mindful of the time.

The Deputy Presiding Officer: You do not need to rush, minister. I will give you extra time for the intervention.

Joe FitzPatrick: Thank you.

It is clear that there are challenges, which several members have raised. I can confirm that the Government will listen very carefully to all the challenges that are raised. There are clear concerns around security, as a number of members mentioned. In any electronic system, the integrity of the votes that are cast is an important consideration. As Patrick Harvie said, any change that is introduced here in Scotland would have to win the confidence of voters.

The motion refers to the Scottish Government's public consultation on electoral reform, which gives us the opportunity to explore a wide range of alternatives to the existing electoral processes, and we are keen to hear people's views on not just the innovation of e-voting but a range of other changes.

Patrick Harvie mentioned the weather that interfered with his meeting last week. We have been trying to meet a number of stakeholders to hear their views on the consultation, but the weather has posed some challenges for some of the groups involved. On that basis, I am announcing our intention to extend the consultation to 29 March, and I hope that tonight's debate will encourage more people to feed in their views, whatever they are, and that the extra time will make things easier in that respect.

In conclusion, I thank Mr Stevenson for bringing this debate to the chamber and members for their considered contributions.

Meeting closed at 18:00.

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