



OFFICIAL REPORT
AITHISG OIFIGEIL

Constitution, Europe, External Affairs and Culture Committee

Thursday 16 November 2023

Session 6



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Thursday 16 November 2023

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CONSTITUTION, EUROPE, EXTERNAL AFFAIRS AND CULTURE COMMITTEE
31st Meeting 2023, Session 6

CONVENER

*Clare Adamson (Motherwell and Wishaw) (SNP)

DEPUTY CONVENER

*Donald Cameron (Highlands and Islands) (Con)

COMMITTEE MEMBERS

*Neil Bibby (West Scotland) (Lab)
*Keith Brown (Clackmannanshire and Dunblane) (SNP)
*Kate Forbes (Skye, Lochaber and Badenoch) (SNP)
*Mark Ruskell (Mid Scotland and Fife) (Green)
*Alexander Stewart (Mid Scotland and Fife) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Alice Black (Bectu)
Sam Dunkley (Musicians Union)
Alistair Mackie (Royal Scottish National Orchestra)
David Maclennan (Scottish Government)
George Macpherson (Scottish Government)
Ewan Robertson (Traditional Arts and Culture Scotland)
Angus Robertson (Cabinet Secretary for Constitution, External Affairs and Culture)
Greig Walker (Scottish Government)
Lisa Whytock (Active Events)

CLERK TO THE COMMITTEE

James Johnston

LOCATION

The Robert Burns Room (CR1)

Scottish Parliament

Constitution, Europe, External Affairs and Culture Committee

Thursday 16 November 2023

[The Convener opened the meeting at 09:02]

Decision on Taking Business in Private

The Convener (Clare Adamson): Good morning, and welcome to the 31st meeting in 2023 of the Constitution, Europe, External Affairs and Culture Committee. Our first agenda item is a decision on whether to take business in private. Are members content to take item 6 in private?

Members indicated agreement.

European Union Alignment (Annual Reports)

09:02

The Convener: Our second agenda item is evidence on a series of reports regarding the Scottish Government's commitment to align with the European Union where appropriate. The reports include a draft of the Scottish Government's 2023 annual report on use of the keeping pace power in the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021.

We are joined by Angus Robertson, the Cabinet Secretary for Constitution, External Affairs and Culture. With him from the Scottish Government are George Macpherson, who is the head of EU policy and alignment, and Lorraine Walkinshaw, who is from the legal directorate. I invite the cabinet secretary to make a short—that is what it says here—opening statement. *[Laughter.]*

The Cabinet Secretary for Constitution, External Affairs and Culture (Angus Robertson): Thank you very much. On Europe day on 9 May, I reiterated the Scottish Government's commitment to its EU alignment policy and to providing further information to support the Parliament's scrutiny role on the subject.

Government policy has not changed. Even in the face of the Retained EU Law (Revocation and Reform) Act 2023, with its divergent and deregulatory intent, we will continue to seek to align with the EU where appropriate. That means where it is possible and where it is meaningful for us to do so. The standards that are set by the EU will continue to influence many of the policy frameworks and initiatives that we develop domestically. I am pleased to provide evidence to the committee.

The new annual report improves the transparency of ministerial decision making and increases the amount of information that is provided. The reporting includes our draft annual report on use of the power to align, as required by the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021. The report was laid in the Parliament on 31 October.

As the committee knows, since your response to last year's draft report on the continuity act, officials have been working to expand and centralise the process of managing and sharing information regarding alignment decisions. I thank parliamentary clerks for working jointly with my officials so that we can provide the information that

is needed by the Parliament to carry out its scrutiny function.

My letter of 31 October to the committee confirms the details of the extended approach that has been implemented starting in July. Our expanded reporting demonstrates the complexity of taking alignment decisions, and the need for a proportionate approach in that alignment is not always possible as Scotland is no longer part of the structures to which much of EU law relates. We are also constrained by the limitations of the devolution settlement and, of course, the willingness of the United Kingdom Government to respect it.

I would like to mention the independent research that was commissioned by the committee and carried out by Queen's University Belfast. I agree with its core findings that

"the Scottish Government commitment to align with developments in EU law has largely been upheld",

and that there has been no

"significant divergence between Scots Law and EU Law".

I also agree with the report's conclusion that minor technical divergence will accumulate over time.

Mindful of that, the Scottish Government's approach includes careful consideration of ongoing technical developments in the EU, including via tertiary legislation as well as other instruments. That is illustrated in our expanded annual reporting, although this year's report only reflects the part of the year during which our updated processes have been in operation.

As outlined in my letter from 3 September, when Scottish Government legislation is laid in the Scottish Parliament, information will now be included in policy notes and relevant memoranda for bills to assist with scrutiny. In the future, our reports will cover a full year and will be based on the same reporting period as that of the continuity act; namely, from 1 September to 31 August.

I would welcome discussion between officials regarding the feasibility of sharing the tracker material that is produced by Dr Lisa Whitten in a timeframe that would allow us to co-ordinate the consideration of its conclusions in our analysis of current EU proposals.

I hope that our revised reporting and these comments are helpful in considering how the Scottish Government is implementing its alignment policy, and I look forward to your questions.

The Convener: Thank you, cabinet secretary. I certainly welcome the reports. It has been really useful to see the level of detail that we now have available to us.

In your letter, you agreed with Dr Whitten's assessment in her EU law tracker report that a degree of diversion is a risk that will likely occur cumulatively, potentially becoming significant in the future. Can you expand on the challenges that the Scottish Government has in that respect? What would be the significant implications of regulatory divergence for businesses that are seeking to trade with the EU and in the internal market, including Northern Ireland?

Angus Robertson: We all understand that this is quite a technical area, so we are all very grateful to have the support of committee clerks and advisers and, in my case, my civil service colleagues here and a wider team. If any of them want to illustrate with specifics the points that I am making in generality, I would be grateful for additional comments.

The first thing that I would say is that we are seeking to remain aligned with the EU where it is appropriate to do so. Using phrases such as "where it is appropriate", "where it is possible" and "where it is meaningful" matters. We are not in the European Union, so we are trying to find our best way, using a variety of different approaches, to make sure that we can remain aligned and working in parallel with the EU. We will do that within devolved competence, and we will do that to implement measures that have demonstrable effect.

There are areas in which it is unlikely that there would be demonstrable effect, and there are areas in which measures relate to EU organisations that we are not a part of, or they might be involved in particular areas in which there is no legal locus here. It is literally impossible to do 100 per cent of what the EU is doing in terms of its policy, because we are not in the EU now.

That said, we are going to do everything that we can to maintain the standards and values of the European Union and its strategic approach to things. We have a resource in the Scottish Government here and, indeed, in Scotland House in Brussels—I think that a good number of committee members have already been there, so you will know how competent the team is. Those resources will, in co-ordination, ensure the best way of providing you—and through you, to business and such like—with an understanding of which legislation will have an impact on what we are going to be doing. Everyone on the committee will understand the reporting mechanisms that have been brought in train and will, as a result, be aware of how, when measures are introduced, alignment will be achieved.

I think that we are in a much better place now. As there have been quite a few changes on the committee, some colleagues might not have heard this, but I have already given the committee a

commitment in this respect and have made it clear that, having spent 10 years on the European Scrutiny Committee at Westminster, where every week we had to go through European Union proposals, and having quite literally sat where you are sitting, I do understand what you require to be satisfied that you can scrutinise what the Scottish Government is doing on alignment. However, it is appreciated that this has the potential to be a massive undertaking, so we are trying to find a balance between reporting the legislation, the policies and the strategies of the European Union and how we are seeking to remain aligned with them, in order that you can scrutinise what we are doing. It is about striking a balance between giving you something unwieldy and too technical, with perhaps too much being lost in the detail, and giving you everything that you require.

As I have said, this is the first published iteration of this approach. If there is something that you feel that you require more of or less of, or if you feel that you require something different, we are very open to hearing those comments. I know that my colleagues and the committee clerks have been working closely to ensure that our reporting method is of a standard that is appropriate to you.

The Convener: Thank you. I move to questions from the committee, and I call Mark Ruskell.

Mark Ruskell (Mid Scotland and Fife) (Green): On your comment about what the committee would like to see more of, cabinet secretary, I do welcome the improvements that have been made to the report this year, but I note the useful table in annex C, which gives the title of the relevant European law, the subject issue at stake and the Scottish Government's current alignment consideration. Under the final heading, there are a number of statements, with issues "under active consideration", proposals "under development" and so on. There is some indication of the direction of travel, but the table does not really say exactly where we are in the policy process.

Perhaps I can take, as an example, the nature restoration law that is coming at European level and which will establish "legally binding ... targets". The table says that the proposal is "under development" in Scotland, but we know that it will probably be wrapped into the environment bill. To what extent can we get more clarity on that sort of thing?

Part of the context of my question is the issue of common frameworks, which have arisen with regard to the deposit return scheme, and there is also a transparency issue. I feel, therefore, that there might be a bit more granularity to be had in the conversation across the UK. For example, are there any implications arising from the United Kingdom Internal Market Act 2020?

I wonder whether, beyond a general statement of "Yes, we broadly agree with this, and we are working on something", more could be put under that heading to show the Government's workings with regard to where we are at the moment with alignment and what a committee—whether this one or another—should be looking out for.

Angus Robertson: Well, I think that that will show the committee's workings in action. We are providing the context for the work that we are doing; we are aware of and assessing the proposals, and we are considering what we would wish to do to remain aligned and what implications that might have in the wider context that Mr Ruskell has outlined. That sort of approach leads to exactly those questions being asked.

I cannot be psychic, and neither can my colleagues. The list of legislation is very long, and there might be something there that is not interesting to anybody at all. However, given the variety of interests that members have, there might be really burning issues for you. Now, because we have been able to highlight the things that are on the docket, so to speak, if you have questions, you may ask them in writing, or if your questions are of such import that you wish me or any of my colleagues to give evidence, we can do that.

09:15

There is another aspect to this. The information that we provide has been done in such a way that the subject committees of the Scottish Parliament, which have a particular locus in different policy areas, can say that these environmental issues, to use the example that Mr Ruskell gave, should be considered in the round by the Scottish Parliament committee that deals with environmental and related matters. We hope that this process will make that easier.

It is not for me to sit here and outline specific bits of European legislation today, but this is the start of a process of giving the committee the opportunity to ensure that your colleagues on other committees are aware of proposals, what should be looked at more closely and so on, or whether you wish us to provide you with more evidence as part of your work as a committee, because you require more information about something and how it links with other areas. That is, I think, how the process is supposed to work, so Mr Ruskell is making the point for me. The point is for me to give you an awareness of what has happened, what we have done with it, what is being considered and what is coming down the track that we need to think about more.

Notwithstanding the fact that we are no longer in the European Union, there are still ways in which

we can make our views about certain measures known to EU colleagues. A little bit of horizon scanning would be useful in that regard, and I hope that that is what can emerge from the reporting mechanism.

Mark Ruskell: I think that slightly more granular information would be good, because many of the boxes just say “Subject to future consideration”. What does that mean? For example, if something was related to programme for government commitments or a particular common framework, it might be useful to signpost it.

Angus Robertson: Yes.

Mark Ruskell: I also want to ask about the decision that was captured in last year’s report to diverge from the EU in relation to building standards for electric vehicle car parking. Is any kind of backward look taken at such decisions? That decision was made, but is there a point at which you go back and ask whether it is working, what sort of progress we are seeing in the EU with the roll-out of electric vehicle charging in public car parks and whether we should reconsider the decision? Is it the case that, once we have made a decision, we have diverged, thanks very much, or is there a point at which we go back and ask whether, in terms of keeping pace, that was the right decision? Is there a policy impact in that?

Angus Robertson: I will answer the second part of that and ask George Macpherson to come in on the first part and to say whether he has any subsequent things to mention on the car charging point.

That is also an issue where, in my mind, I really hope that the Parliament’s subject committees, which are aware of how the Scottish Government has sought to align with what has come through the EU institutions, ask themselves after some time whether it is working as intended, as they would do with anything else. That is how this is supposed to work. If it is not working, we need to work out why, but something such as that is absolutely at the heart of committees’ scrutiny work. If you do not have enough information, ask for it. If you want ministers to give evidence about specific measures, have them do that. In the meantime, if there are technical issues or subjects that lie close to the heart of one member rather than the committee as a whole, please raise them us and we will deal with them in the usual ways.

George Macpherson (Scottish Government): The process is quite new. We have had only a small number of months’ worth of centrally gathered information with which to produce the reports. Annex C, which currently identifies EU proposals that the Scottish Government is considering and the view that we have reached on them so far, will in future contain a full year’s worth

of reporting, and I imagine that subsequent reports will contain the current position on those proposals. Looking back, you will be able to compare the reports to see how that position has changed over time. In addition, when the Scottish Government takes action to align with particular proposals, that will be captured in the report, wherever it is most relevant.

The situation is due partly to the fact that the report is quite new. However, I believe that that particular proposal will be captured in annex C as it is considered. As I said, it can then be referred back to.

Donald Cameron (Highlands and Islands) (Con): Good morning to the cabinet secretary. I agree with your comments at the start of your statement about the work that the committee and its clerks have done with the EU law tracker and so on. It is worth making the observation that we are talking about Scottish Government policy, and the committee’s correct role is to scrutinise that. The Scottish Government should lead the way in the work on tracking EU law and so on, and the committee should react to that. There is a slight sense that that has previously been the wrong way round. We are beginning to correct that, but I put the observation on the record and will welcome any observations that you have on it in a moment.

I ask specifically about a point that was made in Dr Whitten’s report, which we wrote to you about on 14 September, asking for your response. I may be wrong, but I do not think that the annual report covers changes in tertiary EU law or measures that are contained in the 15 primary UK acts that make provisions in areas that were previously within EU competence as well as provisions that have otherwise arisen because of UK withdrawal from the EU. Is it possible, either now or at a later date, for you or your officials to give an update on those two points?

Angus Robertson: I will answer the first part of Donald Cameron’s question, and there will be some updating on the second part. On the first point, I absolutely acknowledge that, in the absence of a reporting mechanism, the committee found itself in an imbalance of understanding, knowledge and information. From the first instance of that being the subject of discussion with me before the committee, I have always acknowledged it. I want to be as helpful as possible and have always explained my own personal experience from having had to do this at the other end of the spectrum—every week, the European Scrutiny Committee in the UK Parliament had a very thick sheaf of papers even after a sift by four legal advisers, all of whom were former UK ambassadors. The volume of material that can be scrutinised is enormous.

This is the first attempt at providing a mechanism that should point you towards what we have done, what we are considering and what we expect to be coming down the line, and it is a really good start. There will be areas for which one wants more information. One will be aware of the ground, which was perhaps not previously the case. I therefore totally agree, and I hope that we get the balance right. That is why I say again, if more is required, or less, or if things are needed in a slightly different format, let us try to make that work.

However, I hope that there is an appreciation that this is a very genuine attempt by the Government to work with the committee for the benefit of better lawmaking and scrutiny. We are open to any feedback about what needs to change in relation to that mechanism, but the work is just starting, so we can give it a chance to bed in and then take an iterative approach as we go forward.

George Macpherson, do you want to add anything on the tertiary law points?

George Macpherson: Yes, thank you. We do not differentiate in the reporting between different types of EU legislation, so the tertiary legislation is also captured in our reporting. As we have said, for this particular set of reports, the reporting is for a shorter period. Therefore, there is not a direct read-across with regard to some of the items that Dr Whitten highlighted in her report, because that was prior to our identifying and collating that information centrally. That is not to say that those items might not have already been considered, but we do not have the information for the periods that are outwith the change in the process that we have now implemented.

That said, I believe that we picked up most of the items that Dr Whitten flagged in her report, and I think that the item that we did not pick up was to do with how we aggregated the information. That highlights that there will always be differences between how Dr Whitten identifies something as relevant to devolution in Scotland and the Scottish Government's alignment commitment, and there will be a difference with regard to how we look at that.

Next year, the report will be for a full year, so a direct read-across will be easier. As the cabinet secretary said in his opening statement, we would welcome discussions, at official level at least, around how we could align better, if you will pardon the pun, on how we look at those commitments.

I also note that Dr Whitten highlighted the same point that the cabinet secretary highlighted, which is that the committee itself might want to think about speaking to subject matter committees

about particular issues. Again, we would consider our co-ordination role in that.

Donald Cameron: That is very helpful indeed.

I have a specific question about gene editing. I do not want to get into the pros and cons of gene editing; I do not think that it is appropriate for this committee to do that, and I should also refer to my entry in the register of interests in relation to farming and crofting. However, gene editing is an interesting area, because it is potentially an area on which Scotland could find itself as a bit of an outlier, given that the UK Parliament and the EU have legislated to an extent to allow gene editing, and the Scottish Government has been opposed to it. In your report, you note that you are now looking carefully at what the EU is doing. What is the Scottish Government's current position on gene editing?

Angus Robertson: I will have to furnish Mr Cameron with some advice from Cabinet colleagues who have primary responsibility for that. That is where one of the dangers lies in having a report that includes a myriad of listings of different legislative proposals, because one can pick one out of the hat, draw attention to it and ask questions about it. I want to be able to provide Mr Cameron with the answer to his question, but I am not in a position to do that.

Donald Cameron: That is entirely fair enough. However, it is quite interesting just as an example of where Scotland is diverging from the rest of the UK and, arguably, what the EU is doing. That specific example is fascinating.

Angus Robertson: Mr Cameron is describing that in his own terms, which he is perfectly entitled to do, but it seems to me to be an excellent example—as was the previous example from Mr Ruskell, who has an interest in environmental legislation—of where my Government colleagues who have a responsibility in rural affairs or the environment portfolio will be pleased to answer questions about those areas.

09:30

As someone who has worked very closely on European Union-related issues as a parliamentarian since 2001, I have always taken the view that there is a danger that things relating to the EU are viewed by Government in general as being an issue that is dealt with by European colleagues, as opposed to understanding that those are central issues right across Government.

That is why, to mirror the previous point, I am keen that colleagues on other committees take as close an interest in those issues as you do, convene, although it is your business to work out how you will impress that on them. That is not to

say that you cannot do so as a committee. We need to know more about and be more conscious of those examples now that we have been able to identify in the report that they have happened, are happening or will happen, whether they are on the environmental or rural side of things. That is absolutely right.

Kate Forbes (Skye, Lochaber and Badenoch) (SNP): To go back to Mark Ruskell's question on retrospectively considering areas where we have not aligned, I want to look at how the Government defines "where appropriate" in relation to alignment in the statement of policy. The statement says that Scotland will seek to align with the EU

"where appropriate and in a manner that contributes towards maintaining and advancing standards",

protecting health and wellbeing and maintaining our international standards, none of which anyone would disagree with. Will the minister unpack a bit of how the Government interprets that appropriateness, and who is final arbiter of that?

I imagine that there are two principal reasons why it may not be appropriate to align: first, where we are bound by UK law and it would be therefore unlawful for us to deviate from UK standards; and secondly, where it might significantly disadvantage our citizens for whatever reason because we are trying to compete in an EU market and in a UK market and so on.

Could you outline that, although I fully understand that, if we were a part of the EU, those questions would not emerge, because we would not have to define appropriateness?

Angus Robertson: I said to the committee earlier that there are two particular constraints or realities around which our commitment operates; first is the reality of our devolved competence and the wider UK structures, and second is whether European Union measures have demonstrable effect. To take an easy example, we are in a country where, unless somebody can correct me, we cannot grow olives, and we do not have a wine production sector, so European Union legislation on olive growing or wine production does not have an effect. Then there are things that are obviously within devolved competence, have demonstrable effect here and do not have a disadvantage. Around those realities, consideration needs to be given as to what we are doing.

Were we in the European Union, the situation would be entirely different, because everything would be, from a legislative standpoint, part of a treaty obligation and a requirement to ensure that one fully integrates the entire corpus of EU law. We have already inherited 47 years' worth of that in Scotland.

Ms Forbes's point is absolutely correct. There is not a 100 per cent read-across, notwithstanding the commitment to remain aligned. However, for anybody who understands how the European Union works and the fact that we are now not in the European Union, there will be areas that require, because they do not have direct impact on us, or because of the nature of the devolved settlement and how that works, a caveat—if one wants to call it a caveat—around appropriateness and possibility.

I have written down a few of those, and they are there for a reason, which is that we will not incorporate things that have no impact here or where the constraints are such that we cannot. That should not detract from the fact that, in the main, we will do exactly that which we have intended to do, which is to remain aligned.

George, do you wish to add anything from an administrative point of view, as somebody at the sharp end of making the decisions?

George Macpherson: There is a particular example in the report relating to regulations on citrus growing. Scotland does not have a citrus industry. That is the only example that I would mention.

Kate Forbes: The examples that you have given are commonsensical, but where might there be some dubiety? Is it the default to say that we align and a case therefore has to be made for not aligning? Do you take each case on merit and discuss it? Are there any grey areas, where the Cabinet or the Government needs to consider whether there is an alternative route?

Angus Robertson: My default position is that we should before we should not—if that makes sense. The policy of the Government is that we wish to see Scotland rejoin the European Union as quickly as possible. I look forward to publishing the Scottish Government's paper on this very subject tomorrow. Anybody who understands how European Union accession works knows that there is a requirement for candidate countries to show that they are ready to join, which, in significant part, is because there is an alignment between candidate countries and the standards of the European Union. Our remaining aligned with the European Union is key to the speediest rejoining of the European Union, which is our stated aim.

My position is that, wherever we can, we should be seeking to align, and there needs to be a very good reason why not. Ms Forbes makes the point: in significant part, it is very much a matter of common sense.

I will refer to colleagues about this later, but I am not aware where there are issues that may have been on the cusp, but there is nothing at the forefront of my mind that falls into that category.

Will there be such issues? No doubt. I am not aware of any that are of particular import at the present time, however.

The Convener: I am a wee bit conscious of the time, folks. If we could try and make questions and answers succinct, that would be helpful.

Alexander Stewart (Mid Scotland and Fife) (Con): Cabinet secretary, you have talked about the approach that the Government is taking, about competence, about the effects and about some aspects of scrutiny. Those are all valid in the process. How has the Scottish Parliament's EU law tracker supported the Government's approach to alignment? Has the Government reflected on that? You have mentioned some sectors and business organisations this morning—how have they managed to co-operate under that process?

Angus Robertson: That is a good question. There are quite a number of different sources that can be used as part of EU tracking mechanisms, which are very common in Brussels. I think that everybody knows about the scale of representative organisations, embassies and offices there. Scotland has its own capacity and representation. I would hope that our process is as informed as possible by those tracking providers that provide that service in the best, most useful way. The work that is conducted in the Scottish Parliament is an important part of that.

We will only know if we are missing anything as we go through a number of rounds of the reporting mechanism. Colleagues, clerks or academics can then point to ways in which other tracking mechanisms have caught something—or not—and then work out whether we have done as well as we can.

It is a major industry in Brussels to make sure that everybody is aware of what is happening, and we will avail ourselves of the best information both there and here. As you will know from your own deliberations, extremely talented academics and specialists in the field work daily on that and form part of a wider ecosystem of flagging up what is happening and the import of that. We just have to make sure that we capture it all.

Alexander Stewart: One specific area that has been discussed in the past is a Europe that is fit for the digital age. Scotland has ambitions of ensuring that it has the cultural, social and economic benefits of the digital society. Your ambition is to ensure alignment across the sector and across the area. What confidence can we have about assuring personal data and about the law behind that? My basic understanding is that there are still some complexities in achieving that and that it may be difficult to align some of it, depending on the barriers and areas of difficulty that may be approached or received.

Angus Robertson: That is a very complex area, and Alexander Stewart is absolutely right to highlight it. The European Union is one of the only bodies in the world with the scale and the heft to be able to come up with frameworks for some of those really big challenges, because it is a match for other trading blocs or for particular economic interests. We therefore have to watch very closely what European colleagues are doing in that area. Those of us who want the highest standards in those areas and others can invest some confidence in the fact that the EU will do a lot of the heavy lifting for us. That makes the case for why alignment is of import, quite apart from the sense of remaining aligned so that our return to the European Union is as seamless as possible.

The digital area is exceptionally complex. I am sure that Mr Stewart saw the coverage of the recent conference on artificial intelligence that was hosted by the UK Government—at which, unfortunately, Scotland was not present. Everybody has to think about how we approach all of that, in order to have the appropriate legal and other safeguards. We will work closely with European colleagues to make sure that it is fit for purpose here as well.

Keith Brown (Clackmannanshire and Dunblane) (SNP): I listened to the exchange between you and Kate Forbes, in which there was mention of common sense. I wonder whether that makes you the Scottish Government's minister for common sense. It seems to be the fashion, these days, to appoint such ministers.

I have two points. First, you mentioned accession. Accession is often portrayed as solidifying alignment. However, it also solidifies divergence, as happened with Maastricht—for example, with Danish second homes or the UK opt-out from the social chapter. If the EU proceeded with gene editing, I would be happy to see an opt-out on that. I just make that point because we sometimes get the wrong impression of what alignment actually means.

Given what you said about the volume of work in the UK Parliament and the resources devoted to scrutiny—including four legal advisers—and what I think is a fairly common academic assumption that there is a real lack of genuine scrutiny of European legislation beyond, perhaps, the House of Lords, are we not setting ourselves up to try to do far too much? You mentioned looking across the whole scope of things. I am fairly new to the committee, and maybe this has already been done, but might it be better for the Government and the committee to agree what was relevant and thereby make activity much more focused, as long as the committee or individual members could ask for information about areas that were not covered? Would it not be better to be more proportionate

and focus on the areas that are more likely to be of interest to both Scotland and the committee? That would make it easier on officials, given the breadth of the stuff that they could be doing.

09:45

Angus Robertson: I could not agree more. Indeed, I made that point prior to Mr Brown's membership of the committee. There is a danger in saying, "We require everything in its raw format"—that is, unprocessed, unassessed and without prioritisation or the help of expert advisers, clerks or academics in assessing the importance of a regulation, a directive and so on. Having a sift process is a good thing, but it must operate in a way that can give individual committee members or different subject committees of the Parliament the opportunity in good time—I stress that phrase "in good time", because it is the key factor—to influence the Government's thinking and, indeed, the legislative programme, given that legislative instruments might well be at play, and to allow you as parliamentarians and collectively as a committee to discharge your responsibilities.

The injunction with regard to proportionality is key. Will we get that right all the time? Probably not, because of the volume of material. However, because we are looking back, looking at what is happening presently and looking at what is happening in the future, you can—to go back to Mr Ruskell's specific example on legislation—allow evidence to be taken in good time, allow more information to be drawn down and satisfy yourselves that you have done everything that you think is necessary and proportionate.

We are trying to do exactly the same, and the fact that there is an open channel between officials and committee clerks is also very helpful. We should not be satisfying your demands as a committee just from evidence session to evidence session—it should be an on-going process. You should be aware of things that are happening in the meantime, and we should be aware of any specific issues that you might have.

Indeed, Mr Cameron's question was a good example of that; he wanted to know something technical, but although I have a very big folder, I did not have that information, and I would have liked to have been able to furnish him with it. If we can get that process working well, questions will, I hope, be answered, but if more information is required, it can be given in good time, as part of the committee's on-going investigations and inquiries.

Keith Brown: I suppose that there is a distinction to be drawn with regard to the Government's obligation to look across the whole scope of things, but if the Government and the

committee can agree a position where what we receive has more relevance and less volume, that will be good.

In response to Mark Ruskell, you mentioned talking to the EU ourselves. Obviously, the EU is the source of much of the legislation, but you might be aware that this Parliament and this committee have the ability to nominate to CALRE—the Conference of Regional Legislative Assemblies—which I have been nominated to, or the proximity group or whatever it is called to the Committee of the Regions. However, we will not have a member on that for many months to come, which I think undermines the ability of this committee and this Parliament to have those direct conversations. I do not know whether it is proper to do this—I know that the committee clerks are working on it—but could the Government prevail upon the UK Government to speed the process up as quickly as possible?

Angus Robertson: Yes, we will do that, and we will report back to you.

I think that we have to use every route in that we can. Many of you will have met Martin Johnson and members of the team at Scotland House, who are very capable at reaching legislators, and we are also in the fortunate position of having a friends of Scotland group in the European Parliament, which goes across the mainstream political families. If members want to speak to colleagues in the European People's Party, the Progressive Alliance of Socialists and Democrats or the Greens and the European Free Alliance, there are routes in through the European Parliament and the European Commission. Indeed, it is one of the reasons for our having conversations with other Governments at federal and state level. We want open channels of communication, so that if there are things that we should raise, we will raise them.

Not being present is a problem, and none of that is a substitute for doing what every other normal country does, which is sit on the Council of Ministers and take part in the discussions about what is happening in the European Union, have a nominated commissioner sit on the Commission of the European Union and, indeed, have our full complement of members in the European Parliament making the laws that will have an impact.

The only way to do that is to be a member state of the European Union. Sitting outside in the cold, which is where we are, means that we have to find workarounds, because Brexit has brought about a circumstance in which we are no longer part of the decision-making structures of the EU. Therefore, we will try our best, but there is no substitute for the proper way of doing it.

Neil Bibby (West Scotland) (Lab): I, too, thank the clerks and the officials for their work on producing those reports.

I will follow up on the questions from Kate Forbes and Donald Cameron on the tests in general that the Scottish Government is applying on EU alignment.

Earlier, you said that we align with EU law where appropriate and that that means where it is possible and meaningful—which means not aligning where there is no impact. This morning, we have had the example of gene editing and whether that would be desirable, and Kate Forbes raised issues about whether provisions would be in our national interests. In addition to whether something is possible or meaningful, you mentioned common sense, and surely there is also an element or test of whether the Scottish Government agrees with the proposals.

Angus Robertson: Yes, absolutely. Perhaps there will be examples where one does not agree, but Mr Bibby's point is a good illustration of the need for an awareness of where those things come about, which will enable members to question me or colleagues about the thought process that has brought us to the stage of saying that we are or are not able to proceed with things. The point is well made. That is why we are doing this. It is about being as well sighted as we can be in the best, most timeous way, and then being able to ask those very questions. I totally agree.

The Convener: Thank you. The final thought from me, as committee convener, is to put on record the committee's thanks to officials, clerks, our colleagues in the Scottish Parliament information centre and Dr Whitten for their work in making this significant progress.

Angus Robertson: Hear, hear.

The Convener: I now suspend the meeting momentarily to allow officials to change over.

09:52

Meeting suspended.

09:53

On resuming—

Subordinate Legislation

Retained EU Law (Revocation and Reform) Act 2023 (Consequential Amendments) (Scotland) Regulations 2023 [Draft]

The Convener: Welcome back. I remind members that we have no flexibility on time and that we have other agenda items to get through this morning.

Our third agenda item is consideration of a draft statutory instrument. Following the evidence session with the cabinet secretary and his officials, the committee will be invited under the next agenda item to consider a motion recommending that the instrument be approved. I remind members that Scottish Government officials can speak under this agenda item but not under the next agenda item.

I welcome back to the committee Angus Robertson, the Cabinet Secretary for Constitution, External Affairs and Culture. He is supported by Greig Walker, retained EU law act management lead, and David MacLennan, lawyer for the Scottish Government. I invite the cabinet secretary to make a brief opening statement.

Angus Robertson: It is good to be back. The instrument before the committee is a technical one to update the devolved statute book for the new legal concept of assimilated law, which will become the new name for retained EU law under the Retained EU Law (Revocation and Reform) Act 2023. The change takes effect at the end of the year and cannot be prevented; therefore, as a responsible Government, we want to ensure there is maximal clarity in devolved primary and secondary legislation.

This is the only Scottish statutory instrument laid by the Government under the REUL act to date and the Government has no plans to use REUL act powers to alter policy. The range of policy areas that the SSI touches on—from aquaculture and fisheries to waste management—shows the potential of the REUL act to affect the full panoply of devolved competences.

The committee's recent report "How Devolution is Changing Post-EU" found that the REUL act, like the UK Internal Market Act 2020, represents "a significant shift in the constitutional landscape".

I assure members that the Government is treating the REUL act as such. We are committed to protecting devolved interests in the management of UK statutory instrument proposals, and where powers allow, and it is appropriate to do so, we will

seek to legislate in this Parliament. That is why we have brought forward the SSI.

I wish to touch on the report that the Delegated Powers and Law Reform Committee issued last week, which

“draws the instrument to the attention of the Parliament on reporting ground (e), in that there appears to be a doubt whether paragraph 3 of schedule 1 is *intra vires*.”

That paragraph amends the Freedom of Information (Scotland) Act 2002 so that the phrase “EU obligation” becomes “assimilated obligation”. I note the Delegated Powers and Law Reform Committee’s position, but I remain of the view that all aspects of the SSI are within the enabling powers, and are good law, so I do not propose to withdraw and relay the instrument to exclude the necessary freedom of information amendments. Where out-of-date EU terminology stands on the statute book, it is appropriate that such cases are remedied and, here, an appropriate legislative vehicle was to hand.

I look forward to the committee’s questions on this technical subject. I am delighted to be joined by the two leading experts in the field, who will be able to answer any technical questions that you may have.

Donald Cameron: I refer members to my entry in the register of members’ interests, which states that I am a member of the Faculty of Advocates. I entirely agree with the cabinet secretary’s position. It is important that the SSI is approved. Can I ask why, if it possible to answer, the issue has arisen? Was there an oversight or did something slip through the net? I do not say that critically, because I know that such things often happen.

Angus Robertson: I will ask colleagues to follow up, but I will make a general point first. Imagine that we were in a parallel world where the REUL legislation, as it had previously been proposed, had gone through. We remember that the sunset arrangements had been brought in. No doubt were we still in that universe, we would have been sitting here talking about many, many SIs and SSIs. Now, at least, we are in the more fortunate position that we are not doing so.

There is a lot of reflection about those sorts of issues. It has been highlighted to me that there have been three recent cases where people have suggested that the matter may be relevant in relation to employment law or equality law or, indeed, in relation to Rwanda, which is quite current. However, it is not. Do David MacLennan or Greig Walker want to add anything on the specifics of the measure?

Greig Walker (Scottish Government): Given the scale of the statute book and the challenge of EU exit, it is unsurprising that there may have been missed references in the statute book. I hope

that it gives members confidence that in quite a large instrument—colleagues across Scottish Government teams have been looking at retained EU law intensely for some time—there is an issue with just one line.

As the cabinet secretary said, if we uncover an anomaly, there is a range of approaches that we might take: we might leave it, if it is inconsequential, or we might consider non-statutory options such as guidance or directions. However, in this case, we felt that the matter was comfortably within the enabling powers—general consequential amendment powers—and that the legislative vehicle was to hand. I am not aware of any other anomalies or deficiencies.

10:00

As I think that your briefing makes clear, what were known as deficiency powers under the European Union (Withdrawal) Act 2018 have now gone. However, should there be any remaining points to be addressed, it may be that there are legislative approaches other than using the REUL act because, as the cabinet secretary has stressed, there is no appetite to use the wide suite of powers under the REUL act that are now available to the devolved Governments.

I invite my colleague David MacLennan to say a little more about the fact that the matter has come to light now, the fact that there has been no practical issue to date and why this is the appropriate approach to take

David MacLennan (Scottish Government): The key point is that the instrument is for updating the terminology to reflect a new legislative landscape. Each of the terms in question have to be understood within the legislative framework in which they were intended to be used. When we were an EU member state, there were obligations under EU law that attracted the label of an EU obligation. When we left, the EU law became retained EU law and obligations under retained EU law became known as retained EU obligations. At the end of this year, under the Retained EU Law (Revocation and Reform) Act 2023, retained EU law will become known as assimilated law, which means that those obligations will become known as assimilated obligations. The instrument and its provision are making sure that the right label will attach to the obligations in question. That is why we remain comfortable that we are able to introduce the instrument within the powers of the REUL act.

The Convener: As there are no further questions from the committee, we will move to agenda item 4, which is a formal debate on the affirmative instrument on which we have just taken

evidence. Cabinet secretary, do you wish to add anything?

Angus Robertson: I am content with the statement that I outlined to the committee. Thank you, convener.

Motion moved,

That the Constitution, Europe, External Affairs and Culture Committee recommends that the Retained EU Law (Revocation and Reform) Act 2023 (Consequential Amendments) (Scotland) Regulations 2023 [draft] be approved.—[*Angus Robertson*]

Motion agreed to.

The Convener: Is the committee content to delegate authority to me, as convener, to approve a report on the instrument for publication?

Members indicated agreement.

The Convener: I thank the cabinet secretary and his officials for joining us this morning. We are just two minutes over time, cabinet secretary, so it is a good morning.

10:03

Meeting suspended.

10:07

On resuming—

Touring Artists

The Convener: Agenda item 5 is an evidence-taking session on the challenges of artists' mobility between Scotland and the EU, with a focus on the music industry. The evidence will inform our inquiry on the review of the UK-EU trade and co-operation agreement, as well as our on-going input into the UK-EU parliamentary partnership assembly in advance of its next meeting on 4 to 5 December.

We are joined this morning by Sam Dunkley, acting regional organiser of the Musicians Union; Alice Black, Scottish live events branch, Bectu, who is joining us online this morning; Alistair Mackie, chief executive of the Royal Scottish National Orchestra; Ewan Robertson, board member of Traditional Arts and Culture Scotland; and Lisa Whytock, director of Active Events, who is also joining us online.

I invite each of our witnesses to give a short overview of the challenges experienced by touring artists post-EU exit from their own organisation's perspectives. I will begin with Ms Whytock.

Lisa Whytock (Active Events): Thanks very much for this opportunity. I would like to just add that, in addition to being the director of Active Events, I also run Showcase Scotland Expo, which is the export office for folk and roots music, and that I will be giving evidence in both capacities.

It will come as no surprise to the committee that the challenges since Brexit have increased. It is important to say something else that will also come as no surprise, either: for there to be professional musicians in Scotland, it is imperative that they earn an income outwith the borders of our country. Our nation is simply too small for them to sustain an income.

Some of the main challenges lie with administration. The carnet situation is an issue for artists, both financially and administratively. The associated costs vary widely, depending on the instruments and equipment that need to be listed on the document. There is also a challenge with border controls for carnets. Officials have a varying understanding of the situation; it is random and just depends on which airport you go through. It can often cause delays and alarm for musicians operating under a carnet system.

There is an issue with customs, too, and it has contributed to a massive drop in artists' earnings from merchandising. It is much more expensive to bring merchandise into the EU and, therefore, to earn from it. All of that is, of course, hitting artists during the perfect storm of increased costs and

the challenges of the current economy in which we are living.

Within the Celtic and folk world specifically, there is also a challenge with booking artists. For example, if an arts festival in Denmark or France wants to book a Celtic artist, it is very easy to bypass Scotland and just programme one directly from Ireland. It is a challenge that we have been working hard to try to combat.

It is also much harder for new artists to break into Europe. I think that it is slightly easier for the more established artists, but for newer ones, it is much harder, partly because the promoters in Europe have less confidence that younger artists will understand the complexities associated with Brexit, and partly because, quite frankly, they do not have the financial backing to be able to undertake journeys into Europe for the first time.

There are also challenges with vehicle movement, which I am hoping that my colleague Alice Black will expand on. I am not going to talk about cabotage, which has been widely discussed. Instead, I want to talk about the issues with insurance, which is not even a Government-implemented problem—or whatever the language is. Essentially, if an artist wants to hire a vehicle to go from the UK to mainland Europe, the insurance that imposed by the hire companies is so high that they cannot do it. The private insurance charges are preclusive, which has implications for green touring. The issue needs to be looked at desperately.

I noticed in the papers an outline of the support that currently exists for artists, and I felt that I needed to dispel some myths about that. The music export growth scheme—MEGS—that is mentioned is not a suitable fund for many artists. Under the scheme, you are given money, but you do not receive it until you have spent it and have shown your receipts. It forces artists into debt and is suitable only for musicians who are supported by London-based record labels; it is certainly not suitable for the way in which Scotland's infrastructure is set up.

The open fund is managed by Creative Scotland, which, as everyone knows, is under increasing pressure. It is by no means assured that artists will be supported to tour through that fund; in fact, many of the challenges with it are so great that I think it unlikely that many will be supported by it at all. The PRS Foundation's fund that has been mentioned is only for showcasing, not for touring, while the made in Scotland onward international touring fund is applicable only to artists who have performed at any of the Edinburgh festivals. There is a national performing arts companies touring fund, which, of course, is not applicable to any musicians. Although there are resources that can potentially help musicians,

none of them is suitable for independent musicians, and that is a worry. I think that certain things can be done in that respect.

I will invite you to ask questions after this, because I am trying to run through things as quickly as possible. Quite honestly, I could be talking here for at least an hour.

10:15

There are a number of things that can be done that are within the Scottish Government's ask. The first is to continue the discussions and dialogue on developing a music export office, as that would alleviate many challenges, certainly for emerging artists. A promoter in Denmark might be concerned about booking an emerging or new artist for the first time, so if they have the confidence that a music export office is there to provide the resources and knowledge for those artists, it will go a long way towards helping the situation. I should also point out that, when I say that I run the export office for Scottish folk music, it is very a part-time role, and that, when I refer to a music export office, I mean a fully functioning and properly funded export office.

I also think that something that could be done quite quickly in the shorter term is to set up a touring fund, similar to either made in Scotland or the national companies international touring fund, that will be available to help artists through these times.

I could say a lot more. I am lobbying for a cultural touring agreement within the EU, but I do understand that that is not within the gift of the Scottish Government and is a UK-wide ask. That said, a cultural exchange or touring agreement between the EU and the UK would certainly go a long way towards helping that situation.

I will stop at that. There was quite a lot in there, but I invite the committee to ask questions and I am happy to add any more comments.

The Convener: We will take opening statements from all the witnesses first of all and then move to questions. I will bring in Alice Black who is also joining us online.

Alice Black (Bectu): Much of the media attention around EU touring focuses on artists, but for every musician on a tour, there are several technicians, crew, producers, tour and production managers and drivers, without whom there would be no shows. As our members support the artistic vision and make it something that can be seen and heard, we have to talk about the two things in the same breath—one cannot exist without the other.

Scottish and UK technical staff are renowned as some of the most skilled crew in the world. Many

international artists used to begin their tours in the United Kingdom, working with crews in Scotland, and hired equipment and transport from the UK to take into the EU. That has become too complex and, because of the 90-day rule for travel and the additional paperwork and expense required for the movement of goods, a large number of artists and touring companies are just not travelling to the UK and are not hiring our crew or our equipment to take it abroad. That has had a knock-on impact on venues and promoters, equipment hire companies, trucking companies and transport providers. We were at the centre of the live events industry, but I feel like that that has changed and we are now falling behind.

The 90-days-out-of-180 travel rule is having a real impact on our members. We have heard personal stories of people being unable to holiday with their family, because they are concerned about using up some of their 90 days and not having enough time to take a tour if they are offered it. The rule therefore has an impact on our members and their families, and that impact is wider than just financial.

We would like to see much of what Lisa Whytock talked about, such as a specific mention in the trade and co-operation agreement for cultural workers and a waiver for visas and travel. I know that we have a lot of bilateral agreements with specific countries in the EU, but the situation is complex, because different rules apply in different countries. Individuals and sole traders who are trying to navigate that have to spend a lot of additional time working it all out.

There are also exemptions for carnets for musical instruments, but if our technicians travel with a lighting desk, for example, there is no exemption for that. Again, it means that people are faced with additional costs and paperwork and having to take additional time that they did not have to previously, just to take the tools that they need to do their job into the EU.

I will leave it there for now and take questions later. To summarise, though, I would say that much of the impact is the same for our members in more technical roles as it is for artists.

Ewan Robertson (Traditional Arts and Culture Scotland): As well as being a new board member for Traditional Arts and Culture Scotland, I am a touring musician with a folk group and have direct experience of pre-Brexit and post-Brexit touring. I will give you a snapshot of our experience and some of the challenges.

The main challenge is loss of bookings. In 2018, we had 37 shows in the EU, and in 2019, we played 61. In 2022, however, we played four shows in the EU and, in 2023, we have managed to play 12. Obviously, there are other issues

surrounding Covid, but we are back to similar levels of concerts in the UK and have seen a slight increase in other territories, such as North America.

I have spoken to different EU agents with whom we work, and they have reported administrative problems. They have found that bands simply do not want to come and tour. I know that that sounds a bit vague, but the fact is that those agents are certainly reluctant to engage with Scottish artists.

It is becoming increasingly hard to make a profit, due to rising costs. I have spoken with another group, Skerryvore, who are a flagship Scottish band; they have just completed a European tour, but they did not break even on it. One of the main issues with rising costs was the amount of money that they were spending on their carnet.

There are also a lot of challenges with merchandising. We have had reports of bands losing up to 72 per cent of online sales to the EU. There are also travel challenges with missing flight connections and the other implications of being held up at customs.

Alice Black referred to the problems that the rules cause for work and time with our families. In the band that I play with, three of us have young families. If we have to explore other territories to work in, it means more travel, more time away from home and more costs. It certainly makes things difficult.

I have probably talked about a lot of what will be covered and am repeating what has already been said, but it is important to say that there is a fabulous network of venues and promoters, as well as a huge passion and demand for Scottish music and culture. It is just becoming increasingly difficult to access, with the increased workload and expenditure. Moving forward, we will have to look to other territories, and that is a great shame.

Alistair Mackie (Royal Scottish National Orchestra): I will try not to repeat what has been said, but the RSNO will do 13 performances in Europe this year. I will describe some of the challenges that existed before Brexit for touring an orchestra from Scotland.

Three weeks ago, we went to Salzburg with 110 musicians. There are far fewer flights out of Scotland than there are from London, for example, so we have to put our musicians on multiple flights. We suffer from dynamic pricing models. At the cheap end, we might get a return flight to Salzburg for £300. For the last 10 or 20 musicians, we are up to about £1,000. That is just a geographical point, but it is background to how much more expensive it is for us.

Because we almost always take two flights to our first touring venue, we always have to travel a

day before our first concert, unlike a London orchestra, which will travel on the day of its first concert 95 per cent of the time. We cannot trust flight connections or risk passport delays, as has been mentioned. Passport delays are a huge factor now. Getting 100 people through passport control takes a lot of time.

Even before Brexit, there were additional expenses with touring a Scottish orchestra as opposed to a London orchestra. On top of that are the issues with carnets and cabotage, which have been mentioned. I will give you some detail on that. Cabotage costs us about an extra £15,000—that involves bringing a lorry from Europe to Glasgow, which goes to Europe, comes back to Glasgow and then goes back to Europe, rather than taking our own lorry. Additional carnet costs are about £10,000 for each visit that we make to Europe.

Touring is crucially important for the national orchestra. It offers real reputational gain for the orchestra and for Scotland as a whole. Most major cities and most countries have orchestras that are flagship cultural institutions, and touring them is a crucial part of articulating what is happening back in the home country.

One other piece of background is that I spent 23 years in a London orchestra—the Philharmonia. A London orchestra gets about 20 per cent of its turnover in public subsidy, independent of tax credits. In Scotland, we get nearly 40 per cent. That is much less than it used to be. However, London orchestras are able to build a business model whereby touring is an absolutely crucial income generator. I would like to think that the RSNO can be in Europe enough to build a similar model because, if we are not, we will not build the reputation that we need to have to get into the large halls for the higher fees.

The fees for our tour in January 2024 are 14 per cent higher than those for our tour in April 2022. That is because we are committed to going to Europe. We are building our reputation and our fees. We are going to bigger halls. I want that trajectory to continue. Eventually, touring could be a key part of our turnover. However, we will not get there unless we are in Europe often enough, and we cannot do that and break even at the moment.

The international touring fund has been mentioned. I will say something about that on behalf of the national companies. We could not tour without that fund. It is absolutely crucial. However, we have to tie down touring dates about two years out. For example, we will get some support for Salzburg in October, and some support in January. That support was confirmed with us two weeks ago, after we had been to Salzburg and after all our concerts in January had been

contracted. That funding is invaluable—it allows us to tour, but it is so uncertain at the moment that I am finding it difficult to commit to future European tours without some certainty that we will have that funding. All our finances are so tight, as you know. Adding in a potential significant loss on touring is hard to justify.

I will also say a bit about inward movement. We have always depended to some extent on European musicians coming to Scotland. That allows us to present an international season and to maintain a world-class orchestra. However, I checked our numbers this morning. The RSNO has 108 British members, but it now has only eight European members and one non-European member. That is dramatically different from a London orchestra. That is partly down to the complexities of Brexit—the visas, the costs of visas, national health service surcharges and all the other additional things—but it is also a funding issue, in that we now pay so much less than other UK orchestras, and less than European orchestras.

You can compare the situation to that of a top football team. We need to access the European labour market to get the very best musicians and keep the national orchestra at an international level, but the combination of low salaries, increased complexity and visa costs is making it extremely difficult to recruit from outside the UK. Although I do not believe that that has had an impact on the level of the orchestra at the moment, it is inevitable that, through time, it will.

Maybe I can say something on a more positive, anecdotal note. After Brexit, there is a lot of negative feeling towards the UK and towards UK culture and orchestras. However, everywhere we have been as a Scottish orchestra, we have been warmly welcomed. That is an important statement for Scotland to make, and I wanted to report that back.

We would like to be in Europe more. Almost everywhere we have been, we have been reinvited. However, I hear, “We were surprised how good you were.” I do not want anyone to be surprised by the level of culture in Scotland. The reason for the surprise is that we are just not there enough, and we are just not there enough because of the financial challenges of being there, which have increased after Brexit. They were already challenging before.

I appreciate the chance to tell the committee my woes and to say how crucial it is that Scottish cultural institutions—bands, orchestras, theatres and opera houses—are in Europe. We are letting people know how good what is going on here is.

10:30

Sam Dunkley (Musicians Union): Good morning, and thank you for inviting me today. The experience of the Musicians Union is similar to that that you have heard already, so I will try not to repeat too much.

To give you some context, before Brexit, the inquiries that we got from member musicians about working in Europe were similar to the inquiries that we still get about working in the UK—they were about contracts, fees, insurance and transport. The inquiries that we get now are about visas and work permits; often, they are about carnets. That is because the majority of our members are individual musicians who have been asked to navigate incredibly complex systems that, almost by default, are not user friendly and are not designed to be user friendly.

There are added costs for our members with carnets and visas. There is added complexity in simply being able to go to work and make a living. For a lot of musicians, that combination means that touring in Europe is no longer a financially viable option.

“This is Music 2023”, a report from earlier this year, said that 82 per cent of those who responded to the survey said that their European earnings had decreased, 65 per cent were receiving fewer invitations to perform in the EU, and 57 per cent said that it was not possible to take up invitations because of increased costs. Last month, a member got in touch to ask whether the fee that they had been offered for a gig in Europe was reasonable, and by the time we had talked it through, we worked out they would end up with about £50, and they would be there for three or four days. That is just not viable.

Before Brexit, a lot of independent musicians were learning their trade and adding to the richness of their practice by performing in Europe, by being able to go and perform with musicians who were not from the same nation as them, and by being able to experience different cultures, audiences and a different way of performing. That option is not now open to too many musicians.

As a union, to support our members, we have created a new post, which came into effect just after Brexit. We now have a head of international who leads on such issues and works with the International Federation of Musicians, which is, in effect, a union of musicians unions from around the world, and which can lobby Governments in Europe as well as us lobbying the UK Government and Governments in the nations within the UK. That has got us somewhere, but there is still a lot of inconsistency between the different nations, and that presents our members with challenges.

We were really pleased to see the paragraph in the UK-EU domestic advisory group’s report of 6 November, which states a commitment, or an understanding, that a cultural visa waiver should be created for creative workers. We have been lobbying for that since Brexit, and we have said—as Alice Black mentioned—that it should include musicians and music workers, because without the technicians and others in supporting roles, it is difficult for musicians to do their work.

We support UK Music’s “Manifesto for Music”, which calls for a cultural touring agreement and for a music export office, which Lisa Whytock mentioned previously.

I do not want to take up time repeating things that have been said. I echo everything that has been said so far, and I am happy to talk further if members have questions.

The Convener: I have a question before we move to questions from committee members. I and my deputy convener sit as observers on the Parliamentary Partnership Assembly, and this will be discussed at the PPA in December. I was also allowed to take part in a breakout session on touring artists the last time we were in London. My impression—rightly or wrongly—is that there has been a focus on emerging artists and an assumption that lots of them will be young people.

Given the demographics of the areas that you work in, is having such a focus the right priority? Will it make any difference to the larger sectors that you all work in? I will go in reverse order this time.

Sam Dunkley: Musicians emerge at different ages and different stages of life, because we all have different pressures and different priorities. We have members who are still in study and we have members who are past retirement age, and they all face the same barriers. The difference is not necessarily about age; it is about the scale of support and infrastructure around a musician. If you tour arenas and have production companies and record labels behind you, you will be better able to deal with those barriers than individual artists will be. The focus should be on scale rather than career stage or age.

Alistair Mackie: I was a trumpet player, and when I left university there was not a job for a trumpet player in a UK orchestra for 18 months, so I had no auditions to do. I had no opportunities to get a foot in the door, so I took the chance to go and work in Paris. It was very straightforward. When I came back to the UK, I got married. I came back as a freelance musician, and I made a huge amount of my income by dotting over to Europe and playing for small ensembles, but I was not an international artist; I was an orchestral player.

The choices that I made as a young trumpet player are much more difficult now. Apart from anything else, I do not think that an orchestra in Paris would advertise for a musician in the UK now. It takes a long while. It took me until I was 28 to get my first position in a UK orchestra. I left university at 21, so I had seven years of trying to build my skills to a point where I could win a position in an orchestra. European income and European travel were a huge part of staying afloat until I had the security of a position in an orchestra.

Young people need to be fleet of foot and take every opportunity that comes, but the opportunities for young orchestral players have diminished post-Brexit.

Ewan Robertson: There is an expectation that more established bands are perhaps in a stronger position to tour in the UK but, in my personal experience, that is not the case—it is actually even more difficult. We have taken steps backwards rather than forwards of late. To give you an example, we had to cut costs on our last tour, which was a 10-date tour in Germany, to make sure that the tour was profitable. We were not able to take a sound engineer with us. The fact that we were not able to employ a music worker impacts them, but it also means that you are not giving the best portrayal of yourself on an international stage, because you are taking a chance. It is a difficult situation.

Alice Black: I agree with what has been said. The issue affects members of all ages and at all stages in their careers. It is a particular challenge for younger workers who can no longer enjoy, and gain experience from, touring the EU in the way that I did when I started out in my career. It is a real benefit for people to be able to go and experience that and to bring back knowledge and skills to the industry in Scotland. The lack of such opportunities is putting people off joining the industry, to be honest.

We have severe skills shortages in many technical roles at the moment. We need to try and encourage people to join the industry, but part of that is the experience that you get from touring the EU, which is no longer as easy as it used to be.

As we learned during the pandemic, a lot of our workers have transferable skills, and they were able to move into other areas of the industry. A lot of people come into the industry—for example, someone who had been an electrician might decide that they want to become a lighting technician. That can happen at any stage in a person's career or their life. There are particular challenges for younger people, but it impacts on everyone in the industry.

Lisa Whytock: I agree with what everyone has said. It is often dangerous to say that we will provide a solution by providing funding for young people. I see that a lot, but it is not strategic and it does not deal with the crux of the issue, which is that, if a band that might sell 1,500 tickets in Scotland has never played in France, it needs to be able to access that market and build an audience there to have a sustainable career.

There is rightly a lot of investment in youth music initiatives, particularly in Scotland. That is great but, if those young artists do not have peers and see no pathway to a successful international career, they will not be inspired to take up careers as professional musicians. A strategic approach is needed. You need to look at the solutions for each artist at each stage of their career and not assume that, because a band has significant success in Scotland, its members are safe as professional musicians. I suggest that a more rounded approach needs to be taken, which involves looking at the challenges overall.

Kate Forbes: Thank you all for coming. I agree with Alistair Mackie that it is critical that Scottish music is in Europe. We are all proud of Scotland's musical culture and heritage—it is key for everything else associated with the country's reputation. Success in Europe has an economic, social and demographic impact. Mr Robertson's comment about Skerryvore not breaking even illustrates how critical the situation is, and we are only a couple of years post Brexit.

I will focus on what the committee can call for or do to try to relieve some of the pressures that touring musicians are dealing with—apart from the obvious, which is reversing Brexit, which the committee cannot do single-handedly. There has been talk about funding and technical changes to the rules for transporting equipment, merchandise and artists into and around the EU, but where can we make the biggest and most impactful change to try to resolve the issue? Right now, the situation does not sound sustainable and, if the stakes are so high for ensuring that musicians can tour, what could we, in our devolved capacity, do that would make the biggest difference?

The Convener: Ewan, do you want to go first, as you mentioned Skerryvore?

Ewan Robertson: Some kind of waiver on the carnet would make a difference, because that cost has come directly from Brexit. We did not have to consider it before, and it is a significant cost. All other costs are rising anyway but, if there was some kind of waiver system that could prevent us from having to go through that process, which takes time, causes confusion and costs money, that would be fantastic.

Alistair Mackie: I remember a trip back from Japan when someone put a hanky in their violin case and the whole lorry was emptied because a hanky—a silk hanky, right enough—was not on the carnet. Perhaps there could be a value below which a carnet is not required—it could be anything beneath £500, for instance. I do not know whether that is possible. The complexity of the carnet takes up so much time and money.

I understand that the cabotage exemption was not refused; it was just not pressed for. I do not understand the politics of the matter and why we cannot retrospectively push to have a cultural exemption in the cabotage rules. We invested in a lorry with a modern engine that has a low-carbon footprint, but we have to hire a haulier from Europe. We have no idea what that carbon footprint and additional expense is. It is a nightmare.

I wish that I could give you a compelling thing for the committee to do. I fear that the biggest problem for touring is the perception of complexity that European promoters have and a general negativity towards the UK post-Brexit. However, that makes it even more compelling that we should be in Europe to fight that and fight for Scotland's reputation and place. Culture has a leading role to play.

Brexit was such a huge hit to the music industry, especially to touring. I can suggest no mitigation, although some things would help to make the situation easier and decrease costs and complexity; however, that is an even more compelling reason to fight through.

10:45

Sam Dunkley: A lot of the costs come from the administrative burdens and the fees that are charged for carnets and all the rest of it. The aspiration is to have a UK-wide music export office, but I wonder whether, in the short term, there is potential to create one that serves musicians in Scotland. That would support musicians, at whatever stage of their career, to deal with the bureaucracy that they come up against and to ensure that they have access to experts and, potentially, funding to offset costs that fall on them that are not necessarily of their making and that were not there before Brexit. Is there capacity to create a fund that can pay for some of those costs for artists who tour to Europe?

In the long term, we as a union will continue lobbying for a cultural work visa. Anything that the committee can do to lobby for that would be massively appreciated. Again, I am not sure that there are quick-fix solutions, but we would be all

for something in Scotland to support Scottish musicians.

Lisa Whytock: I echo what Sam Dunkley has said. Obviously, the committee can lobby for waivers et cetera, but the question was about what the Scottish Government can do now. In the longer term, the ultimate aim is a Scottish music export office that focuses on the specific needs of Scottish artists. I, for one, would prefer to see that, as opposed to Scotland's being subsumed into a UK music export office, because that worries me. I would much prefer us to lobby for a Scottish music export office.

In the short term—I mean now—an international touring fund needs to be set up to help artists to access new territories. Ewan Robertson was right that, due to the complexities and difficulties in Europe, artists now look to North America. North America is massively expensive to tour, but also very rewarding. It has always been massively expensive to tour North America, so that is not new. The complexities in Europe are new. I worry that, without intervention now, a lot more artists will leave the industry.

Colleagues in the more indie and pop world have told me that many artists have just chosen to stop touring altogether. They still record and release albums but they no longer tour, because that is just not financially practicable.

Scotland has a rich cultural heritage. We are seen as massively punching above our weight when it comes to the talent in the country. However, without intervention to sustain those professional musicians now, I worry about the future, and I think that there will be an increasing decline over the next two years. I therefore urge the committee to take action now to reverse that. That does not need to involve a huge amount of money. I welcomed the First Minister's announcement about increased funding for culture and arts, and I urge that at least some of that be released now, to deal with the pressing problems that artists currently face.

Alice Black: I echo much of what has been said. I agree with campaigning for changes to the EU trade and co-operation agreement to include a free cultural worker permit or exemption and a carnet waiver and exemption. I also agree about funding to support workers and organisations with the additional costs and admin, because that is one of the main barriers that the Scottish Government could help with, through continuation of the international touring fund for national performing companies and support for the festivals expo fund. I know that, through its open funds, Creative Scotland supports organisations and individuals to tour internationally. An increased level of funding to support the kind of international

work that those funds help to provide for would be great.

A member recently had a five-week tour cancelled because the international artist got too nervous about issues with visas and carnets and decided to go with a German supplier instead. It would be a great help to have a campaign about the impact of those issues.

Mark Ruskell: I am interested in your campaign for a cultural touring agreement. Alice Black just spoke about the TCA review in 2026 and what discussions there can be ahead of that. Are there other sectors that link in with touring companies and musicians and that are facing similar issues, so that there is potential for you to work together? I am thinking about the screen industry as part of the cultural ecology. Are workers in the screen and other cultural sectors coming up against similar problems? How might you build a case from there?

Alice Black: We have members who work across screen and theatre, and this situation has an impact on them all; it is not restricted to music. My day job is partly in the National Theatre of Scotland and I also freelance in the music industry. I was having a conversation with colleagues at the National Theatre of Great Britain, who said that “War Horse”, which was one of its huge international touring productions, just would not be possible now because of the additional costs and the restrictions on the amount of time that it can spend in the EU. If big operators with the levels of resource, capacity and staffing of the National Theatre cannot manage that, how are smaller companies and arts organisation supposed to do it? That is definitely felt across the sector. Bectu covers all those areas, and a lot of working together and discussion is happening to press for changes. A cultural visa waiver would be great.

Sam Dunkley: Our head of international, Dave Webster, sits on the advisory board of the Independent Commission on UK-EU Relations, which is an organisation that has released reports on many sectors of UK life. Its most recent report was on manufacturing, so it is not only the music industry that is suffering. We are seeking commonalities by working with cross-industry organisations from outside the creative sector because, as you say, it is not only musicians and those in supporting roles in the music industry who are facing these barriers—they affect professionals working across the economy.

Our focus is on lobbying for a cultural exemption, because that will be of most benefit to our members. We hope that it can be done either as part of the TCA review or as an independent side agreement. We are also working with other sectors to ensure that the voice of music is heard

so that we are not missed out when any larger moves are going on.

Lisa Whytock: There are some common issues across the sector, but the music industry is unique. I welcome the investment in Scottish Screen and the film industry in general, but that is not matched for the music sector. We must ensure that the particular challenges that the music industry faces are recognised, because it is a different industry. I would like that to be noted.

Mark Ruskell: Okay—it is noted.

I have a final question. The committee recently went to Ireland, where we heard about a lot of the cultural work that the Irish state does to connect with its diaspora. Are artists and workers who have a family connection to Ireland applying for Irish passports? Is that a workaround to enable greater access to Europe?

Alistair Mackie: Yes, of course—a lot of musicians are trying to find a grandfather somewhere in Ireland. Apart from anything, an Irish passport gets people through airports an hour quicker. A lot of individual musicians are looking to see whether they can get dual nationality.

Mark Ruskell: That is interesting. Does anyone have any other thoughts on that?

Sam Dunkley: Musicians have contacted us to support them in that process.

It is worth mentioning that, any time that we look at what is happening in the Republic of Ireland, we find that the level of public funding for the arts is substantially higher than it is anywhere in the UK. That makes a massive difference, because it means that the sector can be better funded—for example, musicians in employed roles can be better paid. We sit round the table and have friendly discussions about what the pay should be for musicians, but we all know that there are challenges because of the level of public funding that organisations get. The level of public funding in Ireland—the last time that I looked, it was about £20 per head—makes a difference to how musicians can tour, either with organisations or as individuals and is, as I said, vastly higher than it is in the UK.

Lisa Whytock: I will echo that. Currently, numerous artists are applying for Irish passports, just to make things easier for touring in Europe.

Culture Ireland’s level of investment is absolutely phenomenal. For example, there are loads of German-Irish touring circuits, and they are funded. A lot of the artists’ travel costs are funded for them to participate in those tours, which are very successful and brilliant at introducing new artists to new audiences. Ironically, some of the artists who perform on those tours are Scottish, but they are marketed as Irish artists. It is the

same in the US. There is a massive number of Irish festivals, which are all supported by Culture Ireland, and they also present Scottish artists, but the general public think that they are Irish.

I do not think for one minute that the committee will suggest that the Scottish Government should do the same, although I wish that you would. I do not think that the level of support that Culture Ireland gets directly from the Irish Government will be replicated by the Scottish Government, but it is a good model and a good way of looking at it.

Culture Ireland has responsibility not just for music but for all the arts, so it can take a strategic view as to what each arts sector needs. That relates back to the question about similar struggles that professionals across all art forms in the sector face. The Culture Ireland model is definitely worth looking at in a context of what is right for Scotland.

Mark Ruskell: Yes—while being mindful of the constraints that we have.

Neil Bibby: I thank the panel members for your evidence and your campaigning efforts on these issues. On the issue of a cultural touring agreement, it would be remiss of me not to mention that the shadow secretary of state for culture, media and sport has committed a future Labour Government to negotiating an EU-wide cultural touring agreement, which would include carnet, cabotage and customs. The evidence that we are getting this morning is that there is an urgent need for action on that issue.

In the meantime, witnesses have laid out a lot of evidence about the impact that the situation is having on income and career progression, and you have highlighted a range of evidence from other organisations in relation to that. Is there a need for the UK Government to carry out a full long-term assessment of the impact of the current situation, so that there can be greater recognition of and agreement on the need to address the issue?

Ewan Robertson: Yes.

Neil Bibby: Thank you.

11:00

Alistair Mackie: There are UK Government initiatives that need to help culture. Without cultural tax credits, many organisations in the UK would not be surviving at the moment, but more could be done through the taxation system. To give you just one example, we could work with the UK Government to get an employers national insurance exemption for culture. There are VAT cultural exemptions for tickets and there are tax credits for culture. The problem is that, in this country, 90 per cent of cultural workers are self-

employed. They do not have the security of employment, because organisations simply cannot afford to employ them. All sorts of anomalies exist in culture. London orchestras operate on a self-employed basis—they do not pay all the employer add-ons. I am in competition with them and, as an employer, I have to pay employers national insurance.

We could lobby the UK Government to model a system for exemption from employers national insurance, which would bring more cultural workers into employment. Any financial gain from organisations could be recycled so, potentially, the Treasury could have the same take.

There are things that could be done in the taxation system and the subsidy system, as well as everything else. No stone should be left unturned in looking at how to support and advance cultural workers.

Sam Dunkley: Anything that we can do to assess the current situation would be welcome. An important part of that is looking at the current situation as a whole. As we have heard from other witnesses today, and as we know as a union, some musicians have left the industry because of the impacts of Brexit, combined with the impact of Covid and all the other stuff that has been going on. Any assessment of the current situation must find a way to recognise the people who have left and understand why they left, which is a difficult thing to do. To just take a snapshot now risks missing an impact that has already been felt by the industry, which is a really important narrative, alongside what musicians are currently facing.

Lisa Whytock: I always welcome research but not at the expense of action. Often, research is used as a way of delaying activity. With regard to the UK-wide situation, a lot of research has already been conducted by UK Music, Live music Industry Venues & Entertainment and the agents associations. There is a lot of research out there already, so I would welcome it, but not at the expense of an intervention, which is urgently needed now.

Alice Black: Lisa Whytock has mostly covered what I was going to say. Any more research to establish the impact would be welcome, but we can already see that there has been a significant impact, so what is needed urgently is action. We absolutely support what Neil Bibby said about the Labour Party position on the cultural touring agreement to include carnet exemptions, which would be fantastic. Although more research is welcome, we can see that there has been a significant impact on the industry. What is needed now is action.

Alexander Stewart: You have given us a very honest and stark view of the industry that you all

represent and are trying to maintain and sustain. I suspect that, without some of the interventions that you are asking for, the industry or many organisations will be at a tipping point with regard to what might happen next. We have already touched on what might be required to get some financial support. We have touched on the issue of the 90 out of 180-day rule with regard to visas. That would give you some hope, if such areas could be managed and maintained.

What other opportunities do you see, if any, with regard to challenging the situation and where you want the sector to go? The sector is in a dire situation and needs help to progress.

Each of you has talents in your own sector. Are you doing anything collectively to try to make progress or to challenge? We have opportunities here to tackle the Government. Is anyone within your own sectors coming forward with potential solutions? We have heard about some of those this morning, which is really encouraging, but are there others? What are other parts of the world doing in similar situations? Are they doing something that we could support or copy, or does everything have to come from the Government side and from the funding mechanisms that we control here? Is that the only opportunity that we have?

Alistair Mackie: I can talk about the RSNO, but every organisation I know has been resourceful and entrepreneurial in trying to balance public subsidy with increased commercial income. The RSNO has invested £1 million in a facility in Glasgow that enables us to bid for film, television and video game recordings. The music for Denzel Washington and Sylvester Stallone's most recent films was recorded in Glasgow and we had Kevin Costner in the building for five days. That is crucial income, but it also puts Scotland's national orchestra in a global position because anyone who goes to a cinema anywhere in the world to watch those films hears Scotland's national orchestra.

Those contracts are a game changer for us but we can win them because we have a world-class facility and an amazing orchestra, and we have those things because of Scottish Government support. That is what puts us in the game. Without that, we would not be competitive.

We have spoken about what we could do with visa waivers or carnets. Those things are all important and I understand the funding crisis that we are all facing, but we get more or less the same Government subsidy as we did in 2008 and we are on a cliff edge now. I hate to say this to you, but we have the lowest starting salary of any UK orchestra and if my colleagues from Scottish Ballet or Scottish Opera were here, they would tell you the same thing. We are running organisations that pay lower salaries than anywhere else in the

UK. How long can we sustain our quality if that continues?

I know that that is a blunt thing to say and I understand that funding is difficult for you, but it is important to say that and not to suggest that we can navigate the problem with entrepreneurial initiatives or waivers for European touring. Europe is a really competitive marketplace for orchestras. If we want to get into the top halls in Europe, we have to compete with orchestras from Berlin and Amsterdam that have way more subsidy than we do, which allows them to ask for less money and to have really great musicians.

I assure you that the RSNO is not alone. We are trying everything we can to generate more income and be more entrepreneurial. For us, that means film, television and video game scores.

Alexander Stewart: Does anyone else want to add to that?

Sam Dunkley: Musicians are entrepreneurial. Along with Help Musicians, we published a musicians census earlier this year, which found that the average income a musician earns from working in music is £20,700 a year, while 43 per cent of those who responded reported that they earned less than £14,000 a year.

Musicians, sometimes against their best interests, will make music for the love of music. We think that they should be paid for their work and should be able to make a living. Sometimes the difference between being able to go to Europe and tour or not being able to do so is whether you will make any money from merch, but if you have to register for VAT in every nation that you go to, that is a barrier that makes going there almost impossible.

We work with UK Music, with LIVE—Live music Industry Venues and Entertainment—and with FIM, the International Federation of Musicians. We lobby through them, on behalf of our members, and we listen to our members and encourage them to come to us when they face challenges so that we are aware of those and can come to places like this to report those challenges to you.

I have not arrived here today naive enough to think that you in this committee or this place will be able to solve all the problems that we have outlined, but it is really important that we underline the things that you are already aware of, and I am sure that you are already aware of much of what we have said today.

We will continue to lobby here, and at Westminster, Stormont and Cardiff. We are working on behalf of our musicians and members with as many organisations as we can that will listen to us, and we will continue to do that.

Lisa Whytock: I echo that point. Musicians are resilient and resourceful. Through the Showcase Scotland Expo, we approach commercial sponsors and PRSF. We look at every revenue stream that there is. Artists do that, too. There is a cost of living crisis, however, and commercial sponsorship opportunities have waned drastically: they just do not exist like they used to.

The committee should examine the possibility of establishing an international touring fund for musicians. I reiterate that, although there are funds out there, such a touring fund does not exist at the moment, and musicians are not able to access the majority of the funds that exist for touring. You would not need to fund an artist forever, however. It would be a matter of providing seed funding for the first two to three tours of any nation, by which time the tour will be commercially sustainable and the artist will no longer need investment. That allows resources to be used in a strategic way, intervening at a critical point in the artist's career.

Before Brexit, most artists did not apply to Creative Scotland for tour funding, because they did not need it. The cost of living crisis did not exist, Brexit did not exist and we did not have the perfect storm of coming out of Covid. Indeed, the sector and the industry are still in recovery from Covid. I would not want the committee or the Scottish Government to think that every artist would need to be subsidised for the duration of their career in order to do international touring. That is not what is needed; what is required is strategic intervention, sensibly utilised to maintain the professional artists that we have and to ensure that professional musicians can come through in the future, which is the bit that I am really concerned about.

Alice Black: Skills shortages, which I have mentioned already, is another area where we are struggling. Bectu has been looking into vocational training for members and has been trying to skill people up to fill the skills gaps, helping colleagues to diversify their income by, for example, training someone who works primarily in music to work elsewhere. There is so much cross-pollination of workers, particularly in technical roles, among theatres, music, live events and screen.

People should be able to have a career in music. Unfortunately, however, they are also having to try and get money from elsewhere. We are trying to help members with training, to fill skills gaps and bring new entrants into the industry.

Keith Brown: Thinking back to the Brexit debate, two scenarios were set out: one was that we would reach sunny uplands, full of opportunity, with no or very little regulation. On the other side, it was said that Brexit would be an enormous act

of self-harm. I am getting a distinct impression from the sector about which of those two scenarios you feel is being played out. Perhaps this sector, more than any other, shows the folly of cutting ourselves off from a huge market right on our doorstep. It is depressing to hear some of the stories about people who have stopped working in their profession or stopped performing or touring.

I have two quick questions. The first is the extent to which the things that we have been discussing were predicted or predictable. Was it possible to know that those things were going to happen, or have some of them become apparent subsequently? What proportion of things does that apply to—if you can make a guesstimate of that? That question is for any member of the panel.

My second question is specifically for Lisa Whytock. I was quite surprised at this, but I am new to the committee, so this might be something that everyone else knows. You said that Scotland was too small a country to sustain full-time musicians. If that is the case, is there a cut-off in country sizes for the ability to sustain full-time musicians? Do you have an idea of what size of country would be able to do that?

11:15

Lisa Whytock: It is difficult to give you the size of a country, but Scotland is a small nation for a musician to sustain a professional income. As Alice Black rightly pointed out, that does not just concern the musicians; it involves the infrastructure and the managers and technicians who support the musicians. People need to be performing full time, for most of the year, to sustain their income. In Scotland, only the major cities can resource artists performing and provide artists with an adequate level of income from concerts. Looking at our festival circuit, there are not many major festivals for our musicians outwith the Edinburgh festivals, which are not really music based.

It is therefore imperative that artists are able to earn a living outwith Scotland. At Showcase Scotland Expo we include exports to mean England, Ireland and Wales, because that is exporting our artists from Scotland, but that also includes the European market, critically. Germany is one of the largest markets in the world for touring and for merchandising sales. Ewan Robertson indicated Skerryvore's situation when the band toured Germany recently. It only just broke even. It is really important to understand that musicians have to be able to perform and sell albums outside Scotland if they are to maintain a living.

We find that other countries in Europe that are the same size as us, such as Norway, Sweden

and Finland, and their Governments all take a proactive approach to exporting their artists. They have a music export office, and they have music export touring funds to support those artists, certainly in their first ventures overseas.

We are not the only nation in the world that is small, and I would like to say that we punch above our weight talentwise. Currently, our musicians are massively respected in Europe. We are not alone in our size, but we are alone in that we do not have the same solutions that those other small nations have.

Keith Brown: I invite any member of the panel to comment on the things that have had a big effect that have become apparent since Brexit that were perhaps not predicted or predictable beforehand.

Alistair Mackie: Most things were perfectly predictable. The ability of an orchestra to move freely in Europe gave individuals immense opportunities. The effect there was predictable. On cabotage, we had all assumed that there would be an exemption, so not achieving that was a surprise. The big things were predictable, while some small things took us by surprise.

To add something about the size of the country, there are very few venues in Scotland that are large enough to host an orchestra. Historically, it was the local council that promoted concerts in large cities such as Aberdeen and Dundee. We got direct support from the local council, or we were hired by the council to present in its halls. That is gone for us now. Even within a small country, the market has dramatically changed for us, because of the change in the funding landscape. It really is a perfect storm.

The one great thing about film and television music is that it is an international marketplace. Touring is also an international marketplace, and such marketplaces are increasingly crucial for balancing our budgets. We often have an engineer and a composer in Los Angeles, while we are recording in Glasgow. We have fast internet in the centre of Glasgow, and we have been very successful in that. There are things that we can do to mitigate against a decline in opportunity in Scotland.

I would love us to be in Aberdeen and Dundee as often as we used to be. We want to be there, but the issue is simply that the local councils do not have the finance to provide us with support for that any more.

The Convener: I would like to ask a final question, but I am completely out of time, so I will share my thoughts with regard to Mr Brown's question. In relation to funding, is it fair to compare Scotland as a non-state, if you like, with other states? Would it be fairer to compare Scotland

with the Basque Country, Catalonia and some of the Länder? We only have time for yes or no answers.

Alistair Mackie: Could someone double-check this statistic? As I understand it, the average European country puts 1.5 per cent of its gross domestic product into culture, and Scotland puts in 0.6 per cent. It is not just about the size of the country, but about the proportion of funding that is assigned for culture.

Culture has huge economic value but, across the cultural sector, we are not yet good enough at articulating that clearly. We have digital outreach through education. What is the economic benefit of reaching all those kids? We also have work on film scores coming in, so we are on major film soundtracks. What is the economic benefit not just of the income in dollars but of the reputational gain for Scotland? We need to articulate that better and help to persuade decision makers of the economic benefit of culture.

The Convener: I will have to close the evidence session. We have another agenda item to consider in private, and we have no flexibility on a Thursday because of First Minister's question time.

I thank all the witnesses for your contributions and the written submissions that you provided to the committee.

11:21

Meeting continued in private until 11:25.

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