



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Constitution, Europe, External Affairs and Culture Committee

**Thursday 27 January 2022**

**Session 6**



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**Thursday 27 January 2022**

**CONTENTS**

<b>UNITED KINGDOM INTERNAL MARKET .....</b>	<b>Col. 1</b>
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**CONSTITUTION, EUROPE, EXTERNAL AFFAIRS AND CULTURE COMMITTEE**  
**3<sup>rd</sup> Meeting 2022, Session 6**

**CONVENER**

\*Clare Adamson (Motherwell and Wishaw) (SNP)

**DEPUTY CONVENER**

\*Donald Cameron (Highlands and Islands) (Con)

**COMMITTEE MEMBERS**

\*Dr Alasdair Allan (Na h-Eileanan an Iar) (SNP)

\*Sarah Boyack (Lothian) (Lab)

\*Maurice Golden (North East Scotland) (Con)

\*Jenni Minto (Argyll and Bute) (SNP)

Mark Ruskell (Mid Scotland and Fife) (Green)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Donald Cameron (Scottish Government)

Euan Page (Scottish Government)

Angus Robertson (Cabinet Secretary for the Constitution, External Affairs and Culture)

**CLERK TO THE COMMITTEE**

James Johnston

**LOCATION**

The David Livingstone Room (CR6)



## Scottish Parliament

### Constitution, Europe, External Affairs and Culture Committee

Thursday 27 January 2022

[The Convener opened the meeting at 09:30]

#### United Kingdom Internal Market

**The Convener (Clare Adamson):** Good morning, and a very warm welcome to the third meeting in 2022 of the Constitution, Europe, External Affairs and Culture Committee. We have received apologies from Mr Ruskell.

Under agenda item 1, the committee will take evidence from the Scottish Government on the evidence that we heard during the committee's United Kingdom internal market inquiry. We welcome to the meeting the Cabinet Secretary for the Constitution, External Affairs and Culture, Angus Robertson; Donald Cameron, deputy director, constitution and UK relations division; and Euan Page, head of UK frameworks.

I invite the cabinet secretary to make an opening statement.

**The Cabinet Secretary for the Constitution, External Affairs and Culture (Angus Robertson):** [*Inaudible.*—this morning. I think that this is my fifth session with the committee. Since we previously met, I have given evidence on common frameworks and the United Kingdom Internal Market Act 2020 to the House of Lords Common Frameworks Scrutiny Committee, and I have been in regular discussions with my counterparts in the UK Government and with the other devolved Governments.

Any inquiry into the internal market regime that is imposed by the internal market act must proceed against, and be seen in, the wider context of the devolution settlement. In 1997, people in Scotland voted overwhelmingly to re-establish the Scottish Parliament. With our own Parliament, free personal care has been introduced, university tuition fees have been abolished, and no one is now charged for prescriptions. Those initiatives and many more have improved the lives of people in Scotland immeasurably.

We are now confronted by an effort by the UK Government to put the gains of devolution at risk by taking control once again of key devolved powers without consent—without the permission of elected members of the Scottish Parliament and, indeed, the Scottish Government. In some parts of UK politics, devolution has always been seen as a problem to be fixed, and the UK is

mistakenly conceived as being a unitary state rather than a voluntary political union of nations. That view has become increasingly obvious since the European Union referendum, and it can be seen most clearly of all in respect of the internal market act, which we are deliberating over today.

The Scottish Government's opposition to the internal market act is clear, well known and understood. We have argued from the outset that it represents a fundamental change to the devolution settlement that people voted for in 1997, that it is a change that was achieved by stealth, and that it is a chipping away at the powers and responsibilities of the Scottish Parliament. The majority of members of the Scottish Parliament agree with that and have voted overwhelmingly to refuse consent to the act, as did colleagues in Cardiff. The Northern Ireland Assembly passed a motion to reject the bill. No devolved legislature has consented to the act. Despite that overwhelming rejection, the Sewel convention was once again ignored, and the act has been imposed on us.

Those concerns were, and continue to be, dismissed by UK ministers as scaremongering. Instead, we have been told that, somehow, the act represents a power surge—if that were to be believed—following EU exit. It is just over a year since the act passed into law, and we now have a growing body of evidence that vindicates our position and the concern of the overwhelming majority of members of the Scottish Parliament. Witnesses in the inquiry have laid bare the negative impact of the act.

I have had a look at the evidence that the committee has garnered, and certain contributions stand out. One goes as follows—this is a direct quotation:

“The Internal Market Act could create risks for the integrity of the existing devolution settlement and in particular for the integrity of the regulatory prerogatives that the Scottish authorities enjoy, in accordance with the Scotland Act 2016, in the area of public health and especially alcohol control policy.”

That is the view of Professor Nicola McEwen of the University of Edinburgh.

A further quote says:

“The internal market act views devolution and the potential for divergence as an obstacle and a potential irritant to the economic integration of the UK, which is prioritised and privileged through the market access principles of the act.”—[*Official Report, Constitution, Europe, External Affairs and Culture Committee*, 2 December 2021; c 19.]

Another says:

“The Act undermines devolution and will limit the ability to the Scottish Parliament and Government to improve farmed animal welfare standards.”

That contribution is from a written submission to the committee by Kirsty Jenkins of OneKind Charity.

I could go on, because the committee has received a lot of evidence that underlines our concerns. However, it is not just in the Scottish Parliament and other devolved institutions that the concerns have been amplified. Only last week, Lord Hope spoke to BBC Scotland, marking the publication of a House of Lords report. He said:

“The problem has been, while it was always understood from the beginning that Westminster would not make laws for Scotland which cut across the devolution system without the consent of the devolved administrations, they did not respect that, particularly with Brexit, and that created a great deal of mistrust and, indeed, hostility”.

Responding to a question about whether the internal market act strengthens or undermines devolution, Lord Hope said:

“Well, I think the Scottish Government are right about that.”

Lord Hope, who is a cross bencher and a very independent and well-versed member of the House of Lords, agrees with the position of the Scottish Government and the majority view in the Scottish Parliament on this matter. Although he and I might not see eye to eye on the best constitutional future for the UK, it is difficult to argue with those clearly expressed views, which he gave only last week.

The act means that devolved powers will now be exercised in a system that is designed and controlled by UK ministers. During the passage of the bill, much was heard from UK ministers about how the proposals simply replicated the rules that provide for regulatory coherence in the EU single market. That is not the case. The internal market act does not provide any of the exemptions or protections for local autonomy that are enjoyed by members of the EU single market, nor do its provisions mirror the internal market rules that pertain in other devolved or federal states.

Delegated powers in the act enable policy areas that are currently controlled by the devolved Parliaments to be brought within the scope of the market access principles by UK ministers. Those powers mean that UK ministers can change the scope of the act unilaterally. Indeed, as we speak, the UK Government is expected to seek the consent of the devolved Governments to changes to the services exclusions regime. The fact of it seeking consent might sound reassuring, but any such assurance would be false. Although there is a duty in the act that requires UK ministers to seek the consent of the devolved Governments before such changes are made, the UK Government can proceed after just one month regardless of whether consent has been given.

The act has made other significant changes that are worth noting. It allows, for the first time, UK ministers to decide how money should be spent in Scotland on wholly devolved policy areas spanning culture, sport, education, economic development and infrastructure. That money should be for the Scottish Parliament—for you, as members of the Parliament—and the Scottish Government to make our own choices about, in line with the priorities of the people who have elected you and us. The First Minister of Wales has pithily observed that the act steals money and powers from Wales, and it is difficult to disagree with his assessment.

The act represents a fundamental erosion of the devolution settlement and a departure from the principles and practice of devolution that have been experienced over two decades. We will no doubt come on to questions about what can be done to mitigate or how to work with the grain of the act now that it is, unfortunately, a reality. My response will be plain. The act cannot be reformed or properly mitigated. It is an internal market regime that has been imposed on its constituent members without their consent. It is inherently unstable. It is unsustainable. The only way to address the act’s harms is for it to be repealed.

**The Convener:** Thank you, cabinet secretary. We will move to questions, and I will start by asking about the submission from the Law Society of Scotland, which refers to a Scottish Parliament information centre briefing on common frameworks that addresses the question of what new governance arrangements will be needed to make common frameworks work. The SPICE paper states:

“when more decisions are taken through intergovernmental forums ... accountability and parliamentary scrutiny can suffer.”

That increases

“the importance of ensuring that intergovernmental bodies are transparent and accountable.”

What is your view on that issue? How do we ensure that the common frameworks process is transparent and accountable to the Scottish Parliament and its committees?

**Angus Robertson:** It is likely that you will touch on a range of issues in relation to frameworks, because they impact in significant ways on the internal market act. The situation is moving and evolving, but I will update the committee on where we are at present.

We are moving forward to formal scrutiny of frameworks in all four legislatures across the UK. Prior to publication, officials have been sharing clear provisional frameworks with parliamentary officials. We saw some initial scrutiny of frameworks in the spring of last year, and some

frameworks have been put forward for scrutiny in recent weeks. For example, the Cabinet Secretary for Health and Social Care gave evidence last week on frameworks in his policy area.

A number of factors have impacted on the development of common frameworks—not least the pandemic, as officials have been called away to other tasks. The biggest single impact has been from the UK Government's decision to introduce the internal market act, which raised fundamental questions about the purpose or viability of the common frameworks. It has taken a considerable time to work through the act's impact and develop mitigations.

With regard to stakeholders in the frameworks process, which includes the committee and everybody else who has a locus in the matter, there was a multiphase process for the development of the frameworks, and extensive stakeholder engagement. It has been encouraging to note from earlier witnesses in the inquiry the level of stakeholder interest in common frameworks and a clear consensus that frameworks offer a much better model than the internal market act does for co-operation on managing policy divergence. Stakeholders' views on the efficacy of the frameworks are of central importance to the Government—and, no doubt, to the committee as it takes evidence on how things work.

Of course, there is also the committee's ongoing scrutiny. As I said in my opening statement, this is the fourth or fifth time that I have been with you, and I am happy to come back to update you, as are my officials, including my colleagues who were introduced at the start of the meeting, who do a lot of the technical work on the frameworks. We are happy to keep you apprised of how things are working or not working.

We are at the stage of seeing whether the UK Government will recognise the workings of the framework, which should allow for the divergence of policy across the UK. Either the UK Government will allow that to work or it will not. I have examples that I can go into. I do not want to pre-judge any questions that the committee has, but there are current issues in respect of which we will be able to see whether the UK Government is minded to allow us to get on with what we have been elected to do.

**The Convener:** Thank you. We will move on to questions from committee members.

**Jenni Minto (Argyll and Bute) (SNP):** Thank you for joining us again, cabinet secretary. I will touch on a couple of the points that you raised in your introduction.

In her contribution to yesterday's debate on Scottish Parliament committees' scrutiny of

Scotland's budget, the Cabinet Secretary for Finance and the Economy noted the importance of being able to tailor our response to Scotland's needs and priorities. You mentioned the less generous local regulatory autonomy that the UK internal market act give us, compared with the EU internal market rules. As you noted, the UK Government has started spending in devolved areas with no recourse to the Scottish Parliament. You touched on education, and I am thinking specifically of the adult numeracy fund, which is being used despite education being fully devolved. Will you expand on your thoughts and the Scottish Government's thoughts on that change?

09:45

**Angus Robertson:** This is one of the most problematic areas of the whole issue. UK ministers are now in a position to decide how public money—money that you, I and our constituents have paid in taxation—should be spent in Scotland. UK ministers have not been elected for that purpose, but they are now going to make decisions on the basis of their priorities, which they were not elected to do in Scotland. At the heart of it, there is democratic deficit and a democratic problem with all of that. As I mentioned in my opening remarks, it cuts across a range of devolved subjects including culture, sport, education, economic development and infrastructure. It bypasses you and your colleagues, and that is profoundly wrong.

UK ministers have not wasted any time in using their new powers in areas where you should be in charge, not them, and the spending is unco-ordinated. It is not co-ordinated properly with the Scottish Government, and it is not subject to your appropriate scrutiny. For example, more than £152 million of funding from the community renewal fund plus the initial rounds of the levelling-up and community ownership funds has now been awarded to projects in Scotland. It almost goes without saying that funding for worthwhile projects is a welcome thing. Who would gainsay that? However, that is not at issue. The issue is how we manage resources and priorities and what the democratic mechanisms are for doing so.

I will give you two concrete examples. First, there is the multiply programme, which involves a £560 million numeracy programme—it is not small. The multiply fund will be top-sliced from the UK shared prosperity fund and delivered by the UK Department for Work and Pensions across the whole of the UK, despite devolution being wholly involved. No engagement took place with the Scottish Government prior to the announcement, and it means that there is likely to be duplication—and waste—with the Scottish Government's adult

learning strategy, which is to be published in the spring.

My second example relates to the shared prosperity fund. The UK Government has shared some thinking about the role of the Scottish Government in the governance and operations of the shared prosperity fund that would make it a subordinate partner. The Governments would not be equals and there would not be co-decision. I say again that this is a devolved area and it is the Scottish Parliament and the Scottish Government that should be responsible.

Nevertheless, the UK Government is proceeding. Three options have been proposed in Whitehall, none of which has yet been cleared with Government ministers, and each of them has an ever-decreasing role for the Scottish Government. All the options state that UK Government ministers will have the final say, and a ministerial board has been described with the role of ministers from devolved Governments being to act in an advisory capacity only.

The Scottish Government has seen the initial paper on the indicative priorities of the UK shared prosperity fund and it raises significant questions about the strategic nature of potential projects. It only highlights our concerns regarding distant and unelected decision making for those issues. That is not just the view of the Scottish Government or the majority of members of the Scottish Parliament. Recently, the Scottish Council for Voluntary Organisations, which is the umbrella organisation for the country's voluntary organisations, highlighted its members' view that funding priorities should be set at a devolved level in order to tackle inequalities, enhance human rights and promote wellbeing

“by linking outcomes with Scotland’s National Performance Framework and other relevant policy frameworks”.

The SCVO has raised concerns about the shared prosperity fund being managed centrally by the UK Government, which echo concerns that the Scottish Government and members of the Scottish Parliament have had since the beginning of the process. Things are beginning to happen, and what we are seeing is indeed what was foretold.

**Jenni Minto:** That leads me on to comments from Professor Nicola McEwen, who has said that UKIMA could have a longer-term chilling effect on legal and policy reform. That view was reflected in evidence that the committee received from Alcohol Focus Scotland, which specifically talked about whether Scotland still has the ability to bring in legislation on minimum unit pricing for alcohol, given that health was one of the areas in which countries in Europe could choose the appropriate legislation to support their own needs. I would be

interested to hear your thoughts on that area and the chilling effect that UKIMA could have.

**Angus Robertson:** There is no doubt that it could, theoretically, have a chilling effect. The good news for you, and for colleagues who think that it is important for the Scottish Parliament to deliver on what the people voted for, is that the Government will not entertain any chilling effect, even if it might feel chilly at times. We will try to deliver on what we have been elected to do.

I will give some practical examples. The issue can sometimes sound a little theoretical, and people might say, “What’s that got to do with me?”. Jenni Minto mentioned minimum unit pricing as one example. I can come on to that, but first I will give the committee a very current example of an issue that is subject to the difficulties that we are talking about this morning: single-use plastics.

We are all—I think—trying our best to do better by the environment so that we can live in a more sustainable way, and so that our economy operates in a less damaging way. We are trying, by our actions, to be more considerate of the next generation who will inherit the situation. Some of those actions might seem small, but they will make a difference as part of a wider change in our approach to sustainability issues.

A specific concern for us, where the issue that Jenni Minto mentions kicks in, relates to single-use plastics. We all know about those, because we have all used them in different circumstances: polystyrene drinks cups and food containers, single-use plastic stirrers, plastic cutlery and straws, balloon sticks and plastic plates, which are used and then simply discarded, causing environmental degradation.

That is not sustainable, which is why we have been pursuing new rules to end their use. Legislation was introduced in the Scottish Parliament to enable us to do that, and it was decided that that was supposed to be happening. However, we might not be able to enforce a ban in Scotland, as the internal market act effectively exempts any items that are produced or imported via another part of the UK. We can make a democratic decision and say, “We are elected to do these things, so we need to change the way that we live and be more environmentally sustainable”, but the legislation that we are currently discussing drives a coach and horses through our ability to do so.

Other UK nations are moving more slowly than Scotland to ban those products. I very much hope that they follow Scotland’s lead on that, as what is good for us will be good for people in England, Wales and Northern Ireland, but it is the democratic right of our neighbouring nations to work at their own speed. What is not right is for



them to tell us that we cannot legislate in areas in which we have competence, and to use the internal market act to prevent us from doing so.

We are working with the UK Government to use the common frameworks procedure to ensure that we can deliver on what we have been seeking to do, but that is a concrete example, and there are others. Another issue on the horizon relates to the banning of the sale of horticultural peat for gardening purposes. That is because of the impact of that practice, and because we do not want to continue with the degrading of that part of our environment. However, if one was to continue with the provisions of the 2020 act, it would effectively mean that controls in Scotland could be overridden, and that is unsustainable. I could go on—there are issues around food standards, there is the risk to health measures such as minimum unit pricing on alcohol, and there are other issues coming down the track.

You ask about the chilling effect. We refuse to be artificially chilled, if I can put it that way, but the risk exists and, if there were a Government in Scotland that were less committed to protecting our ability to make our own decisions, you can imagine that people would be sitting in private rooms saying, “Oh, we’d better not proceed with that policy in our manifesto because of the internal market act.” That is no way to govern a country.

The minute that anything comes along that might impact on our ability to make decisions, I would very much want to be working with this committee to shine a light on it so that people could understand its impact. Of course, we have to test everything that we do against the risk of not having cover through the frameworks, which would mean that things would be open to legal challenge. That is a big problem. There is a solution to that, of course. In the first instance, one could get rid of the act, but my preferred option would be that Scotland become a sovereign country that makes sovereign decisions about its own market, and I would prefer us to be in the biggest single market, in Europe. That would put us in a much better place, with a system that we know and was tried and tested when the UK was still part of the European Union.

**The Convener:** I am conscious of time, so it would be helpful if we could have succinct questions and answers from now on.

**Donald Cameron (Highlands and Islands) (Con):** Good morning. I want to pick up on that last point. Much of the evidence that the committee has heard has been of a hypothetical nature, concerning what might happen in the future. Many potential challenges have been identified, but we are still very much in the realms of “could”—that is, what could happen.

I am keen to ask you about existing Scottish Government policy commitments that are being impacted, and I am interested in the example that you gave of single-use plastics. Have you had any communication from the UK Government that the market access principles are definitely going to cut across that policy commitment?

**Angus Robertson:** I am giving my officials a heads-up that I am about to pass the ball to them with regard to the latest technical stage that things have got to.

I think that I shared with the committee at a previous evidence session that I have had productive and positive discussions with Chloe Smith, who was then a Cabinet Office minister, to try to get the framework process out of the mud in which it had managed to get stuck. The reason for that was that, unless we made progress on understanding what the frameworks were there to do, they were going to fail. We worked quite hard on that in good faith and managed to get things to a place where, through assurances that were given by the UK Government that mirrored ones that had previously been given at the dispatch box in the House of Lords, we could proceed with the frameworks. As you know, the frameworks allow us, in certain circumstances, to protect the position of devolved decision making, although only with the say-so of UK Government ministers.

10:00

We are in the process of going through that procedure, which is why I think that it will help if my colleagues explain where we have got to, what we know is working as it should be and how, as we hope, it all might work but why it might not. What lies at the heart of this—and what I want to leave the committee with—is that, although we might be really fortunate and find a sympathetic minister in, say, the Department for Environment, Food and Rural Affairs or some other UK ministry who says, “Okay, we see why the Scottish Government and Parliament want to do this. As minister with responsibility in the UK Government, I will be gracious enough to allow the people who are elected to do these things to get on and do them”, we might well find others who are less empathetic, sympathetic or understanding. What should concern all of us as democrats and elected parliamentarians is that this power has been taken—I was going to say that we have offloaded it, but that makes it sound as if it was voluntary when it has actually been done to us—and someone else is sitting in judgment on the matter. That is where things currently are—on the secretary of state’s desk.

I will ask Donald Cameron and Euan Page to jump in here and give you the latest on where we are.

**Donald Cameron (Scottish Government):** To answer the deputy convener's question, and following on from the cabinet secretary's remarks, I think that it is important that we go back to the way in which the bill was introduced and, as colleagues will recall, the very truncated time period for consultation and scrutiny. Some of the issues that we would normally have expected to emerge through that process are actually emerging now, and we are, to some extent, in a process of discovery with regard to the impact of the market access principles, in particular.

As for what we in the Scottish Government are doing, we are first of all tracking the impacts across the range of the Scottish Government's responsibilities. As a result, when we develop policies, we think about the legislation and make an assessment of the likely impact of the 2020 act. Indeed, the cabinet secretary has highlighted a number of examples where we have assessed that there will be an impact.

Perhaps I can make two further points. First, with regard to the cabinet secretary's example of single-use plastics, it has been agreed with the UK Government that market access principles will definitely bite on Scottish Government legislation in that respect. For that reason, there has been a discussion through the resources and waste common framework on the need for an exclusion to be granted by the relevant UK secretary of state. As I have said, there is no doubt that those principles will bite on any such legislation.

More broadly, it has been recognised that the market access principles will likely bite on all policy issues that are covered by a common framework. That is quite a broad-based set of impacts.

**Donald Cameron:** Mr Page, do you wish to comment?

**Euan Page (Scottish Government):** No.

**Donald Cameron:** Thank you for those answers. I suppose that it is a question of what is happening in reality. We all have views on the 2020 act and the wider internal market, but even if market access principles are having an impact on devolved policy decisions, the question is how all of that plays out in practice and whether such matters can be resolved.

That brings me on to my second question, which is on intergovernmental relations. About 10 days ago, the three-tier approach was published. Given that the Scottish Government has signed up to it, do you see it as a viable method of working through any challenges or disputes that might arise either under common frameworks or under the 2020 act?

**Angus Robertson:** We go into the process with good intentions and hoping to make it work. It is set to replace existing arrangements, which are theoretically supposed to bring people together and allow them to work through difficulties. I highlight my concern that we can tinker with formal ways of working but, at the heart of it, if one is not interested in making them work, it does not matter what set-up is in place.

My earlier example is a good one. I had a UK Government interlocutor who was really interested in trying to make something work, so we made it work because it was self-evidently in the interests of the UK Government and the Scottish Government to make progress. I refer to the process on the frameworks with Chloe Smith that I described. That delivered results.

Unfortunately, it did not take long from the establishment of the previous system until Prime Ministers did not really turn up to top-level meetings and UK Government secretaries of state devolved responsibilities to their junior ministers to turn up in their stead. Those ministers are not in a position to make decisions on their departments' behalf; that responsibility rests with secretaries of state, who were too important or too unavailable to take part in meetings.

I am simply highlighting the point that, unfortunately, we have long experience of the UK Government not thinking that it is an important process. I cannot come up with any other reason to explain why they would not turn up or would not send along the right people. Colleagues have turned up to other meetings and been told that they do not have speaking rights. All of that has been indicative of intergovernmental relations in the UK in recent months and years and it is not good. It could be a lot better. If people want to operate on the basis of good faith, it should work.

We will make the best of the new arrangements that have been put in place. I hope that they will mean that the needs, interests and expectations of the devolved Administrations and legislatures are listened to and respected. However, I highlight again the point that there is a world of difference between saying that we have been consulted and, in contrast, that we have worked through issues from inception to decision in a collegial way. Those are two very different things.

I hope that decision makers in Whitehall have said, "Yes, we need to do things better. Here's a new way of doing it. Let's take a good run at it." I hope that they do that because, in many respects, there is no reason to find things difficult and we will make progress as long as there is respect for the devolution settlement.

**Donald Cameron:** On intergovernmental relations, there are political differences at the top,

and some of the political relationships work and some do not. At official level, we are in the process of agreeing common frameworks. It strikes me that, down at that level, relations are quite good and effective. It also strikes me that, if we look at the previous system and the new one, there are grounds for optimism that the more technical nature of many of the issues can be resolved. Do you agree with that?

**Angus Robertson:** I hope that that is the case. I have been involved all the way through the process and have been updated on what the latest meeting has been like on a technical level and where we have got to. One often hears that people have not had political sign-off to go beyond certain stages. Therefore, even if there is good will at a technical level, one has often not been able to proceed. That is my first observation.

My second observation is that certain UK Government departments have an inherently better understanding of the devolved nature of governance in the UK than others. It is important to differentiate, in that no single approach is taken by the UK civil service in Whitehall and the civil service in Scotland.

Let me concentrate on the positive—I am a glass-half-full kind of person. We have a new structure, so let us try to make it work and let us see how the concrete examples are proceeded with. Let us give things a fair wind. The issue is not being exaggerated by anybody, as you will know from the evidence that we have received across the board. This is not a concern just of Government, of the majority of members in the Scottish Parliament, of the voluntary sector or of representative bodies; the concerns are reflected across the piece. We are dealing with something that is quite serious, but I want to rest on my glass-half-full approach and try to make some of this stuff work.

I have the benefit—if you want to call it that—of having been in Westminster for quite a long time. Many of my interlocutors are people I know, and that counts for something in trying to act in good faith and in moving things forward. At some point, however, one has to have sign-off for proposals and for legislation that the Government and the Parliament have enacted, and either UK Government ministers will allow what has been democratically decided to go ahead or they will block it.

**Donald Cameron:** On that positive note, I will hand back to the convener.

**The Convener:** Thank you.

**Dr Alasdair Allan (Na h-Eileanan an Iar) (SNP):** Good morning, cabinet secretary. You are certainly a regular customer at the committee, and

we look forward, I hope, to UK ministers being similarly co-operative in future.

My question is about how the United Kingdom Internal Market Act 2020 relates to other measures. You touched on this in your introductory remarks, but I am interested in the cumulative effect on policy, particularly as it relates to all three devolved Administrations. You mentioned unhappiness in that quarter, and I know that there has been coverage about unhappiness on the part of the Welsh Government about the impact on policy in areas such as education. What contact has there been with, or what have you heard from, the other devolved Administrations about what they feel is the cumulative effect of the 2020 act, plus other measures?

**Angus Robertson:** We are at an early stage of the act biting and of the application of frameworks in certain areas. There are some known knowns. You are right that Welsh colleagues have had much to say about proposals on spending in certain parts of Wales. There is a feeling that decisions have been made to spend money in certain parts of the country where people have a preponderance to vote for the Conservative Party. That is politically motivated spending, and it is no way to govern.

Incidentally, that comes in a week when we have been hearing that there have been threats from within the UK Government to members of Parliament that spending projects would not go ahead if they did not vote for the Government in one way or another. That is not how one should govern anywhere, and it should give us all cause for concern.

The extent to which there is a guiding hand for UK Government spending in devolved areas is not yet obvious. Money has begun to be spent—the UK Government has begun to spend in areas where it has next to no experience of devolved policy delivery in Scotland. The example that I gave on education provides insight into that.

In other areas, there is, on the margins, a recognition that there should be some sort of Scottish Government advisory input, but not co-decision. There is a bit of me that thinks that the UK Government knows that it has a presentational problem, but the spreading largesse approach to how decisions are made and how money is spent is just no way to do things.

10:15

We will see the cumulative effect of that approach only as more projects are funded, as more spending areas are identified and as we see the extent to which there is co-ordination. We in the devolved Administrations speak with one another. You do not need me to point this out in

any great detail—you know this already—but I highlight that, although I am speaking to you as the cabinet secretary with responsibility for the constitution in the global sense of how we understand the application of constitutional instruments, what we are talking about will impact directly on individual Government portfolios in Scotland. As I mentioned, one of my cabinet secretary colleagues talked about that in one evidence session, and it is equally true for all the other policy areas, too.

There will be an effect not only at a theoretical or global level. Dr Allan asked whether there is a cumulative effect that we can point to. So far, the UK Government's approach is not to involve the Scottish Government; it just goes ahead and does what it wants to do without any recourse to the people who are democratically elected—in other words, you.

I would be delighted to see an evidence session with a UK Government minister, sitting where I am, answering questions from you and your colleagues, and to hear how they explain the lack of democratic oversight. I look forward to tuning in to that evidence session.

**Dr Allan:** As far as I understand it, the UK Government is presenting the shared prosperity fund or the levelling up fund as, in essence, new money. You mentioned the impact on individual portfolios. Can you say a bit more about the impact on Barnett consequentials? There has been a decision to expand the English shared prosperity fund across the UK. What are the implications of that for the block grant?

**Angus Robertson:** I point in the direction of the Cabinet Secretary for Finance and the Economy, Kate Forbes, who would be much better at helping you to understand, at a granular level, how that is reflected in the budgetary process in Scotland.

The lack of clarity about consequentials has been a problem for a while. That has been the case in my area—for example, we have been asking for a long time about £40 million-worth of UK Government consequential funds for culture, which have not been fully received. One gets very opaque answers and is then told that there might be clarification at a later stage in the budgetary process. That is not great for spending departments—my department is by no means one of the biggest spending departments in the Scottish Government; there are others for whom that is very problematic. I know that it is an issue for Kate Forbes, as the cabinet secretary with responsibility for budgetary issues. It is very difficult to understand whether there will be consequentials for certain kinds of funding and not for others.

There is a suspicion, which I think people are right to have, that the mechanism is being used to avoid consequential spending, which drives a coach and horses through the devolution settlement. We should all be concerned about that—it is not good governance, quite apart from anything else. We can also talk about the democratic legitimacy of the process, which is thin gruel.

However, on good governance, if we—in the royal sense; I am talking about the UK Government—are not co-ordinating and working in the normal custom, using normal practice, that we are expected to, and to the standards that we should be held to, that does not make governance any easier, which is not good. At the end of the day, we are all here to do a job, which is to deliver for the people. If our intragovernmental processes—at a financial level and at all the other levels that we have been talking about—are not operating properly, that has to have an impact on service delivery and on how the country is run, which is not good.

**Dr Allan:** The cabinet secretary has hinted at some of the UK Government's motivations behind its actions. In a state that operates without a written constitution and on precedent and expediency, where is this all going? Are we moving into a period in which the UK Government looks at the Sewel convention—the convention that the powers of the Scottish Parliament are not altered without its consent—as constitutional history?

**Angus Robertson:** Let us start by considering the views of the Prime Minister, who thinks that devolution is a “disaster”. Everything that we have heard about his views on the subject gives the insight that he is not a supporter or a fan of devolution, and that—I am paraphrasing—he would much prefer decisions to be made by him and his Government and to put devolved Administrations in a box to be managed more effectively.

The UK Government has overridden things such as the Sewel convention, has been happy to ignore devolved Administrations in a host of ways and has got away with it, so there is real reason to believe that that approach will continue and be amplified. We are right to be concerned by that. I see absolutely no sign of that changing, notwithstanding the new arrangements that the deputy convener, Donald Cameron, raised. If that is the great white hope for better governance in the UK, I am yet to be convinced.

**The Convener:** I remind members that the Finance and Public Administration Committee is leading on scrutiny of the shared prosperity fund. I do not want us to step on its toes in our questioning.

**Maurice Golden (North East Scotland) (Con):**

The Scottish Government's stated position is to align with EU law. How do you monitor whether cabinet secretaries and ministers are adhering to that—[Inaudible.]. For example, the delay to the deposit return scheme could lead to divergence from the EU circular economy package.

**Angus Robertson:** It is nice to see you, Mr Golden, and to see you with your clock on the wall. I was joking with you earlier that I was not sure whether that is an attempt to make me speak for longer or shorter. Nonetheless, it is nice to see you with your clock in situ.

When I gave evidence in a previous meeting—I think that it was the third meeting that I attended—I said that that area of governance is evolving and new, and that we are finding ways of managing the issue. I said that I was keen for us to work out a sustainable way of sharing with you different issues that proceed through the pipeline of policy that the Government has to deal with, so that you can be satisfied, through your scrutiny requirements, about how things are being dealt with. My colleagues have been in touch with parliamentary officials to try to find a route forward on that.

In relation to specific issues, such as the example that Mr Golden gave, ministerial colleagues who are dealing with individual subject areas are best placed to say, "Here is how we have considered it, here are the options that we had, here is why we have alighted on this way of doing it and here is how we decided on the best way to go forward." That might mirror the content or the spirit of European legislation. For different legislation, both at Westminster and in Scotland, it is almost like how one highlights if there are any issues that relate to human rights—or, previously, when we were members of the European Union, how things related to standing European policy.

That will be the best way for you and colleagues with an interest in such matters to follow things. I am following the convener's pointer regarding financial oversight. When subject ministers are dealing with specific issues or legislative processes, they are the best people to give updates in an evidential sense.

Secondary to that—and not directly connected—is the method, which is still to be finally progressed, whereby, between the constitution directorate and the committee, we can have a system in place that satisfies your scrutiny concerns.

I do not know whether Euan Page, one of my big-brained colleagues who has been working in such areas, wishes to jump in.

**Euan Page:** On Mr Golden's original point, Scottish Government policy is to align with EU law

when it is in Scotland's interests to do so. That is a discretionary power and, as the cabinet secretary has indicated, it will be a matter of considering policy decisions in the round before coming to a conclusion on the best route.

Officials who are working on the deposit return scheme have determined that the 2020 act poses a threat to the ability to legislate in that area. As Donald Cameron indicated earlier, however, because we are in a position of post hoc, post-implementation analysis of the policy consequences of the act, which is a consequence of a lack of adequate pre-legislative scrutiny, we need time to work through the full policy implications.

**Maurice Golden:** I am conscious that the clock on the wall is ticking away. I thank the cabinet secretary and his officials for their answers.

**The Convener:** I move now to Ms Boyack. If members have any more questions, they should put an R in the chat function, please.

**Sarah Boyack (Lothian) (Lab):** I would like to ask a couple of questions of the cabinet secretary. The answers to colleagues' questions have been very interesting. In the light of the experiences with the United Kingdom Internal Market Act 2020, could the cabinet secretary outline his priorities for intergovernmental work? There is clearly an issue across portfolios. You talked about the transparency that we asked about in previous discussions with you regarding the common frameworks. What would be your short-term priority—I am not talking about fixing everything—in expecting a different approach on the issues, both from UK Government ministers and in civil service relations, so that the problems that you have identified can be aired and acted on?

**Angus Robertson:** That is a good question. The formal position is that there are now structures that should enable discussion to take place, which must lead to adequate conclusions. As I have shared with you, I think that that is not enough, as we are dealing with human relations and different human priorities. In politics, we are talking about different Administrations taking different views of things. There is a fundamental cultural problem in Whitehall Government departments—by which I mean the top-down political element—in respect of relations with the devolved Administrations.

10:30

You asked specifically about me, and what I can do. The truth is that I am quite limited in what I can do. Given my particular area of responsibility, I am often involved in discussing quite technical areas. That is why I had the exchanges that I described with Chloe Smith in the Cabinet Office, which

deals with the constitution; she was dealing with me as the Scottish Government's constitution secretary. In contrast, my colleagues, such as the Cabinet Secretary for Rural Affairs and Islands or the Cabinet Secretary for Education and Skills, might have to jump on a call to discuss something and may feel, among other things, that it seems like a decision has already been taken.

When one is in a meeting, one is able to feel what the interchanges are like—do they sound substantive or do they sound pro forma? Colleagues may feel that they are taking part in a meeting in which they are simply going through the motions to satisfy a tick-box agenda so that the UK Government can say, "Well, we've consulted with Scotland, Wales and Northern Ireland."

That is a world away from the UK Government saying, "We need to join up our thinking at an early stage, identify any potential impacts on the devolved Administrations and, if there are any, take them on board seriously." In some respects, it depends on whom one is dealing with. There are some people whom I can deal with very well; I do not want to embarrass them, but they have been very collegial in working with us. It goes without saying that civil service staff will work to the brief that they have been given and to the general direction that they get from their secretary of state.

Beyond that, I can, in a co-ordinating role—although I should say that the issue of intergovernmental relations falls within the Deputy First Minister's orbit—ensure that there is consistency from all Scottish Government ministers and civil servants at meetings. We spend so much time on Teams calls and Zoom calls that things may seem like a oneness of being in endless meetings. Nevertheless, if we are trying to make the new system work, we almost need to signpost the fact that it is a new system and we have to make it work. It is then down to other people.

As grown-ups, we should—I have no doubt about this, because we have excellent relations; that is what grieves me somewhat in all this—be able to work beyond fundamental political differences on the constitutional future of the UK and Scotland in talking about technical and policy areas. I have managed to do that with Welsh Labour colleagues, and with colleagues from Northern Ireland, regardless of what political side of the fence they are on with regard to the constitution. I am mystified as to why that is often such a challenge in dealing with UK Government interlocutors. It is because they feel that they are in charge and it is for us to do what they say. However, that is not the case when we are dealing with an area of devolved responsibility, and that is the difficulty in which we find ourselves here. The

short answer to your question is that I am limited in what I can do.

I will add one more thing. I can ensure that, across Government departments in Scotland, we have an institutional memory of all our interactions so that we can quantify the nature of the interrelationship. I look forward to reviewing that. I hear examples in which colleagues cannot speak at all in meetings, where someone just says, "Noted," or where one arrives to have substantive discussions about things and there are none. I regularly say to colleagues that I am ensuring that we have an institutional memory of that, so that people do not think that we are just blaming big bad Whitehall, and that we are bound to do that because we are pro Scottish independence. That is not where we are at all.

On a practical level, things have not been working well. We now have a new system in place that we hope will work well, but we require an institutional memory, and we need to remind colleagues in Whitehall that things need to be a lot better.

**Sarah Boyack:** In relation to institutional memory and cross-departmental working, you said that John Swinney as Deputy First Minister is in charge of intergovernmental relations and Kate Forbes is in charge of telling us whether there are implications for Barnett consequentials. That suggests that there is a need for cross-Scottish Government working as well as cross-UK Government working.

**Angus Robertson:** If I gave the impression that that is not needed, that is not the case.

**Sarah Boyack:** Is that analysis available to us? We are keen to see how that kicks across different areas of Government. I was going to ask you about support for Scottish producers in relation to the Northern Ireland protocol and the impact of the internal market but, having listened to your previous answer, I guess that you would say that a different minister would respond to that question.

In relation to institutional structures, are there recommendations in the House of Lords Constitution Committee report on the constitution that came out last week that would be useful for our committee to look at? There is an issue about the structure and there have always been issues with individual ministers. There is also an issue about the processes and ensuring that you and your colleagues have the structures as part of the common frameworks, as we have talked about before, so that the issues can be monitored and so that we can get parliamentary accountability on them.

**Angus Robertson:** There is a lot in those questions. In relation to the House of Lords Constitution Committee report, notwithstanding its

conclusion on future constitutional arrangements, there is a lot in it and it is not for me to say which bits you should look at. House of Lords committee reports are often very detailed and there are some very intelligent people involved in the process, so they are always worth going through, even if you may not agree with them.

On your point about co-ordination, as I hope you would expect, we talk to one another across Government in general terms about intergovernmental relations. We also do that in relation to specific policy areas. There have been deep-dive discussions on the impacts of intergovernmental working on different departments. I made the point that it is not simply for me or the Deputy First Minister to take a view on or have oversight of that work; it is important that everybody across Government and Parliament is seized of learning those lessons.

In relation to having insight on analysis, I do not have a report in front of me that lists numbers of meetings and has a traffic-light system that gauges the mood music at meetings—it is not in that sort of format. However, I am keen that we retain a form of institutional memory so that when, for example, Government ministers go to the next meetings, they remember what happened at previous meetings and whether things had not worked well or were not proceeded with. To that extent, one is not just turning up at yet another meeting without seeing it as part of a continuing institutional interrelationship.

I am clear that we go to those meetings to try to find solutions to things. We try to work respectfully with colleagues from other parts of the UK. I go back to my glass-half-full perspective: we are at the start of a new way of working, and I hear that the Prime Minister might deign to turn up to meet with the First Ministers of Scotland, Wales and Northern Ireland. It will be interesting to see whether it is secretaries of state who turn up for meetings with the cabinet secretaries who are their opposite numbers or whether they choose to send junior ministers in their stead. Notes will be kept of that and it will be clear to see whether the relationship is being taken seriously on a formal level at Whitehall, and then you will hold us to account on the substance of what happens at those meetings at evidence sessions such as this one.

**Sarah Boyack:** That is actually quite important for accountability. In fact, we have talked about, for example, having a traffic-light system for common frameworks. It would be useful if we could get that kind of cross-governmental feedback, because, after all, you have had questions from colleagues about the monitoring of the 2020 act and its impact on devolved issues such as agriculture, environmental standards—

which is a recent matter—and so on. There is also the impact on Barnett consequentials to take into account. These things need to be properly processed, and the committee is interested in that, given the fact that, like you, we take a cross-governmental overview. We would certainly be very keen to monitor that.

I had to smile when you talked about “thin gruel” in relation to UK consequentials. It is a brilliant analogy that could be applied to how our local government colleagues sometimes feel about the Scottish Government. We need intergovernmental awareness at all levels of government, and I am very keen to get some feedback and cross-governmental analysis on this matter, as it would be useful to the committee’s work.

**The Convener:** No one else seems to have a question, cabinet secretary, but I would like to ask you a final one. Our role as a parliamentary committee is to scrutinise the Scottish Government’s policies and decision making, but are we moving to a situation where, with executive decision making at Scottish Government and, in particular, UK Parliament level, our opportunity to scrutinise policy decisions could be lost?

**Angus Robertson:** Speaking as a parliamentarian as much as a Government minister, I have to say that I hope not. I have repeatedly told the committee that I am happy to come back as often as you want me to—with five visits, I think that I qualify for a frequent flyer pass—and I would also hope that UK Government ministers would be happy to give evidence, as I have done to House of Lords committees in great detail and at great length.

It is essential that we have scrutiny and that we can shine a light on things, because that ensures that things work well. Scrutiny keeps people like me on my toes and lets civil servants know that certain questions are likely to be asked of them. Those are all good things, and we should not be scared of them. We might not always have the answers, but if we do not, that probably means that we should get them.

The Scottish Parliament’s strong committee system was set up specifically to make Governments in Scotland work in a better and different way. I am committed to making the system work, and I am moving forward in that collegial fashion. The suggestions that you make and the questions that you ask along the way really have an impact on me and those who advise me, and that is exactly what should happen.

**The Convener:** Thank you, cabinet secretary. The committee has no further questions. I should also point out that we will actually be seeing you again next week, so that will be your sixth time in

front of us. I thank you and your officials, Mr Cameron and Mr Page, for attending.

*Meeting closed at 10:43.*

Before I close the meeting, I should say that, when I spoke on behalf of the committee in yesterday's parliamentary debate on committee budget scrutiny, I omitted to thank the members of the committee, my deputy convener Donald Cameron and, indeed, our clerks for their support in the budget scrutiny process. I do so now, and my thanks are on the record.



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