



OFFICIAL REPORT
AITHISG OIFIGEIL

Constitution, Europe, External Affairs and Culture Committee

Thursday 17 November 2022

Session 6



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**CONSTITUTION, EUROPE, EXTERNAL AFFAIRS AND CULTURE COMMITTEE
26th Meeting 2022, Session 6**

CONVENER

*Clare Adamson (Motherwell and Wishaw) (SNP)

DEPUTY CONVENER

*Donald Cameron (Highlands and Islands) (Con)

COMMITTEE MEMBERS

*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:

George Macpherson (Scottish Government)

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

CLERK TO THE COMMITTEE

James Johnston

LOCATION

The Robert Burns Room (CR1)

Scottish Parliament

Constitution, Europe, External Affairs and Culture Committee

Thursday 17 November 2022

[The Convener opened the meeting at 08:45]

Decision on Taking Business in Private

The Convener (Clare Adamson): Good morning, and welcome to the 26th meeting in 2022 of the Constitution, Europe, External Affairs and Culture Committee. Our first item is a decision on whether to take business in private. Do members agree to take item 3 in private?

Members indicated agreement.

UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021 (Draft Annual Report)

08:45

The Convener: The second item on our agenda is evidence on the draft annual report laid by Scottish ministers on the exercise of the power in the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021. We are joined remotely this morning by Angus Robertson, Cabinet Secretary for the Constitution, External Affairs and Culture, and by George Macpherson, head of EU policy and alignment, Rosemary Greenhill, drinking water quality regulatory team leader, and Lorraine Walkinshaw, lawyer, from the Scottish Government.

I offer you all a warm welcome and I invite the cabinet secretary to make a brief statement.

The Cabinet Secretary for the Constitution, External Affairs and Culture (Angus Robertson): I join you from Scotland House London, where I am holding meetings with the United Kingdom Government. Thank you for accommodating me by allowing me to join you remotely.

Today, we are focusing on the European Union and, in particular, on our report on how the Scottish Government is using the continuity act to protect and maintain the high standards that we enjoyed as a member state of the European Union. We are committed to remaining close to the EU and to building the strongest possible relationship between the EU and Scotland. It is important that we consider why that is.

Alignment is a point of principle and conviction. Scotland's attachment to the European Union has been demonstrated at the ballot box time and time again. If the latest polls are to be believed, that desire to remain close to Europe is only increasing. The people of Scotland see what is at stake and understand the devastating effect that Brexit—and not just the calamitous litany of successive UK Governments—is having on the country. Above all, alignment is about protecting the wellbeing of the people of Scotland. Our standards, shared with and shaped by the EU, are among the most advanced in the world. They protect the environment, people's working conditions, the safety and quality of the food that we eat and, as we will see, the water that we drink.

The Scottish Government's policy of maintaining alignment with the EU where we can and where it makes sense to do so protects those standards.

That can happen in several ways. The power under the continuity act that we are discussing today is only one such vehicle and only one part of the story. There are other legislative means or changes to non-legislative guidance, policy and programmes that can be made to provide for the standards that are enjoyed by people in Scotland.

I thank the committee for sharing the research that was carried out by Queen's University Belfast in order to establish a potential baseline of EU legislation that has been passed since Scotland was forced to leave the European Union. We will carefully examine the research and the recommendations that have been made. However, I note that it is important to remember that Scotland's approach to alignment is to align where possible and where it is in Scotland's interests to do so. That requires careful consideration as to the extent and the method by which Scotland should align in order to achieve the outcomes that we share with the EU.

Where we align by legislation, as the committee will know, the Parliament has agreed our statement of policy to provide transparency in information in relevant policy notes and consultations. I am grateful that the civil service and parliamentary officials are discussing how that can be taken forward.

Alignment is not just about legislation and standards; it is about the vision that we share with the European Union for the continent's future and its part in the world and on tackling the climate emergency, sustainable growth and supporting Ukraine—those are just some examples. The outcomes that our interventions support in consideration of alignment and the international dimension are an integral part of our approach to policy making.

The commitment to align is made all the more important by the devastating project that we see emerging from Westminster. We all need to weigh up what the Retained EU Law (Revocation and Reform) Bill will mean. In its current form, it is less about taking back control from Brussels and more an attempt to dismantle the high standards that Scotland and the UK have enjoyed as a result of our former membership of the European Union—*[Inaudible.]*

The Convener: Cabinet secretary, I wonder—

Angus Robertson: We were told—*[Inaudible.]*

The Convener: Cabinet secretary? I do not think that he can hear me.

08:50

Meeting suspended.

08:53

On resuming—

The Convener: Welcome back to the committee meeting. We will try to resume questions to the cabinet secretary. Cabinet secretary, if you could repeat the final few minutes of your opening statement, that would be very welcome, as we were not able to hear it.

Angus Robertson: That is very kind, convener. I hope that you can hear me now. I was beginning to come to the end of my statement by talking briefly about the Retained EU Law (Revocation and Reform) Bill, because of the relevance that it has to Scotland remaining aligned with the European Union, and by touching briefly on a number of report-related issues. If you are still able to hear me, convener, I will conclude there.

The implications that the retained EU law bill might have for our approach to preserving and advancing what we have are profound, and it remains to be seen what impact it will have on Scotland's ability to act in its own devolved interests. The bill means divergence, and, to quote Vice-President Šefčovič's comments last week to the EU-UK Parliamentary Partnership Assembly,

"divergence will carry even more cost and will further deepen the barriers to trade between the EU and the UK ... divergence means more friction and less trade—simple as that. And again, this in times of severe economic strains."

In taking forward alignment in Scotland, I am determined to proceed in a way that others can understand. Much of this can feel arcane to our fellow citizens, which is why I welcome today's evidence session and why our policy statement, as agreed by the Parliament in June last year, commits us to going beyond the requirements of the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021 to provide detail on the impact of our commitment to aligning in respect of all relevant legislation that is brought forward.

We want to ensure that the Parliament and the public understand how and where EU standards are being preserved and advanced in Scotland, and I commend the fact that parliamentary officials are working with my own officials to ensure that we apply the commitment effectively. Only by working together well in this way will we have the best chance of delivering our shared interests and allowing the Scottish Parliament to fulfil the role that it has been assigned in the devolution settlement.

I will just make a brief comment about the draft report that the committee is considering this morning. It covers how the section 1 regulation-making powers have been used in the most recent reporting period, which runs from 1 September to

31 August 2022. As I have explained, it is a subset of the overall application of alignment.

The most important development is that we are now taking forward planned use in respect of World Health Organization requirements on the quality of water that is intended for human consumption, as detailed in the recast EU drinking water directive. It is a really good example of how we are applying our alignment commitments, because we are able to align with the directive's provisions using the most effective powers that are available to us in a way that protects and advances standards. It also demonstrates that we have to carefully consider how and when we implement certain aspects of EU directives, and the section of the report that details considered use over the reporting period—in this case, on decarbonisation—does likewise.

The detail of the water quality regulations is, of course, a matter for Michael Matheson's portfolio and the Net Zero, Energy and Transport Committee, but I am very grateful to be accompanied this morning by civil service colleagues from the environment and EU secretariats. We will do our best to answer your questions and help you consider any written representations that the committee might wish to make.

The Convener: Thank you very much, cabinet secretary. I confirm that we can hear you, and I hope that that will continue for the rest of the session and that there will be no more disruption.

I want to reflect, first of all, on the comments in your opening remarks about the research that our committee commissioned to inform the wider public and the Parliament about some of the decisions that have been made and some of the legislation that has been passed in the EU. We have also heard evidence that the Westminster dashboard does not seem to cover devolved areas. Do you agree that there needs to be more information? You say that the report is just part of the picture, but how can stakeholders, civic Scotland and so on examine the decision making that is taking place at the moment? Moreover, do you agree that it is almost as important to know what is not being taken forward by the Government as it is to know what is being taken forward?

Angus Robertson: There is quite a lot in that question. I will answer it in the context of our endeavours to remain aligned prior to the application of the retained EU law bill by the UK Government instead of conflating the two issues in question.

On the question of how things currently stand, I think that we are beginning to find our way through the process of alignment and have realised that

we can do that in a number of ways, not all of which involve legislation. We have a mechanism in place for reporting to Parliament, under which I and my colleagues answer to you and provide you with background material to illustrate the issue both in general and specific terms. The fact that it is work in progress is evidenced by the on-going discussions between Scottish Government and parliamentary officials about how we can improve and fine-tune things as we go forward.

09:00

That is the formal context for today's evidence session. However, a massive issue is casting a shadow over the process, and alignment more generally, which is the retained EU law bill that is currently going through the Westminster Parliament. I think that committee members understand that, in effect, that bill forces Parliaments—whether it is the UK Parliament, or the Scottish Parliament in devolved areas—to make decisions about the entirety of European Union law, not just the legislative proposals that the EU has made since Brexit. We now have to look right back through, effectively, 47 years of European Union membership and at legislation on our statute book that was passed during that time and make decisions about all those laws.

That takes us into a totally new situation. I agree that the prior situation and what is coming are related, especially from the committee's perspective, as you will want to ensure that you are able to scrutinise all that legislation. The scale of it will not be lost on you, as it certainly is not lost on me. When I spoke to the previous minister with responsibility for this area, Jacob Rees-Mogg, he could not even tell me how many pieces of legislation there were in devolved areas.

We know that the previously avowed total of EU legislation was roughly 2,500 pieces. In the past week or so, the *Financial Times* has published a report that suggests that it might be considerably higher than that, going way beyond 3,000 pieces. We have had no information from the UK Government—although we have asked—about how many of those are in devolved areas.

We are working on the assumption that the bill will go forward, notwithstanding the fact that the Scottish Parliament is being asked to withhold legislative consent. As we know, the UK Government has been prepared to override the Sewel convention repeatedly. If it were to do so again and were not to accept amendments that would carve out Scotland from the process, which would be the easiest way for us to retain EU legislation—our alignment, in effect, would be the status quo position—we, as a Government, and then we as a Parliament and you as a committee, will have to find new ways, we would hope, to

manage the historical alignment of Scotland and the EU.

That would, without a doubt, be a massive undertaking. First, we would need to identify the active pieces of legislation that we wished to retain. We would need to evaluate the various ways in which we might need to act to ensure that they remained on our statute book and decide whether that would require primary or secondary legislation or statutory instruments—the whole kit and caboodle.

Other devolved Governments are facing the same process. I spoke this week with my opposite number in the Welsh Government, Mick Antoniw, and we discussed the scale of the challenge and the beginnings of our thinking about how we would manage our way through the process.

I share that with the committee to highlight that we are at the start of the long—and, to be frank, unnecessary—road to try to maintain alignment by having to protect the historical legislative framework of our entire European Union membership. That takes us into altogether new territory.

The Convener: Thank you, cabinet secretary. We begin taking evidence on the retained EU law bill next week so, as a committee, we will be returning to that.

We move to questions from members on the annual report, starting with Donald Cameron.

Donald Cameron (Highlands and Islands) (Con): Good morning, cabinet secretary. I am delighted to hear that you are in London meeting UK Government ministers and officials.

On the subject of keeping pace, you spoke at the start of your evidence about the principle and conviction—I think you said that—of staying close to Europe. However, under the annual report, you have chosen not to align with EU legislation, so it appears that, although your Government's stated intention is to align with EU law, that is not the policy that you are following. In this instance, it concerns the EU energy performance of buildings directive.

I think that that approach is commendable, but it leaves a huge question mark for Scottish businesses and organisations and civic Scotland, which will have uncertainty if they do not know whether the Scottish Government is going to align or not. I would like your response to that point, please.

Angus Robertson: First, I would not want the impression to be created that there is not a general position of wishing to remain aligned with the policy and initiatives of the European Union. That is the case. I could draw your attention to a whole series of examples from regulations on

single-use plastics to food and feed safety, and I could go on. You have picked up on a particular issue that relates to building regulations and, I think, electric vehicle charging measures.

I signal to colleagues who are on the line that they may add anything that they wish on the subject after I have said what I have to say.

I will briefly address the specific point on the reference to the use of electric vehicle infrastructure regulations in the previous annual report. The Scottish Government did not consider using the powers for the relevant regulation over the period of that report. Consideration was made of using the power in relation to its potential application during the reporting year that has now ended. The implications of measures that are proposed in the EU legislation still need to be carefully considered in terms of the outcomes that they will support.

I think that we all understand that the pivot towards electric vehicles is very much an on-going situation. In this case, it was important to consider the evidence that was held in reaching a decision on our approach to EV charging, and aligning with the regulation in question would not have supported the outcome that is sought in the transposition timescale. We may seek to align at a later date and we are committed to keeping the matter under review.

As I have said to the committee a number of times, we are committed to remaining aligned in the broadest of senses, but specific measures will come forward that, for a number of technical reasons, may not need to be introduced in their entirety or at this time. We are not following a blanket alignment policy with 100 per cent transposition of everything, not least because many measures do not impact on Scotland in any way whatsoever.

That is my answer to Mr Cameron's question. Are there any colleagues on the call who would like to add any technical insight into the particular regulation that Mr Cameron asked about?

The Convener: I have had no visual indication of that yet. Your colleagues would have to put something in the chat function.

I will bring in Mr Macpherson.

George Macpherson (Scottish Government): Following on from what the cabinet secretary has stated, I note the important point that it is not always possible for Scotland to align with the European Union because we are now not part of many of the structures and frameworks that were in place here when we were a member state. We are now—obviously—outside the European Union.

In particular cases, we need to consider carefully how and when we will align. In some

cases, it may be that the process of doing that would not result in the outcome that we seek to achieve. My understanding is that, in that particular case, the purpose of the EU regulation is to ensure that it is easier to install EV charging infrastructure and that that infrastructure will be available in new buildings, in large part. I believe that the evidence indicated that significant investment is taking place in those areas anyway and that the regulation would not improve or increase access to EV charging points. The decision was therefore made that we should ensure that we monitor the position and consider whether alignment should happen at a later date.

On the wider point, the deputy convener asked how people are supposed to know where we are and are not aligning. The Scottish Government brings forward legislation that details where measures are being taken. That is one way of aligning. There are other ways, such as policy announcements and agreements with other organisations in order to deliver services. Those would lead to alignment in a wider sense. Obviously, the purpose of those is to provide information to the general public and the Parliament.

I believe that members will want to consider whether the Scottish Government is aligning in those areas, rather than potentially looking at what the European Union is doing, because action would be required by the Scottish Government to ensure that alignment was taking place.

Donald Cameron: Thank you for those contributions.

I want to move on to the work on tracking EU legislation, which the committee has begun. The cabinet secretary mentioned that in his opening statement. We are about to embark on the very wide administrative task of trying to track EU legislation on behalf of the Parliament, which will involve a huge number of staff and a huge amount of resources. However, that work cannot exist in a vacuum. It is, of course, a response to the Scottish Government's policy to align, and it is not for us as a Parliament to lead that work; we are here to scrutinise what the Government does.

Can the cabinet secretary or any of the officials give us more detail than is present in the annual report on the work that the Scottish Government is doing to analyse and track EU legislation, especially as—as has been mentioned—there are various routes to alignment and not just the power that we are considering today? Does the cabinet secretary want to start on that?

Angus Robertson: Yes. I draw the attention of members who were not present at the meeting to my previous evidence to the committee, in which I reflected on my decade-long membership of the

UK Parliament European Scrutiny Committee. That committee went through hundreds if not thousands of documents a year in order to satisfy the UK Parliament that European legislative proposals had gone through the scrutiny mechanism. When I gave that evidence, I reflected on the fact that I thought that that was a profoundly unsatisfactory way of providing parliamentary oversight in a digital age, given the scale of regulatory oversight that was required.

The Scottish Government has taken the position that that very bureaucratic approach is not the best way of doing things. We know that all EU legislation is published on the EU's websites, that the scope of EU legislation is vast, that much of it is technical and that it is not directly applicable in Scotland.

I think that everybody knows that alignment is a policy decision for ministers and not a legislative requirement, and that a commitment by the Scottish Government to producing a report that sets out whether we have aligned in each instance when the EU makes legislation was not included in the policy statement that was presented to and agreed by Parliament. Doing so would be impractical and would take significant resource, and such detail would not assist ministers in applying the discretionary alignment policy against the Scottish Government's strategic priorities.

That said, I am sympathetic to the point that Mr Cameron made about the challenge that is provided to the committee in trying to identify particular areas in which greater scrutiny by it may be wished for. That is why I am keen that my officials and committee colleagues on the Parliament side are able to progress work to ensure that we get the right balance with the approach that we take. On the one hand, it should not be massively bureaucratic and time consuming. On the other hand, it should give enough insight and understanding beyond what the Scottish Government requires and reports to Parliament about the decisions that we are making. The fact that I am giving evidence on the question yet again underlines part of the process that we have for going through this.

09:15

It is important to stress again the wider context of the matter, given that the retained EU legislation challenge that the REUL bill presents is heading in our direction. I will be frank with the committee: we will need to think long and hard about how we are best able to understand the impacts in Scotland of historic EU legislation, which might inform the ongoing process of alignment with new EU proposals. If there are specific suggestions about how we can make that process as workable as possible, I am very open to working with the

committee on that. It is in all our interests that we can do that with maximum transparency and efficiency, and we will have to work hard to find the best way of doing it.

It would probably be a good idea also to reach out to colleagues in Wales and in Northern Ireland—when, we hope, a devolved Government is re-established there—so that we can share best practice as Governments and Parliaments around that added layer of challenge in relation to historic EU legislation and not just newer proposals from EU institutions, with which we are trying to remain aligned.

George Macpherson: I have two things to mention to add to what the cabinet secretary has said on the subject of transparency. First, I note the cabinet secretary's point that alignment is a policy commitment and not a legislative one. Secondly, I note the policy statement that the Scottish Parliament passed in June that commits the Scottish Government to providing information alongside relevant legislation that will help to explain its relevance to EU alignment.

We have specifically been considering the now updated business and regulatory impact assessment, not just in relation to EU alignment but also to consider the potential impact of the United Kingdom Internal Market Act 2020 and to expand on earlier updates around Scotland's international obligations. The BRIA is in its final stages and it will be released shortly.

In addition, we have committed to providing information in relevant policy notes that accompany legislation, which will set out the relevance to EU law and how the legislation is relevant to the Scottish Government's commitment to align with the European Union where possible, or where it is in Scotland's interest to do so and we have the power.

I also highlight that we are committed to providing a commentary early in the new year around the European Commission's work programme for 2023 and subsequent years. The commentary will reflect on the high-level plans that the commission has made for the legislative priorities for the year ahead. It will highlight where the Scottish Government—at that point—expects to take action to align, where we might not be able to align and where further consideration might be required. The idea is that the European Commission work programme commentary will set out where alignment might take place over the coming year.

The information that is provided alongside legislation will set out clearly exactly where alignment is relevant. In addition, the BRIA will carry that work forward by setting out how the policy options and alignment have been

considered in the particular case. When that information has been included in those other areas, we would expect it to feed through into public consultation, too, which will reflect the approach that we take with the BRIA.

The Convener: I am conscious that time is limited due to the cabinet secretary's commitments. Every member of the committee wants to come in, so it would be helpful if members could be succinct and not repeat points that have already been made.

Sarah Boyack (Lothian) (Lab): I am glad that the cabinet secretary and his team can see the work that we are doing on the issue. It is very clear that we need as much transparency as possible. The discussion so far has been about where the Government intends to align, but can you clarify where you do not intend to align? That is critical to businesses, environmental organisations and others, who need to know where EU law will continue to apply. Where are you not convinced that we should retain alignment?

Angus Robertson: I draw Ms Boyack's attention to the report as published, which partly answers that question as it gives an example of where we do not intend to align. I drew attention to that in my opening statement.

The list of EU legislation that does not apply to Scotland because of geographical proximity or because it relates to specific regulations for industries or agriculture that have no direct impact whatsoever for Scotland illustrates why having an exhaustive list of regulations that do not apply is not an effective and efficient way forward for the Government, given the transparency that we are keen to deliver. You have just heard my colleague outline that.

On the point that people want to understand which regulations pertain in Scotland, if we use the example of electronic vehicles, people know exactly what the regulations in that area are in Scotland, so I am not entirely sure how we could proceed in a way that would satisfy Ms Boyack's concern. I underline that, if there are better ways in which the process could be explained to the committee and, through it, to the Parliament, I am very open to our officials making suggestions about that and to taking them on board and introducing them if they are practical and proportionate.

Sarah Boyack: The issue is where you have decided not to align. You say that it would be too much work to routinely scrutinise everything, but surely there needs to be a process whereby Parliament can at least ask questions about where you have decided not to align and why. You have given us examples of a couple of policy issues around industry and agriculture, but should that

not be tested? Should it not be visible so that people can agree or disagree with the Government's decisions? Should we not have clarity of process and timing on the issue?

Angus Robertson: With the greatest respect, the procedure is clear, in as much as we report to Parliament as part of our legislative process. I am back in front of the committee and we are engaged in an on-going process of seeing whether there are specific ways in which we can provide increased transparency and satisfy committee members' demands—which I appreciate, having sat in their position doing exactly the same job in the United Kingdom Parliament.

I will definitely reflect on how we can ensure that, if there are major proposals that may have relevance to Scotland and we have decided for whatever reason that legislation is not required to be aligned, that information can be shared. Maybe that is a part of the process that our committee officials and Scottish Government colleagues need to address directly.

I am not aware of anything crossing my desk where a decision not to align through the adoption of policy or legislation has not been reported. Were there to be such a case, I would want to make sure that people were properly informed of it. I will take that question away to reflect on and will make sure that what happens is, in fact, what I believe to be current custom and practice.

Sarah Boyack: That would be helpful. Table 1 in the report that we commissioned lists key areas—including environmental protection, animal health and welfare, chemicals, plant health, food standards and police and judicial co-operation, to name just a few—and notes whether alignment in each of them is devolved. If we consider the information that the Scottish Government will have held over the past 23 years, we will start off with a database. We would be very interested to receive feedback from the cabinet secretary with clarity about alignment and non-alignment, as well as the timing. Thank you.

Alasdair Allan (Na h-Eileanan an Iar) (SNP): Cabinet secretary, I appreciate that we are here to talk primarily about the report but, in your opening remarks, you mentioned that, if Scotland was not carved out of the retained EU law bill, we would need to look at—I think you said—"totally new" approaches for keeping pace with some areas. Has there been any indication whatsoever from the UK Government whether it intends to do any such carving out? If not, what might be other options that the Scottish Government would have to pursue, and what would be the likely scale of the task?

Angus Robertson: I am in a slightly curious position in that I have received assurances from

the United Kingdom Government that the Sewel convention will be respected in relation to retained EU law and the bill that is going through the UK Parliament. In normal circumstances, if the Scottish Parliament did not give legislative consent, the bill in question would not—you would imagine—proceed as currently drafted. If you took that commitment at face value, you might imagine that the United Kingdom Government would be prepared to amend the bill, or to accept amendments that had already been tabled in the House of Commons this week. I have not yet had an indication whether the United Kingdom Government is actually prepared to do that.

As committee members will appreciate, given that our position in Scotland is to try to remain aligned—which means trying to protect the legislative framework that we have inherited as a past member state of the European Union—we could save ourselves a lot of work. If the UK Government were serious about working collegially so that we could deliver on our respective mandates and priorities, framing UK legislation that actually reflected that position would be the best solution. I am still working towards trying to make that happen, but we will have to wait and see whether the still relatively new Prime Minister and other ministerial colleagues have a different view to their predecessors.

Therefore, we do not know the answer to your question yet, Dr Allan. In the meantime, my Welsh colleague—with whom I had discussions this week for this very purpose—and I are trying to renew our efforts to help the UK Government understand that we do not want to see it continue as it plans to. We very much hope that the new Prime Minister and his colleagues will listen to and respect that view and, notwithstanding that, will actually live up to the promise to respect the Sewel convention in specific respect of this legislation.

Having said all that, and in light of Sewel being breached, I think, seven or eight times now and the UK Government carrying on regardless of what the Scottish Government or the Welsh Government has said in past instances, I think that we have to work on the basis that the UK Government might just plough on regardless. If it does so, we face a significant challenge, not least because it will have an impact across Government. After all, a significant proportion, if not a majority, of areas—areas for which the Scottish Government has responsibility—have a European or European legislation dimension.

09:30

As I have said already, the UK Government is not in a position—or is not prepared—to point out

the impacts on the devolved areas. Certainly, it has not included that information in the tracker that it has established. Therefore, we will have to go through a phase of working all that out and then a phase of working out how we can retain that legislation on our statute book. After we have done that, we will have to work out how parliamentary time will be used to do all this work. We are very much at the beginning of the process.

Convener, you will no doubt have me back soon to talk about that process. I have heard what you said about the committee taking evidence, and I am happy to come back, but I should say that it is a very fast-moving situation. There are significant resource implications for us and our Welsh colleagues in having the expertise and capacity to go through 47 years of European Union legislation, and there are also resource implications for parliamentary time and the Government's existing legislative programme. The answer to Dr Allan's question, then, is that we are facing a very big challenge.

Mark Ruskell (Mid Scotland and Fife) (Green): I have a couple of follow-up questions. In relation to the public consultation on the annual report, I presume that, if people have concerns about the decision that was made on EVs—or anything else that is in the detail of the report—they can make submissions to that consultation. Is that right? Are you looking for active engagement on the Government's decisions through the consultation, or does it have a different focus? What happens to the responses that come in? Do they get passed to the relevant cabinet secretary? What is the process for stakeholders?

Angus Robertson: First, I very much hope that stakeholders engage on an on-going basis with the process of alignment and of remaining aligned with the European Union. I very much welcome stakeholders' reflections on decisions that have been made; as it is a live and on-going process, rather than an event, it is therefore an iterative approach, too. As I have said, I very much welcome stakeholders becoming part of that process.

Thus far, though, stakeholders have not flagged up anything about the process to me, have not said that there is too much or too little of something and have not made specific suggestions about different ways of doing things. However, were that to be the case, I have no doubt that it would influence the thinking of civil service colleagues, and that anything of significance—that was proportionate to and commensurate with my responsibilities—would be flagged to me, and I would look at it very closely. Through the committee, I have this opportunity to say to other stakeholders who follow these issues that if they want to reflect on things that form part

of the report, or if they have more general issues related to realignment, I would very much welcome people's input.

Mark Ruskell: Obviously, the bigger question is the retained EU law bill and how that stakeholder engagement can realistically happen, given the immense scope and nature of the work that will potentially have to take place over the next 12 months. Do you have further thoughts on how you can engage stakeholders in thematic areas as we potentially approach that black cliff edge? Obviously, in Europe, that process is happening the whole time, because there is on-going stakeholder engagement. At this point, how do you reach out to groups and stakeholders on the totality of that EU law?

Angus Robertson: Most committee members will agree that, sometimes, such issues can seem a bit dry and distant and that they do not impact on us that much—notwithstanding, of course, the fact that we are beginning to look at regulations that impact on the likes of drinking water, which affects us all. However, there is a world of difference between the process of understanding specific and on-going new proposals emanating from the European Union and a process that could potentially see the cliff edge—which is political language for “the end”—of legislation that has been a part of European Union membership over the past 47 years. It is of a qualitative magnitude and a scale so much bigger than that of dealing with the month-to-month proposals that currently come out of EU institutions.

Perhaps through you, convener, and the committee, I should say to anybody and everybody who knows and understands the importance of European Union legislation and the high standards and safeguards that it has provided to us all, that we really need to wake up and smell the coffee about what is coming towards us with this proposal from the UK Government. We will have to think very clearly about how we marshal the needs, interests, concerns and expectations of citizens and stakeholders to ensure that, as we go through the process, we are able to protect everything that we would wish to protect. That is certainly the ambition of the Scottish Government, and I imagine that that will be the case for committee members, too.

Mark Ruskell: I have one final question. You have referenced Dr Whitten's excellent report for the committee. In it, she has highlighted the potential for passive divergence, particularly with tertiary law—that is, the implementation of European Union law. Have you made a commitment to that tertiary law?

Angus Robertson: These things currently operate through a central team in the Scottish Government's directorate of external affairs, which

works closely with Scotland house in Brussels and Scottish Government lawyers in supporting policy directorates to consider the Government's policy of maintaining and advancing EU standards where appropriate. The team supports the work as part of DEXA's on-going business of enabling policy areas to understand the international context of their work, and it also ensures that policy areas consider where alignment might be possible and how they can support ministerial decision making in considering alignment alongside the range of information and other priorities that the Government must consider in reaching policy decisions.

My view is that that has to be done across the piece with regard to proposals emanating from European Union institutions. If any particular aspects of European legislation, regulations or directives need to be considered—I think that everybody on the committee appreciates the difference between those three types of proposals—we have to ensure that we capture them across the piece.

I am very interested in Dr Whitten's highlighting of that particular issue, and I want to make sure that we have an understanding across the full range of European Union proposals to ensure that there is no passive drift—I am not quoting exactly what Dr Whitten had to say here—or unconscious drift in alignment. Again, that would be another area in which if there was any particular thinking on the committee about the risks and how they could be ameliorated, I would be very happy to hear it.

Mark Ruskell: I am sure that we will come back to that when we receive the Government's response to that piece of work.

The Convener: I have two members who want to come in as well as a possible supplementary question, so if everyone could be as succinct as possible, that would be helpful.

Maurice Golden (North East Scotland) (Con): Today's session is obviously on the continuity act draft annual report. As we have also covered a lot of ground with regard to the retained EU law issue, I think that the cabinet secretary might have spared himself another appearance on that subject.

However, I want to return to the focus of today's evidence session. There is a lack of clarity on Scottish ministers' decision-making process around alignment. Cabinet secretary, do you think that the current process around alignment is transparent?

Angus Robertson: I do not want to be cheeky by just saying yes—but my answer is yes. However, I stress to Mr Golden that, if there are areas where the committee wants more

transparency or more understanding of the decision-making process, I am, as I have said a number of times now, prepared to actively consider those suggestions. I also hope that those are the matters that are being discussed between our officials.

You asked for brevity, convener, so the short answer to Mr Golden's question is yes. We have a system that works, and we are finding our ways through it as best we can with regard to being transparent, but I am open to specific ways in which that can be improved.

Maurice Golden: It would be helpful to understand how Scottish ministers monitor new EU legislation—an issue that we covered earlier—for possible alignment and how decisions about that alignment are made. I was wondering how you could publish that information to make it more transparent.

Angus Robertson: I could reread what I said in a previous answer about how the Scottish Government manages the alignment process with regard to the central DEXA team, Scotland house colleagues in Brussels and Scottish Government lawyers as the three key groups in the triage process—if you want to call it that—of understanding what is coming towards us. That all goes into the civil service system and is considered in ministerial decision making—that is the process.

I am also answerable to Parliament through this committee as well as through answering members' questions in the chamber. If people have questions about how decisions are made or which decisions are being made, I am happy to consider them in addition to the broad spectrum of ways in which I and my civil service colleagues have answered the committee's questions already. If Mr Golden has any specific examples on which he wishes more information, I am happy to provide that.

The Convener: Cabinet secretary, I am conscious of the time. Do you have any flexibility with regard to the time that you have available to stay with the committee?

Angus Robertson: Unfortunately, I do not—absolutely none. I need to go straight to an event in the room next door with Scotland house staff.

The Convener: That is helpful. In that case, I will take a very quick question from Jenni Minto.

Jenni Minto (Argyll and Bute) (SNP): I will be brief. The responses to our questions highlight how inextricably linked everything around Europe is and how what happens in Westminster severely impacts on what goes on in Scotland. I was interested to hear the comments from you and George Macpherson on how the continuity act is

not the only way in which we in Scotland are maintaining our links with European law. I would like to hear a couple of examples of that, so that the normal person might be able to put things into perspective.

Angus Robertson: I am happy to do so briefly, if I can think of some areas where alignment has been a factor.

One recent and concrete example is the regulations on single-use plastics. We are trying to be more environmentally responsible, are we not? We are trying to ensure that we are not unnecessarily polluting the environment, so stopping the production of things made from plastic—whether they be cutlery, plates or whatever else—that are to be thrown away after use is probably the most tangible recent example of an area where we have sought to remain aligned with the European Union. We are the first part of the United Kingdom to have done that, and we have had to do that by using new mechanisms that have been introduced for a post-Brexit UK. The United Kingdom Internal Market Act 2020 and the common frameworks, which we have discussed in committee before, have had a role in considerations around that.

That is an example of where we are trying to do our best to maintain the highest standards—and, as we know, the highest standards are the EU standards. That is what we are doing; the rest of the UK has not done it yet, and it is for them to decide how they want to proceed, but we want to ensure that we live up to the highest standards that we can. For that reason, we try to remain aligned with EU policy, and we have done just that.

The Convener: Thank you, cabinet secretary. I am very conscious of your time, so I will just thank you and your officials for attending. The committee might have a couple of follow-up questions that we were unable to get to today, but we will decide on that in private session, which we will now move into.

09:45

Meeting continued in private until 09:59.

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